

## ABSTRACT

Dissension within the Confederacy: The Tenth  
Legislature of Texas during the U.S. – C.S. War

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At the time that Texas' Tenth Legislature began their session in the autumn of 1863, the war between the United States and the Confederacy was in its third year. The Eighth and Ninth Legislatures worked to respond to the necessities of the state during the outset and first years of the war, often putting the war effort and the needs of the Confederacy first. Various issues such as state finances, state defense, and frontier protection demanded action. After the summer of 1863, as the war shifted in favor of the North, the newly elected legislature and new governor began to put the needs of Texas first. This caused some dissension between the state and the Confederate government.

Dissension within the Confederacy: The Tenth  
Legislature of Texas during the U.S. - C.S. War

by

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A Thesis

Approved by the Department of History

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## CHAPTER ONE

### Introduction

In his work on the history of the “rebellion in the United States,” Horace Greely writes that “To the future historian, much will be very easy that now is difficult; as much will in his day be lucid which is now obscure...”<sup>1</sup> One finds, however, that there is not one clear and concise explanation for most historical events. This is particularly true of momentous occasions in history like the war fought between the United States and the Confederate States. The various political, economic, geographic, and social aspects of the Civil War have continuously been explored, debated, and assessed by historians since the end of the war nearly one hundred fifty years ago. As these questions have been researched and addressed even more questions have arisen; thus additional clarity has produced more opaqueness.

One could argue, however, that Greely was partially correct in his seemingly bold prediction: the modern historian has many manuscripts and primary sources, an abundance of secondary sources, and has had almost a century and a half to analyze the great American conflict of the mid-nineteenth century. Several new works, including many theses and dissertations, are added each year to the annals of history, each contributing a small but necessary piece to the convoluted puzzle. Despite these

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<sup>1</sup> Horace Greely, *The American Conflict: A History of the Great Rebellion in the United States of America, 1860-64: Its Causes, Incidents, and Results: Intended to Exhibit Especially its Moral and Political Phases, with the Drift and Progress of American Opinion Respecting Human Slavery from 1776 to the Close of the War for the Union*, vol. 1, (Chicago: O. D. Case and Company, 1864), <http://texashistory.unt.edu/ark:/67531/metaph61111/> (accessed April 6, 2013), 10.

advantages and the influx of new work, many questions remain about myriad aspects of the Civil War and much work is left to be completed. This is especially true of Texas during the Civil War.<sup>2</sup>

Although many aspects of Texas' role in the Civil War have been sufficiently addressed with recent scholarship, there are still numerous subjects to be explored. General analysis of Texas during the Civil War can be found in Ralph A. Wooster's *Texas and Texans in the Civil War* (1995) as well as Kenneth Wayne Howell's more recent *The Seventh Star of the Confederacy: Texas during the Civil War* (2009). An assessment of the factors that led Texas to join the Confederate cause and go to war with the United States is examined by Charles Grear's 2010 work, *Why Texans Fought in the Civil War*. Grear also edited *The Fate of Texas: The Civil War and the Lone Star State* (2008) which provides eleven essays on various themes within Civil War Texas including women and slaves. Other recent scholarship has focused on the fighting in Texas during the war in works like Stephen A. Townsend's *The Yankee Invasion of Texas* (2006) and Stephen A. Dupree's *Planting the Union Flag in Texas: The Campaigns of Major General Nathaniel P. Banks in the West* (2008).

The struggle to protect the western frontier is a perennial theme found throughout the Civil War era in Texas. Many laws providing for the frontier's defense and funding that defense were common throughout each legislative session which met during the war. In his 1992 book, *Frontier Defense in the Civil War: Texas Rangers and Rebels*, David Paul Smith analyzes the efforts Texans made to protect the frontier and prosecute a war at

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<sup>2</sup> Fredericka Ann Meiners, "The Texas Governorship, 1861-1865: Biography of an Office" (PhD diss., Rice University, 1974) <http://hdl.handle.net/1911/15155>; Nancy Head Bowen, "A Political Labyrinth: Texas in the Civil War, Questions in Continuity" (PhD diss., Rice University, 1974) <http://hdl.handle.net/1911/15012> (accessed April 6, 2013). These dissertations addressed this argument nearly forty years ago.

the same time. The issue of frontier defense, as well as others like state finances and Confederate relations, dominated the political landscape of Texas throughout the Civil War. In 1998, Dale Baum's *The Shattering of Texas Unionism: Politics in the Lone Star State During the Civil War Era* attempted to diagnose these various political trends throughout the State. Baum utilized a significant amount of quantitative data, such as voting records, to determine the unifying characteristic of Texas unionism prior to and during the war. Other historians exploring antebellum politics, like Walter L. Buenger, have concentrated their work on the reasons for Texas secession in 1861.

More than two decades before Baum's work, two dissertations written at Rice University, Nancy Head Bowen's "A Political Labyrinth: Texas in the Civil War, Questions in Continuity" and Fredericka Ann Meiners' "The Texas Governorship, 1861-1865: Biography of an Office," expounded the major issues and themes of Texas politics during the Civil War. In the introduction to her dissertation, Bowen cites historians Charles W. Ramsdell and Frank E. Vandiver and their calls for more work on State politics during the Civil War.<sup>3</sup> Bowen acknowledges that there is a considerable amount of writing on Texas politics leading up to the Civil War, but argues that most "...historians have neglected the non-military aspects of Civil War Texas..." and "...have been content to follow the example of Oran M. Roberts..." and Texas Governor Francis Lubbock.<sup>4</sup> At the end of the nineteenth century Oran Roberts, described by Bowen as a "...Democratic politician, state supreme court justice, and secessionist..."

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<sup>3</sup> Bowen, "A Political Labyrinth," 1-2.

<sup>4</sup> Ibid., 3-4.



dismissed the notion of serious controversy in Texas politics during the Civil War.<sup>5</sup> Likewise, Texas' first elected wartime governor, Francis Lubbock, neglected any "dissension and discord in Texas" during the war.<sup>6</sup> Bowen further argues that due to such prominent Texans espousing this view, historians have frequently assumed political homogeneity in Texas throughout the Civil War.<sup>7</sup> This has led to overlooking various matters, most notably state politics, during the war.

Political dissension, as Bowen and Meiners suggest, was present throughout the Civil War era in Texas, from the first whispers of secession, through the turmoil of being a member of the Confederacy, and beyond the last shots fired in the conflict. As is confirmed in Baum's work, *The Shattering of Texas Unionism*, there was much Union sentiment at the outset of the secession crisis in 1860-1861, before fighting began in South Carolina. Nearly one-fourth of Texans voted against secession.<sup>8</sup> Once secession became a reality, however, Unionists had to choose a course of action in Texas. Some Unionists, like James W. Throckmorton, eventually accepted secession as the will of their fellow Texans and supported the cause. In his 2008 work on Throckmorton, *Texas Confederate, Reconstruction Governor*, Kenneth Wayne Howell writes that Throckmorton's change in allegiance to the Confederacy was due to political expediency and his concern over western frontier defense.<sup>9</sup> Another group of Unionists, including

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Dale Baum, *The Shattering of Texas Unionism: Politics in the Lone Star State During the Civil War Era* (Baton Rouge: Louisiana State University Press, 1998), 42.

<sup>9</sup> Kenneth Wayne Howell, *Texas Confederate, Reconstruction Governor: James Webb Throckmorton* (College Station, TX: Texas A&M University Press, 2008), 73.

Texas Governor Sam Houston, left the public spotlight. A third group chose to fight against the Confederacy and Texas directly as ardent Union supporters.<sup>10</sup>

Another type of dissension began to develop among the devoted secessionists in Texas as the war progressed. As the fate of the Confederacy shifted from hopes of victory and independence to mere survival, factions developed along State and national lines once again. As the Confederate States attempted to salvage the war effort after losing battles at Gettysburg and Vicksburg in 1863, many Texans sought to implement policies that would benefit the State, regardless of their effect on the country. In his 1999 journal article, "Pendleton Murrah and States Rights in Civil War Texas," John Moretta discusses Texas Governor Pendleton Murrah and his policies during the last years of the war. During Murrah's time in office, his states' rights policies influenced the Tenth Legislature which was in session.<sup>11</sup> The legislatures that convened during the Civil War, as well as their laws, were at the heart of this dissension and have not been studied comprehensively. This was particularly true for the last years of the war as Texas began to slowly sever ties with the Confederacy and become more state-centric. This thesis seeks to examine this neglected piece of the political landscape in Texas during the Civil War: the Tenth Legislature and its laws within a declining Confederacy.

The Tenth Legislature was the last wartime congress in Texas. It bridged the gap between the legislative bodies before and during the Civil War and the period of Reconstruction which followed the war's conclusion. The Secession Convention led Texas from independence to Confederate state while the Eighth Legislature passed laws

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<sup>10</sup> Claude Elliot, "Union Sentiment in Texas, 1861-1865," *Lone Star Blue and Gray: Essays on Texas in the Civil War*, ed. Ralph Wooster, (Austin: Texas State Historical Association, 1995), 82-84.

<sup>11</sup> John Moretta, "Pendleton Murrah and States' Rights in Civil War Texas," *Civil War History* 45, no. 2 (June 1999): 141 (accessed September 11, 2014), EBSCO Host.

in preparation for a war that was grossly underestimated in scope. The Ninth Legislature met in the fall of 1861 with a better understanding of how to legislate for a state at war, but Texas remained unscathed until the fall of 1862 when the war reached its borders. As the tide of the war changed in favor of the Union in 1863, Texas legislators elected to the Tenth Legislature were more proactive in their legislation and adjusted previous laws as Texas became cut off from the rest of the Confederacy and an independent spirit flowed back into the state.

Although these legislative bodies have been studied in political overviews of the state, there has not been an analysis specific to the Tenth Legislature. This important body of legislators and its laws would guide Texas through the end of the war. An examination specific to the Tenth Legislature will provide a better understanding of Texas politics during the Civil War as well as Texas' role within (and its occasionally contentious relationship with) the Confederacy. This study, in conjunction with further analysis of the legislatures, governors, and state politics in the other members of the Confederacy, will also contribute to a better understanding of how dissension in the Confederacy affected the South's war effort and to some degree, the outcome of the war.

### *Secession Convention*

After the election of Abraham Lincoln in November of 1860, states from the lower South dissolved their political connections with the United States. South Carolina seceded in December and was rapidly followed by Mississippi, Alabama, Florida, Georgia, and Louisiana in January, 1861. Texas Governor Sam Houston came under pressure as calls mounted for an immediate state response and the convening of the legislature in extraordinary session. Fearing the governor would not call the legislature

into session or realizing that "...A Legislature cannot express as a Convention may, the sovereign will of the people..." prominent men and newspaper editors called for an election of delegates to a convention to be held in Austin on January 28, 1861.<sup>12</sup>

Although Governor Houston initially resisted, he soon acquiesced to demands, and on December 17 he called the Eighth Legislature to meet in extra session on January 21, one week before the Secession Convention was to assemble.<sup>13</sup> When the legislators arrived in Austin, they were tasked with addressing three main issues: frontier protection, the "embarrassed condition" of the State's finances, and the growing secession crisis which was embodied in the forthcoming convention. Within a week, both the House and Senate had passed bills recognizing the legitimacy of the convention.<sup>14</sup>

When the convention assembled in the capitol during the last week of January, no time was wasted before addressing the relationship and role of Texas within the United States. Four days after the convention convened, an Ordinance of Secession was passed by a 166-8 vote.<sup>15</sup> The ordinance contained two sections. The first section briefly listed the reasons for secession and declared that the ordinance which joined Texas and the other united states, less than sixteen years prior, was "...repealed and annulled; that all

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<sup>12</sup> John Marshall, ed., *State Gazette* (Austin, Texas), vol. 12, no. 18, ed. 1, Saturday, December 8, 1860 <http://texashistory.unt.edu/ark:/67531/metapth81463/> (accessed April 9, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>13</sup> John Marshall, ed., *State Gazette* (Austin, Texas), vol. 12, no. 20, ed. 1, Saturday, December 22, 1860 <http://texashistory.unt.edu/ark:/67531/metapth81465/> (accessed April 9, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>14</sup> *Journal of the House of Representatives of the State of Texas: Extra Session of the Eighth Legislature.* (Austin: John Marshall, State Printer, 1861), [http://www.lrl.state.tx.us/scanned/HouseJournals/8/houseJournal8th\\_1Entire.pdf?CFID=19463403&CFTOKEN=81053667&jsessionid=8430b3aeedb075265f55616e7b40c3666e2e](http://www.lrl.state.tx.us/scanned/HouseJournals/8/houseJournal8th_1Entire.pdf?CFID=19463403&CFTOKEN=81053667&jsessionid=8430b3aeedb075265f55616e7b40c3666e2e) (accessed April 11, 2013), 11, 60-61.

<sup>15</sup> Ernest William Winkler, ed., *Journal of the Secession Convention of Texas, 1861* (Austin: Austin Print Co., 1912), 48-49.

the powers which by said compact were delegated by Texas to the Federal Government are revoked and resumed...” and that Texas was now “...a separate sovereign State.”<sup>16</sup> The second section called for the ordinance to be approved or rejected by the state’s voters on February 23, 1861.

Before the convention adjourned for a brief recess, a Committee of Public Safety was established and given power to appoint various commissioners for the purpose of “...taking possession of any of the federal property with[in]...” the borders of Texas.<sup>17</sup> This Committee was made up of fifteen men with military experience and was tasked with acquiring federal outposts throughout the State as well as raising troops to combat belligerent Unionists.<sup>18</sup> In mid-February some of these commissioners, with the help of Colonel Ben McCulloch and his troops, negotiated the surrender of all federal posts and property in Texas under the control of Major-General David E. Twiggs in San Antonio. General Twiggs, a Southerner, did not have clear instructions from his superiors and wished to “...avoid even the possibility of a collision between the Federal and State troops...”<sup>19</sup> Therefore, the Secession Convention not only passed an Ordinance of Secession, but also began seizing federal property even before secession was approved by the citizens of Texas.

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<sup>16</sup> Ibid., 36.

<sup>17</sup> Ibid., 60.

<sup>18</sup> John G. Johnson, "COMMITTEES OF PUBLIC SAFETY (CIVIL WAR)," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/mdc06>), accessed February 08, 2014. Uploaded on June 12, 2010. Modified on March 4, 2011. Published by the Texas State Historical Association.

<sup>19</sup> Gen. David E. Twiggs, “General Orders, No.5” quoted in Col. O. M. Roberts. *Texas*, vol. XI, in *Confederate Military History*, ed. Gen. Clement A. Evans (1899; repr., National Historical Society, 2008), 25.

The convention adjourned on February 5, but reconvened on the second day of March to determine if Texas would remain a member of the Union or become a free and independent State once more. The votes were counted on March 4 and sixty-six percent of the electorate (a large majority of the counties) voted in favor of secession, but there were nineteen counties in north and central Texas that voted to remain within the United States. Among these was Travis County, home to the state's capitol.<sup>20</sup> It is difficult to attribute one specific reason as to why secession was so popular among Texans, but factors like frontier protection, the economy, slavery, and Texas' identity within a nation have continued to be argued among historians.<sup>21</sup>

After the votes were counted, the Secession Convention sent formal notice to Governor Houston that the convention had reconvened and that Texas was independent as of March 2, 1861, the predetermined date Texas secession would become effective. The governor countered, citing that the convention's authority, granted by the Eighth Legislative, only consisted of "...submit[ing] the question of Secession to a vote of the people. The Convention performed the functions assigned it by the Legislature and in the opinion of the Executive its powers were then exhausted."<sup>22</sup> This exchange brought about a great deal of tension between the convention and Governor Houston. A few days

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<sup>20</sup> Winkler, *Journal of the Secession Convention of Texas, 1861*, 87-90.

<sup>21</sup> Walter L. Buenger, "Texas and the Riddle of Secession," in *Lone Star Blue and Gray: Essays on Texas in the Civil War*, ed. Ralph A. Wooster (Austin: Texas State Historical Association, 1995), passim.

<sup>22</sup> Sam Houston to Messengers of Secession Convention, quoted in Winkler, *Journal of the Secession Convention of Texas, 1861*, 113.

after secession was declared the convention would almost unanimously vote to join Texas with the new Confederate States of America.<sup>23</sup>

Despite Governor Houston's vital role throughout the brief history of Texas, there was concern that his refusal to further acknowledge the authority of the convention was counter to the will of the people. There were even calls for Houston to "...resign his office and retire to his farm..." which would ensure that people would "...overlook his more recent acts and gladly turn to the glorious past, wherein he shines preeminent as a hero and a statesman."<sup>24</sup> On March 16 state officers were called to take an oath to the Confederate government. Houston not only refused to take the oath, he did not even attend the occasion and Edward Clark became the governor of Texas.<sup>25</sup>

Houston appealed his plight to the people of Texas the same day he was supposed to take the oath to the new Confederate government. The long address appeared in newspapers throughout the state during the following week. The former governor again claimed that the convention had only the power to pass the Ordinance of Secession and submit it to the people. Every additional action, including the passage of laws, establishing a Committee of Public Safety, joining the Confederacy, amending the state constitution, and forcing elected officials to take an oath of allegiance to the new Confederate government, was a usurpation of the legislature's authority and therefore illegal. In some newspapers, only one line of Houston's address was printed: "I

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<sup>23</sup> Winkler, *Journal of the Secession Convention of Texas, 1861*, 101-102.

<sup>24</sup> *The Weekly Telegraph* (Houston, Tex.), vol. 27, no. 1, ed. 1 Tuesday, March 19, 1861, <http://texashistory.unt.edu/ark:/67531/metaph236137/> (accessed April 21, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>25</sup> *The Weekly Telegraph* (Houston, Tex.), vol. 27, no. 2, ed. 1 Tuesday, March 26, 1861, <http://texashistory.unt.edu/ark:/67531/metaph236138/> (accessed April 21, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

PROTEST IN THE NAME OF THE PEOPLE OF TEXAS AGAINST ALL THE ACTS AND DOINGS OF THIS CONVENTION, AND DECLARE THEM NULL AND VOID!”<sup>26</sup>

There was some trepidation that some of Houston’s supporters or even the U.S. military might attempt to restore the governor to power in Texas. This fear was put to rest in a letter from Houston to Colonel Carlos A. Waite, the new federal commander in Texas. In the communication, Houston wrote that he “...respectfully [declines] any such assistance of the United States government...” and also “...protest[s] against the concentration of troops or fortifications in Texas...”<sup>27</sup> Sam Houston would lead the people of Texas no more; Edward Clark would lead Texas into the Confederacy and into the Civil War.

The convention kept very busy after secession was declared and a union with the Confederacy was approved. Acting as a quasi “people’s legislature,” the convention passed laws concerning frontier defense, state finances, and preparation for the state’s defenses. Various changes to the state constitution were also considered. On March 20, several of the state’s military assets were transferred to the Confederate government for its discretionary use. Then it was all over. After nearly a month of guiding the transition in which Texas left the United States, became independent, and then joined the

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<sup>26</sup> Ibid.; for Governor Houston’s full address, see J. P. Newcomb, ed., *Tri-Weekly Alamo Express* (San Antonio, Tex.), vol. 1, no. 20, ed. 1 Wednesday, March 20, 1861 <http://texashistory.unt.edu/ark:/67531/metaph181830/> (accessed April 23, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>27</sup> Sam Houston to Colonel Waite, quoted in Roberts, *Texas*, 34.



Confederate States, the Secession Convention referred several issues to the legislature and adjourned *sine die* on March 25.<sup>28</sup>

### *Eighth Legislature*

The Eighth Legislature first met in regular session from November 1859 until February 1860. It was nearly a year until they were called to meet in extra session by Governor Houston. As the legislature gathered on January 21, they were requested to consider the state's finances, frontier protection, and determine Texas' response to the sectional crisis. During the first part of the session, several acts were passed which addressed the state's finances and frontier protection. On February 7, they passed "An Act to provide for the protection of the Frontier of the State of Texas" which provided for frontier counties to organize companies of Minute Men. There were other acts passed subsequently to fund the defense of the frontier.<sup>29</sup> Until the legislature adjourned the second week of February, it spent much of its time on frontier protection, addressing the state's finances, and handling local matters like adjusting county lines and organizing various court systems throughout the state.

Although it was not the first item addressed, Texas' relationship with the federal government was taken under consideration during the first week of the called session. Two joint resolutions were passed on February 1. The first declared "That when the sovereign States of this Confederacy entered into the compact of Union, they delegated to the Federal Government no power to compel, by force of arms, obedience by the States to

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<sup>28</sup> Winkler, *Journal of the Secession Convention of Texas, 1861*, 198-251.

<sup>29</sup> Hans Peter Mareus Neilsen Gammel, *The Laws of Texas, 1822-1897*, vol. 5, <http://texashistory.unt.edu/ark:/67531/metaph6727/> (accessed April 25, 2013), University of North Texas Libraries, 346-354.

the Federal authority, but, on the contrary, such power was expressly denied.”<sup>30</sup>

Essentially this resolution merely pointed out that the federal government did not have the authority to “coerce” states to remain in the union if they desired to dissolve their political connection. The second joint resolution approved the Secession Convention and gave it legitimacy. Through an official act passed on February 7, the legislature mandated that the Ordinance of Secession had to be submitted to the Texas electorate for approval or rejection.<sup>31</sup> The legislature adjourned on February 9, but planned to return in mid-March, after the question of secession had been decided.

When the legislature reconvened on March 18, they were faced with a variety of interesting circumstances. Since their adjournment, Texas had declared its independence from the United States and quickly moved to join the Confederacy. Also, Governor Clark was now leading the executive branch instead of Governor Houston, who had been deposed by rejecting the convention’s authority and the unification with the provisional Confederate government. To avoid controversy, the Speaker of the House, Dr. Marion DeKalb Taylor, took the oath to the Confederacy and then administered it to other members of the House on the first day of the adjourned session.<sup>32</sup> The Senate also administered the oath to its members, but did so on March 19, because they did not have a quorum on the previous day.<sup>33</sup>

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<sup>30</sup> Ibid., 391-392.

<sup>31</sup> Ibid., 347.

<sup>32</sup> *Journal of the House of Representatives of the State of Texas: Adjourned Session of the Eighth Legislature*, <http://www.lrl.state.tx.us/scanned/HouseJournals/8/houseJournal8thAdjEntire.pdf?CFID=19463403&CFTOKEN=81053667&jsessionid=8430a13f05197f07be8e4aa5a79e23162912>, 126.

<sup>33</sup> *Journal of the Senate of the State of Texas: Adjourned Session of the Eighth Legislature*, <http://www.lrl.state.tx.us/scanned/SenateJournals/8/senateJournal8thAdjEntire.pdf?CFID=19463403&CFTOKEN=81053667&jsessionid=8430a13f05197f07be8e4aa5a79e23162912>, 111.

The House spent the first week addressing the state's finances, coordinating with the convention, and considering the current condition of the executive. Benjamin Epperson, a Unionist who represented the 2<sup>nd</sup> District of Red River County, offered a resolution which declared that despotism naturally occurs when a body possesses legislative, executive, and judicial powers and that Texas had not approved any such body from exercising such power. He argued that the convention's removal of Sam Houston was beyond the scope of their purpose and authority and violated the state constitution. The resolution was changed to claim that any state official not taking the oath to the Confederacy as mandated by the convention "...has deposed himself..." from office. The measure passed 53-12 and Edward Clark was approved as the new governor by default.<sup>34</sup>

On March 20, an act was passed which would provide funding for the incurred debt of frontier protection through bonds. Likewise, another act was passed which provided for school funding through taxation in accordance with the state constitution.<sup>35</sup> The Legislature continued to pass other laws related to the state's finances. These laws were enacted in order to fund specific items like frontier defense or military defense like the act passed on April 8.<sup>36</sup> In addition to the acts concerned with the finances and defense of the state, the Eighth Legislature spent a great deal of time organizing the courts throughout Texas as well as resolving county lines, addressing railroad companies,

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<sup>34</sup> *Journal of the House of Representatives of the State of Texas: Adjourned Session of the Eighth Legislature*, 133-134.

<sup>35</sup> Gammel, *The Laws of Texas*, 360, 371.

<sup>36</sup> *Ibid.*, 375-378.

and establishing congressional districts for the Confederate Congress.<sup>37</sup> The Legislature further prepared Texas for any impending conflict by turning over all confiscated federal property to the Confederate government as well as suggesting the Confederacy build arms manufacturing centers in Marion and Cass counties.<sup>38</sup> Having addressed the most pressing issues of state finances and both frontier and general defense, the Eighth Legislature adjourned *sine die* on April 9, 1861.

### *Ninth Legislature*

South Carolina's Fort Sumter was bombarded by and then surrendered to the Confederacy three days after the Eighth Legislature adjourned. Although no troops were killed and no prisoners were taken, Abraham Lincoln called for 75,000 militia to be raised in order to put down the rebellion, refusing to recognize the Confederate States as a separate nation. It was this call for troops from the remaining states within the Union which caused Virginia, Arkansas, North Carolina, and then Tennessee to secede and join the Confederacy. The other slave states, Missouri, Kentucky, Maryland, and Delaware, wrestled with leaving, but ultimately decided to remain in the United States. Maryland and Delaware were intimidated by federal troops due to their proximity to Washington, D. C. and Maryland was further stymied from any secession movement by the imprisonment of its secession leaders. Kentucky chose a different route to avoid entanglement in the secession crisis: neutrality. To some extent the ploy worked, although the state would eventually align itself with the North for the rest of the war. Missourians also found themselves split on the issue of secession. The state legislature

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<sup>37</sup> Ibid., 337-437, passim.

<sup>38</sup> Ibid., 395-397

ended up fleeing to Arkansas and joining the Confederacy while the Unionist secession convention within the state voted to remain in the Union. Thus, Missouri was officially in the United States and the Confederate States during the Civil War. The sides had been drawn and more than nine hundred miles to the east of Texas, the war had begun.<sup>39</sup>

On the morning of July 21, 1861, nearly four months after the firing on Fort Sumter, a battle was fought near Manassas, Virginia. This Confederate victory changed the assumption that the war would be merely a spectacle. It was during this battle in which General Thomas J. Jackson and his brigade received the moniker “Stonewall.”<sup>40</sup> Newspapers in Texas declared the battle as a “glorious victory” for the South and claimed that “Washington [was] overcast with gloom.”<sup>41</sup> Although the fighting had not found its way to Texas, the state was preparing itself for war. Due to the actions of the Committee on Public Safety and the Eighth Legislature, Texas defenses were being assembled during the spring and summer of 1861. The Committee took possession of federal forts and supplies within the state and also began organizing a preliminary defensive army in an effort to protect the state before permanent measures were put in place.<sup>42</sup> One of the problems encountered while assembling protection for the state was supplies. As historian Ralph A. Wooster wrote, “In the spring of 1861 it was often easier to recruit

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<sup>39</sup> John Keegan, *The American Civil War: A Military History* (New York: Alfred A. Knopf, 2009), 35-36.

<sup>40</sup> *Ibid.*, 105-106.

<sup>41</sup> *Houston Telegraph* (Houston, Tex.), ed. 1 Saturday, July 27 1861 <http://texashistory.unt.edu/ark:/67531/metapth233256/> (accessed April 23, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>42</sup> John G. Johnson, "COMMITTEES OF PUBLIC SAFETY," *Handbook of Texas Online* <http://www.tshaonline.org/handbook/online/articles/mdc06> (accessed June 7, 2013), published by the Texas State Historical Association.

troops, even for the infantry, than it was to find arms and ammunition.”<sup>43</sup> This meant that for the beginning of the war Texans would furnish their own guns and supplies. Wooster remarked that it was also well known that Texans preferred serving in the cavalry as compared to the infantry. One British military observer stated that “...no Texan walks a yard if he can help it” and Governor Clark noted that Texans had a “predilection” for the cavalry.<sup>44</sup> In the fall of 1861, some of the military companies organizing were reported to be “...destitute of clothing, and very many men [were] without arms...” and the arms that men did possess needed repair.<sup>45</sup>

The newly elected Ninth Legislature began their regular session on November 4, 1861 and assembled on November 5 to count the votes for governor. The contestants vying for the governorship in 1861 were Governor Edward Clark, Francis (Frank) Lubbock, and General Thomas J. Chambers. All three men were Democrats and Secessionists, which provided an election in which Texans would vote on a governor simply to maintain the status quo. Perhaps due to the endorsement of influential state newspapers like the *Texas State Gazette*, Francis Lubbock narrowly defeated Edward Clark by less than one hundred thirty votes and was declared the governor of Texas.<sup>46</sup> On November 1, as Clark prepared to leave the executive office, he submitted a synopsis of the present condition of Texas, especially with respect to military preparedness. He

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<sup>43</sup> Ralph A. Wooster, *Texas and Texans in the Civil War*, (Austin: Eakin Press, 1995), 27-28.

<sup>44</sup> Colonel Arthur Fremantle and Governor Clark quoted in *Ibid.*, 31.

<sup>45</sup> John Marshall, ed., *Texas State Gazette* (Austin, Tex.) vol. 13, no. 14, ed. 1 Saturday, November 9, 1861 <http://texashistory.unt.edu/ark:/67531/metaph180136/> (accessed April 23, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>46</sup> Leann Cox Adams, “Francis Richard Lubbock,” *Ten Texans in Gray*, ed. W. C. Nunn, (Hillsboro, TX: Hill Junior College Press, 1968), 81.

asked the new legislature to consider the state's current militia law which he found "...impracticable in its character and [unwieldy] in its operations." He continued, stating that "...it is ill adapted to the necessities of an actual war."<sup>47</sup> In the war's eighth month, it became clear that some of the defense laws Texas had in place prior to the war were not conducive to organizing soldiers for an actual conflict. Clark also lamented that the previous legislature failed to grasp the magnitude of the conflict between the United States and the Confederacy. This led to actions completed "...without the sanction of positive legislation, and upon the responsibility of the Executive."<sup>48</sup> Fredericka Meiners argues that one theme that is evident in Civil War Texas politics is that of action-reaction. Specifically, "In 1861 no one knew what the war would involve; they could only react to each new demand." As the war progressed this would shift and allow the wartime governors and legislators to better provide for the needs of Texas in a war setting.<sup>49</sup> During the first year of the war the Eighth Legislature and Governor Clark did their best to pass laws and make decisions to prepare Texas defense and make a contribution to the Confederacy's war effort, but it was time for a new legislature and new governor to assume responsibility.

Governor Lubbock, like many southerners, felt that the Confederacy was fighting "a war for liberty" and compared the Union army to "Hessian" mercenaries.<sup>50</sup> In his

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<sup>47</sup> Edward Clark to the Ninth Legislature, in James M. Day, ed., *Senate Journal of the Ninth Legislature of the State of Texas* (Austin: Texas State Library, 1963), 28, <http://www.lrl.state.tx.us/scanned/SenateJournals/9/senateJournal9thLegEntire.pdf>

<sup>48</sup> Ibid.

<sup>49</sup> Meiners, "The Texas Governorship," iii.

<sup>50</sup> *Francis Lubbock Inaugural Address to the Ninth Legislature*, quoted in John Marshall, ed., *Texas State Gazette* (Austin, Tex.) vol. 13, no. 14, ed. 1 Saturday, November 9, 1861, 13

inaugural address, Lubbock praised the Confederate military efforts throughout the previous months claiming the Union had been “...defeated on every battle field, and their hireling soldiers flee panic stricken before our army of citizens.”<sup>51</sup> After several lines commending the women of Texas for their role in the war effort, Lubbock moved to the crux of his address: the self-defense of the state and its duties within the Confederacy.<sup>52</sup> As Nancy Head Bowen and Meiners have argued, Lubbock was the epitome of a devoted Confederate governor.<sup>53</sup> From the beginning of his term Lubbock made it clear that Texas would do everything in its power to support the Confederacy and its war effort. In his address, Lubbock called on citizens to “cheerfully” pay their taxes contributing to the war and the maintenance of the state government. In addition to defending the state from possible Union invasion, Lubbock also mentioned the persistent concern of frontier defense.<sup>54</sup> The newly elected governor promised to share more detailed views in the future, but it was time for the Ninth Legislature to begin its work.

The regular session of the Ninth Legislature presented many of the same challenges which confronted the previous legislature. The war between the United States and the Confederate States caused many reactionary policies and laws as state officials attempted to manage the wartime situation. Due to Texas’ withdrawal from the Union, the state now had to consider its own defenses for the frontier and from potential invasion by the United States, both unfamiliar tasks. As Meiners argues, “The needs for men, money, arms, food, relief for indigents, a fiscal program, and state defense forced the

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<sup>51</sup> Ibid.

<sup>52</sup> *Francis Lubbock Inaugural Address*, 13-14.

<sup>53</sup> Meiners, “The Texas Governorship,” passim.; Bowen, “A Political Labyrinth,” passim.

<sup>54</sup> *Francis Lubbock Inaugural Address*



governor to react to provide for the state.”<sup>55</sup> The most glaring aspects confronting Texas continued to involve finances and defense. The size and geography of Texas made its defense a complex and expansive task and emphasis was given to the western frontier and the vulnerable coastline.

In addition to calling for 75,000 troops after the Confederate bombardment of Fort Sumter, Lincoln also instituted a blockade of the major Confederate ports. This blockade was a major piece of the Anaconda Plan which the Union attempted to implement in the early phases the war. This plan called for the North to surround the South and apply pressure to end the war. Historian Michael P. Johnson writes that “The blockade contradicted Lincoln’s concept of the war as a domestic rebellion…” because it “...represented a de facto recognition by Lincoln that the Confederacy was a separate sovereignty.”<sup>56</sup> In Texas the blockade did have some minor success as a few merchant ships were seized near Galveston and customs houses were closed, but as a whole the Texas coast remained calm throughout the first year of the war.<sup>57</sup> The legislature, seeking to improve Texan sea power as well as provide the Confederate navy the ability to strike back at the Union blockade, appropriated five hundred dollars for Texas mapmaker Robert Kreuzbaur to submit his proposed “Sea King” design to the Confederate war department. The ship was to be made of iron and wood and contain a torpedo-like tube for firing at ships from underneath the water, but it would never come to fruition. On March 8, 1862, the historic naval battle between the Confederate ironclad

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<sup>55</sup> Meiners, “The Texas Governorship,” iii.

<sup>56</sup> Michael P. Johnson, ed., *Abraham Lincoln, Slavery, and the Civil War: Selected Writings and Speeches* (Boston: Bedford/St. Martin’s, 2001), 122.

<sup>57</sup> Wooster, *Texas and Texans in the Civil War*, 43.; Gammel, *The Laws of Texas, 1822-1897*, 504.

*Virginia* and the Union's ironclad *Monitor* revealed how effective iron-built ships could be and both sides began producing the powerful vessels rapidly. There was no time to implement Creuzbaur's underwater cannon innovation.<sup>58</sup>

The legislature spent much time addressing the means to pay for the new defenses of the state. Laws were passed legalizing bonds and establishing taxes by the County Courts which would raise revenue and could pay soldiers and provide them with the necessary equipment they would need. One special war tax would be a direct, ad valorem tax levied on property at no more than twenty five cents per one hundred dollars.<sup>59</sup> The revenue from various taxes and the issuance of bonds would aid the state in the numerous appropriations that were necessary to prosecute the war in Texas. On January 14, 1862 the sum of one million dollars was appropriated for military purposes including items like arms, ammunition, and other supplies and expenses which were needed. In addition to supplies to be used during the defense of the state, money was also appropriated for a hospital fund which would care for the wounded Texas soldiers fighting during the war.<sup>60</sup> Another act, which was passed three days prior on January 11, appropriated money for obtaining and manufacturing arms. Perhaps more importantly, this act created a Military Board comprised of the governor, comptroller, and the treasurer of the state which possessed broad powers to use money to direct the war effort within the state.<sup>61</sup>

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<sup>58</sup> Mark Dallas Loeffler, "SEA KING," *Handbook of Texas Online* <http://www.tshaonline.org/handbook/online/articles/etslq> (accessed May 10, 2013), published by the Texas State Historical Association.

<sup>59</sup> Gammel, *The Laws of Texas, 1822-1897*, 450-451, 467-469.

<sup>60</sup> *Ibid.*, 496-497, 475.

<sup>61</sup> *Ibid.*, 484-485.

Before these defense appropriations bills were approved in January, two acts were passed during the week of Christmas which would alter the organization and nature of the Texas military. The first of these acts was concerned with the protection of the frontier and repealed the Eighth Legislature's law on the same matter passed just eight months prior. It called for a regiment of ten Ranger companies to be raised in order to protect the western and northern frontier from Indians and other threats found in the outlying counties of the state. Section Two of the act stated that men formed in this regiment would serve twelve month service terms and were to provide their own weapons, horses, and other military supplies which further acknowledged the state's financial problems and unpreparedness for a war at home. The regiment was to be part of the Confederate army, but was never to leave the state.<sup>62</sup> Texas' struggle to organize and provide frontier defense would remain a prominent issue throughout the war.

The other law, approved on Christmas Day, sought to "perfect the organization of State Troops, and place the same on a war footing."<sup>63</sup> This act provides further credence for the aforementioned argument, championed by historians like Nancy Head Bowen and Fredericka Meiners, which claimed Texas' government could only react early in the war. The law itself was a major overhaul of the state's military organization and clarified who was liable to serve and who was exempt from military service. The law prescribed that all "...able bodied free white male inhabitant[s] of this State, between the ages of eighteen and fifty years..." were responsible for potential military service.<sup>64</sup> The list of

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<sup>62</sup> Ibid., 452-454.

<sup>63</sup> Ibid., 455-465.

<sup>64</sup> Ibid.

exceptions included various state officials like judges and members of the executive branch, county sheriffs, and engineers and operators of railroads and steamboats. The state would be divided into thirty-three brigade districts consisting of one or more counties to better facilitate military organization. Each brigade was to consist of companies, battalions and regiments. Companies were to contain between thirty-two and one hundred regular soldiers, battalions three to five companies, regiments at least two battalions, and brigades at least two regiments. In sections five, six, and seven of the law, the legislators detailed the type and number of officers each detachment would contain. These sections also provided an oath to be administered to display loyalty, first to Texas and then to the union of Confederate States.<sup>65</sup> This act, as well as the one for frontier protection, provided much needed structure and reorganization for Texas state defenses and aided in the state's ability to prosecute the war at home and abroad. Though the law did not constitute a full state draft, it would have become necessary if there were not adequate volunteer numbers.<sup>66</sup>

The regular session of the Ninth Legislature ended in January of 1862 and did not reconvene until called to meet in extra session during February of 1863. During the year of 1862 the Confederacy began to experience some defeat on the battlefield. In the spring, the South lost battles at Pea Ridge, Arkansas and Shiloh, Tennessee. These battles were particularly devastating because of the deaths of two well-known Texan generals: Ben McCulloch at Pea Ridge and Albert Sidney Johnston at Shiloh.<sup>67</sup> A few

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<sup>65</sup> Ibid.

<sup>66</sup> Adams, "Francis Richard Lubbock," 85.

<sup>67</sup> Wooster, *Texas and Texans in the Civil War*, 47.

weeks after the battle in Tennessee, the Confederate government put into place a conscription law which called men between the ages of eighteen and thirty-five to serve in the military if called.<sup>68</sup> This law exasperated many within the state because it called for exemptions to those in charge of certain numbers of slaves which many viewed as further indication that the Civil War was "...a rich man's war and a poor man's fight."<sup>69</sup>

The Confederate conscription law further exposed many Unionists in the Central Texas hill country and in the northern counties near the Oklahoma border. Due to their blatant opposition, these groups were targeted by citizens and the military and led to two separate deadly conflicts. The first conflict involved six German counties near northwest San Antonio which vehemently resisted conscription. The counties were declared to be in rebellion by General Hamilton Bee, commander of the Western Sub-district of Texas, who sent Captain James Duff and four companies of the Fourteenth Texas Cavalry Battalion to end the uprising. Duff immediately declared martial law and hung suspects as many escaped the area. One group of militia was found trying to pass into Mexico: nineteen were killed during fighting, nine were wounded and then executed, and others fled.<sup>70</sup>

The second conflict involved a plot of Unionist sympathizers in the northern counties of the state. As the plot was uncovered, more than one hundred fifty suspects were brought to trial. In Cooke County alone, fifty-five were condemned and were hung

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<sup>68</sup> *Houston Telegraph* (Houston, Tex.), ed. 1 Tuesday, April 29, 1862, <http://texashistory.unt.edu/ark:/67531/metaph233272/> (accessed May 13, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>69</sup> Roberts, *Texas*, 68.

<sup>70</sup> Robert L. Kerby, *Kirby Smith's Confederacy: The Trans-Mississippi South, 1863-1865* (New York: Columbia University Press, 1977), 92-94; Elliot, "Union Sentiment in Texas, 1861-1865," 96-97 and 86-88.

near Gainesville, Texas. Despite these insurrections Texas would remain committed to the Confederate cause and legislators would eventually write very stringent laws punishing internal security threats.<sup>71</sup>

As Texans and other Southerners celebrated victory at a second battle near Manassas at the end of August, 1862, the war took an unfavorable turn. The two opposing armies met near Sharpsburg, Maryland on September 17 and fought what would be the bloodiest day in the short history of the United States as more than 23,000 men were killed, wounded, captured, or missing when it was over. The Texas Brigade, which was attached to James Longstreet's corps within Robert E. Lee's army, suffered a casualty rate more than twice that of the rest of the Confederate army.<sup>72</sup> On September 22, several days after the Battle of Antietam, President Lincoln issued his Preliminary Emancipation Proclamation which declared that as of January 1, 1863 "...all persons held as slaves within any state, or designated part of a state, the people whereof shall then be in rebellion against the United States shall be then, thenceforward, and forever free..." Lincoln's official Emancipation Proclamation, expounding on the preliminary one, was released and went into effect on January 1, 1863.<sup>73</sup> It can be argued that it was purely a political, wartime measure, because the Proclamation only affected slaves held in the Confederate states, while leaving slavery legally intact in other states which remained in the Union.

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<sup>71</sup> Ibid. More on these events can be found in Richard B. McCaslin, *Tainted Breeze: The Great Hanging at Gainesville, Texas, 1862* (Baton Rouge: Louisiana State University Press, 1994) as well as Robert W. Shook, "The Battle of the Nueces, August 10, 1862," *Southwestern Historical Quarterly*, LXVI (July, 1962): 31-42.

<sup>72</sup> Wooster, *Texas and Texans in the Civil War*, 60-61.

<sup>73</sup> Abraham Lincoln, "Emancipation Proclamation," in Michael P. Johnson, ed., *Abraham Lincoln, Slavery, and the Civil War*, 206.

During the fall of 1862 the war finally reached the Texas coast in earnest as Fort Sabine was destroyed and Union attention moved to Galveston. Texas' second largest city was invaded by Union forces in early October, but was only held by the enemy for three months. In the early morning hours of the New Year, General John Bankhead Magruder used land and naval forces to launch a surprise attack on Union soldiers and reclaim Galveston. The retaking of the city was hailed throughout the South and it was lauded as "the most brilliant affair of the war" in Texas.<sup>74</sup>

Several weeks after Galveston was retaken, Governor Lubbock called the Ninth Legislature to convene in extra session. The legislature initially gathered on February 2, 1863, but did not have a quorum in the House of Representatives until February 5 when the governor was to make an address to both chambers. Lubbock began his speech by extolling the virtues of the Southern cause and denouncing the tactics of Lincoln and the North. He then went on to discuss a host of topics including the newly created Military Board, state defenses, taxes and funding war initiatives, conscription, and various home matters which required attention during the called session. Heeding the governor's requests, the Ninth Legislature began to work on issues pressing the wartime state.<sup>75</sup>

The legislature passed several laws during the session appropriating funding for the care of wounded soldiers and providing for soldier's families. One act expanded on the hospital fund created during the regular session, calling for two hundred thousand

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<sup>74</sup> *The Texas Almanac - "Extra"* (Austin, Tex.), vol. 1, no. 37, ed. 1, Saturday, January 3, 1863, <http://texashistory.unt.edu/ark:/67531/metapth78178/> (accessed May 16, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>75</sup> Governor Lubbock Address to Called Session of Ninth Legislature, in James Day, ed., *House Journal of the Ninth Legislature: First Called Session* (Austin: Texas State Library, 1963) <http://www.lrl.state.tx.us/scanned/HouseJournals/9/houseJournal9thLeg1stCalled.pdf>, 4-38.

dollars for the sick and wounded soldiers serving in Texas and the Confederate armies.<sup>76</sup> Two other laws provided care and support for families and dependents of soldiers fighting outside of Texas or defending the state's borders. One of these laws, approved on March 5, appropriated six hundred thousand dollars to be distributed to counties throughout Texas to assist soldiers' families.<sup>77</sup>

Frontier defense, a continual problem during the previous session, as well as previous legislatures, required attention and a law was passed organizing a ten company mounted regiment and appropriating 800,000 dollars for the protection of the frontier. Also, due to President Lincoln's Emancipation Proclamation, the issue of slavery found its way into the extra session and two separate acts were passed. The first sought to define the offense of inciting slave insurrection and provided punishment of five to fifteen years in prison upon conviction. The second law regarding slavery addressed "the hostile invasion of the State of Texas by persons of color." This act provided that any person of color fighting against the state during the war had "...forfeited his freedom..." and upon capture, would be held prisoner until the end of the war. Any runaway slaves would be returned to their previous owners and those remaining would be sold by the state under the various provisions of the law.<sup>78</sup>

As has been discussed, some areas throughout the state resisted calls to service. As Texas assembled defenders for the frontier and regular state defense and as the Confederacy called for volunteers outside of Texas and passed conscription laws, many

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<sup>76</sup> Gammel, *The Laws of Texas*, 599.

<sup>77</sup> *Ibid.*, 599, 617.

<sup>78</sup> *Ibid.*, 601-602, 608-610.



refused to serve or attempted to avoid service. This was occasionally done through force, which led to two unfortunate massacres within the state. In order to counter this, the legislators passed a law which severely punished those evading or assisting others in evading the conscription laws. Most offenses described in the act carried prison sentences ranging from one to five years. The Ninth Legislature also found it prudent to pass a law to exclude men avoiding military service or joining or aiding the enemy from holding office, voting, serving on juries, and holding property.<sup>79</sup> These laws reveal the legislature's strong commitment to the Confederate cause in early 1863 and the gravity with which the state dealt with treason and evasion of military service.

On the morning of March 7, both the House and Senate determined "...that they had performed their duty assigned them..." and the Ninth Legislature adjourned for the last time.<sup>80</sup> For the succeeding eight months Texans were left with the acts and resolutions of both sessions of Congress in order to defend the state, support the Confederacy, aid soldiers' families, and fund domestic programs and the government. A new legislature and new governor would be elected and would assemble in the fall to address new issues pressing upon Texas, locally and within the Confederate union. Action would be needed because the summer of 1863 brought drastic changes to the war and to the Confederacy itself. Much would fall upon and be required of the Tenth Legislature, the last wartime legislature in Texas.

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<sup>79</sup> Ibid., 600.

<sup>80</sup> Day, *House Journal of the Ninth Legislature: First Called Session*, 213.

## CHAPTER TWO

### Tenth Legislature Elected

#### *The Summer of 1863*

The summer of 1863 brought two of the most important battles fought during the Civil War. One of these battles, arguably the most famous of the war, was fought at Gettysburg, Pennsylvania and the other was fought at Vicksburg, Mississippi. Gettysburg proved to be a debilitating defeat for the Confederate army as thousands of men lost their lives and General Lee was forced to withdraw and abandon his invasion of the North. General Lee was determined to face the Union army at Gettysburg despite the apprehension of some of Lee's subordinate officers. The officers' trepidation would prove to be justified as Confederate forces were outmaneuvered and turned back at Little Round Top and during General George Pickett's ill-fated charge. Both sides suffered heavy casualties, but the Army of the Potomac would claim victory over Lee's Army of Northern Virginia.<sup>1</sup>

Although the battle at Gettysburg garners more attention and included well-known figures like Robert E. Lee and James Longstreet, the Union siege at Vicksburg had a greater effect on Texas and perhaps the outcome of the war itself. Because Memphis and New Orleans were lost in 1862, the Union victory at Vicksburg gave the United States complete control over the Mississippi River and split the Confederacy in half. Although the commander of the District of Texas, New Mexico, and Arizona, General John Magruder, tried to remain positive, most elected officials in the Trans-

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<sup>1</sup> Keegan, *The American Civil War*, 194-201.

Mississippi department (the area west of the Mississippi River that was now under the military and quasi-political jurisdiction of General Kirby Smith) lamented at the state of affairs. One politician declared "...that the West had been thrown away by the bureaucrats in Richmond..." and Texas Confederate Senator Williamson S. Oldham claimed that the region had been "...virtually and practically abandoned by the Executive and War Department, and surrendered to Gen. Smith to be governed according to his discretion and to be sustained by its own resources."<sup>2</sup> The Trans-Mississippi Confederate states, of which Texas was the westernmost, would remain segregated for the remaining two years of the war.

General Smith was so unnerved by the turn of events that he called for a special meeting of Trans-Mississippi governors to be held in Marshall, Texas in mid-August, 1863. The purpose of the conference "was to allay the public's despondency by providing convincing proof of the loyal and unanimous determination of the West's leading men to fight on to final victory, and to relieve popular fears of army despotism by arranging an exhibition of the civil government's continued supremacy over the military."<sup>3</sup> This was akin to a twenty-first century political publicity stunt as it was merely to illustrate how the four western states (Arkansas, Louisiana, Missouri, and Texas) were still devoted to the cause despite being separated from the rest of the Confederacy. As some historians have argued, the premise of the conference was also ill

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<sup>2</sup> Kerby, *Kirby Smith's Confederacy*, 134-136.

<sup>3</sup> *Ibid.*, 137.

conceived, because civilian leaders were summoned by a Confederate general, contradicting the desire for no appearance of army despotism.<sup>4</sup>

Smith brought six points before the delegates of the conference that needed to be addressed or clarified including the extent of his own authority, the current condition of each state's citizenry and resources, the possibility of obtaining French and Mexican support, and "...the least objectionable method of buying and selling cotton..."<sup>5</sup> Due to the brevity of the meeting, subcommittees were assigned issues to quickly debate and submit recommendations. Perhaps most important, General Smith would assume greater authority for the general defense of the western district, but these powers were limited to those within the constitutional parameters of the Confederate Executive and only to be used when necessary.<sup>6</sup> Thus General Smith would be an extension of President Davis and the executive branch out west. Judge Edwin Merrick, a delegate from Louisiana and the chairman of the subcommittee that addressed Smith's power, wrote that the state governments would continue to function as the main bastion of authority throughout the Trans-Mississippi district.<sup>7</sup> The main controversy and the only proposal rejected by the entire conference was Senator Oldham's recommendation to pay for cotton through six percent bonds backed by specie. Due to its importance, the "...military authorities would need to buy or impress virtually all the cotton in the Department."<sup>8</sup> Oldham's committee believed that "...cotton should be used to support the economy, to stabilize the

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<sup>4</sup> Ibid.

<sup>5</sup> Bowen, "A Political Labyrinth," 165.

<sup>6</sup> Kerby, *Kirby Smith's Confederacy*, 139.

<sup>7</sup> Bowen, "A Political Labyrinth," 166.

<sup>8</sup> Ibid., 166-167.

depreciating [Confederate] currency, and to pay for necessary imports...” like military supplies.<sup>9</sup> The whole body accepted the premise of nationalizing the cotton industry, but rejected the notion of six percent bonds which would force Smith to impress most of the department’s cotton. Although many delegates like Governor Lubbock felt positive about the deliberations of the Conference, it had little effect because it had no “legal standing.” It did, however, solidify the resolve of the four western Confederate states which were essentially on their own for the remainder of the war.<sup>10</sup>

### *The Election of 1863: The Office of Governor*

Governor Lubbock called for Texas counties to hold elections on the first Monday in August, 1863 for governor and lieutenant governor, as well as state representatives and senators and other state offices. Upon the request of the governor, newspapers printed this proclamation in addition to a proposed constitutional amendment that would allow county courts to sell lands granted to public schools. Newspapers across the state ran election notices throughout the spring and summer up until the day of the election on August 3.<sup>11</sup>

Lubbock accepted a commission with the military rather than seek a second gubernatorial term. Despite his claim of desired military service, it seems Lubbock’s prospects for reelection were not entirely promising as many felt he cooperated too much

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<sup>9</sup> Kerby, *Kirby Smith’s Confederacy*, 141-142.

<sup>10</sup> *Ibid.*; Bowen, “A Political Labyrinth,” 167.

<sup>11</sup> *The Semi-Weekly News* (San Antonio, Tex.), vol. 2, no. 175, ed. 1, Monday, August 3, 1863, <http://texashistory.unt.edu/ark:/67531/metaph179809/> (accessed May 31, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

with the Confederate government, especially with regard to the Conscription Act.<sup>12</sup> It seems that a faction within the state, apart from Unionists, were more concerned with Texas than the Confederate nation. The governor's decision resulted in a contest between Pendleton Murrah, a relatively unknown lawyer from Marshall, Texas, and General Thomas Jefferson Chambers, a man who had unsuccessfully sought the governorship three previous times. On the surface, the bland candidates and concern with the war effort seems to have resulted in a lower voter turnout in the 1863 election.<sup>13</sup> After all, the election in 1861 brought out more than 43,500 voters whereas the 1863 election saw only 31,045. In her study of Texas politics during the Civil War, however, Nancy Head Bowen argues that this number "compared favorably" to previous elections and was "particularly impressive considering the fact that thousands of soldiers... were out of the state in the Confederate armies."<sup>14</sup> In addition to the justifiably reduced turnout, the outcome was not close. Pendleton Murrah of East Texas was elected over Chambers by more than five thousand votes.<sup>15</sup>

During the summer months preceding the election, newspapers throughout the state like *The Tri-Weekly Telegraph* (Houston) and the *Dallas Herald* endorsed Murrah while *The State Gazette* (Austin) staunchly opposed him and supported Chambers. Most newspapers lauded Murrah for being "pure and honest," while others claimed "he [had]

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<sup>12</sup> Benny E. Deuson, "Pendleton Murrah," *Ten Texans in Gray*, ed. W. C. Nunn, (Hillsboro, TX: Hill Junior College Press, 1968), 93.

<sup>13</sup> *Ibid.*, 122.

<sup>14</sup> Bowen, "A Political Labyrinth," 150.

<sup>15</sup> James M. Day, ed., *House Journal of the Tenth Legislature: Regular Session* (Austin: Texas State Library, 1965), <http://www.lrl.state.tx.us/scanned/HouseJournals/10/houseJournal10thLegEntire.pdf>, 38.

done nothing...that has even lifted him up to the level of mediocrity.”<sup>16</sup> Furthermore, Murrah’s relative obscurity outside of East Texas was brought to light as the same paper claimed that “neither in the civil nor military service, has he ever done one jot or tittle that entitles him to be known beyond the precincts of a county.”<sup>17</sup> Despite the negative press within the Texas capitol, most electors in the state decided to take a chance on the unknown candidate and Pendleton Murrah was elected and then sworn in on November 5, 1863.

The voters in Texas decisively elected Murrah as he received five thousand more votes than Chambers. Initially it appears Chambers was simply defeated for the fourth time, coldly rejected by Texans across the state because Murrah was viewed more favorably, but further analysis reveals a different story. Nancy Head Bowen argues that “there was an overriding issue in 1863: the favorable or unfavorable view that the candidates...took toward Confederate civil and military authority.” As Texas became cut off from the rest of the Confederacy, attitudes toward the government at Richmond, Virginia began to slowly shift. Many in the state felt a creeping animosity toward the Jefferson Davis administration. Chambers received 12,455 votes, the highest tally in his four attempts at the governorship. This illustrates the frustration many Texans felt over their new isolation and the Confederate authority tightening in Texas. Chambers represented and became the “anti-administration” candidate while the lesser known

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<sup>16</sup> *Dallas Herald*, vol. 11, no. 35, ed. 1, Wednesday July 29, 1863, <http://texashistory.unt.edu/ark:/67531/metaph294261/> (accessed May 31, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.; *The State Gazette* (Austin, Tex.), vol. 14, no. 49, ed. 1, Wednesday, July 8, 1863, <http://texashistory.unt.edu/ark:/67531/metaph180192/> (accessed May 31, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>17</sup> *Ibid.*

Murrah was the “pro-administration” candidate. Bowen also argues that although both men might have been dedicated to the Confederate cause, this “dedication to the cause cannot be equated with devotion to the Davis administration and its policies, or with a willingness to cooperate with General [Kirby] Smith, Davis’ ‘vice-regent’ in the West.”<sup>18</sup> Furthermore, Chambers’ “...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...” which caused most Texans to elect the lesser known, but safer, Murrah.<sup>19</sup> The gubernatorial race was not the only election which centered on the state’s relationship with the Confederacy as three of Texas’ six Confederate congressmen were replaced during the August election, caught up in politics between states’ rights and the Confederacy.<sup>20</sup> Candidates for the state legislature remained somewhat immune to the “pro” and “anti” administration argument although small pockets of division manifested throughout the state during the election.

### *The Election of 1863: The Legislature*

Although the gubernatorial election took center stage in 1863, many newspapers argued for the importance of the forthcoming state legislature election as well. *The State Gazette* (Austin) lamented that the focus on the election of the next governor was overshadowing the significance of the next legislature due to the impending term expiration of Louis T. Wigfall, one of two Confederate Senators from Texas along with

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<sup>18</sup> Bowen, “A Political Labyrinth,” 136-137.

<sup>19</sup> Ibid.

<sup>20</sup> Kerby, *Kirby Smith’s Confederacy*, 154; A full analysis of the six congressional races and of their outcomes can be found in Bowen, “A Political Labyrinth,” 141-149.



W. S. Oldham. Wigfall's term would expire in 1865, before the regular session of the Eleventh Legislature, and thus the responsibility of selecting a new Confederate Senator to represent Texas fell on the forthcoming Tenth Legislature. The newspaper implored voters to ask their potential state legislators, "whom will you vote for, for C. S. Senator?"<sup>21</sup> Although *The State Gazette* made it a point to inform its readers about this important task required of the new legislature, it would be a moot point, because the Confederate armies surrendered and the Confederate government collapsed before a new senator would be needed.

One of the best commentaries concerning the upcoming legislature appeared in a late June issue of E. H. Cushing's *The Weekly Telegraph* (Houston) and implored voting citizens to choose "The very best men of the State of Texas, now remaining at home..." to serve as legislators. Much like *The State Gazette* in Austin, *The Weekly Telegraph* argued that the Tenth Legislature would be, if properly formed, a "bulwark of the State."<sup>22</sup> Several weeks later Cushing's Houston newspapers, *The Weekly Telegraph* and *The Tri-Weekly Telegraph*, again addressed the importance of electing the right men for office in the upcoming election, a mere week away. In response to the cynicism of citizens that espoused apathy toward voting for any particular candidate because of their negative perception of legislatures, the newspapers argued that "A state of war does not do away with the necessity of carrying on the civil Government..." and it may be even

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<sup>21</sup> Richardson, D., ed., *The State Gazette* (Austin, Texas), vol. 14, no. 49, ed. 1, Wednesday, July 8, 1863, <http://texashistory.unt.edu/ark:/67531/metaph180192/> (accessed June 15, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>22</sup> Cushing, E. H., ed., *The Weekly Telegraph* (Houston, Texas), vol. 29, no. 15, ed. 1, Tuesday, June 23, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236238/> (accessed June 17, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

more important to continue the functions within the state because of the war.<sup>23</sup> Cushing's ideal elected officials were a combination of businessman and patriot. Thus, citizens were entreated to disregard "party and party issues," instead focusing on questions such as: "Is he competent? Will he be faithful? [and] Can we trust him?" The newspaper closed the editorial on a positive note, citing that the names that had been put forth across the state in each county should provide for a good legislative body.<sup>24</sup>

Potential legislators began announcing their candidacy for the state legislature in June, less than eight weeks before the election on August 3, 1863. Many candidates chose to utilize local newspapers throughout the summer months in order to communicate with their potential constituents. One such candidate was Nathan W. Bush, the incumbent representing Austin County. Bush served during the Second Called Session of the Ninth Legislature and used several June and July issues of *The Bellville Countryman* to announce his candidacy for re-election, which he would successfully accomplish. In his message, Bush vowed to "...oppose the agitation of the question of a division of Austin county..." and represent his constituents "...without regard to locality, clique or

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<sup>23</sup> Cushing, E. H., ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 56, ed. 1, Friday, July 24, 1863, <http://texashistory.unt.edu/ark:/67531/metapht236550/> (accessed June 17, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>24</sup> Ibid.

party.”<sup>25</sup> The division in Austin County was due to a large Unionist German population.<sup>26</sup>

Thomas Pratt, a candidate hoping to represent the counties of Bell and Lampasas, submitted a brief biographical narrative and laid out his qualifications for office in a mid-July edition of the *State Gazette* (Austin). Pratt claimed to be “...an independent States Right Democrat, a firm and unwavering supporter of Constitutional rights, and an uncompromising advocate for the prosecution of the present war to a final and eternal separation from the Yankee nation.”<sup>27</sup> He also wrote that he intended to “...labor for the advancement of the interests of my constituents--the welfare of the State, and the maintenance and perpetuity of our noble Confederacy.”<sup>28</sup> Despite these political beliefs, the voters in Bell and Lampasas chose first time legislator E. Walker to represent them in the upcoming legislature. Although little is known about Walker, one could surmise that the convoluted political structure of Bell County, allowed for his victory. Although an overwhelming majority of residents voted for secession in 1861, there was “a significant minority” of Unionist support in Bell County as the secession crisis began. Union support did not disappear in the county, but many secession-era Unionists faithfully

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<sup>25</sup> Osterhout, John P., ed., *The Bellville Countryman* (Bellville, Texas), vol. 3, no. 47, ed. 1, Saturday, June 27, 1863, <http://texashistory.unt.edu/ark:/67531/metaph177101/>, (accessed June 12, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>26</sup> Charles Christopher Jackson, "AUSTIN COUNTY," *Handbook of Texas Online* <http://www.tshaonline.org/handbook/online/articles/hca08> (accessed July 04, 2014), Uploaded on June 9, 2010, published by the Texas State Historical Association.

<sup>27</sup> Richardson, D., ed., *The State Gazette* (Austin, Texas), vol. 14, no. 50, ed. 1, Wednesday, July 15, 1863, <http://texashistory.unt.edu/ark:/67531/metaph180193/> (accessed June 12, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>28</sup> Ibid.

supported the Confederacy once the war began.<sup>29</sup> Thus, in the fall of 1863, Bell County residents remained loyal to the Confederacy and rejected Pratt's seemingly strong states' rights view.

Newspapers were also utilized by editors to write opinions and endorsements pertaining to specific men seeking office in the next legislature. The *Dallas Herald* announced the candidacy of men seeking election to represent Dallas County as well as candidates for surrounding counties. In addition to the announcements, the paper also wrote separately that one candidate named Colonel John C. McCoy was "...well and favorably known..." in the county and was "...justly entitled to a return to the seat which he so well filled during the past called session."<sup>30</sup> One week later, the same newspaper announced the candidacy of John C. McCoy and W. H. Witt again, but also announced the candidacies of Thomas J. Nash and Henry J. Moffatt, all for Dallas County. Separate editorials of support were written for both new candidates Nash and Moffatt.<sup>31</sup> Two legislators were chosen from Dallas County: George Wilson of Cedar Hill and Henry J. Moffatt of Dallas. However, Moffatt's election was contested by the incumbent John C. McCoy in mid-November and after some debate by the Committee on Privileges and Elections the seat from Dallas County was declared vacant and a new election was held

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<sup>29</sup> Seymour V. Connor and Mark Odintz, "BELL COUNTY," *Handbook of Texas Online* <http://www.tshaonline.org/handbook/online/articles/hcb06> (accessed March 02, 2014), Uploaded on June 12, 2010, published by the Texas State Historical Association.

<sup>30</sup> *Dallas Herald*, vol. 11, no. 32, ed. 1, Wednesday, July 8, 1863, <http://texashistory.unt.edu/ark:/67531/metaph294258/> (accessed June 13, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>31</sup> *Dallas Herald*, vol. 11, no. 33, ed. 1, Wednesday, July 15, 1863, <http://texashistory.unt.edu/ark:/67531/metaph294259/> (accessed June 13, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

in which McCoy won and served throughout the remaining sessions of the Tenth Legislature.<sup>32</sup>

The other representatives and senators had an easier time taking their seat in the newly elected congress. There were ninety seats in the lower house of the Texas Legislature comprised of seventy-seven districts throughout the state. Thirteen of these districts had two men representing the district: the twelfth, the thirteenth, seventeenth, twentieth, twenty-first, twenty-seventh, thirty-sixth, thirty-seventh, fortieth, forty-second, forty-fourth, sixty-second, and seventy-first districts. The Texas Senate contained thirty-three seats with one senator from each district. Over the course of the Tenth Legislature's tenure, six representatives and three senators were succeeded by other men due to death, resignation, and the aforementioned special election in which McCoy defeated Moffatt.<sup>33</sup> In one particular case, the senator-elect from the nineteenth district, Thomas C. Neal, died before the legislature convened on November 2 and was replaced by William Wilson who resigned and was succeeded by William M. Peck in 1864.<sup>34</sup>

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<sup>32</sup> Day, *House Journal of the Tenth Legislature*, 87.; "John McCoy" under Legislators and Leaders, Legislative Reference Library of Texas, <http://www.lrl.state.tx.us/legeLeaders/members/memberDisplay.cfm?memberID=4857&searchparams=chamber=~city=~countyID=0~RcountyID=~district=~first=~gender=~last=~leaderNote=~leg=10~party=~roleDesc=~Committee> (accessed June 13, 2013).

<sup>33</sup> "Members of the Tenth Legislature" under Legislators and Leaders, Legislative Reference Library of Texas, <http://www.lrl.state.tx.us/legeLeaders/members/membersearch.cfm?chamber=&city=&countyID=0&RcountyID=&district=&first=&gender=&last=&leaderNote=&leg=10&party=&roleDesc=&Committee> (accessed June 21, 2013).

<sup>34</sup> "Thomas C. Neal" under Legislators and Leaders, Legislative Reference Library of Texas, <http://www.lrl.state.tx.us/legeLeaders/members/memberDisplay.cfm?memberID=4673&searchparams=chamber=~city=~countyID=0~RcountyID=~district=~first=~gender=~last=~leaderNote=~leg=10~party=~roleDesc=~Committee> (accessed June 21, 2013).

Despite these changes and the absence of a few legislators from the regular session, the Tenth Legislature remained fairly consistent.<sup>35</sup>

Cushing changed his positive tone and the composition of the Tenth Legislature continued to be scrutinized before it assembled on November 2, 1863. In mid-October the *Tri-Weekly Telegraph* (Houston) printed the names of the legislators that were known at the time and concluded that there were enough "...to give the public an idea of the complexion of the incoming legislature..." and, furthermore, was disappointed with its formation.<sup>36</sup> This assessment was not meant to disparage the men elected, but to caution against the "temporary popular excitements" throughout the state in which men would do very little in order to maintain their popularity throughout the state and appear wise "...in the annals of the country."<sup>37</sup> There was a fear from men like Cushing and Guy M. Bryan, former Texas legislator and Confederate officer, that the new legislature would remain silent on pressing issues confronting Texas at this phase of the war or follow the lead of the Ninth Legislature that "...tampered with 'experimental and dangerous legislation' that was finally checked only by the cohesiveness of a bare conservative majority."<sup>38</sup> This type of legislation was blamed on Governor Lubbock's "radical" message to the

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<sup>35</sup> Representatives/Senators (districts) absent at regular session: William Poag (16th), James Loughridge (41st), John Ingalls (74th), S. G. Cole (75th), Charles Callaghan (76th). One senator, James Magoffin (33rd). "Members of the Tenth Legislature" under Legislators and Leaders, Legislative Reference Library of Texas.

<sup>36</sup> Cushing, E. H., ed, *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 90, ed. 1, Friday, October 16, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236586/> (accessed June 24, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>37</sup> Ibid.

<sup>38</sup> Bowen, "A Political Labyrinth," 169.

legislature and his perceived tendency to do "...too much toward the war effort."<sup>39</sup> As Bowen argues, Cushing's analysis would prove to be false as many "...of the conservative leaders of the Ninth Legislature...returned to Austin determined not to be panicked into 'reckless' legislation" that would put the Confederacy's interests ahead of the state's interests.<sup>40</sup>

As the legislature assembled in early November, it was evident that the regular session would be marked by inexperience as sixty-seven out of ninety available seats, (nearly seventy-five percent), in the House of Representatives were filled with first time representatives. The senate boasted much more experience with all but eight seats held by senators with previous legislative experience.<sup>41</sup> It would be up to this relatively inexperienced group of men to lead Texas through the necessities of civil government through the remainder of the Civil War.

The regular session began on Tuesday, November 2, 1863, but the House did not meet quorum and business began on the following day. The first order of business for the representatives was to elect a Speaker of the House to direct their daily activities. For the position, only two names were put forth: Constantine W. Buckley and Dr. Marion DeKalb Taylor. This important election within the house presented an interesting contest between the two previous Speakers of the House in the Eighth (Taylor) and Ninth (Buckley) Legislatures. Although both men were qualified, Dr. M. D. K. Taylor, who

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<sup>39</sup> Ibid., 170.

<sup>40</sup> Ibid., 169.

<sup>41</sup> "Members of the Tenth Legislature" under Legislators and Leaders, Legislative Reference Library of Texas.

possessed much more legislative experience, was elected by an overwhelming majority and would serve as Speaker during all three sessions of the Tenth Legislature.<sup>42</sup>

Taylor was born in Georgia in 1818, but was raised and lived in Alabama until 1846. He attended school up to age thirteen and then worked in the family stagecoach business until he bought a farm in 1838. Due to poor health, Taylor could no longer maintain the farm and began practicing medicine under the guidance of a local doctor. Taylor's first experience in politics came when, at the age of twenty-four, he served as the representative of Butler County in the Alabama House of Representatives. Upon his defeat for re-election in 1846, because of his support for Texas statehood, Taylor moved to Texas.<sup>43</sup> After establishing a medical practice in East Texas, Taylor re-entered politics in his newly adopted home state. Before serving as the Speaker in the Tenth Legislature, Taylor served in the House of Representatives during the Third Legislature and then served four successive terms during the Fourth through Seventh Legislatures in the Senate. Taylor returned to the House and served as that body's Speaker during the Eighth Legislature before returning to the same post two years later.<sup>44</sup> Only one other legislator serving in the Senate during the Tenth Legislature matched Taylor's years of legislative service prior to the current term, David Catchings Dickson. Dickson also served in six legislatures prior to serving in the last Texas legislature of the Civil War including the First Legislature which met in early 1846 after Texas' annexation.<sup>45</sup>

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<sup>42</sup> Day, *House Journal of the Tenth Legislature*, 3-4.

<sup>43</sup> Texas Legislative Council, "Marion DeKalb Taylor," *Presiding Officers of the Texas Legislature, 1846-1995*, (Austin: Texas Legislative Council, 1995), 114-115.

<sup>44</sup> *Ibid.*

<sup>45</sup> "David Catchings Dickson" under Legislators and Leaders, Legislative Reference Library of Texas, <http://www.lrl.state.tx.us/legeLeaders/members/memberDisplay.cfm?memberID=4658&>



After M. D. K. Taylor's election as Speaker, a Chief Clerk, three Assistant Clerks, a Sergeant-at-Arms, an Assistant Sergeant-at-Arms, a Doorkeeper, and a Chaplain were selected to complete the organization of the House.<sup>46</sup> The Senate met quorum and organized on November 2, 1863. Robert H. Guinn was selected as President *pro tem* and the posts of Secretary, Assistant Secretary, Sergeant-at-Arms, Doorkeeper, Enrolling Clerk, Engrossing Clerk, and Chaplain were also filled.<sup>47</sup> As the legislature organized, newspapers began to speculate the matters that should occupy the bulk of the session. E. H. Cushing surmised that the most pressing matter for the new legislature would be "...the providing of a revenue adequate to the extinguishment of the current debt and the support of the Government for the succeeding two years."<sup>48</sup> Cushing felt it was necessary to utilize taxes to keep the state from acquiring an unmanageable amount of debt like the Confederate government had done. Specifically, he thought the legislature would be wise to, within the confines of the Constitution, bolster the strength of the currency, the "great sinew of the war."<sup>49</sup> The depreciation of Confederate currency was a concern discussed at the conference of the Trans-Mississippi state governors in August,

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<sup>46</sup> Day, *House Journal of the Tenth Legislature*, 4-6.

<sup>47</sup> James M. Day, ed., *Senate Journal of the Tenth Legislature: Regular Session* (Austin: Texas State Library, 1964), <http://www.lrl.state.tx.us/scanned/SenateJournals/10/senateJournal10thLegEntire.pdf>, 3-5.

<sup>48</sup> Cushing, E. H., ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 97, ed. 1, Monday, November 2, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236593/> (accessed June 27, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>49</sup> *Ibid.*

but due to lack of authority the conference was unable to address the issue.<sup>50</sup> A full explanation of the currency crisis was reprinted in *The Tri-Weekly Telegraph* (Houston) from a newspaper in Shreveport, Louisiana. The editorial acknowledged the currency depreciation as a major problem, but claimed it was of secondary concern to the fight for Southern liberty. Furthermore, citing England's successful banking and taxation practices during wartime, the writer argued that the Confederate government and its citizens must "...bow down to heavy taxation..." and in place of gold and silver, utilize "...a currency which will pay debts, be respected by the people, and supports our armies and maintain our navy..."<sup>51</sup> It was evident that Confederate currency, specie usage, taxation, and, in the Trans-Mississippi states, cotton impressment would be issues the Tenth Legislature would need to address, but this was merely speculation on the part of newspaper editors, not gubernatorial advice. After two days both houses were organized and the Tenth Legislature waited on direction from the executive branch.

*Governor Lubbock and Governor Murrah Address the Tenth Legislature*

As the legislature settled into the first week of the regular session, Governor Lubbock appeared before congress in joint session on November 4 and again on November 5. The latter appearance on November 5 was in conjunction with the inauguration of Governor-elect Pendleton Murrah. The day before, however, Lubbock

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<sup>50</sup> Kerby, *Kirby Smith's Confederacy*, 141.

<sup>51</sup> Cushing, E. H., ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 97, ed. 1, Monday, November 2, 1863.

presented to the legislature the current state of affairs in Texas concerning myriad topics and also advised as to how legislation could ameliorate the specific problems.<sup>52</sup>

Lubbock began his speech by lauding Texas' fortunate position at this stage in the war, but quickly moved on to the harsh realities of living in the western-most state in the Trans-Mississippi Confederacy. The beginning of the speech called on all resources in the state to contribute to the war effort. Specifically, Lubbock said that Texans "...must realize the fact that the country is at war...[and]...private affairs must cease to occupy so much...attention."<sup>53</sup> He continued by expounding the failures of the Confederate Exemption Law that allowed many Texans, as well as other Southerners, to avoid military service for various reasons. Although the law was intended for the "public good," many used the exemption "...for their personal benefit and advancement," and did not "...supply the Government and people with their [goods]...at a fair remunerative price."<sup>54</sup> Also, wealthy men were paying for substitutes to serve and fight in their place. Lubbock felt that "...every man capable of doing military duty should represent himself in [the] great struggle" and, if done, the Confederate army would attain its "proper strength."<sup>55</sup>

Lubbock then proceeded to specific issues and reports which the legislature would need to analyze and perhaps address with legislation. The governor brought the legislators' attention to reports submitted by The Military Board and the Adjutant and Inspector General; both report summaries assessed the state's ability to prosecute the war

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<sup>52</sup> Day, *House Journal of the Tenth Legislature*, 8-35, 45-53.

<sup>53</sup> Governor Lubbock Message to Tenth Legislature in *Ibid.*, 9-10.

<sup>54</sup> *Ibid.*, 11.

<sup>55</sup> *Ibid.*

and provided solutions for inadequacies. For instance, The Military Board reported a need for iron works due to the metal's scarcity throughout the state. It was also reported that the new legislature would need to approve additional appropriation for the interest on eight percent bonds (if the policy was to be continued). Utilizing the Adjutant and Inspector General's report, Lubbock boasted that Texas had provided nearly ninety thousand men to the Confederate cause, but because of the continuous need for more men, the organization of Texas troops was "destroyed." Lubbock argued that a law was necessary to call all men at least sixteen years old and "not totally unfit" to serve in the military with no exemptions or substitutions. Clarification was also needed in regard to two sections of the state constitution that exempted conscientious objectors and ministers from military service.<sup>56</sup>

The frontier and its defense continued to be an issue for Texas as the third year of the war was coming to a close. Texas had been forced to provide for its own defenses and maintained a Frontier Regiment which required extensive state resources. The Confederacy refused to accept the regiment into Confederate service, which Texas desired, because Texas demanded the regiment not be removed from the state. Due to conscription laws, the Frontier Regiment's numbers dropped, which made their difficult task impossible. In his address, Lubbock "...suggested...that the Legislature repeal the current restrictions..." and allow the regiment to be transferred to Confederate service without issue. This would provide better protection for the frontier and transfer most of the cost to the Confederacy.<sup>57</sup>

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<sup>56</sup> Ibid., 12-16.

<sup>57</sup> Bowen, "A Political Labyrinth," 172-173.

Some attention was given to men leaving the state in order to avoid military service and those deserting current service. Lubbock recommended placing such men in the penitentiary system to carry out sentences of hard labor in addition to forfeiting citizenship rights. A host of internal state issues, which were directly and indirectly influenced by the ongoing Civil War, like the penitentiary, distilleries, hospitals, various asylums, Indian agents, legal reform, and bond sales were also discussed by the governor and brought to the attention of the legislators.<sup>58</sup> In his conclusion, Lubbock again praised the positive condition of Texas, calling the state “blessed” by “Divine Providence.” Unfortunately, Lubbock lamented, there was a small group of “untrue” men and laws were needed to punish those men that cannot “give some palpable evidence of his devotion to the Southern Cause” for fear that loyal citizens would take it upon themselves. Due to the high prices of goods and depreciated currency, resulting from avaricious business owners, Lubbock suggested that the Texas Legislature emulate the state of Virginia by fixing prices on goods.<sup>59</sup>

The *Tri-Weekly State Gazette* (Austin) printed large portions of Governor Lubbock’s message among its inauguration coverage because the newspaper claimed it “...breathes the very soul of patriotism in every line.” The paper also credited Lubbock with “pure and disinterested motives” despite “...his extreme views in support of the General Government, at the expense of...the local interests of the State...”<sup>60</sup> E. H.

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<sup>58</sup> Governor Lubbock Message to Tenth Legislature in Day, *House Journal of the Tenth Legislature*, 18-32.

<sup>59</sup> *Ibid.*, 33-35.

<sup>60</sup> D. Richardson, ed., *Tri-Weekly State Gazette* (Austin, Tex.), vol. 2, no. 11, ed. 1, Friday, November 6, 1863, <http://texashistory.unt.edu/ark:/67531/metaph181220/> (accessed June 29, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

Cushing's *Tri-Weekly Telegraph* (Houston) also acknowledged the admirable qualities many found in Lubbock, citing his "...great purity of purpose, the loftiest patriotism, the utmost self-sacrifice in behalf of his country, and a fixedness of purpose that nothing could shake."<sup>61</sup> Although the newspaper spoke highly of Governor Lubbock, one correspondent wrote that his address was "...looked upon by many as extremely radical..." and due to its configuration, the Tenth Legislature would experience a "stormy session" because of the competing conservative and radical factions.<sup>62</sup>

After Lubbock's speech, the Senate returned to their chamber and the House briefly adjourned until three o'clock. It was then that a joint session of the legislature counted the votes for the executive office and determined that Pendleton Murrah and Fletcher Stockdale had been elected governor and lieutenant governor, respectively. The joint Inaugural Committee reported that the inauguration would take place on the morning of November 5, 1863 at eleven o'clock. The committee described where various members of the state government would sit in the House chamber and provided a schedule for the brief ceremony that included a procession, a prayer by the Senate Chaplain, valedictory speeches from the departing governor and lieutenant governor, and finally the oath that would be given to the incoming governor and lieutenant governor.<sup>63</sup>

On the morning of the inauguration, the House took care of some routine legislative matters including the passage of a bill for the expenses of the Tenth

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<sup>61</sup> Cushing, E. H., ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 100, ed. 1, Monday, November 9, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236596/> (accessed June 29, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>62</sup> Ibid.

<sup>63</sup> Day, *House Journal of the Tenth Legislature*, 42-43.

Legislature. After a brief recess the Senate entered the House chamber followed by the distinguished members of the executive and judicial branches, including the governor-elect and lieutenant governor-elect. The Senate chaplain offered a short prayer and then Speaker Taylor introduced Governor Lubbock who presented his departing speech. In his speech, Lubbock praised Texan soldiers and citizens, specifically recognizing the women of the state, for their contributions to the war effort. He further invoked a patriotic call for every man and woman at home to fulfill "...their duty to leave nothing undone to sustain our men in the field, and to see that they are furnished with [everything] necessary for their efficiency and comfort."<sup>64</sup> One section specifically addressed the new legislature and was printed verbatim in the *Tri-Weekly State Gazette*:

Let me urge upon you to place every man at home into military service; to do away with all exemptions, and the power to furnish substitutes under the militia laws, and pass a joint resolution requesting Congress to do the same thing.

Pass a law punishing desertion most severely, and those encouraging desertion or harboring deserters; suppress distilleries, one of the greatest curses now in the State; force all aliens to serve in her defense or to leave the country; punish all disloyal men; confiscate the property of all who leave the country to avoid participating in the present struggle and deny them the privilege of ever returning. Limit the rates of profits on merchandise and the price of articles of prime necessity; impress the goods of extortioners, monopolizers, and engrossers when needed for public purposes, and the support of soldiers' families. Do these things, and a few more of the same character, and you will be received with open arms by the army, and the good and true men of the country.<sup>65</sup>

The passages from Lubbock's valedictory address printed in the newspaper provided a succinct summary of the message he presented to the legislature on the previous day. He outlined, once again, his ideas on what legislation that the Tenth Legislature should pursue.

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<sup>64</sup> Governor Lubbock Valedictory in *Ibid.*, 45-53.

<sup>65</sup> D. Richardson, ed., *Tri-Weekly State Gazette* (Austin, Tex.), vol. 2, no. 11, ed. 1, Friday, November 6, 1863.

When the departing governor finished speaking, Pendleton Murrah took the oath of office administered by the Chief Justice of the Texas Supreme Court and delivered his inaugural address. Murrah opened his speech by extolling the “importance and responsibility” of the governorship of Texas and humbly declared his intention to carry out his duties “...with a firm hand...” despite his “shortcomings.”<sup>66</sup> The Governor then began to expound on the intricate relationship between the Confederacy’s authority and the sovereignty of Texas’ local, civil power. As Bowen asserts, “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.’”<sup>67</sup> Essentially Murrah’s speech straddled between the same states’ rights rhetoric and support for the Confederacy “...which had sprouted during the summer election campaigns.”<sup>68</sup> Unlike Governor Lubbock’s speech, which contained numerous legislation proposals, Governor Murrah’s speech only made one suggestion that concerned manufacturing throughout the state.<sup>69</sup>

By the end of its first week, the new legislature had heard from the retiring Governor Lubbock and the newly elected Governor Murrah. Each discussed the current condition of the state of Texas, emphasizing its new role in the Trans-Mississippi department, as well as calling on all Texans to contribute to the war effort. It was

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<sup>66</sup> Governor Murrah Inaugural Address in Day, *House Journal of the Tenth Legislature*, 53-54.

<sup>67</sup> Bowen, “A Political Labyrinth,” 175.

<sup>68</sup> Ibid.

<sup>69</sup> Governor Murrah Inaugural Address in Day, *House Journal of the Tenth Legislature*, 59-60.



Lubbock, however, who presented the legislature with several issues that he thought needed to be addressed while maintaining an amicable relationship with the Confederate government. Murrah offered nearly no legislative proposals during his inaugural address, but instead chose to discuss the important balance between supporting the Confederacy and maintaining effective local, civil government. Therefore, new legislation was now in the hands of the Tenth Legislature which began deliberations in earnest after the inauguration ceremony.

## CHAPTER THREE

Regular Session: November 2, 1863 – December 16, 1863

The Tenth Legislature's regular session began on November 2, 1863. During the first week of the session, time was spent on organization and the inauguration of Governor Murrah. The House and Senate elected men to fill various official posts and on November 5 Speaker Marion D. K. Taylor assigned representatives to standing committees that would serve throughout the session. Most of the committees consisted of a chairman and eight regular members and included matters such as Military Affairs, Public Debt, Finance, Contingent Expenses, Confederate Relations, State Affairs and the Judiciary. The Senate also organized standing committees by the end of the first week and both houses began referring resolutions and various matters to the committees for debate.<sup>1</sup>

Due to the initial lack of guidance from Governor Murrah, the legislators were forced to utilize Governor Lubbock's final message for legislative direction.<sup>2</sup> Although numerous questions occupied the Tenth Legislature's regular session, three recurring matters required immediate attention. These issues were of such magnitude that they had the potential to affect the state's relationship with the Confederate government: Confederate currency, frontier defense and conscription, and the impressment of state resources. Other important state issues concerning deserters and sedition, manufacturing,

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<sup>1</sup> Day, *House Journal of the Tenth Legislature*, 39.; Day, *Senate Journal of the Tenth Legislature*, 56.

<sup>2</sup> Bowen, "A Political Labyrinth," 174.

state courts, the reorganization of the military, and aid to soldiers and their families were also addressed by the legislators. Each of these things was discussed and debated during the session and resulted in the passage of notable resolutions and acts. It would be the aforementioned issues, however, that garnered the most attention throughout the state and the Trans-Mississippi Department during the session and continued to cause concern into early 1864 because these issues caused a quiet divisiveness between Texas and the Confederacy.<sup>3</sup> The Legislature needed to determine whether or not to tie the state's financial future to that of the Confederacy by continuing to use its depreciated currency. To abandon the money would certainly affect the Confederacy negatively, but might alleviate financial disaster in Texas. Similarly, Texas had to look to its own self-defense, especially along its western and northern frontier borders. To do so effectively would limit the number of Confederate soldiers from the state and place Texas and Confederate, civil and military, authorities at odds. Lastly, the matter of Confederate impressment policy and its limitations required the legislature to consider the sale of state's most precious commodity, cotton. In consideration of each of these issues, the Tenth Legislature looked to guard its own interests ahead of the Confederacy when practicable.

### *Confederate Currency and State Finances*

The first major issue that both houses of the legislature undertook was the controversial Confederate currency issue. The value of Confederate-issued paper money progressively depreciated as the war continued. As the Tenth Legislature convened in early November, newspapers reported that most people throughout the state considered the currency question the single most important issue that Texas faced in addition to

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<sup>3</sup> Gammel, *The Laws of Texas*, 655-706, 715-753.

fighting the war itself. The war with the United States was expected to last only a few months, initially, but was now in its third year; it seemed wise to secure Southern independence and then recover financially if the war was to only last a matter of months. As the war dragged on, however, it seemed prudent to ensure that the currency "...retain the semblance of vitality and represent at least approximately in value what it does in name."<sup>4</sup> If the war was going to be prosecuted successfully, the state's finances needed to be addressed.

The editorial in E. H. Cushing's newspaper argued that the prevalent explanation for the currency's depreciation, "redundant circulation," was erroneous because it was "...not the sole or even the prime cause of the depreciation..."<sup>5</sup> Cushing conceded that an excess of currency in circulation contributed to the problem, but the origin of the depreciation was "...a tainted credit, a want of confidence in the intrinsic value of the currency itself..." and "...a fear of repudiation" upon trying to redeem the currency at the war's end.<sup>6</sup> To back up his claim of the Confederate cause being unaffected by the devalued currency, Cushing cited the condition of the paper currency during the American Revolution in the 1770s. Because the Revolutionary War was successfully prosecuted, despite the worthlessness of the Continental currency, Cushing claimed that the Confederacy could be successful as well. He did, however, backtrack slightly and claimed that he was "...fully committed to the object of raising the value of the currency

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<sup>4</sup> Cushing, E. H., ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 97, ed. 1, Monday, November 2, 1863.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

in every possible way...” and believed this could only be accomplished by “...depleting the circulation...” of money.<sup>7</sup>

According to Nancy Head Bowen, Governor Lubbock’s message to the legislature “...offered no panacea to cure the disease of depreciation” because he believed the solution for Texas’ “financial woes” could be solved by the Confederate Congress, not the state legislature.<sup>8</sup> Texas had enough Confederate currency to retire its debt, but due to its depreciation “...the state’s creditors would hoard their treasury warrants,” which had greater worth. Bowen suggests that the state could have eliminated some of its debt by making the valuable treasury warrants “...alone receivable for taxes and public dues,” but because this would have negatively impacted state taxpayers and the Confederacy (further devaluing the Confederate currency), Lubbock did not pursue it.<sup>9</sup> Texas was therefore in a difficult position. It did not want to extend its debt throughout the remainder of the war, but it also did not want to alienate the Confederate government by further depreciating the value of the currency. The Tenth Legislature would have to determine whether to address the issue directly or remain patient, hoping the currency would appreciate without state legislative action.

The House immediately addressed the currency issue as John L. Lovejoy (Denton) presented a joint resolution “...instructing [the state’s] Senators and requesting [the] Representatives in Congress to use their influence to secure the passage of a law

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<sup>7</sup> Cushing, E. H., ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 99, ed. 1, Friday, November 6, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236595/> (accessed July 05, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>8</sup> Bowen, “A Political Labyrinth,” 173-174.

<sup>9</sup> *Ibid.*

making Confederate Treasury Notes legal tender” on Friday, November 6, 1863.<sup>10</sup> The resolution was referred to the Committee on Confederate Relations after its first reading which in and of itself is quite revealing. The matter was not considered within the realm of state finance, public debt, or the comptroller’s or treasurer’s offices, each of which were standing committees, but was instead a matter for the committee tasked with reviewing and debating bills and resolutions concerning the relationship between Texas and the Confederate government. The legislature realized that Texas’ course of action on the currency matter would greatly impact the Confederacy. On the following Tuesday, November 10, James G. McDonald (Grimes), the chairman of the Committee on Confederate Relations, reported that the committee had considered the resolution, but determined that the Confederate government had no authority to pass a law as prescribed in the resolution and returned the resolution to the House with a recommendation against its adoption.<sup>11</sup>

Two additional resolutions were offered on November 6 by J. M. Willis (Davis) and Groves M. Brazier (Houston), respectively, that were referred to the Committee on Judiciary. Willis’ resolution requested the committee to “...inquire into the expediency of staying all debts during the war and ten years thereafter upon the refusal to take Confederate money or state warrants in payment thereof.”<sup>12</sup> G. M. Brazier proposed that the Judiciary Committee ascertain the constitutionality of eliminating the interest on debts paid with Confederate currency. The Willis resolution sought to encourage

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<sup>10</sup> Day, *House Journal of the Tenth Legislature*, 64.; Bowen’s “A Political Labyrinth” contains an excellent summary of the events in question on pages 176-180. All legislators’ names are accompanied by the primary county that they represented in parenthesis.

<sup>11</sup> *Ibid.*, 79.

<sup>12</sup> *Ibid.*, 65.

Confederate currency usage by punishing those that refused to accept the notes, whereas Brazier's resolution sought to create legislation that rewarded individuals for using Confederate currency by eliminating the interest on debts paid with Confederate notes.<sup>13</sup> The Judiciary Committee rejected the Willis resolution citing a disparity between it and Article 1, Section 10, Clause 1 of the Constitution of the Confederate States of America, which prohibited states from making "...anything but gold or silver coin a tender in payment of debts..."<sup>14</sup> Later in the session, Groves' resolution was also rejected by the committee due to its apparent violation of the 14th section of the Bill of Rights of the 1861 Texas Constitution, and it was recommended the resolution "...be discharged from the further consideration of the subject."<sup>15</sup>

On November 9, Alfred DeBerry (Panola) offered another resolution pertaining to Confederate notes:

Whereas, Confederate Treasury Notes have from some cause become greatly depreciated in value to the great injury of the citizens of the state of Texas, and more especially those in the army of the Confederate States and of the state of Texas, therefore BE IT RESOLVED that the Committee on Judiciary be instructed to inquire into the authority of the legislature under the Constitution to provide some measure or measures which will have the effect to appreciate the value of Confederate Treasury Notes, and also as to the expediency of such measure or measures and report by bill or otherwise.<sup>16</sup>

DeBerry's resolution was adopted, but upon consideration the Judiciary Committee reported "...that the object contemplated in said resolution is not within the power of the

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid., 101-102.

<sup>15</sup> Ibid., 126-127.

<sup>16</sup> Ibid., 73.

legislature, but appertains exclusively to the Congress of the Confederate States.”<sup>17</sup> Thus a fourth resolution was rejected by its originating committee, although one resolution reached its way onto the main floor of the House.

The issue was not entirely put to rest as Lovejoy’s original resolution, which sought to encourage Texas’ Senators and Congressmen to influence the Confederate Congress to establish Confederate notes as legal tender, was brought before the entire House on November 16. This would have been a rather bold initiative, because it would have required an amendment to the Confederate constitution which only recognized gold and silver as legal tender. The report from the Committee on Confederate Relations was tabled upon the motion of James Guinn (Angelina), clearing the way for lively debate and parliamentary tactics. The more conservative House members tried to dismiss the resolution, but were unsuccessful as the House voted against tabling the resolution. A second conservative measure proposed that consideration for the resolution be postponed until late December, but this was also defeated. Conservatives finally achieved a small victory on November 17, when C. W. Buckley successfully postponed the debate until the following day, November 18.<sup>18</sup> Bowen argues that this brief respite allowed Buckley “...to enlist [John] Brady and [Joab] Banton to charm the galleries and sway the representatives.” To this end, the conservative element was successful as both Brady’s (Harris) and Banton’s (Walker) speeches successfully converted representatives to their

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<sup>17</sup> Ibid., 105-106.

<sup>18</sup> Ibid., 112-117.



side of the argument. The resolution was finally defeated by a margin of forty-four to thirty-three.<sup>19</sup>

The Senate also dealt with the currency issue early in the session. John Moore (Davis) introduced a resolution that resembled a combination of the resolutions of Willis and Brazier in the House. Specifically, it asked the Senate 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.”<sup>20</sup> Much like in the House, albeit with less fanfare, the resolution was rejected by the Judiciary Committee on the grounds that the resultant legislation would violate clauses in both the Texas Constitution and Confederate States Constitution.<sup>21</sup>

While the currency matter was debated in the legislature, discussions also took place in the state’s newspapers. E. H. Cushing wrote extensively on the historical failure of legalizing tender and implored that the “...legal tender advocates be warned in time, and turn their attention to legitimate remedies.”<sup>22</sup> In mid-November the *Tri-Weekly State Gazette* (Austin) claimed that “all arbitrary and coercive measures for the improvement of the currency, will not only fail to accomplish the object, but will result in manifest

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<sup>19</sup> Bowen, “A Political Labyrinth,” 179-180.; Excerpts of the speeches can be found in Cushing, E. H., ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 107, ed. 1, Wednesday, November 25, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236605/> (accessed July 07, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>20</sup> Day, *Senate Journal of the Tenth Legislature*, 56.

<sup>21</sup> *Ibid.*, 62-63.

<sup>22</sup> Cushing, E. H., ed., *The Weekly Telegraph* (Houston, Texas), vol. 29, no. 34, ed. 1, Tuesday, November 17, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236258/> (accessed July 07, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

injustice and dissatisfaction among the people.”<sup>23</sup> The editorial further condemned any improvement measures because they threatened “the foundation of [the] social system” and reasoned that the only legitimate method to appreciate the currency was to limit the amount in circulation.<sup>24</sup>

Newspapers in the major Texas cities supported the conservative faction in the legislature and wrote that laws were not appropriate to solve the currency crisis. Both editors and legislators believed that the state government had no authority in the matter and only the restriction of Confederate notes would reverse their depreciation. The *Tri-Weekly State Gazette* (Austin) reported that Governor Murrah addressed the currency issue at length in his message presented to the legislature on November 25, 1863. Murrah did not mention currency legislation, but reiterated the argument for limiting the amount of currency in circulation as a means to appreciate its value.<sup>25</sup> Bowen notes that although “... facets of the currency question kept cropping up...,” the Tenth Legislature proved through the rejection of legal tender measures to be conservative in nature.<sup>26</sup> Addressing the issue on a state level, the House of Representatives attempted to amend Articles 400 and 401 of the state’s Penal Code in order to “suppress the issuance and circulation of paper money...” in Texas, but the Senate rejected the House’s bill.<sup>27</sup>

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<sup>23</sup> *Tri-Weekly State Gazette* (Austin, Texas), vol. 2, no. 14, ed. 1, Friday, November 13, 1863, <http://texashistory.unt.edu/ark:/67531/metaph181223/> (accessed July 07, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>24</sup> Ibid.

<sup>25</sup> *Tri-Weekly State Gazette* (Austin, Texas), vol. 2, no. 20, ed., 1 Friday, November 27, 1863, <http://texashistory.unt.edu/ark:/67531/metaph181229/> (accessed July 09, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>26</sup> Bowen, “A Political Labyrinth,” 180.

<sup>27</sup> Day, *House Journal of the Tenth Legislature*, 140; Day, *Senate Journal of the Tenth Legislature*, 122-123.

In addition to the contentious currency issue, other financial matters demanded the legislature's attention. In an effort to increase the state's revenue, the legislature passed an extensive taxation act near the end of the session in mid-December. The law provided for numerous state taxes levied annually on a variety of items, citizens, and businesses. Specifically, a one-half of one percent tax was passed "...on all specie, treasury notes of the Confederate States of America, treasury warrants of the State of Texas, and bank notes, held or owned within this State."<sup>28</sup> Also, a one dollar poll tax was levied on free white males over twenty-one years in addition to persons of certain occupations or selling certain merchandise.<sup>29</sup> On December 15, a lengthy act to tax and regulate the sale of "distilled Spirits, Fermented Liquors and Wines" was passed. The purpose of the law was twofold. As reported by *The Tri-Weekly Telegraph* during deliberation on the matter, the law's "practical operation" was "...to raise an immense revenue for the State, or to keep liquor at [the] standard price of three dollars per gallon."<sup>30</sup> The law prescribed that as the price of liquor increased, the seller's profit would decrease, which would promote lower prices. The newspaper estimated that the income tax on whiskey was a "trial strain" in Texas with taxation on other items to follow. Furthermore, taxation was utilized by the legislature as opposed to the passage of "maximum laws" which would fix the prices on goods throughout the state.<sup>31</sup>

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<sup>28</sup> Gammel, *The Laws of Texas*, 692.

<sup>29</sup> *Ibid.*, 692-694.

<sup>30</sup> E. H. Cushing, ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 116, ed. 1, Wednesday, December 16, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236614/> (accessed July 25, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>31</sup> *Ibid.*

A law approved on December 10, 1863 authorized the governor to sell state bonds in denominations of his discretion in order to raise two million dollars used for state defense, repelling invasion, and manufacturing machinery. The payment of the bonds was to be made and secured in cotton owned by the state. In order to possess enough cotton to meet the requirements of this act, another law was passed on December 16 that allowed the governor to use a variety of means to purchase the necessary cotton.<sup>32</sup> The legislature used several methods, including bond sales and taxation, to generate revenue for wartime Texas. The Tenth Legislature also passed an appropriations act to support the state government throughout 1864 and 1865. This law, standard for the regular session of the legislature, provided a budget for state expenses until the next legislature was elected and convened.<sup>33</sup>

Although the Confederate currency debate yielded no direct legislation, it was nonetheless important because it confirmed that Texas was still committed to the Confederacy. In passing a revenue act and an appropriations act, Texas legislators continued to provide the state with the means to function as a sovereign state as well as defend its borders within a divided Confederacy. Other matters that persisted throughout the war, like adequate frontier protection and general state defense, were brought before the legislature. State defense, especially concerning the frontier, was addressed extensively during the Tenth Legislature's first session and strained Texas' relationship with the Confederate government as the war progressed.

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<sup>32</sup> Gammel, *The Laws of Texas*, 663,683-684.

<sup>33</sup> *Ibid.*, 694.

### *Frontier Protection and State Defense*

In his address to the legislature at the end of November, Governor Murrah explained that he was "...decidedly impressed with the belief that it would secure better results to entrust the protection of the frontier in the main, if not entirely, to Confederate authority."<sup>34</sup> Frontier defense, an issue that lingered from the birth of Texas and remained prevalent throughout the Civil War, was considered the responsibility of the central government: first the United States and then the Confederate States. Throughout the war "...the state government's determination to protect its Indian frontier at all hazards," caused restrictions that were placed on frontier regiments prohibiting them from leaving Texas.<sup>35</sup> Unless the restrictions were lifted, the Confederacy would not accept the regiments into the Confederate military and Texas would continue to bear the financial responsibility for frontier protection. In a report that Governor Lubbock submitted in his message to the legislature on November 4, the Comptroller claimed that if the state's frontier protection was turned over to the Confederacy, Texas would have an excess of nearly three million dollars "...of Revenue over all liabilities at the time."<sup>36</sup> Lubbock implied that the restrictions placed on the frontier troops ought to be eliminated and claimed that upon acceptance into the Confederate Service, General Smith would "...provide adequately and skillfully for its protection."<sup>37</sup> The need for better protection

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<sup>34</sup> Governor Murrah Message to Tenth Legislature in *Tri-Weekly State Gazette* (Austin, Texas), vol. 2, no. 20, ed., 1 Friday, November 27, 1863.

<sup>35</sup> David P. Smith, "Conscription and Conflict on the Texas Frontier, 1863-1865," *Lone Star Blue and Gray: Essays on Texas in the Civil War*, ed. Ralph Wooster, (Austin: Texas State Historical Association, 1995), 276.

<sup>36</sup> Governor Lubbock Message to Tenth Legislature in Day, *House Journal of the Tenth Legislature*, 30.

<sup>37</sup> *Ibid.*, 17-18.

along the frontier became more important during the summer and fall of 1863 as emboldened “Indian enemies” increased atrocities throughout the frontier counties. As the state’s financial situation worsened and Indians increased the frequency and ferocity of their attacks, Governor Lubbock invited new debate on the frontier protection issue.<sup>38</sup>

The frontier question was first addressed at the inception of the Civil War by the Second Called Session of the Eighth Legislature in early 1861. A law providing for the protection of the frontier through county companies of Minute Men was passed February 7, 1861. Various laws that appropriated money for frontier defense were also passed during the session.<sup>39</sup> As the war progressed, the Texas military, including frontier units, were reorganized to accommodate the changing needs of the state. In late December 1861, the Ninth Legislature passed a pair of laws that reorganized Texas frontier defenses from companies of Minute Men to a regiment of Rangers and overhauled the rest of the state’s defenses.<sup>40</sup>

*The Texas Almanac for 1863* claimed that the second of these laws, which reorganized state troops, “...[became] almost a nullity, owing to the heavy drafts made upon the country for the Confederate service.”<sup>41</sup> The drafts the *Almanac* mentioned resulted from two Confederate conscription laws passed in 1862. The first law, enacted in the spring of that year, made white men between the ages of eighteen and thirty-five liable to serve in the Confederate army for three years. In the fall, the second

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<sup>38</sup> Ibid.

<sup>39</sup> Gammel, *The Laws of Texas*, 346-347, 353-354, and 368.

<sup>40</sup> Ibid., 452-465.

<sup>41</sup> *The Texas Almanac for 1863*, <http://texashistory.unt.edu/ark:/67531/metaph123769/> (accessed July 14, 2013), University of North Texas Libraries, The Portal to Texas History, Texas State Historical Association, Denton, Texas, 13.

conscription law increased the maximum age to forty-five in order "...to Provide for the Filling up of Existing Companies, Squadrons, Battalions and Regiments, and to increase the Provisional Army of the Confederate States."<sup>42</sup>

One of the main problems with the Confederate conscription laws was the exemptions that accompanied them. The laws allowed for men in various positions to be exempted from military service and "persons claiming exemption from military duty under [the conscription] act [were] required by the enrolling officer..." to promise they were "lawfully exempt."<sup>43</sup> In addressing the condition of the state's defenses (including frontier defense), conscription, and general military strength outside of the state and within, Governor Lubbock argued that the minimum age for service should be lowered to sixteen while limiting exemptions and prohibiting substitutes. This would allow for more Texans to fight in the Confederate army as well as defend Texas from potential Union invasion and protect the frontier more effectively.<sup>44</sup> General Lubbock desired to support the Confederate military and wanted as many Texans as possible liable for Confederate service.

In addition to frontier defense, Governor Murrah's November 25 address to the Tenth Legislature stated his opposition to the current organization of the state's military

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<sup>42</sup> David P. Smith, "Conscription and Conflict on the Texas Frontier, 1863-1865," 277-278; Cushing, E. H., ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 28, no. 91, ed. 1, Wednesday, October 15, 1862, <http://texashistory.unt.edu/ark:/67531/metaph236436/> (accessed July 19, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>43</sup> E. H. Cushing, ed., *The Weekly Telegraph* (Houston, Texas), vol. 28, no. 10, ed. 1, Wednesday, May 21, 1862, <http://texashistory.unt.edu/ark:/67531/metaph236189/> (accessed July 19, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>44</sup> Governor Lubbock Message to Tenth Legislature in Day, *House Journal of the Tenth Legislature*, 15-16.

forces. He argued that “the dangers that threaten the State from without and within require a military organization so complete and thorough as to embrace, control and direct the entire fighting strength of the State.”<sup>45</sup> Concern over the state’s defenses increased in the fall of 1863 as the Union army threatened the Texas coastline again. Much like the attack on Galveston the previous year, Sabine Pass was attacked in September, two months before the Tenth Legislature convened. Lincoln and the United States Army desired to establish a Union presence in Texas and ordered the commanding general of the Department of the Gulf, General Nathaniel P. Banks, to complete the task. Ralph A. Wooster writes that General Banks chose Sabine Pass to begin the assault on Texas “...because of its proximity to New Orleans...and...because of the supposed weak defenses...” near Sabine that would allow the Union army to move on to Houston.<sup>46</sup>

Despite the deployment of four gunboats in support of twenty-two transport vessels that carried several thousand soldiers, the Union was defeated on September 8, 1863 by the meager forces at Fort Griffin near Sabine Pass. The Confederate victory resulted from commendable defense from the fort’s forty-two defenders and bad intelligence and misfortune on the part of the Union forces. As the Tenth Legislature assembled in Austin in early November, Federal troops occupied Brownsville, Texas and utilized the city as a starting point for other incursions along the coast.<sup>47</sup> These coastal invasions, as well as additional military threats, constituted a need for Texas defenses to be reconsidered once more.

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<sup>45</sup> Governor Murrah Message to Tenth Legislature in *Tri-Weekly State Gazette* (Austin, Texas), vol. 2, no. 20, ed., 1 Friday, November 27, 1863.

<sup>46</sup> Wooster, *Texas and Texans in the Civil War*, 87-88.

<sup>47</sup> *Ibid.*, 88-94.



All facets of the defense question were considered during the session including exemption. Although the Confederate conscription laws "...left no doubt that the central government, not the states, would be responsible for raising units for Confederate service," the exemption and substitute systems had been in place since their passage in 1862.<sup>48</sup> Despite the Confederate government's supposed monopoly on troop recruitment and exemptions, Texas liberally exempted men, especially in frontier counties, from Confederate conscription in order for these men to remain within the state. Specifically, the December 21, 1861 act providing for frontier protection organized ranger units that were solely under state authority for frontier protection and prohibited from leaving the state's borders. These men tasked with protecting the frontier were, in effect, exempted from Confederate military service. The state militia act, passed on December 25, 1861, exempted several state officials, Confederate officers, and those responsible for operating railroads, steamboats and the penitentiary from serving in the state troops.<sup>49</sup> This was not the same as exempting Texans from Confederate service, which would prove to be more contentious. The frontier act provided *de facto* exemption and the matter persisted and became a bigger problem under the policies of Governor Murrah as well as legislation passed by the Tenth Legislature.<sup>50</sup>

On December 3, 1863, a joint resolution was passed that "instructed" Texas' Senators and "requested" its Representatives to try "...to repeal all laws exempting persons from conscription, on account of their being the owners of property of any

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<sup>48</sup> Smith, "Conscription and Conflict on the Texas Frontier, 1863-1865," 278.

<sup>49</sup> Gammel, *The Laws of Texas*, 453, 455.

<sup>50</sup> Wooster, *Texas and Texans in the Civil War*, 105.

description whatever.”<sup>51</sup> This resolution was in direct response to the concern expressed in Governor Lubbock’s Message over exemption and simply requested action by the Confederate government. This measure was not contentious, but sought to improve the number of Texans serving in the Confederate army by not allowing liable men to exempt without “valid reason.”<sup>52</sup> The legislature acted upon and embraced Governor Lubbock’s policy of aiding the Confederate cause. Near the end of the session, the legislature passed a law that redefined the specific state and county offices, professions, and workers that were exempt from state service and prohibited substitutes for otherwise eligible men. Furthermore, the exemptions for “millers, blacksmiths, and other mechanics” were contingent upon the amicable price of their goods.<sup>53</sup> Whereas these legislative actions attempted to increase the number of available soldiers in Texas, legislation that was passed at the end of the session addressed key components of state defense that created a significant amount of discord between Texas and the Confederacy.

“An Act to Provide for the Protection of the Frontier, and turning over the Frontier Regiment to Confederate States Service” was approved on December 15, 1863.<sup>54</sup> The law organized companies comprised of twenty-five to sixty-five men from the frontier counties within the state (Cook, Wise, Parker, Johnson, Bosque, Coryell, Lampasas, Burnett, Blanco, Bandera, Medina, Kendall, Atascosa, Live Oak, McMullen,

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<sup>51</sup> Gammel, *The Laws of Texas*, 705. Prior to the Seventeenth Amendment to the United States Constitution, which was used as a model for the Confederate Constitution, Senators were chosen by the state legislatures and therefore they were “instructed” on certain matters, whereas Representatives, elected by the people, were simply “requested.”

<sup>52</sup> Governor Lubbock Message to Tenth Legislature in Day, *House Journal of the Tenth Legislature*, 15-16.

<sup>53</sup> Gammel, *The Laws of Texas*, 700.

<sup>54</sup> *Ibid.*, 677-679.

La Salle, Dimmit, and Maverick) as well as counties north and west of those counties. These counties were to be divided into three equal districts under the command of a major who was responsible for the organization of the various companies. Men in the companies were required to be citizens of the state and actual residents of their respective counties and were responsible for furnishing their own firearms, ammunition, horse, and provisions for ten days.<sup>55</sup> Two supplemental acts clarified Section Four's provision concerning ammunition, which was to be supplied by the state, and added portions of Karnes and Bee counties to those listed in the primary frontier defense act.<sup>56</sup>

Section Six of the act asserted that one-fourth of each company was to be "...in the field in actual service..." with the contingency that the commanding officers of the districts, under the direction of the governor, could call the remaining men into service.<sup>57</sup> The next section established one of the functions of the new frontier regiment: they were to "...arrest, and deliver to the nearest Confederate State authorities, every person reported or known...to be a deserter, either from the State or Confederate States army, and also all persons from the interior counties who are avoiding conscription or draft service."<sup>58</sup> Despite the charge to round up deserters and draft-dodgers and no specific mention of Indians in the law, David P. Smith writes that it "...was an understood prerequisite" that the new regiment, called the Frontier Organization, "...was to be used to protect the frontier from Indian incursions."<sup>59</sup> As was previously discussed, the

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<sup>55</sup> Ibid.

<sup>56</sup> Ibid., 688-689.

<sup>57</sup> Ibid., 678.

<sup>58</sup> Ibid.

<sup>59</sup> Smith, "Conscription and Conflict on the Texas Frontier, 1863-1865," 278-279.

atrocities in the frontier counties increased during the summer of 1863 and frontier protection needed to be addressed once more.<sup>60</sup>

Upon organization, the governor possessed the authority to turn the Frontier Regiment and its equipment over to Confederate Service, "...provided, the Confederate Commander...[accounted] to the State for all property so turned over at its proper value...."<sup>61</sup> If the equipment transfer could not be arranged satisfactorily, the governor was authorized to use the frontier regiment property to best serve the state. This section of the act caused some contention between the House and the Senate in the legislature. The Senate initially proposed the measure to transfer the regiment to Confederate service, but the House refused to approve the amended Twelfth Section. Finally, after a "lengthy discussion," the House approved the controversial section and passed the amended bill two days later.<sup>62</sup>

Section Thirteen of the act stipulated that the regiment was to be used "...as effectual as possible to defend the frontier..." but could be utilized to repel any invasion from the Union army in other parts of the state as long as the regiment was not "...kept away from their own proper field of operations for a longer time than a month...."<sup>63</sup> The legislature had finally provided for the transfer of frontier protection over to Confederate service, but appeared to again restrict the scope that the Frontier Regiment could operate within the Confederate army.

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<sup>60</sup> Governor Lubbock Message to Tenth Legislature in Day, *House Journal of the Tenth Legislature*, 17.

<sup>61</sup> Gammel, *The Laws of Texas*, 679.

<sup>62</sup> Day, *House Journal of the Tenth Legislature*, 210-212.

<sup>63</sup> Gammel, *The Laws of Texas*, 679.

The act for frontier protection was immediately criticized by skeptical newspaper editorials. *The State Gazette* (Austin) bluntly proclaimed, “We doubt the policy of this measure at this time...”<sup>64</sup> The newspaper reasoned that there were not enough men to form the various companies prescribed in the law to provide adequate protection, because there were “barely sufficient left at home to raise the food necessary for the support of the women and children...”<sup>65</sup> Due to the possibility that the completion of the new frontier organization might not occur or might be inadequate for protection of the frontier, the editorial categorized the law “...as a nullity.”<sup>66</sup> Finally, it questioned the logic of reorganizing the current frontier regiment, as well as committing it to Confederate service, and claimed that the law was “...quite in character with other acts of the session...”<sup>67</sup> It is evident from this scathing piece, especially the final barb about other acts, that some in Texas did not think highly of the new frontier protection act.

Although somewhat contentious, the frontier act was not as provocative toward the Confederate government as the other defense law passed during the regular session. “An Act to provide for the Defense of the State” was approved on December 16, 1863 and provided for the complete reorganization of the state militia. It authorized the governor to extend the service of the current militia, as well as call out the remaining

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<sup>64</sup> D. Richardson, ed., *The State Gazette* (Austin, Texas), vol. 15, no. 19, ed. 1, Wednesday, December 23, 1863, <http://texashistory.unt.edu/ark:/67531/metapht180206/> (accessed July 26, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

militia, in order to “...enforce the laws, suppress insurrections or to repel invasion...”<sup>68</sup>

According to Sections Two through Four, all members of the state militia that were not then serving were to be enrolled and at the conclusion of the service term, the militia was to be divided into three classes determined by ticket draw.<sup>69</sup> Once the reorganization was complete, the First Class (militia members drawing a “one”) was to be furloughed for three months. Upon its return, the Second Class would go on leave followed by the Third Class. Thus, one-third of the state militia would always be on furlough, leaving two-thirds of the force in the field.<sup>70</sup>

David Smith writes that “General John Bankhead Magruder, commander of the Military District of Texas, New Mexico, and Arizona, reacted unfavorably to the state militia law, but his initial concern dealt with...” the Fifth Section, which provided for three month furloughs for one-third of the state militia.<sup>71</sup> Magruder was incensed that the Texas militia would only support the Confederate military without ever being sworn into it; the governor maintained control of the state troops even if they were fighting alongside the Confederate army. In response to Magruder’s unease about the loss of the use of Texan soldiers, Governor Murrah “...left no doubt that he would not be as compliant on the issue of conscription and Confederate authority as his predecessor in office”

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<sup>68</sup> Gammel, *The Laws of Texas*, 698-699.

<sup>69</sup> The members of the militia at the time of this act literally drew tickets marked “one” or “two” out of a hat. The Third Class specified in the act was comprised of the recently enrolled militia members that were not in service.

<sup>70</sup> Gammel, *The Laws of Texas*, 698-699.

<sup>71</sup> Smith, “Conscription and Conflict on the Texas Frontier, 1863-1865,” 279.

(Lubbock) and further argued that the militia belonged to Texas and merely supported Magruder's Confederate forces within the state.<sup>72</sup>

The conflict between the militia and the Confederate military in Texas can be traced back to the beginning of the war. There was as an inherent bias toward serving in state forces as opposed to the Confederate army. Clayton Jewett argues that a pattern emerged throughout the war in which Texans chose state service in order "...to protect their families and provide economic security."<sup>73</sup> Thus, Confederate conscription efforts in 1862 caused more men to join the state militia as opposed to serving in the Confederate army and possibly leaving Texas. Robert L. Kerby argues that "the principle of conscription was itself alien to the mind of the Southern yeoman, especially since the Confederacy's conscription laws seemed framed so as to make poor men fight a rich man's war."<sup>74</sup> General Magruder's wariness over the state defense law seems reasonable, given the reluctance of Texas and Texans to join the Confederate army. The law took from Magruder access to state forces that the Confederacy had worked for two years to obtain.<sup>75</sup> The matter was evidently considered by the legislature to be in the best interest of the state despite the concern of Confederate authorities. The divide between the Confederate military and the civilian government in Texas, caused by the two primary state defense laws, continued to grow and reached its apex in 1864. Other defense

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<sup>72</sup> Ibid.

<sup>73</sup> Clayton E. Jewett, *Texas in the Confederacy: An Experiment in Nation Building*, (Columbia, MO: University of Missouri Press, 2002), 140.

<sup>74</sup> Kerby, *Kirby Smith's Confederacy*, 89-90.

<sup>75</sup> Smith, "Conscription and Conflict on the Texas Frontier, 1863-1865," 279.

measures, however, were considered and passed before the Tenth Legislature's Regular Session ended in mid-December of 1863.

In a separate act, the legislature amended and repealed various acts from the Eighth and Ninth Legislatures that organized and prepared state troops for war. As was previously mentioned, the first section provided an extensive list of exemptions from state service and the prohibition of substitutes. The rest of the act established and defined the duties and obligations of the major general and the six brigadier generals for the state of Texas. Sections Seven and Ten called for three physicians in each county in the six military districts in Texas to examine and re-examine men to determine whether or not they were physically fit for military service.<sup>76</sup> This act and the state defense act sought to prepare Texas and Texans in case the Union invaded their borders *en masse*. In order to meet the wartime circumstances, other alterations were made as well.

In early December, the legislature reorganized the Texas State Military Board. The original Military Board was created by an act of the Ninth Legislature that sought to make the procurement and production of munitions for Texas' defense easier. The act, approved January 11, 1862, provided that the Board include the governor, comptroller, and the treasurer of the state. Any two members of the Board had the authority to sell bonds and use the funds to acquire the needed guns and ammunition. The Board was also authorized to establish manufactures in the state for producing munitions.<sup>77</sup> Another corresponding act provided that state bonds could be replaced with Confederate bonds as the Board purchased firearms and munitions and resold them to the Confederacy. This

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<sup>76</sup> Gammel, *The Laws of Texas*, 700-701.

<sup>77</sup> *Ibid.*, 484-485.



practice, as well as the Military Board itself, was seen by some as “one of the most controversial steps taken by the Lubbock administration...” because of the failure of many of its objectives.<sup>78</sup> The initial task of the board, procuring arms and munitions using United States indemnity bonds and then reselling them to the Confederate military for Confederate bonds, proved unsuccessful due to the lack of faith in the U. S. bonds. Although the scheme failed, it is clear that the initial purpose of the board was to benefit the Confederacy as the very idea for such a board came from Confederate Secretary of War Judah P. Benjamin.<sup>79</sup> The Board’s dealings in the cotton trade were not much better. From the inception of the State Military Board until it was reorganized by the Tenth Legislature, it “...had purchased 5,736 bales of cotton for \$544,438 and sold 5,551 bales for \$434, 454.”<sup>80</sup> This was a dismal record, but despite its general ineffectiveness, the Board did manage to either establish or contract for munitions manufacturing within the state, primarily in Austin.

The new Texas Military Board was comprised of the governor, who was also the president of the Board, and two other members appointed by the governor. Unlike the first Military Board, its successor was to have two full-time members entirely devoted to managing the states supplies for the war effort. The act called for the new Military Board to assume the responsibilities of its predecessor with powers that “...extended to the control of all public works and supplies, and to the aid of producing, within the State, by the importation of articles necessary and proper for such aid.”<sup>81</sup> Some of the policies of

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<sup>78</sup> Wooster, *Texas and Texans in the Civil War*, 98-99.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Gammel, *The Laws of Texas*, 680.

Governor Murrah and the newly organized Military Board, especially pertaining to cotton impressment, further exasperated General Magruder, leading to further confrontation with Confederate authorities.<sup>82</sup> Historian Ralph A. Wooster writes that the second Texas State Military Board was even less successful than the first in its endeavors to supply the state's militia and frontier forces.<sup>83</sup>

In addition to reorganizing the state's frontier regiment, the state militia, and the military board, the Tenth Legislature also addressed desertion from the military and sedition, including avoiding military service. Section Six of the State Defense Act and Section Eight of the other military reorganization act determined that desertion took place when a man failed or refused "...to do and perform military service under [these] act[s], without sufficient excuse...."<sup>84</sup> Men accused of desertion would face court martial and "...suffer such punishment...not inconsistent with the rules and regulations governing the army of the Confederate States."<sup>85</sup>

In his legislative Message during the first week of the session, Governor Lubbock devoted an entire section to desertion from Confederate and state military service. He recommended that deserters, as well as those "encouraging desertion or harboring deserters," be placed in the state penitentiary for hard labor and forfeit their citizenship.<sup>86</sup> The legislature addressed one aspect of the issue early in the session as they approved an

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<sup>82</sup> Kerby, *Kirby Smith's Confederacy*, 198-199. Impressment will be discussed in the next section.

<sup>83</sup> Wooster, *Texas and Texans in the Civil War*, 99.

<sup>84</sup> Gammel, *The Laws of Texas*, 699, 702.

<sup>85</sup> *Ibid.*, 702.

<sup>86</sup> Governor Lubbock Message to Tenth Legislature in Day, *House Journal of the Tenth Legislature*, 25-26.

act that allowed Confederate and state authorities to house deserters in county jails throughout the state.<sup>87</sup> An act that addressed those aiding and encouraging desertion followed Governor Lubbock's advice more stringently. The first section of the act proclaimed that any person that aided or harbored a known deserter or draftee "...shall be punished by confinement to hard labor in the State Penitentiary not more than five years...."<sup>88</sup> Likewise, a person found guilty of encouraging desertion from Confederate or state military service faced hard labor in the penitentiary for two to five years. There was an exception, however, for wives and mothers that aided their husbands and sons in desertion. These women faced no penalties under the act.<sup>89</sup> In order to aid enrolling officers in their duties, which included arresting deserters and men avoiding conscription, an act was passed that allowed them to utilize local sheriffs for support.<sup>90</sup>

The Legislators also found it prudent to amend an act concerning sedition, especially as it pertained to desertion. The act was renamed "An Act to punish persons who are disaffected to the State" and established a three to five year sentence in the state penitentiary for any person that advised against military service or spoke favorably of the Confederacy's enemies.<sup>91</sup> Likewise, a law was passed that defined and provided a punishment for "Disloyalty to the State of Texas."<sup>92</sup> The law provided that any person discouraging military service, encouraging desertion, harboring deserters, creating

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<sup>87</sup> Gammel, *The Laws of Texas*, 658.

<sup>88</sup> *Ibid.*, 684-685.

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*, 665.

<sup>91</sup> *Ibid.*, 674.

<sup>92</sup> *Ibid.*

“...disaffection among the people towards this State or the Confederate States,” or influencing others “...to aid, assist or adhere to the public enemy...” would face anywhere between two and five years in the penitentiary.<sup>93</sup> Except for the last clause, which defined aiding the public enemy, most things in Section One of the act can be found in other laws that sought to punish desertion.

The second section, however, specifically defined “disloyalty” to Texas and prescribed appropriate punishment. Any person that communicated such information as the “...disposition, strength or movements of the [Confederate] army” to the enemy or that helped another person engaged in such activity would be sentenced to a term in the penitentiary ranging from three to five years.<sup>94</sup> There was an attempt in the Senate to pass legislation that prohibited deserters from voting, but it never became law. Daniel Montague (Cooke) introduced the bill on November 9, 1863 and although the bill received a first and second reading, it was referred to the Senate Judiciary Committee where it remained.<sup>95</sup>

The legislature made a few changes to the state’s Penal Code during the session, but one act in particular addressed multiple chapters and articles concerning treason. In amending Article 231 (of Part II, Title IV, Chapter I), the penal code defined treason against the state as “...levying war against it, or adhering to its enemies, giving them aid and comfort.”<sup>96</sup> Therefore, any action taken (even without communication with the

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<sup>93</sup> Ibid., 674-675.

<sup>94</sup> Ibid., 675.

<sup>95</sup> Day, *Senate Journal of the Tenth Legislature*, 63. A bill is usually read three times before an official vote for approval is taken.

<sup>96</sup> Gammel, *The Laws of Texas*, 666-667.

enemy) in an attempt to aid the enemy was seen as an “overt act” and constituted treason. The amended code also compelled any person with knowledge of treacherous activity to report it to the governor or a state judge. An exemption for husbands and wives and mothers against children stated that they were not required “...to give information against each other....”<sup>97</sup> The definition of treason was also extended to the press and anything that was printed, regardless of publication format, could not possess language in support of the enemy. The last amendment of the Penal Code in the act addressed the punishment for conspiracy to commit various crimes including treason and murder.<sup>98</sup>

State defense and frontier protection concerned all of the legislatures that convened during the war fought between United States-Confederate States. Upon secession and unification with the other southern states, Texas was tasked with defending an extensive coastline and eastern border as well as protecting its expansive western and northern frontier. Prior to the Tenth Legislature and Governor Murrah, Texas’ government attempted to accomplish these tasks with the utmost regard for the Confederacy. However, as the war progressed and Texans found themselves in the westernmost region of the Trans-Mississippi Confederacy, cut off from the rest of their new country, the state adopted laws and policies in the best interests of Texas. The Tenth Legislature’s frontier protection law, state defense laws, and the policies of the reorganized State Military Board were passed in order to provide Texas with adequate protection along its borders, including its wild frontier. The result of the legislature’s

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<sup>97</sup> Ibid., 667.

<sup>98</sup> Ibid., 667-668.

defense statutes, as well as other legislation passed during the session, was direct confrontation with Confederate military authorities.

### *Various Legislative Actions*

The Tenth legislature also dealt with several other issues during their first session. Although some of these issues were regular state business, most concerned some aspect of the war effort. The second act approved during the session amended an act that sought to prevent speculation in Texas. The new section stated that in such cases where a person falsely claimed to work for the state or the Confederate States in order to purchase clothing, food, or other supplies that the army needed, they would, upon conviction, serve two to ten years in the penitentiary for each offense. The harsh penalty for each offense was passed in hopes of eliminating the practice throughout the state.<sup>99</sup> Other matters, such as the resources for the state's defensive efforts and the procurement of such resources, were directly related to the war.

Although the State Military Board was typically left to its own devices, the legislature passed some legislation to provide specific direction. One such act, passed December 7, 1863, appropriated two hundred thousand dollars for the Board to construct Spinning Jennies at the state's foundry in Austin. The completed machines were to be sold to people throughout the state and the funds deposited in the treasury to be used for "...the wants of the people in different parts of the state."<sup>100</sup> One of the most important resources found in abundance in the state, and vital to the prosecution of the war, was iron ore. *The Tri-Weekly Telegraph* (Houston) wrote a lengthy editorial in mid-

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<sup>99</sup> Gammel, *The Laws of Texas*, 657.

<sup>100</sup> *Ibid.*, 662.

November encouraging the legislature to construct iron works throughout Texas.<sup>101</sup> The legislature recognized the importance of iron and the Military Board was directed to establish at least one forge for the manufacture of iron and was allowed one million dollars to complete the task. The iron produced was supposed to be used in the state's defensive efforts, but if there was iron produced that was not needed, it was to be sold to the Texan people.<sup>102</sup>

In an effort to promote manufacturing in the state, a law was passed that provided incentive for establishing new businesses manufacturing iron, cotton, firearms, paper, oil, or other needed items by March 1, 1865. A person would be granted three hundred twenty acres per one thousand dollars of machinery owned upon the inception of the business.<sup>103</sup> Although this incentive-based law was passed at the end of the session, the legislature incorporated many companies through special laws including the Sulphur [sic] Fork Iron Company, the Waco Manufacturing Company, the Rusk County Iron Company, the Comal Oil Company, the East Texas Manufacturing Company, the Paluxy and Brazos Sulphur [sic], Nitre [sic], and Powder Company, the Hempstead Manufacturing Company, the Brazos Manufacturing Company, the Chappell Hill Manufacturing Company, the Bastrop Iron Manufacturing Company, the Washington Iron Manufacturing Company, and the Trinity Manufacturing and Flouring Company.<sup>104</sup>

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<sup>101</sup> E. H. Cushing, ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 101, ed. 1, Thursday, November 12, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236599/> (accessed August 02, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>102</sup> Gammel, *The Laws of Texas*, 690.

<sup>103</sup> *Ibid.*, 676-677.

<sup>104</sup> *Ibid.*, 718-746.

These companies were established to increase the manufacture and production of iron, cotton, and other materials necessary for the prosecution of war that Texas severely lacked.

While Texans increased manufacturing and industry as a part of the concerted war effort, the Confederacy sought to reap the benefit of this industriousness and authorized the impressment of private property to supply and aid the military. Officers were only to impress resources when they could not be obtained by some other means. The Confederate law, approved in the spring of 1863, detailed the circumstances under which impressment was to take place and the proper compensation for impressed goods.<sup>105</sup> The law also made provisions for the use of slaves in conjuncture with respective state laws. The owners were compensated fifteen dollars per month, but there was great concern that the slaves were being mistreated during the hard labor for which they were impressed.<sup>106</sup> The contentious nature of the matter resulted in numerous complaints that eventually led General Kirby Smith "...to caution [General] Magruder about the use of impressment..." as it pertained to slaves.<sup>107</sup>

In his message to the Tenth Legislature, Governor Lubbock implored the "honorable body" to pass a state impressment law in addition to the Confederate version. He argued that resources throughout the state were needed to supply the militia and impressment would allow officials to acquire the materials without paying "unreasonable

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<sup>105</sup> E. H. Cushing, ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 18, ed. 1, Monday, April 27, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236512/> (accessed August 02, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>106</sup> Wooster, *Texas and Texans in the Civil War*, 130-131.

<sup>107</sup> *Ibid.*, 131.



and exorbitant rates” that some demanded.<sup>108</sup> He suggested that “authority should also be given to impress slaves to carry on the public works, drive teams, and perform all other labor necessary to the efficiency of the service.”<sup>109</sup> Prior to the assembly of the legislature, E. H. Cushing used *The Weekly Telegraph* to lobby for the impressment of slaves. Although Cushing used the term “conscription” and not “impressment,” his argument called for “...a number of negroes to do the camp drudgery...,” but dismissed using slaves as full-fledged soldiers until it was absolutely necessary.<sup>110</sup>

Neither house of the Tenth Legislature approved any bills relating to impressment. Two separate resolutions were offered in the house that concerned slaves and impressment, but neither made it out of the committee to which they were referred. The first resolution, proposed by William Thaxton (San Saba), called for a select committee

to inquire into the expediency and propriety of authorizing the Governor of this state to call into the service of this state or of the Confederate States, all able-bodied male slaves between the ages of eighteen and forty-five years, within this state, allowing therefore the same pay, rations and clothing now given soldiers in the field, and to report by bill or otherwise.<sup>111</sup>

Although the resolution called for the impressment of male slaves into military service, it was still only to be in a labor capacity. The second resolution, brought by John Griffith (Kaufman), called upon Texas’ Confederate delegation “...to use their influence in

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<sup>108</sup> Governor Lubbock Message to Tenth Legislature in Day, *House Journal of the Tenth Legislature*, 22.

<sup>109</sup> Ibid.

<sup>110</sup> E. H. Cushing, ed., *The Weekly Telegraph* (Houston, Texas), vol. 29, no. 31, ed. 1, Tuesday, October 27, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236255/> (accessed August 02, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>111</sup> Day, *House Journal of the Tenth Legislature*, 84.

passing a law for the impressment of Negro men in the military service.”<sup>112</sup> When the committee reported on its deliberations concerning the resolutions, it claimed that “...the impressment law of the Confederate States now in force makes sufficient provisions for the impressment of Negroes, and that further legislation on that subject at this time is not advisable.”<sup>113</sup> These unsuccessful resolutions were the extent to which the Tenth Legislature specifically addressed the impressment issue as it pertained to slaves or other resources.

Other statutes and resolutions approved during the regular session addressed various local concerns like court systems, citizen relief, college incorporation, and myriad routine matters. Several moral laws and resolutions regulated alcohol sale and prohibited other activities on Sundays. The sale of liquor was prohibited within ten miles of the courthouse in Huntsville, within four miles of the school house in Round Rock, and within five miles of Dallas.<sup>114</sup> These special laws were an extension of the legislature’s restriction of distilleries throughout the state. One law authorized county courts to declare distilling liquor within their respective counties harmful to its citizens and could punish distillers, even closing them.<sup>115</sup> Another moral law described certain actions that were prohibited on Sundays including working, horse racing, selling liquor, and playing billiards. Each offense resulted in a fine of fifteen to fifty dollars.<sup>116</sup>

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<sup>112</sup> Ibid., 106.

<sup>113</sup> Ibid., 131.

<sup>114</sup> Gammel, *The Laws of Texas*, 745, 747.

<sup>115</sup> Ibid., 702-703.

<sup>116</sup> Ibid., 690-691.

Despite these and other relatively routine laws, the majority of the legislation of the Tenth Legislature's regular session concentrated on the war between the United States and Confederate States. The financial situation in Texas was primarily concerned with providing for the defense of the state and was tied to the Confederacy. As the two previous legislatures had done, the Tenth also approved bond sales, but also implemented new taxes in order to generate funds for the war. Due to ineffectiveness, the legislature also reorganized the frontier regiment, the state's militia, and the State Military Board. Texas was still trying to find the best way to defend itself from potential invasion by the Union, protect its expansive frontier, and provide enough resources to accomplish both tasks.

The legislature adjourned *sine die* on December 16, 1863 and nine days later, on Christmas Day, *The Tri-Weekly Telegraph* wrote that the Tenth Legislature had "...done probably as well as the country could have expected..." in handling the "...difficulties arising in their deliberations."<sup>117</sup> Furthermore, the reporter wrote that "...there has not been...a more harmonious session since 1843" and the Tenth Legislature was "far superior" to the Ninth.<sup>118</sup> This is not to suggest that the Tenth Legislature was unified on every issue, but its members seemed to reflect the conservative ideology of Governor Murrah much like many members the Ninth Legislature often followed the leadership of Governor Lubbock. After the regular session concluded, one could argue that the laws passed were no longer focused solely on the general Confederate cause, but on what was

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<sup>117</sup> E. H. Cushing, ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 120, ed. 1, Friday, December 25, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236618/> (accessed August 03, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>118</sup> *Ibid.*

best for the state within the confines of the Trans-Mississippi Confederacy. Much of the seemingly contentious legislation would not have been passed, nor would a shift toward state-centered legislation occurred, if not for the catastrophic events throughout 1863, most notably the siege at Vicksburg which resulted in the division of the South. The shift in Texas-centered legislation during the session, however, was not well received by Confederate authorities inside and outside of Texas and resulted in conflict in early 1864. This conflict over legislation and policy, as well as other new issues, led Governor Murrah to call the Tenth Legislature back to Austin to convene in extra session.

## CHAPTER FOUR

First Called Session: May 9, 1864 – May 28, 1864

### *Conflict in the New Year*

As 1864 began, the war between the United States and the Confederate States entered its fourth year. Although the war would continue for another year, the momentum was now solely in possession of the Union army due to their successful division of the Confederacy during the summer of 1863. This newfound condition drastically affected the South's ability to wage an effective war against the North. Although Texas endured minor invasions along the coast and at Brownsville and experienced numerous challenges since the beginning of the war, it had not endured the devastation like other states in the Confederacy.<sup>1</sup> After the conclusion of the Tenth Legislature's regular session, a Houston newspaper reprinted a story from the *Mobile Advertiser* that claimed that Texas' fortune in the war was due to divine "Providence."<sup>2</sup>

Despite these positive aspects, Texas still faced many challenges as the war progressed into 1864. To meet these challenges the legislature enacted laws that some in the state decried as "illegal and unconstitutional," but the *Tri-Weekly State Gazette* (Austin) conversely argued that a long period of peace caused many Texans to not

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<sup>1</sup> *Tri-Weekly State Gazette* (Austin, Texas), vol. 2, no. 33, ed. 1, Friday, January 1, 1864, <http://texashistory.unt.edu/ark:/67531/metaph181242/> (accessed August 04, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>2</sup> E. H. Cushing, ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 117, ed. 1, Friday, December 18, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236615/> (accessed August 04, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

recognize such measures as simply “unusual and burdensome.”<sup>3</sup> The newspaper did not advocate a blanket acceptance of all state action and, coupled with the recognition of many constitutional state laws during the war, it encouraged Texans to “...scrutinize very closely, every infringement upon [their] rights, and guard with jealous care the temple of liberty, lest the polluted hand of tyranny approach and undermine its foundations, under the plea of necessity.”<sup>4</sup> It is evident from this that there was some concern that the war could be used by some to usurp the liberty of the Texan people. With regard to the Tenth Legislature, the same newspaper claimed that “many errors have been committed, and some unjust laws have been enacted,” but argued that the people were responsible for the legislator’s actions, because they elected them into office.<sup>5</sup> The time would come, the editorial continued, in which “wiser men” could be put in office, but not until the conclusion of the war. The newspaper concluded its legislative analysis with a call for citizens to stop complaining and to do their part for the war effort until independence was achieved and internal wrongs could be remedied.<sup>6</sup>

As was previously mentioned, some of the laws passed during the regular session of the Tenth Legislature caused some conflict with the Confederate military authorities responsible for Texas and the Trans-Mississippi Department, namely General John Magruder and General Kirby Smith. Before the gubernatorial and legislative conflict between Texas and the Confederate officials reached its apex, the state’s Supreme Court became entangled in its own Confederate controversy. Five Texans had been arrested by

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<sup>3</sup> *Tri-Weekly State Gazette* (Austin, Texas), vol. 2, no. 33, ed. 1, Friday, January 1, 1864.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

General Magruder for conspiracy against the Confederacy and transferred to San Antonio. The accused men were placed under the control of the Travis County sheriff as their attorney petitioned the high court for their release. The commander of the Confederate post in Austin, Major J. H. Sparks, received orders to return the prisoners to Houston and one of General Magruder's attorneys asked that the five men be placed in Major Sparks' charge. As the court considered the motion, the five prisoners were taken from the sheriff. Although the court held Sparks in contempt, it was determined that Magruder was responsible and that he "...had perpetrated a 'glaring and palpable' outrage against both the law and the authority of the court."<sup>7</sup> Magruder was brought before the angry court where he first argued ignorance, but then claimed the right to suspend *habeas corpus* under a recent Confederate law passed in February 1864. Justices George F. Moore and James Bell disagreed and reasoned that Magruder had no authority under the statute to hold the prisoners as he was not the President, Secretary of War, or General Smith (commander of the Trans-Mississippi). After hearing the case, Bowen wrote in her dissertation, the judges decided, "...there was no doubt...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."<sup>8</sup> Despite these egregious actions, Magruder and Sparks were only held liable for the court costs. Bowen concluded that "...in yet another example of deteriorating civil-military relations, the judges, while declaring the defendants in contempt of court, let them off with minimal

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<sup>7</sup> Bowen, "A Political Labyrinth," 223-226

<sup>8</sup> Ibid., 226-227.

punishment because it was a ‘military necessity’ to do so.”<sup>9</sup> Some Texans thought this was the correct course of action and further encouraged the Texas Legislature to “...cooperate with Confederate authorities...”<sup>10</sup>

As the trouble with the court was resolved, the legislative conflict (which arose from the state defense laws that reorganized the state militia and provided a new Frontier Organization as well as those concerning Texas cotton) was in full swing. The act providing for frontier protection caused the most conflict with Confederate authorities because it exempted all men in more than fifty counties from Confederate conscription. The Confederate generals tasked with protecting and prosecuting the war in the western portion of the Confederate States, including Texas, “...protested that no state had any right to exempt whole counties from the operation of the Confederate conscription laws...”<sup>11</sup>

The exemption of the frontier counties caused rampant confusion as men who thought the law pertained to them returned home from Confederate service.<sup>12</sup> General Magruder’s warning that the law might cause a wave of de facto desertion from the Confederate army proved to be accurate. In February of 1864, Magruder complained that the law “...had induced the equivalent of at least three regiments to decamp from the Confederate army.”<sup>13</sup> These men left their stations and returned to the frontier in order to enlist in the new Frontier Organization that was supposed to provide adequate protection

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<sup>9</sup> Ibid., 227.

<sup>10</sup> Ibid.

<sup>11</sup> Kerby, *Kirby Smith’s Confederacy*, 219.

<sup>12</sup> Wooster, *Texas and Texans in the Civil War*, 105.

<sup>13</sup> Kerby, *Kirby Smith’s Confederacy*, 219.



and be transferred into Confederate service. By March of 1864 the formation of the new regiment was complete and had taken over protection of the frontier. Each military district (Northern, Middle, and Southern) had either a Brigadier or Major General in command with an average of 1,400 troops per district. As was stipulated in the act, out of more than 4,200 total frontier militiamen, nearly 1,100 remained on active patrol at one time. Robert L. Kerby writes that "...except for a few minor adjustments in boundaries, troop dispositions, and command assignments...this scheme for the protection of the frontier continued in force until the end of the Civil War," though with little effect on the Indians and other marauders.<sup>14</sup>

Magruder continued to argue for the supremacy of Confederate laws over those of Texas as Governor Murrah, incensed by Magruder's "haughty attitude," resisted in an effort "...to uphold state sovereignty."<sup>15</sup> Eventually, the two officials met with General Kirby Smith in Houston to discuss the impasse and explore potential solutions. The meeting resulted in a reluctant agreement in which the state militia remained under the control of the state, but could be transferred to Confederate authority in the event an emergency was declared.<sup>16</sup> The issue became more convoluted upon the passage of another Confederate conscription law in February, 1864 that included men aged seventeen to fifty. The law provided that newly conscripted men, seventeen years of age and those forty-five to fifty years would form a "...reserve corps...within their home states."<sup>17</sup> Texas had already claimed exemption for all men in its frontier counties and

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<sup>14</sup> Ibid., 220.

<sup>15</sup> Wooster, *Texas and Texans in the Civil War*, 105-106.

<sup>16</sup> Ibid.

<sup>17</sup> Smith, "Conscription and Conflict on the Texas Frontier, 1863-1865," 280.

maintained authority over the state militia. The additional conscription act, providing younger and older soldiers for home defense, would further complicate military organization in the state.

As the Union armies renewed their assault on the South in the spring of 1864, the conflict between Magruder and Murrah became more serious. Intelligence suggested that General Nathaniel Banks was heading for East Texas where Louisiana, Arkansas, and Texas converged. Magruder asked Murrah for control of the Texas militia in order to supplement troops in Louisiana and Arkansas under the provisions of the new Confederate conscript act. Murrah agreed to help support Magruder, but offered only portions of the militia under Texas commanders and organization. Magruder declined this proposal and was incensed at Murrah's failure "...to recognize the 'binding force' of the Congressional act and..." the importance of "...cooperat[ion] because of the dangers inherent in any conflict of authority."<sup>18</sup> The dangers referred to by Magruder could have been the confusion over the organization of Texas troops in the state militia, frontier defense units, or the Confederate Army, but there might have also been some worry over the perception of the conflict outside of the Confederacy.

In her dissertation on the wartime Texas governors, Fredericka Meiners wrote that "...Murrah's belief in state sovereignty came to the fore..." as he questioned Magruder on the limitations on Confederate authority.<sup>19</sup> Murrah questioned Magruder pointedly, "Do you believe or does any man believe that the Laws of Congress abrogated the laws

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<sup>18</sup> Meiners, "The Texas Governorship," 305-309.

<sup>19</sup> *Ibid.*, 307.

of the State on [the militia]?”<sup>20</sup> Because Murrah interpreted the state defense laws from the Tenth Legislature strictly, he did not believe that he had the authority to deviate from their explicit prescription. The feud of words between General Magruder and Governor Murrah over Texas troops appeared to be a stalemate, but as the severity of the threat grew and after stringent appeals from Magruder, Murrah acquiesced and released the militia to Magruder.<sup>21</sup> Meiners claimed that Murrah’s explanation for finally giving in to Confederate demands included “. . .the confusion produced by the new act, Magruder’s refusal to compromise, the dangers threatening the state, the desire to avoid the appearance of disharmony between the authorities, and the belief in future legislative approval of his action.”<sup>22</sup> The governor felt compelled to take the course of action he did and took solace in assurance that the conflict over state defense would be resolved by the state legislature. With one conflict with Confederate authorities resolved, at least presently, another, involving Texas’ most valuable commodity was still waging on.

Cotton has long been recognized as the staple crop of the South during the nineteenth century, aptly labeled “king.” Historian Robert Kerby writes that during the Civil War “it ruled the region’s economy, it commanded the deployment of armies and fleets, it governed commercial intercourse, it purchased the tools of war, and it received from both its subjects and its alien tributaries the homage due a monarch.”<sup>23</sup> In an effort to persuade European powers to recognize and aid the South in its quest for national autonomy, President Jefferson Davis instituted a policy in which cotton was withheld

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<sup>20</sup> Ibid.

<sup>21</sup> Smith, “Conscription and Conflict on the Texas Frontier, 1863-1865,” 280-281.

<sup>22</sup> Meiners, “The Texas Governorship,” 310.

<sup>23</sup> Kerby, *Kirby Smith’s Confederacy*, 155.

from the international market. Texas vehemently disagreed with the policy and obtained approval from the Confederate Congress to continue its lucrative cotton trade with Mexico. The Confederate government soon realized, however, "...the importance of Mexico as a trading partner [and] outlet to other markets."<sup>24</sup> Texas cotton became very important to the Confederate government and authorities did all they could to obtain it to use to purchase necessary supplies.

The conflict began in the spring of 1863 when the Confederacy approved an act for the impressment of private property. Desperately in need of cotton, Confederate officers debated whether or not the new act allowed for its impressment. Eventually, after much consideration, General Kirby Smith "...ordered [General] Magruder to impress enough cotton to meet the needs...[of] military buyers, and to sustain the credit of the government."<sup>25</sup> Most Texans and Texan newspapers denounced the Confederate impressment as an assailment on the "sanctity of private property," although at least one newspaper, *The Tri-Weekly Telegraph* (Houston), defended the maneuver as appropriate.<sup>26</sup>

General Smith created a Cotton Bureau for the Trans-Mississippi Department and appointed William J. Hutchins chief of the Texas Cotton Office in Houston. Hutchins submitted an open letter "To the Cotton Planters of Texas" in early December to *The Tri-Weekly Telegraph* (Houston) that detailed a Confederate plan for purchasing cotton in the state. Under this plan, one-half of a planter's cotton would be purchased while the other

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<sup>24</sup> Ronnie C. Tyler, "Cotton on the Border, 1861-1865," *Lone Star Blue and Gray: Essays on Texas in the Civil War*, ed. Ralph Wooster, (Austin: Texas State Historical Association, 1995), 213-214.

<sup>25</sup> Kerby, *Kirby Smith's Confederacy*, 172-174.

<sup>26</sup> *Ibid.*, 175.

half remained exempt from impressment and could be utilized at the owner's discretion.<sup>27</sup>

This plan sought to limit the need for impressment, but instead drew the ire of Texans throughout the state. Cotton had to be transported to Brownsville (and later Laredo and Eagle Pass when Brownsville was taken under Union control) in order to be sent across the border to a Mexican city like Matamoros or Monterey at the cost of the planter.<sup>28</sup>

In order to counter the Confederate plan, Governor Murrah combined the authority of the Tenth Legislature's acts reorganizing the State Military Board and authorizing the issue of seven percent bonds to purchase cotton and created a "State Plan."<sup>29</sup> Under this plan Texas contracted for all of a planter's cotton and provided for transport to the border, thus rendering it exempt from Confederate impressment. At the border the owner regained possession of half of the cotton shipment and could sell or transport it at his discretion.<sup>30</sup> The State Plan was popular among Texans as "...nearly half of all baled Texas cotton had been sold to the state...by March 1864."<sup>31</sup> Conversely, the plan infuriated Confederate authorities, including General Smith, who thought the plan "...undermine[ed] their efforts" to provide for the defense of the Trans-Mississippi Department.<sup>32</sup> This matter would also need to be addressed by the Tenth Legislature in its first called session in May.

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<sup>27</sup> E. H. Cushing, ed., *The Tri-Weekly Telegraph* (Houston, Texas), vol. 29, no. 111, ed. 1, Friday, December 4, 1863, <http://texashistory.unt.edu/ark:/67531/metaph236609/> (accessed July 31, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>28</sup> Kerby, *Kirby Smith's Confederacy*, 195, 181.

<sup>29</sup> *Ibid.*, 198-199.

<sup>30</sup> Tyler, *Cotton on the Border, 1861-1865*, 225.

<sup>31</sup> Wooster, *Texas and Texans in the Civil War*, 107.

<sup>32</sup> *Ibid.*

### *The Legislature Convened and the Governor's Message*

In early April, 1864, Governor Murrah ordered the Tenth Legislature to convene in extraordinary session on May 9.<sup>33</sup> Once both houses met quorum on May 11, the Message of Governor Murrah was delivered to a joint session. Although he reconvened the legislature in a time "...of trouble and of danger," Murrah began his address by voicing optimism about Confederate success in the ongoing struggle with the United States.<sup>34</sup> The bulk of the message detailed "...plainly the condition of the State..." and brought "...attention to such matters of public interest...[that required] serious and patient consideration."<sup>35</sup> Among other issues, specific consideration in Murrah's address was given to the condition of Confederate currency, the organization of state troops, the new Frontier Organization, and the purchase of Cotton through state bonds. Perennial themes that Texas had faced since the beginning of the war would be laid at the feet of Texas legislators once again in hopes that they could provide adequate solutions for the state.

The Confederate currency depreciated to the point of worthlessness and the notes were eventually withdrawn from circulation. The Tenth Legislature, while not passing direct currency legislation, utilized Confederate currency for appropriations, state obligations, and tax collection in hope of "sustaining" it. Governor Murrah reported that

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<sup>33</sup> Charles De Morse, ed., *The Standard* (Clarksville, Texas), vol. 20, no. 41, ed. 1, Saturday, April 16, 1864, <http://texashistory.unt.edu/ark:/67531/metapht234381/> (accessed August 08, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>34</sup> James M. Day, ed., *Senate and House Journals of the Tenth Legislature: First Called Session of the State of Texas* (Austin: Texas State Library, 1965), 4, <http://www.lrl.state.tx.us/scanned/SenateJournals/10/senateJournal10thLeg1stCalledEntire.pdf?CFID=19463403&CFTOKEN=81053667&jsessionid=8430c721fc0f01e097fe293a7045597755b4>.

<sup>35</sup> *Ibid.*

the Confederate congress planned to issue a new currency, but tasked the Texas Legislature with determining whether Texas would "...continue the same financial system, depend entirely upon Confederate Notes in all their fluctuations and rapid changes as to value and form, or adopt a different system."<sup>36</sup> Murrah briefly outlined a potential solution to the problem and stressed the importance of sustaining the state's credit, but claimed he did not devote a significant amount of time to the issue.<sup>37</sup>

The second major concern that Murrah brought to the legislature's attention was the organization of state troops. Murrah admitted that the reorganization was never completed due to the immediate concern of invasion as well as the new Conscription Act.<sup>38</sup> A few weeks before the legislators convened in Austin, *The Weekly State Gazette* (Austin) reported that the state's militia reorganization had been abandoned due to its conflict and confusion with the Confederacy's recent Conscript Act. The newspaper called on the upcoming session of the legislature to provide a new militia law "...more adapted to...[the] present condition, and the requirements of the country."<sup>39</sup>

In his address, Murrah defended his actions and further described the effect of the conflict between the state and Confederate military acts on state defenses. Texas was "...without any military force whatsoever..., not even a sufficient police...[under state

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<sup>36</sup> Governor Murrah Message to Tenth Legislature, First Called Session in Day, ed., *Senate and House Journals of the Tenth Legislature: First Called Session of the State of Texas*, 4-6.

<sup>37</sup> Ibid.

<sup>38</sup> Governor Murrah Message to Tenth Legislature, First Called Session in Day, ed., *Senate and House Journals of the Tenth Legislature: First Called Session of the State of Texas*, 8-14.

<sup>39</sup> *The Weekly State Gazette* (Austin, Texas), vol. 15, no. 36, ed. 1, Wednesday, April 20, 1864, <http://texashistory.unt.edu/ark:/67531/metaph181544/> (accessed August 12, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

control] in any county.”<sup>40</sup> The governor argued that this situation had to be addressed and proposed that “those between the ages of fifty and sixty years and those exempt from military service...should be organized into minute companies in their respective counties under the authority of the State....”<sup>41</sup> Upon organization, this local defense force could serve as a police force in addition to providing other domestic services. In relation to militia structure, Murrah briefly discussed the newly created Frontier Organization. He remained optimistic that once fully implemented, it would provide sufficient protection in the state’s frontier counties, but questioned its “swelled” numbers and the appropriations necessary for it to function properly.<sup>42</sup> It was evident that the state’s defensive organizations would have to be discussed and addressed during the extra session.

Although the governor mentioned various matters like the uses of the penitentiary, the need for manufacturing, and the writ of *habeas corpus*, the last major issue discussed at length was the condition of Texas cotton. Murrah explained that the cotton bond acts the legislature had provided months before at its regular session would have cost the state millions of dollars and lowered the state credit. To avoid such an outcome, Murrah instituted a cotton plan that utilized pieces of the legislature’s cotton bond acts and provided for the state to purchase cotton with seven percent bonds and return half of the cotton after shipment to the border. Due to the implementation of his plan, Murrah had been involved in contentious communication with General Kirby Smith, but maintained that “this whole cotton business, once systematized and controlled in a manner consistent

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<sup>40</sup> Ibid., 16.

<sup>41</sup> Ibid., 16-17.

<sup>42</sup> Ibid., 18-19.



with the rights of the citizen and what is due to the public necessities, the State and Confederate authorities exerting themselves in concerted effort, the most gratifying results may be anticipated.”<sup>43</sup> The governor was convinced that once the system was implemented efficiently the conflict would resolve itself.

Governor Murrah concluded his message in review of congressional acts passed by the Confederate government pertaining to matters such as the currency, conscription, and the suspension habeas corpus. Upon reflection of these “extraordinary,” “unprecedented,” and “significant” laws, he argued that “...if they are justified at all, they must be justified by the unusual crisis and as a means to save the life of the nation.”<sup>44</sup> In the last lines of the message, Murrah called upon the legislature to “...stand firm...and discharge fearlessly and faithfully the duties devolved...” to them.<sup>45</sup> The governor believed that in pursuing this course God would not only aid the South in securing its independence, but also allow the Confederacy to grow into a world power.<sup>46</sup>

### *The Legislature Begins its Work*

As the legislature gathered during the second week in May, 1864, newspapers in the state speculated as to the purpose of the called session and what legislation might be considered. Austin’s *Weekly State Gazette* briefly discussed the Confederate currency problem and Murrah’s state cotton plan as potential issues that the extraordinary session should address. The newspaper wrote that Texas needed to “...return to a specie basis or

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<sup>43</sup> Ibid., 25-28.

<sup>44</sup> Ibid., 37.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

become bankrupt...” and to “abolish all restriction on trade...and encourage by every possible means private enterprises...”<sup>47</sup> In closing, the editorial advocated for Texas and the legislature to “...respect the laws and authorities of the Confederate States, and not come in conflict or even competition with them...”<sup>48</sup> The legislature entertained the suggested concerns, but did not exclusively act in accordance with prescribed outcomes.

Although the session officially lasted twenty days, legislative business was only conducted for sixteen days due to two Sundays and a lack of quorum until May 11, 1864. After Governor Murrah presented his message, the Senate immediately assigned portions of it to various committees for deliberation, including the Committees on Finance, Military Affairs, and State Affairs and Confederate Relations. The Senate also considered, but ultimately rejected, a proposal from the House for their respective committees to work together on legislation in accordance with Governor Murrah’s address.<sup>49</sup> The House of Representatives likewise organized quickly and began introducing bills and joint resolutions for consideration within the first two days of the called session concerning matters of local concern as well as those with wartime implications.<sup>50</sup>

Nearly all of the laws passed by the Tenth Legislature were approved within the last week of the called session. Several of the first acts pertained to routine matters such

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<sup>47</sup> *The Weekly State Gazette* (Austin, Texas), vol. 15, no. 39, ed. 1, Wednesday, May 11, 1864, <http://texashistory.unt.edu/ark:/67531/metaph181548/> (accessed August 16, 2013), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>48</sup> Ibid.

<sup>49</sup> Day, ed., *Senate and House Journals of the Tenth Legislature: First Called Session of the State of Texas*, 38.

<sup>50</sup> Ibid., 132-140.

as the reorganization of various state courts and the funding of the legislature's expenses. The first major issue to be addressed, considered by some to be the most important issue, was the monetary structure the state had altered continuously throughout the war and the resultant financial situation.<sup>51</sup> Legislators in Austin exemplified the condition found throughout the state. Because of the lack of money, many bartered for rooms or camped out on the capitol grounds in wagons.<sup>52</sup> In an attempt to ameliorate Texas' dire financial situation, due in part to the ever depreciating Confederate currency, the legislators passed an act that provided for the disposal of old Confederate notes and the implementation of newly issued notes.<sup>53</sup> According to the law, the state and its citizens would have one month to use their old treasury notes at par value before they would further depreciate according to the procedures set forth in the Confederate law.<sup>54</sup> Bowen argues that the Texas legislators had "no alternative" but to pass such a law because the state was "tied...to the national currency system..." of the Confederacy.<sup>55</sup>

Other acts passed during the session attempted to bring solvency to the state's financial situation by allowing other forms of currency, such as state warrants and specie, to be used. Bowen notes that some "...senators and several House members thought that 'the time [had] come to divorce the finances of the state from those of the

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<sup>51</sup> Bowen, "A Political Labyrinth," 236.

<sup>52</sup> Benny E. Deuson, "Pendleton Murrah," in *Ten Texans in Gray*, ed. W. C. Nunn (Hillsboro, TX: Hill Junior College Press, 1968), 131.

<sup>53</sup> Gammel, *The Laws of Texas*, 764-765.

<sup>54</sup> *Ibid.*

<sup>55</sup> Bowen, "A Political Labyrinth," 236.

Confederacy.”<sup>56</sup> One of the other financial acts sought “to regulate the manner of liquidating claims for payment under appropriations made by the Legislature.”<sup>57</sup> The state did not have enough money to meet its obligations and provided for warrants to be drawn on the treasury to pay for the civil departments of the state, the relief families of Texas soldiers, employees of various departments, and the state asylum. A second law, approved on the same day, allocated a portion of Texas’ specie funds acquired from state cotton sales for payment on the interest on the increasing public debt. This law also allowed for the specie to be used for the interest on outstanding state bonds and to fund the treasury warrants issued under legislation of the Tenth Legislature provided that it was first used to procure arms and ammunition for the frontier organization.<sup>58</sup> Despite the importance of the financial crisis, there was little more the legislators could do during the session except raise state taxes. This seemed unlikely given the dreadful currency situation; Texans were already losing wealth due to controlled depreciation from the Confederate government and increased taxes would have been political suicide.<sup>59</sup>

In an effort to protect Texan’s property, the legislature passed a law “to punish unlawful interference with private property or private rights.” Any person found guilty of taking or disturbing another’s “personal or moveable” property was subject to fines and jail time, but any person found guilty of the same offense “...under the false pretence [sic] of acting under orders from lawful authority...” was subject to increased fines and at least

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<sup>56</sup> Ibid., 238.

<sup>57</sup> Gammel, *The Laws of Texas*, 768-769.

<sup>58</sup> Ibid.

<sup>59</sup> Bowen, “A Political Labyrinth,” 237-238.

four years in the penitentiary.<sup>60</sup> In conjunction with general property rights there was specific concern over “the unlawful interference with the exportation and transportation of cotton...and the unlawful impressment of property.” The legislature addressed this concern with a law passed at the end of the session which prohibited any interference with the Texas cotton trade and prohibited impressment without the authority of law and just compensation for articles impressed.<sup>61</sup>

Impressment continued to be a contentious subject between Texans and the Confederate government. On May 27, a joint resolution sponsored by Senators John Harcourt and James Throckmorton voiced the legislature’s “...outrage over the general policy of impressment.”<sup>62</sup> The first four sections of the resolution argued for the rationality of just compensation when articles are impressed by the Confederate military. The fifth section was quite overt in protesting Confederate actions of impressment. It noted that the original impressment law “...authorized impressments of ‘forage, articles of subsistence, or other property,’ only when such articles [were] ‘absolutely necessary for the exigencies of the army in the field.’”<sup>63</sup> Furthermore, the resolution stated that several items that were “necessary for the support of the owner and his family, and to carry on his ordinary agricultural and mechanical business...” were exempt from impressment.<sup>64</sup> The legislators claimed, however, that “...these plain requirements of the law...[were]...frequently and grievously violated by persons acting under color of

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<sup>60</sup> Gammel, *The Laws of Texas*, 765.

<sup>61</sup> *Ibid.*, 770-771.

<sup>62</sup> Patsy McDonald Shaw, ed., *The Texas Senate Vol. II: Civil War to the Eve of Reform, 1861-1889* (College Station, TX: Texas A&M University Press, 1999), 41

<sup>63</sup> Gammel, *The Laws of Texas*, 774.

<sup>64</sup> *Ibid.*

authority of the Confederate States...” and on other occasions when “foodstuffs and other family necessities” were transported throughout the state, they were “unwarrantably impressed.”<sup>65</sup> The Legislature requested Governor Murrah send the resolution, including a demand for the cessation of the practice by way of law or military order, to the Confederate government.<sup>66</sup>

A third and final area of dissension between the Tenth Legislature and the Confederacy was one of continued concern throughout Civil War Texas: state defenses. Texans readily volunteered to fight outside of the state at the beginning of the war, with twenty-five thousand men filling recruitment roles in 1861.<sup>67</sup> As the war progressed and more troops were required east of the Mississippi River, fewer men were left to defend the state’s borders. Previous legislative sessions frequently attempted to reorganize and supply men defending the frontier counties, but the laws were inadequate and ineffective. As was previously discussed, the latest reorganization experiment was met with bitter contestation between the Texas executive and Confederate military authorities. Although Governor Murrah eventually acquiesced to General Magruder’s demands for state troops to defend the northern Texas-Louisiana border, the Legislature continued to resist conscription and attempted, once more, to organize frontier defenses.

The legislature first addressed the issue by giving Governor Murrah’s executive actions legislative approval. On March 28 an act was approved that finally transferred

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<sup>65</sup> Ibid.

<sup>66</sup> Ibid., 774-775.

<sup>67</sup> Ralph A. Wooster, *Civil War Texas: A History and a Guide* (Austin: Texas State Historical Association, 1999), 5.

the state troops into Confederate service "...in accordance with the laws of Congress."<sup>68</sup> The previous law organizing the Texas militia, passed during the Tenth Legislature's regular session, was repealed. Under the new law, "...nearly seventy-five under-strength companies..." were transferred to Confederate authority throughout June and July of 1864.<sup>69</sup> Although the Texas government relinquished control of the militia within state, the Frontier Organization remained intact. Governor Murrah and the legislature refused to concede Confederate conscription in the western frontier counties. Men were enrolled within a frontier district for state service as long as they could prove they were residents of an "exempted" frontier county. This procedure ensured Confederate deserters and men liable for Confederate conscription were not avoiding service by hiding in the frontier counties.<sup>70</sup>

Despite this practice, rampant fears of Confederate enrolling officers taking legitimate frontier troops lingered throughout the frontier districts. This fear was magnified when the head of the Bureau of Conscription for the Trans-Mississippi Department, Confederate General Elkanah Greer, issued Special Orders Number 40 that enrolled men already in the Frontier Organization into Confederate companies for frontier protection. The orders created unnecessary confusion along the frontier and invited more dissension between Texas and Confederate authorities.<sup>71</sup> Governor Murrah beseeched President Jefferson Davis to approve the exemption of the frontier countries from Confederate service, but to no avail. President Davis instructed General Smith to

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<sup>68</sup> Gammel, *The Laws of Texas*, 770.

<sup>69</sup> Smith, "Conscription and Conflict on the Texas Frontier, 1863-1865," 281.

<sup>70</sup> *Ibid.*, 282.

<sup>71</sup> *Ibid.*, 281-282.

enroll the frontier troops into the Confederate army, but allowed them to remain on the western border for frontier defense.<sup>72</sup>

The Texan government was not entirely satisfied with this arrangement and decided to retain a claim on the Frontier troops under state control. Murrah assured, however, that deserters, eligible conscripts evading service, and those that did not live in frontier counties at the time of the frontier protection law passed in 1863 would be turned over to Confederate authorities. Furthermore, Murrah claimed that the frontier counties were closed to further immigration.<sup>73</sup> The Tenth Legislature sought to codify and legitimize the governor's policy in a bold joint resolution aimed at Confederate authorities, namely General Kirby Smith. The resolution, passed May 24, 1864, called on Governor Murrah to obtain "...assurances from Gen. Smith of the frontier organization of this State remaining undisturbed..."<sup>74</sup> The Legislature also desired for the conscription orders for those in frontier counties to be withdrawn by the Confederate military, leaving the frontier organization under the authority of the state. Under these conditions, the governor was tasked with turning over non-residents of the frontier counties (those not settled prior to July 1863) as well as prohibiting further immigration to the frontier region.<sup>75</sup>

In accordance with new Confederate policy, the legislature also extended the age of those in the frontier organization to include men as young as seventeen years in an act

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<sup>72</sup> Ibid., 282-283.

<sup>73</sup> Ibid., 283.

<sup>74</sup> Gammel, *The Laws of Texas*, 773.

<sup>75</sup> Ibid.



supplementary to the frontier defense law passed during the regular session.<sup>76</sup> Although this law sought harmony between Confederate and state policy, another joint resolution passed during the session concerning conscription was more divisive. In direct response to Confederate attempts to draft state officials, the legislators vehemently declared “...that no officer of a sovereign State can be placed in the military service of the Confederate States, without his consent...” because this seemed tantamount to state officials serving “...at the will and pleasure of Congress, and not under the Constitution and laws of their State.”<sup>77</sup> The second section of the resolution requested the governor issue a proclamation “...declaring that all civil officers, elected or appointed in accordance with the Constitution and laws of the State...[were] not liable to military duty in the Confederate States army.”<sup>78</sup>

Two final joint resolutions that addressed the military were approved on May 28, 1864. One of these resolutions supported the Confederate Congress’ attempt to strengthen the fighting force of the South by requiring clerks and employees to serve in active duty. The Texas legislators claimed that this order was being ignored in many circumstances and requested that Confederate authorities correct the issue. In doing so, the legislature argued, “...the people [would] feel and realize, that the cause in which we are engaged is common, demanding a hearty and willing co-operation of all.”<sup>79</sup> Although not as divisive as other military issues, this resolution provides another incident of legislators frustrated with Confederate policy execution. The last resolution of military

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<sup>76</sup> Ibid., 771

<sup>77</sup> Ibid., 775.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid., 776.

concern requested that the "...various companies, battalions and regiments of Texas troops, east of the Mississippi river, [be able] to return home for the purposes of recruiting their decimated ranks..."<sup>80</sup> Whether or not the legislature truly desired for the First, Fourth, and Fifth Texas Regiments to come home to recruit new members to its ranks and return to the theater of war remains to be seen. These regiments, assigned to the Texas Brigade (Hood's Brigade) for the majority of the war, suffered heavy casualties, especially at the Battle of Sharpsburg (Antietam) where the Texas First Infantry lost 82.3 percent of its men.<sup>81</sup> One could argue that due to the decimation of these units, Texans simply desired their soldiers closer to home. Patsy McDonald Spaw writes, in her second volume on the Texas Senate, that this was not the first attempt to bring troops back toward Texas during the war. When the Ninth Legislature was in special session, Senator Rice Maxey "...proposed a joint resolution requiring the withdrawal of all Texas troops to positions west of the Mississippi River."<sup>82</sup> The resolution failed, but the sentiment remained and manifested itself in the Tenth Legislature's resolution that attempted to bring Texan troops home.

Other legislation passed during the session was less contentious and focused on the manufacturing necessary to prosecute a war and provide for those that remained within the state. Several companies, including the Cherokee Furnace Company, Beaver Iron Manufacturing Company, Dallas Manufacturing Company, Trinity Mills Manufacturing Company, The Star State Machine and Manufacturing Company, The

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<sup>80</sup> Ibid., 775-776.

<sup>81</sup> Wooster, *Civil War Texas*, 56.

<sup>82</sup> Shaw, *The Texas Senate*, 42.

Falls of Brazos Manufacturing Company, Independence Manufacturing Company, The Texas Copper Manufacturing Company, San Marcos Cotton and Woolen Manufacturing Company, The Comal Springs Manufacturing Company, The Cairo Manufacturing Company, Tyler County Card and Machine Company, and The Guadalupe Manufacturing Company were incorporated with the hopes that they could produce necessary materials needed throughout the state.<sup>83</sup> Despite the number of companies incorporated during each legislative session, many of them textile factories, "...it is doubtful that many of these enterprises got under way [due to]...an almost total lack of capital, labor, and machinery..."<sup>84</sup> Most beneficial manufacturing in Texas during the Civil War was produced at the labor-rich penitentiary that produced many textiles used by soldiers' families throughout the state.<sup>85</sup>

After the legislators finished their work and returned home, the *Weekly State Gazette* (Austin) weighed in on the called session and the legislation it produced. The newspaper praised the act to punish interference with private property as a "good" and "much needed" law.<sup>86</sup> Despite printing the legislature's General Laws from the called session, the newspaper claimed that the "...only laws that are really important, and of much general interest..." were those that pertained to the state's finances.<sup>87</sup> These three laws regulated the replacement of Confederate money, established the method for paying

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<sup>83</sup> Gammel, *The Laws of Texas*, 783-796.

<sup>84</sup> Shaw, *The Texas Senate*, 45

<sup>85</sup> *Ibid.*, 46.

<sup>86</sup> *The Weekly State Gazette* (Austin, Tex.), vol. 15, no. 42, ed. 1, Wednesday, June 1, 1864, <http://texashistory.unt.edu/ark:/67531/metaph181551/> (accessed February 19, 2014), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>87</sup> *Ibid.*

appropriations authorized by the legislature, and authorized specie acquired through state cotton sales to pay for state Treasury Warrants. The first of these laws, the newspaper argued, was necessary, but lamented that the third law bestowed so much ambiguous discretion upon the governor regarding the use of specie to fund Treasury Warrants. The editorial concluded that the legislature could have done more, but had, nonetheless, “...exceeded...expectations...in the laws they...passed and the expedition with which [they completed]...their business.”<sup>88</sup>

Other editorials, found in newspapers like the *Galveston News*, the *Houston Telegraph*, and the aforementioned *Weekly State Gazette* (Austin), were very harsh on Governor Murrah and the legislature. Each newspaper tended to be more sympathetic to the Confederate position than that of the state and criticized the legislature for becoming “State Rights men.”<sup>89</sup> In the *Houston Telegraph*, Edward Cushing claimed that “...the Legislature had accomplished little more than to stimulate a ‘jealous distrust’ of Confederate authority.”<sup>90</sup> Some legislators fought back against the criticism. Representative John T. Brady attempted to persuade Cushing to retract some of his comments in his newspaper and Senator James W. Throckmorton questioned the character of Cushing and David Richardson, the editor of the *State Gazette* in Austin, and suggested that they were owned by the military and cotton bureau.<sup>91</sup> Throckmorton’s claim illustrates one of the main themes throughout Bowen’s dissertation: the relationship

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<sup>88</sup> Ibid.

<sup>89</sup> Bowen, “A Political Labyrinth,” 241-242.

<sup>90</sup> Ibid., 241.

<sup>91</sup> Ibid., 241-242.

between civil and military authorities and the competing viewpoints that led to the collapse of the Trans-Mississippi Department.<sup>92</sup>

The Tenth Legislature was in called session from May 9 to May 28 in 1864. During that period, the legislators attempted to resolve numerous issues directly related to the war, but were inclined to focus more on what was best for Texas and its citizens than appease the general government at Richmond. This mindset and the legislation it produced, in stark contrast to the Ninth Legislature and Governor Lubbock's conciliatory administration, caused dissension between Texan and Confederate authorities. The perpetual issues that caused such dissension, namely finances, impressment, and state defenses, were addressed with new laws and resolutions, but remained unresolved after the legislature adjourned on Saturday, May 28, 1864. Some did not expect for the Tenth Legislature to assemble before the Civil War's conclusion, if at all. The *Weekly State Gazette* (Austin) wrote:

In parting from them, we feel that it is the last time we shall see many of them, for before another session, their places will doubtless be filled by abler and more practical men – men who are not only politicians but statesmen, and who having returned from the war, will be justly entitled to all the honors that a grateful country can bestow upon them.<sup>93</sup>

The newspaper anticipated the War between the Confederate States and the United States to reach its conclusion within a year's time and a newly elected Eleventh Legislature comprised of numerous war heroes convened in Austin. This prediction did not come to fruition as various circumstances and actions during the summer and fall of 1864 required the Tenth Legislature to return to Austin a third time.

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<sup>92</sup> Ibid., 242.

<sup>93</sup> *The Weekly State Gazette* (Austin, Tex.), vol. 15, no. 42, ed. 1, Wednesday, June 1, 1864.

## CHAPTER FIVE

Second Called Session: October 17, 1864-November 15, 1864

### *Summer of 1864*

As the Tenth Legislature was in the last week of its called session, General Nathaniel Banks and the Union Army retreated from the Texas-Louisiana border region. Confederate troops, including many Texans, successfully prevented Union invasion and occupation of eastern Texas. Ralph A. Wooster argued that the “price was high” in the Red River campaign victory, because it resulted in 2,852 Texan casualties including the death of well-liked General Tom Green.<sup>1</sup>

At about the same time as the Red River fighting concluded, several Texan regiments were engaged on the eastern side of the Mississippi River. Among the thousands of Texans fighting in General Lee’s Army of Northern Virginia in the east and General Joseph E. Johnston’s Army of Tennessee in the southeast were the First, Fourth, and Fifth Texas regiments that comprised Hood’s Texas Brigade. These regiments fought their way south in defense of Richmond, Virginia and incurred the praise of General Lee for their valiant efforts in numerous engagements during the spring and summer of 1864.<sup>2</sup> Once positioned near Richmond, it was obvious the Tenth Legislature’s resolution requesting the return of these regiments to Texas was rejected. Similar requests from various officers were also rejected and the brigade was eventually

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<sup>1</sup> Wooster, *Texas and Texans in the Civil War*, 148.

<sup>2</sup> *Ibid.*, 156-157.

left with only 600 men. Appeals of brigade members to President Davis, with the support of General Lee ensured that the brigade was not combined with any other unit.<sup>3</sup>

After the adjournment of the legislature, conflict between Texas and Confederate officials ensued. Cotton, and the competing policies of the Confederate and state governments in relation to it, continued to drive a wedge between Governor Murrah and General Kirby Smith. The Tenth Legislature did not sanction, nor did they seek to change, Governor Murrah's state cotton plan. In relation to cotton, the legislature sought to prohibit "...the unlawful interference with the exportation and transportation of cotton...and the unlawful impressment of property."<sup>4</sup> This law referred to a Confederate law, passed in February, 1864, that regulated foreign trade and "...contained no provision for impressment or exemptions."<sup>5</sup> The Texas law threatened Confederate cotton sales which were already affected by Murrah's state plan, loosely pieced together from two acts from the Tenth Legislature's regular session.<sup>6</sup> Another act related to cotton appropriated some of the specie received from state cotton sales to pay for the interest on the public debt.<sup>7</sup>

It can be concluded from these laws, and the lack of other legislation on the cotton issue, that the governor's state plan, although disconcerting for the Confederacy, was acceptable. General Smith, however, did not share in this assessment. Although he was warned by President Jefferson Davis in April, 1864 "...that 'there is no authority in law

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<sup>3</sup> Ibid.

<sup>4</sup> Gammel, *The Laws of Texas*, 770.

<sup>5</sup> Meiners, "The Texas Governorship," 339-340.

<sup>6</sup> Ibid.

<sup>7</sup> Gammel, *The Laws of Texas*, 769.

for the impressment of cotton for the purpose designed by you,” General Smith sought legitimacy for his actions and requested Confederate legislation to that end.<sup>8</sup> While waiting for legislative action and without specific regulations related to foreign trade from Richmond, General Smith issued General Order No. 34 and General Order No. 35. The first order, issued June 1, 1864, “...stated the need of the government for half of the cotton in the department and the determination to acquire it by purchase if possible, by impressment if necessary.”<sup>9</sup> The second order, issued on June 4, regulated trade with Mexico and permitted the export of cotton and other goods only through the state or Confederacy. Throughout the month of June, varying cotton policies and practices furthered dissension between Governor Murrah and General Smith, as each argued for their state-centered and Confederate-centered position, respectively.<sup>10</sup>

The fight over cotton culminated in a meeting between the men in Hempstead, Texas during July 1864. No records of the conference exist, but afterward Governor Murrah capitulated to General Smith and abandoned his state plan for cotton. Bowen argues that any number of things might have caused this change in Murrah’s position: a “...[glimpse of] the probable result of his jealous concern for civil and state primacy..., Unionists taking encouragement from his anti-military posture..., or perhaps he realized that state agents had abused his cotton plan...”<sup>11</sup> Regardless of what caused the shift in Murrah’s position, the *Weekly State Gazette* hoped the conflict over cotton between

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<sup>8</sup> Kerby, *Kirby Smith’s Confederacy*, 206.

<sup>9</sup> Meiners, “The Texas Governorship,” 341-342.

<sup>10</sup> *Ibid.*, 342-345.

<sup>11</sup> Bowen, “A Political Labyrinth,” 243.



Texan and Confederate authorities, seemingly resolved, would lead to more effective policies that benefitted the country and respected private enterprise.<sup>12</sup>

The other significant event in Texas during the summer of 1864 was the election for Texas Supreme Court Chief Justice. This election is thoroughly analyzed in Chapter VII of Nancy Bowen's "A Political Labyrinth: Texas in the Civil War, Questions in Continuity." According to Bowen, the results of the election, despite the continual dissention, demonstrated that Texans were still committed to the Confederate States.<sup>13</sup> With the successful election of Oran M. Roberts as Chief Justice over Judge James H. Bell, Texans had accomplished the legislators' goal of "...finding a candidate for chief justice whose credentials were appropriate, ...an experienced lawyer whose devotion to the Confederacy was as unquestionable as his commitment to civil primacy."<sup>14</sup> Texans chose a secessionist, Confederate-leaning candidate over a staunch Unionist for chief justice of the Supreme Court. Also that fall, the presidential election in the United States was of interest to those in the Confederate States, including Texas.

The Republican candidate was obviously the incumbent president, Abraham Lincoln. The Democrats in the United States decided to run General George McClellan against Lincoln on a platform of peace toward the Confederate States. Their goal, upon McClellan's election, was to offer peace negotiations with the Southern states in hopes of the states' return to the Union with promises to protect slavery. Although the Tenth Legislature took issue with this notion, it never came to pass because Lincoln was re-

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<sup>12</sup> *The Weekly State Gazette* (Austin, Tex.), vol. 15, no. 48, ed. 1, Wednesday, July 13, 1864, <http://texashistory.unt.edu/ark:/67531/metapth181557/> (accessed February 27, 2014), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>13</sup> Bowen, "A Political Labyrinth," 275.

<sup>14</sup> *Ibid.*

elected.<sup>15</sup> Although Lincoln was apprehensive about his re-election chances, he crushed McClellan 212 to 21 in the Electoral College and won fifty percent of the popular vote.<sup>16</sup> There would be no peace negotiations as advocated by the Democrats' platform in 1864; the war would continue under Lincoln's direction.

Fighting throughout the summer of 1864 was especially intense in the east and south east of the Confederacy as both the Army of Northern Virginia and the Army of Tennessee were involved in frequent battles. General Lee's army spent much of the summer and autumn fighting near Richmond, desperately defending the Confederate Capitol. General Johnston's army, on the other hand, battled Union general William T. Sherman throughout Georgia. Eventually, Jefferson Davis replaced Johnston with John B. Hood in hopes that Hood would have more success in taking the fight to Sherman and the Union army. Despite the change in command, the Confederate army did not keep Sherman from taking Atlanta, Georgia in September of 1864.<sup>17</sup> The Confederate army also suffered losses in Tennessee, including a failed attempt, in late 1864, to take Nashville from Union possession.<sup>18</sup> It seems that 1864, much like 1863, was not a good year for the Confederate military. Despite these failures on the battlefield in the eastern Confederacy, Texas had its own concerns in the Trans-Mississippi Confederacy. These concerns led Governor Murrah to call the Tenth Legislature back into session one more time.

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<sup>15</sup> Spaw, *The Texas Senate*, 49.

<sup>16</sup> Johnson, *Abraham Lincoln, Slavery, and the Civil War*, 296 and 304.

<sup>17</sup> Wooster, *Texas and Texans in the Civil War*, 155-165.

<sup>18</sup> *Ibid.*, 166-168.

*Legislature Reconvened and the Governor's Message*

On September 15, 1864, Governor Murrah ordered the Tenth Legislature to meet in a second extraordinary session in Austin on Monday, October 17. There was no doubt as to the primary concern that needed to be addressed by the legislators as Murrah declared, "I convene you with reference to the finances of the State."<sup>19</sup> The governor briefly explained his apprehension about the unforeseen inadequacies of the financial legislation passed at the previous session. The treasury warrants that were authorized to help soldier's families throughout the state were projected to "...fail to accomplish the objects desired," because of the depreciation of the provision made to sustain the warrants.<sup>20</sup> Governor Murrah recommended the warrants no longer be issued and argued, furthermore, that state credit should not be used if it was not sustainable. Although its value fluctuated throughout the state, Murrah suggested that Confederate currency be used to meet the state's obligations. The Confederate congress had recently authorized the state to replace one half of its one hundred dollar Confederate notes for the new notes. This was "...more than...anticipated when in session" during the spring and the legislature would have to decide whether to follow Murrah's suggestion in utilizing the new Confederate currency.<sup>21</sup>

Although called into session on Monday, October 17, 1864, the legislature did not organize until October 20 due to a lack of quorum. Once organized, Governor Murrah's message was read before the legislature in which he reiterated, albeit in more detail, his

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<sup>19</sup> Governor Murrah Proclamation to Tenth Legislature in James Day, ed., *Senate and House Journals of the Tenth Legislature: Second Called Session* (Austin: Texas State Library, 1966), 1, <http://www.lrl.state.tx.us/scanned/SenateJournals/10/senateJournal10thLeg2ndCalledEntire.pdf?CFID=19463403&CFTOKEN=81053667&jsessionid=843011e4f2a9f399034b312f355235186e48>.

<sup>20</sup> Ibid., 1-2.

<sup>21</sup> Ibid.

concerns and reasons for convening the legislature in extraordinary session. The primary concern was the condition of the state's finances, specifically in relation to the law that prescribed for the issue of state treasury warrants for soldier's families and the problems that surrounded the Confederate currency issue and its systematic replacement. In reference to the warrants, there had to be a balance between achieving the goals of the legislation (aiding soldier's families through the issue of treasury warrants) and maintaining the state's credit. The lack of confidence in the warrants came from ambiguity in the text of the legislation regarding the specie payment of said treasury warrants. Governor Murrah argued that "it would be necessary, in order to make the plan successful in preserving the credit of the State, and to keep up the value of these warrants, to satisfy the public mind, in advance, as to the quantity of specie that could be controlled for the purpose named in the law, and as to the periods at which it could be so employed."<sup>22</sup> Essentially, the legislation needed to specifically describe how much specie and how often it would be paid upon the warrants; merely suggesting that specie would be paid when it was available was not good enough to instill confidence in the scheme. A plan from the legislature was necessary to provide "...a constant and general demand, approximating to the amount to be issued."<sup>23</sup>

The question of Confederate currency, constant throughout the war, was also brought to the attention of the legislators. Governor Murrah noted that the state had relied almost "exclusively" on Confederate money, despite its fluctuation and

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<sup>22</sup> Governor Murrah message to Tenth Legislature (Second Called Session) in *The Weekly State Gazette* (Austin, Texas), vol. 16, no. 11, ed. 1, Wednesday, October 26, 1864, <http://texashistory.unt.edu/ark:/67531/metaph181572/> (accessed March 09, 2014), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>23</sup> Ibid.

depreciation in value, "...to cooperate in every practicable way to give strength and credit to the Confederate Government."<sup>24</sup> Furthermore, Murrah stated:

We have reached a point connected both with the finances of the State and the currency of the Confederacy, that makes it absolutely necessary to consider and determine again whether this policy can longer be exclusively pursued, and the State government sustained, and her obligations and duties discharged. So long as this contest shall continue for all that is dear to us as a people, the same policy should be observed so far as consistent with cares and duties devolving upon the State, and inseparable from her as a State. A departure from it must be authorized and demanded by necessity, in order to be reconciled to sound policy; and such is the feeling of the people and of the authorities of Texas. But the force of changes must be recognized, and facts met and dealt with as they present themselves.<sup>25</sup>

Murrah advocated that the legislature at least consider abandoning the Confederate currency.

In order to avoid issuing more Confederate notes, Murrah suggested using state treasury warrants and imposing "...a tax which will annually absorb a certain portion of them [warrants]" to provide for the nearly 74,000 "indigents and dependents of soldiers" throughout Texas.<sup>26</sup> The governor also suggested a system by which products from the state penitentiary could be distributed to the various counties throughout the state for the benefit of soldier's families as well as to soldiers in the field. Providing for these Texans in need, Murrah claimed, was "...one of the first duties of the State Government..."<sup>27</sup>

Other taxes, on things such as property and liquor, were also proposed by Murrah. It was

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<sup>24</sup> Governor Murrah message to Tenth Legislature (Second Called Session) in Day, *Senate and House Journals of the Tenth Legislature: Second Called Session*, 7-8.

<sup>25</sup> Governor Murrah message to Tenth Legislature (Second Called Session) in *The Weekly State Gazette*, Wednesday, October 26, 1864.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

up to the legislators to consider the suggestions and determine the best methods for addressing the numerous financial problems that confronted the state.

Governor Murrah also asked the legislature to consider other items related to the war. One such item for consideration was a law to assign military prisoners sentenced to hard labor to the state penitentiary for labor purposes. This practice was requested by the military authorities of the Trans-Mississippi Department and had already begun; it simply needed legislative approval and authority.<sup>28</sup> The governor also requested that the legislature increase the authority and parameters of the State Military Board. He argued that “the duty of procuring specie to pay the interest on the State Bonds, to procure arms and munitions of war for the Frontier Organization, could with more propriety be devolved upon the Board and the means placed at their disposal for these purposes which are now placed at the disposal of the Executive.”<sup>29</sup> The governor’s message concluded with a request to consider an emergency reserve force for the state, comprised of men under sixty that were not liable to Confederate service.<sup>30</sup> Murrah had provided the legislative session with some guidance and suggestions, but it was now up to them to act and mold the direction Texas was to take for the remainder of the war.

### *The Legislative Session Begins*

Although the Tenth Legislature began addressing the governor’s concerns at the beginning of the second called session, it was several weeks before any of this legislation was debated in earnest and finally approved. Other matters, easier to debate and

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<sup>28</sup> Governor Murrah message to Tenth Legislature (Second Called Session) in Day, *Senate and House Journals of the Tenth Legislature: Second Called Session*, 15-16.

<sup>29</sup> *Ibid.*, 17.

<sup>30</sup> *Ibid.*

legislate, such as the reorganization of various state courts (including the Supreme Court) and the incorporation of new manufacturing companies were addressed before the bulk of the wartime fiscal measures.<sup>31</sup>

One of the first of these fiscal measures that was considered during the session was the new issue of Confederate notes. It was the discretion of the legislature whether to continue Texas' support of the Confederate currency or to sever ties with the depreciated monetary system and determine a more viable successor. Governor Murrah advocated for the latter option and argued that the unknown value of the new issue of Confederate currency and the various changes and regulations to be made by the Confederate Congress in relation to the currency "...are matters of uncertainty and furnish additional and serious embarrassment in considering the finances of this State and any future policy in regard to them..."<sup>32</sup> A rejection of the new issue of Confederacy currency would have been a brazen policy shift for Texas and signified not only a break with Confederate monetary policy, but with the Confederacy itself. The Tenth Legislature was willing to put the needs of the state ahead of the Confederacy on many issues during its Regular Session and First Extra Session, but did not acquiesce to Governor Murrah's recommendation on this issue. On November 12, 1864, the legislature approved a law that provided for the replacement of the old issue of Confederate notes with new issue notes in accordance with Confederate law.<sup>33</sup>

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<sup>31</sup> Gammel, *The Laws of Texas*, 809-813 and 837-839.

<sup>32</sup> Governor Murrah message to Tenth Legislature (Second Called Session) in Day, *Senate and House Journals of the Tenth Legislature: Second Called Session*, 7.

<sup>33</sup> Gammel, *The Laws of Texas*, 839.

A second law, passed November 15, 1864, supplemented a law that appropriated money for the protection of the frontier approved during the Tenth Legislature's Regular Session. Specifically, the companion law provided that an additional one million dollars in Confederate notes was to be appropriated for the expenses of frontier protection.<sup>34</sup> When considered together, these laws had important implications. The first law simply stated that the Confederate currency was to be replaced with new issues and the second law appropriated a substantial amount of the currency for a state expense. Without explicitly acknowledging the issue, the legislators had determined that Texas and its finances were to remain affixed to the Confederacy and its currency. It seems that even the Texas-leaning legislature was not prepared to wholly abandon the Confederate cause just yet.

Governor Murrah also advocated that state treasury warrants should be limited in their use to preserve the state credit. The legislators, in acceptance of the new issue of Confederate notes, were able to accomplish this and limited the issue of treasury warrants to the payment of those in the employ of the state of Texas, a specific appropriation of five hundred thousand dollars for the counties to distribute to soldier's families, and an appropriation of eight thousand dollar to repair the roof of the Land Office.<sup>35</sup> It was estimated that nearly two million dollars in treasury warrants would be unpaid by the fall of 1865.<sup>36</sup> To fund this debt, the legislature approved a law on November 15, 1864 to

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<sup>34</sup> Ibid., 822.

<sup>35</sup> *The Weekly State Gazette* (Austin, Texas), vol. 16, no. 14, ed. 1, Wednesday, November 16, 1864, <http://texashistory.unt.edu/ark:/67531/metapth181575/> (accessed March 16, 2014), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas; Gammel, *The Laws of Texas*, 825.

<sup>36</sup> Ibid.



allow the governor to sell any state property not needed for public use that remained after the transfer of the Frontier Regiment to Confederate service. The state property was to be sold at auctions for state treasury warrants, thus increasing their demand throughout the state.<sup>37</sup> It was estimated that the sale of this property would generate nearly four hundred thousand dollars.<sup>38</sup>

Demand for the warrants was also increased through the passage of another act that allowed railroad companies to pay the interest and principle balance of their debt to the Special School Fund in treasury warrants.<sup>39</sup> Railroad companies had been authorized by a previous legislature to borrow money from the school fund, a practice the *Weekly State Gazette* found to be “...so much money thrown away.”<sup>40</sup> The new measure that allowed the railroad companies to use a “depreciated paper” to pay their entire debt was viewed even more unfavorably by the newspaper that claimed, “We are aware that the rail road interest has for several years measurably controlled the legislation of the State, but we did not expect so soon to see that interest so potent as to ultimate in legislation to rob the children in the State of a sacred fund so wisely set apart for their benefit.”<sup>41</sup>

In addition to increasing demand through state property sales and the railroad payments, the legislature sought to generate more revenue through a series of occupation and income taxes, estimated to provide one million dollars toward funding the state

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<sup>37</sup> Gammel, *The Laws of Texas*, 845.

<sup>38</sup> *The Weekly State Gazette* (Austin, Texas), vol. 16, no. 14, ed. 1, Wednesday, November 16, 1864.

<sup>39</sup> Gammel, *The Laws of Texas*, 820.

<sup>40</sup> *The Weekly State Gazette* (Austin, Texas), vol. 16, no. 14, ed. 1, Wednesday, November 16, 1864.

<sup>41</sup> *Ibid.*

treasury warrants.<sup>42</sup> The law, approved November 15, 1864, provided taxes on various businesses, but was primarily concerned with regulating the liquor industry.<sup>43</sup> Any person operating a distillery with the use of a still (the metallic or wooden container necessary in the distillation of strong alcohol) that held eighty gallons was subject to an annual tax of one thousand dollars, per still. For each still that was capable of holding less than or greater than eighty gallons, a proportional annual tax was levied. The law also stipulated that distillers, as well as those selling the liquor, were required to possess a license to engage in their respective alcohol-related occupations. Those retailing liquor, defined in the law as selling quantities of less than one gallon, were liable for a two hundred fifty dollar annual tax. This occupation tax was in addition to an annual five percent income tax on the gross sales of liquor, beer, and wine.<sup>44</sup>

Section Seven of the statute provided for a one percent income tax on the gross sales of all merchandise save mechanical and agricultural products and the aforementioned alcoholic beverages. Merchants also had an occupation tax of three hundred dollars, for wholesale merchants, or one hundred dollars, for retail merchants. Several other occupations were levied both an occupation tax and a one percent income tax. Among these were hotel proprietors (fifty dollars), restaurateurs (twenty five dollars), and doctors (ten dollars). Many positions within railroad companies required a twenty dollar occupation tax and one percent income tax although railroad companies

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<sup>42</sup> Ibid.

<sup>43</sup> Gammel, *The Laws of Texas*, 813-814.

<sup>44</sup> Ibid.

were only required to pay an income tax at the rate of one-fourth of one percent of their gross receipts.<sup>45</sup>

Several other occupations were taxed on income at a rate of two percent. These occupations, in addition to the two percent income tax, were also responsible for various flat-rate occupation taxes. For example, individuals operating a pool table or a bowling lane, individuals keeping a warehouse, and insurance companies were levied one hundred dollars each year. Dentists were levied fifty dollars and lawyers were levied ten dollars. All of these taxes, levied on occupation and income, were to be paid in specie, as prescribed in Section Fifteen of the law.<sup>46</sup> It can be argued that this law served two purposes. First, an increase and expansion of taxes would provide much needed revenue for the state. Second, the severe taxes on distilling and liquor sales might dissuade liquor consumption throughout Texas.<sup>47</sup>

A series of laws relating to the family members of Texan soldiers in state or Confederate service were passed on November 15, 1864. The most significant of these acts originated in the House of Representatives and was considered by some to be the “...great Financial Bill of the Session.”<sup>48</sup> Austin’s *Weekly State Gazette* reported that after discussion the Texas Senate greatly altered the bill and offered a substitute for the House’s. The Senate Finance Committee determined that the House plan relied too

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<sup>45</sup> Ibid., 813-815.

<sup>46</sup> Ibid.

<sup>47</sup> As has been shown through previous legislation passed during the Civil War, the state often attempted to limit liquor consumption which was considered an evil.

<sup>48</sup> *The Weekly State Gazette* (Austin, Texas), vol. 16, no. 13, ed. 1, Wednesday, November 9, 1864, <http://texashistory.unt.edu/ark:/67531/metapth181574/> (accessed March 16, 2014), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

heavily on the state penitentiary for supplies and proposed a series of measures in attempt to enhance the value of Texas paper money through the use of specie, Confederate notes, and either state bonds or state warrants. Some of the senators also argued that the treasury warrants issued by the state were not warrants at all.<sup>49</sup> The convoluted debate over the definition and constitutionality of the warrants was covered in the November 18, 1864 issue of the *Houston Tri-Weekly Telegraph*. Although it was accepted practice, the editorial reasoned that due to their circulation as money, the warrants were most likely unconstitutional.<sup>50</sup> The suppositions proved to be moot as the senate committee's report and measures were ultimately rejected in favor of the house bill.

The final approved version, entitled "An Act to provide more effectually for the Support and Maintenance of Indigent Families and Dependents of Texan Soldiers," declared that six hundred thousand yards of cloth and thread produced by the state penitentiary was to be used by Texas' respective country courts to purchase necessary supplies for the soldiers' families or, in extreme cases, to clothe them.<sup>51</sup> Under the direction of the law, the financial agent of the penitentiary would divide Texas into six districts, each containing a proportionate amount of the indigent families, which would receive cloth on a rotation basis determined by lot.<sup>52</sup>

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<sup>49</sup> Ibid.

<sup>50</sup> E. H. Cushing, ed., *The Houston Tri-Weekly Telegraph* (Houston, Texas), vol. 30, no. 170, ed. 1, Friday, November 18, 1864, <http://texashistory.unt.edu/ark:/67531/metaph235066/> (accessed March 16, 2014), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>51</sup> Gammel, *The Laws of Texas*, 816.

<sup>52</sup> Ibid.

The fifth, sixth, seventh, and eighth sections of the law described the county courts' ability to levy taxes on items already subject to state tax and the manner in which the taxes were to be assessed and collected. The last section of the act repealed two previous laws passed by the Ninth Legislature; the first was related to wartime taxation by the county courts and the other was concerned with the aid to soldier's families.<sup>53</sup> This act, therefore, reorganized and redefined two previous objectives of the Texas Legislature, employed previously during the war, to ameliorate their function. Another act passed on November 15, 1864 specifically repealed two previous acts of the Tenth Legislature's regular session that provided for support of soldier's families.<sup>54</sup> One of the repealed acts, which appropriated one million dollars for the care of the families, was repealed at the request of Governor Murrah.<sup>55</sup> The one million dollars appropriated for this cause depended on the value of the state's treasury warrants, which Murrah suggested only be used in an emergency. The governor further argued that "measures more efficient and better suited to the condition of the State must be adopted if the appropriation for the benefit of the families of soldiers are to avail them anything in many localities."<sup>56</sup> Therefore, the goals of the repealed legislation, providing and caring for the families of Texas soldiers, were to occur through a more efficient means: the sale of cloth from the penitentiary.

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<sup>53</sup> Ibid., 817-818.

<sup>54</sup> Ibid., 819.

<sup>55</sup> Governor Murrah message to Tenth Legislature (Second Called Session) in Day, *Senate and House Journals of the Tenth Legislature: Second Called Session*, 6.

<sup>56</sup> Governor Murrah Proclamation to Tenth Legislature (Second Called Session) in Day, *Senate and House Journals of the Tenth Legislature: Second Called Session*, 2.

The Texas penitentiary, as has been discussed, was the most productive manufacturing entity during the war and produced substantial amounts of cloth.<sup>57</sup> The large workforce grew under a law passed during the second called session in which convicts from other areas of the Trans-Mississippi Department were permitted to be housed within the Texas penitentiary. Provided the prison was not at capacity, these inmates would augment a seemingly limitless supply of workers to produce cloth for the war effort at home and abroad.<sup>58</sup> Although the penitentiary served as an invaluable manufacturing asset in Texas, the legislature continued to incorporate several manufacturing companies during the session. Among these were the Bastrop Cotton and Wool Manufacturing Company, the Houston Paper Mill Manufacturing Company, the Houston City Mills Manufacturing Company, the Holly Springs Manufacturing Company, and the Austin Iron Company.<sup>59</sup> There was still much demand for the production of war-related materials as well as the production of items necessary for civilians struggling throughout the state.

One of the most significant legislative measures during the session was not a law, but a joint resolution concerning the potential reunification with the United States. The legislature acknowledged that there was a possibility that the Democratic candidate, George McClellan, could win the presidency of the United States. Nevertheless, the preemptive resolution stated that only Confederate States possessed the authority to negotiate or entertain any such proposition or transaction with a foreign government.<sup>60</sup>

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<sup>57</sup> Spaw, *The Texas Senate*, 46.

<sup>58</sup> Gammel, *The Laws of Texas*, 820.

<sup>59</sup> *Ibid.*, 838-845.

<sup>60</sup> *Ibid.*, 826.

Texas was beholden to the will of the Confederacy and refused to consider reconciliation independent from their new country. In addition to their sectional loyalty to the South, the legislators claimed that any attempt made by the United States to establish peace with individual southern states was simply a disingenuous “divide and conquer” technique to separate the Confederate states from one another.<sup>61</sup> To persuade the Confederate states to consider any proposition of peace, appeals are made to the South’s “love of property,” assumed by the United States to “control [their] conduct.”<sup>62</sup> Section Three of the resolution sought to discredit this notion and declared:

That it will be well for the people of the North to understand, even at this late day, that the Southern States did not secede from the Union upon any question such as the mere preservation of the slave property of their citizens. But, that being free and sovereign States, they were resolved to preserve their freedom and their sovereignty. They were free to govern themselves as they, and not as others saw fit. They were free to change their government, to erect a new one, and to make whatever alliances they should choose. And after nearly four years of arduous war, these States are still unwavering in their resolution to preserve their freedom and their sovereignty, without which all else is valueless.<sup>63</sup>

Slavery, according to the Texas legislators, made no difference in terms of reconciliation with the North, because it was not the root cause of their separation in the first place.

In the section that followed, the resolution laid the blame for the present conflict at the feet of President Lincoln and declared that even if the war had not occurred, there could be no reunification with the United States due to past experience including constitutional violations suffered at the hands of the North.<sup>64</sup> The legislators then outlined and described all manner of atrocities the Northern armies had supposedly

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<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid., 826-827.

committed against the Southern people throughout the war. In summation of these “inhumanities of war,” it was written that

the people of the North have never failed, when the opportunity was presented, to render ovations to the most transcendent among the criminals, while their press has been constant in its laudation, and their orators and preachers have cried out ‘well done.’ Army, Government and people have united to make the name of Yankee, suggestive as it was before of fraud, now the synonym of barbarism and baseness.<sup>65</sup>

The people of Texas, as well as the rest of the Confederate States, held the North in the greatest contempt for not only initiating the war, but for myriad war crimes committed since its inception. The Seventh Section of the resolution claimed that Texas truly desired peace with the North, but that peace required the complete independence of the South and had to be negotiated through the Confederate government.<sup>66</sup> The resolution was printed on the front page of the November 9, 1864 issue of the *Weekly State Gazette* (Austin) because of its importance.<sup>67</sup>

It is apparent from the aforementioned actions of the Tenth Legislature that this session did not yield such striking and defiant legislation directed at the Confederate government. Texas still recognized the Confederacy as the legitimate authority to contract for peace with the United States and Confederate currency was to remain in use throughout the state, an acknowledgement of the interconnectedness of the two financial systems. The legislature did not adjourn without taking a few shots at the general government in two of its joint resolutions on the matter of impressment. As has been examined, three main issues caused dissension between Confederate officials and Texas:

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<sup>65</sup> Ibid., 827.

<sup>66</sup> Ibid., 828.

<sup>67</sup> *The Weekly State Gazette* (Austin, Texas), vol. 16, no. 13, ed. 1, Wednesday, November 9, 1864.



state troops and defenses, state finance methods, and impressment of wartime goods, namely cotton. The first of these issues, concerning state defenses and the availability of Texan soldiers to fight for the Confederacy, was resolved during the summer of 1864. Governor Murrah acquiesced to the majority of General Smith's demands and the bulk of Texas troops were at the Confederacy's disposal. During the second called session, the legislature provided validation of this policy and called for the governor to discharge from the Frontier Organization any members that were not actual citizens of the frontier districts, allowing them to be transferred into Confederate service.<sup>68</sup>

The second divisive issue, concerning the state's financial policies, was of less concern than Texas troops (and impressment), but had the potential to cause harm to the financial stability of the Confederate government. The legislature continued to affirm the use of Confederate currency, even to the detriment of the state, in effort to improve its value. Most recently, the legislators approved the replacement of old issue Confederate notes with new issues. In his message at the beginning of the recent session, Governor Murrah presented an ulterior motive for the approval of Confederate currency: the sustainment of the state's credit. This was the only acceptable reason for its continued use according to Murrah who, later in his message, advocated for the rejection of the currency.<sup>69</sup> The legislature saw fit to continue using the Confederate currency to discharge several of its obligations.

Impressment proved to be the only issue causing dissention between the Tenth Legislature's second called session and the Confederate government. One resolution,

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<sup>68</sup> Gammel, *The Laws of Texas*, 828.

<sup>69</sup> Governor Murrah message to Tenth Legislature (Second Called Session) in Day, *Senate and House Journals of the Tenth Legislature: Second Called Session*, 7-8.

passed November 15, 1864, requested that General Smith prohibit the “unwise and unlawful” impressment of beef by military authorities for sale in Mexico.<sup>70</sup> The legislators cited that numerous Confederate citizens as well as the army depended on Texas beef and this practice limited the supply of available beef. In addition to beef, the impressment policies of cotton continued to burden Texans throughout the state. One final resolution during the session addressed this matter in no uncertain terms. The legislature declared that the Confederate cotton policies had been a disaster. Various military regulations and orders, coupled with the uncertainty of their enforcement, and the depreciating effect of impressment caused chaos among cotton businessmen.<sup>71</sup> Even when President Davis, under authority from the Confederate Congress, attempted to regulate the cotton trade, there was still confusion and disagreement. The mismanagement caused some men, even those willing to support the army with their cotton, to distrust the entire enterprise and reluctant to sell to any government agent.<sup>72</sup> The legislators then boldly declared that the Confederate government should “...desist from the purchase and impressment of cotton...to leave private enterprise free to transport and export it...” and to levy a heavy, but not entirely cumbersome, export tax on it.<sup>73</sup> In one last act to champion states’ rights, Texas politely requested that the Confederate government stay out of the Texas cotton trade.

The legislature adjourned *sine die* on November 15, 1864 and the *Weekly State Gazette* (Austin) immediately printed the general laws approved during the session the

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<sup>70</sup> Gammel, *The Laws of Texas*, 829-830.

<sup>71</sup> *Ibid.*, 830.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

issue released the following day. An editorial regarding the conclusion of the legislative session declared that the most important legislation was “left untouched” until the final days and “rushed” through without proper consideration.<sup>74</sup> This harsh assessment included an unfavorable view of the legislature’s signature piece of legislation that provided for the sale of cloth to benefit the families of Texas soldiers. In the next publication of the *Weekly State Gazette* (Austin), David Richardson, the newspaper’s editor, concluded that the legislature “...had failed...to accomplish the main object for which they had been convened.”<sup>75</sup> He argued that too much time was spent on private relief bills and charters for various corporations which caused the legislators to hastily address or entirely neglect the matters that convened the legislature. Due to the “wasted” expenditure of time on the “Penitentiary Cloth Bill,” Richardson claimed he “...expected no better results...” and was not disappointed in the session.<sup>76</sup> The editorial claimed that the men of the Tenth Legislature had acquired an “unenviable notoriety” and purported that “...all the statesmanship of the country is in the army...”<sup>77</sup> This was a reference to not only the Tenth, but also the Ninth Legislature, the other wartime Texas legislature. Richardson concluded that the weak performance during the session might necessitate a

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<sup>74</sup> *The Weekly State Gazette* (Austin, Texas), vol. 16, no. 14, ed. 1, Wednesday, November 16, 1864.

<sup>75</sup> *The Weekly State Gazette* (Austin, Texas), vol. 16, no. 15, ed. 1, Wednesday, November 23, 1864, <http://texashistory.unt.edu/ark:/67531/metaph181576/> (accessed March 16, 2014), University of North Texas Libraries, The Portal to Texas History, Dolph Briscoe Center for American History, Austin, Texas.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

third called session to ameliorate the state finances. If that did not happen, he argued that abler men should be chosen for the next legislature.<sup>78</sup>

Richardson's fear of a third called session did not come to fruition as the Second Called Session of the Tenth Legislature was its last. The legislature was convened to address the dismal state finances and patched together a series of fixes to constitute their economic policy. The labor of the penitentiary was to provide counties with cloth to sell to care for Texas soldier's families. This measure was thought to prevent further issue of state treasury warrants, which were to be used sparingly. To increase the demand for the warrants, which were being utilized as a quasi-currency throughout Texas, the legislature approved more controversial laws to sell state property and accept payment from railroad companies as well as increasing and establishing occupation and income taxes, especially in relation to alcohol.

The legislature also spent time on drafting a vehement rejection of reunion with the United States and declared that any negotiation had to go through the Confederate government. This assertion, along with the decision of the legislature to continue using Confederate currency, signified Texas' commitment to the Confederacy and Southern cause. This was in spite of the resolutions passed objecting to the Confederate impressment of Texas beef and cotton. It is evident that Texans felt the tightening pressure created in 1863 with the loss of the Mississippi River and the formation of the Trans-Mississippi Department. The first two sessions of the Tenth Legislature provided opportunities for divisive legislation, protesting the general government's encroachment on Texas' sovereignty. A different climate emanated from the third session which one can decipher from the body of legislation it produced. The war was coming to a close

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<sup>78</sup> Ibid.

and despite its occasional defiant tone Texas remained loyal to the Confederacy.

Regardless of how the war's direction turned, the Tenth Legislature's role was over.

## CHAPTER SIX

### Conclusion

With defeats at Atlanta and Nashville, 1864 proved to be just as disastrous for the Confederate armies as 1863 had been. The only glimmer of hope was found in General Lee's ability to successfully defend Richmond, Virginia. Even this task was met with difficulty as the year progressed into 1865. Desperation took hold of the South and bold, new measures were proposed in the Confederate Congress by Texas Senator Williamson Oldham to allow for the arming of slaves to fight against Union forces. The bill even allowed for freedom for the slaves in exchange for fighting, although this was left up to the discretion of the individual states. The final version of the bill, approved in early spring of 1865, limited the number of slaves enrolled from any one state at twenty-five percent.<sup>1</sup>

This measure came too late to aid the South and in early April, General Lee lost hold of the Richmond lines and retreated westward. At Appomattox Court House, Lee surrendered the Army of Northern Virginia on April 12, 1865. Within a few weeks, the Army of Tennessee, back under the command of General Joseph Johnston, also surrendered to Union forces.<sup>2</sup> The war in the eastern portion of the Confederate States was essentially over, but it would be more than a month before Texas and the Trans-Mississippi Confederacy surrendered.

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<sup>1</sup> Wooster, *Texas and Texans in the Civil War*, 175.

<sup>2</sup> *Ibid.*, 175-177.

At the behest of Generals Smith and Magruder and Governor Murrah, Texans continued the fight for the Southern cause for a few more weeks. Upon news of Lee's surrender, Murrah wrote an extensive treatise to his fellow "countrymen," imploring Texans "... to redeem the cause of the Confederacy from its present perils.<sup>3</sup> The governor invoked images of bravery displayed by Texans at both the Alamo and San Jacinto. It seems that Murrah, although frequently referencing the Confederate cause in his plea, was still more concerned with the defense of Texas.<sup>4</sup>

The last battle of the war took place in south Texas at Palmito Ranch and was a Confederate (Texan) victory. As Texans realized the futility of their efforts, however, more and more simply left for home. In effect, the army and defenses in Texas disbanded before any official surrender by General Smith. This occurred on June 2, 1865.<sup>5</sup> The war between the United States and the Confederate States was finally over and the Confederacy was no more.

For their part, the legislatures in Texas during the conflict played an integral role in the prosecution of the war effort while balancing the demand of regular state business. The laws passed during their regular and called sessions organized and funded protection for the frontier and state troops, organized manufacturing companies, provided for soldiers' families, and regulated the Texas cotton trade. Whereas the Ninth Legislature, under the guidance of Governor Lubbock, yielded to Confederate policy and Confederate

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<sup>3</sup> Murrah to "My Countrymen," April 27, 1865, Records of Pendleton Murrah, Texas Office of the Governor, Archives and Information Services Division, Texas State Library and Archives Commission.

<sup>4</sup> Ibid.

<sup>5</sup> Wooster, *Texas and Texans in the Civil War*, 175-177.

military officials in most of these matters, the Tenth Legislature took a more states' rights approach.

The Tenth Legislature was confronted with a different set of circumstances that none of Texas' previous legislatures encountered. It was not unique in being the only legislative body in Texas during the Civil War; the Eighth Legislature had ushered in secession and a union with the Confederate States and the Ninth Legislature served during the first two years of the war, scrambling to meet the ever-changing needs of the state. The Tenth Legislature was unique, however, because it had to conduct the business of the state and provide the means for war while separated from the rest of the Confederacy as a part of the Trans-Mississippi Department. As the westernmost state within the department, Texas was under the military authority of General E. Kirby Smith who also represented the Confederate government. This required Smith to make decisions based on what was best for the Confederate cause with respect to the dire situation.

Due to this arrangement, Texans were met with unexpected hardships and many claimed the Confederacy (manifested in General Smith and other military officials) violated many of Texas' sovereign rights as a state. The Tenth Legislature, influenced by Governor Pendleton Murrah, passed legislation during their regular and first called sessions that caused a great deal of dissension between Texas and the Confederacy. The primary divisive issues concerned state troops' liability for Confederate service and the cotton trade. In each case, the legislators approved measures that would benefit Texans. The protection of the frontier was continually addressed throughout Texas' brief history. In want of federal and then Confederate protection, the responsibility often fell to the



state. Eventually, the Frontier Organization was created to protect the northern and western counties from Indian raids and various outlaws and its members were exempted from Confederate service by legislative act. The state frequently reorganized its own troops for defensive purposes. The conflict ensued because Governor Murrah refused to relinquish control of these forces to the Confederate military.

Cotton was the most valuable product within the Confederacy, especially Texas. As Confederate officials implemented a plan to purchase or impress cotton from farmers, the governor implemented his own cotton plan under the authority of two separate laws passed by the Tenth Legislature. This plan greatly weakened the Confederacy's officials in the Trans-Mississippi Department from procuring cotton which it sold for necessary supplies. Texas argued that there was no legal basis for impressing cotton and its own plan was more beneficial to the state. On both of these issues, cotton and state troops, Texas refused to budge for some time.

As the war progressed, however, both of these contested issues were abandoned by the state. When the legislature convened for its second called session in the fall of 1864, it seemed the spark of dissension had left as the legislators briefly addressed the state's financial situation, decried reunion with the United States and adjourned. The only reminiscence of the first two sessions of the Tenth Legislature came in two meager joint resolutions that requested the Confederate government abandon its impressment policy on beef and cotton in Texas.

There was never a point which Texas would have left the Confederacy, but for almost a year the Tenth Legislature passed laws that did not attempt to appease Confederate military authorities as the Ninth Legislature had done. However, the

realization that the South could lose its war for independence reinvigorated the lukewarm relationship between Texas and the Confederacy in the summer and fall of 1864.

Although many of their courses of action on conscription, frontier defense and cotton defied Confederate authorities, the Tenth Legislature and Governor Murrah would eventually capitulate to the Confederacy. It was all for naught as fighting and resistance finally ended in the early summer of 1865. A number of theories have been given for why the South lost the Civil War, although many factors led to its demise. One such theory argued by historians is that the state's rights positions maintained by many Confederate governors and legislators, like Murrah and the Tenth Legislature, limited the Confederacy's ability to fight a complete war with the North.<sup>6</sup>

As June, 1865 brought a close to the war between the United States and the Confederate States, the Texas' secession experiment came to an end. Union General Gordon Granger and newly appointed provisional governor of Texas Andrew Jackson Hamilton "...declared all acts of the legislature passed during the war illegal and called for a new state constitution..."<sup>7</sup> The Tenth Legislature, the last wartime congress in Texas, was null and void.

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<sup>6</sup> Richard E. Beringer et al., *Why the South Lost the Civil War* (Athens, GA: University of Georgia Press, 1986) , passim, but especially 443-457.

<sup>7</sup> Wooster, *Texas and Texans in the Civil War*, 184.

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