



THE POWERS OF THE COMMANDER OF THE CONFEDERATE TRANS-MISSISSIPPI DEPARTMENT 1863-1865

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1. The Organization of the Trans-Mississippi Department

During the last two years of the war of secession, the situation in that part of the Confederacy which lay west of the Mississippi was without a parallel in the history of modern warfare. A vast territory, thinly populated, undeveloped, practically without railroads, cut off from its principal source of military supplies, having but precarious and infrequent communication with the general government to which it must look for direction in the desperate struggle for independence, it was thrust back upon its own resources and forced to acquiesce in a governmental arrangement of an unusual design. By common consent, under pressure of necessity, a military chieftain assumed the functions, in large part, of the president and cabinet and attempted to carry on the government under constitutional forms without resort to martial law. The conditions which brought about this extraordinary situation, the problems which beset the head of this government, the functions which he assumed and exercised, and the relations which

he sustained to the local civil governments and to the distant and all but inaccessible government at Richmond, constitute an important but hitherto neglected part of the history of the Confederacy.

Though the Confederate government was organized quickly, it was hardly in operation before the war was in actual progress. Among the many questions which pressed upon the Executive and Congress was that of the organization of military departments. At first the territory west of the Mississippi was divided into several departments; then it became a district, the Trans-Mississippi, of the Western Department.¹ This district was too large for effective administration, however, and in May 1862, it was erected into the Trans-Mississippi Department, which was composed of the districts of Arkansas and Texas. The Arkansas district, which included Arkansas, Missouri, and that part of Louisiana lying north of the Red River, was placed under the command of Major General T. C. Hindman; while the Texas district, consisting of Texas and the remainder of Louisiana west of the Mississippi River, was assigned to Major General P. O. Hébert.²

There was strong objection in Louisiana to this arrangement since it divided the state between two districts and gave it adequate protection in neither. The protests which were made to the President by state officials³ and the steady advance of the Federals on the Mississippi probably led to the next change. In July Major General T. H. Holmes was sent to command the Trans-Mississippi Department. He made Louisiana a separate district and assigned Major General Richard Taylor to command it. The Indian Territory was added to the Arkansas District and Arizona and New Mexico to that of Texas.⁴

During the first two years of the war, Galveston and minor posts in Texas had been captured and retaken; New Orleans and much of the coast country in Louisiana had been seized; Missouri had been overrun; and the Confederate forces in Arkansas had lost control of the Mississippi and had been driven south of the White River. The greater part of this department had been untouched by invasion, but the continued advance of the Federals on the Mississippi threatened the separation of the west from the east.

These disasters aroused the people everywhere. In the west especially the feeling became intense. Soon after the fall of New Orleans, leading men began to urge the officials at Richmond to make arrangements by which this department could be maintained and protected if the river should be lost. Guy M. Bryan of Texas, May 2, 1862, urged upon the congressmen from his state that the government send representatives of the war and treasury departments west of the Mississippi. Governor Moore of Louisiana, two days later, telegraphed the President that if the river should be lost the military operations west of the Mississippi would have to be independent of those east of it and that the general in the west must be invested with plenary powers.⁵

In some parishes and counties of Louisiana and Arkansas a condition little short of anarchy prevailed. By the fall of 1862, some parts of both Texas and Arkansas had been illegally placed under martial law. The organization of the department was loose and

¹ *Official Records, War of Rebellion*, Series I, Vol. VII, 826. Hereafter in this paper these Records will be referred to as *Off. Recs.*, and when Series I is cited, no series number will be indicated. The volumes will be referred to in large Roman, the parts in small Roman, and the pages in Arabic.

² General Orders No. 39, War. Dept., May 26, 1862, *Off. Recs.*, IX, 713; General Orders No. 1, [Hébert] June 18, 1862, *Ibid.*, 719.

³ Moore to Randolph, July 25, 1862, *Off. Recs.*, LIII, 819.

⁴ General Orders No. 5, August 20, 1862, *Ibid.*, IX, 731.

⁵ *Off. Recs.*, LIII, 804, 805.

ineffective. The Arkansas delegation in Congress sent a memorial to the President asking that abuses in that state be corrected and that General E. Kirby Smith be sent to command the Trans-Mississippi Department.

One after another these reports piled up evidence of the demoralization in these states. Actuated by these demands, by apprehensions of the loss of the river, and by the necessity of strengthening the military organization of the department, the President, February 9, 1863, gave orders for the unification of the department and assigned E. Kirby Smith to its command.⁶

General Smith assumed command of the department, March 7, 1863, and after a short time, made Shreveport, Louisiana, his headquarters. For a time he continued the districts as they had been organized - Major General Richard Taylor in command of Louisiana, Major General Magruder in Texas, and Major General Holmes in command of the district of Arkansas.⁷

A vigorous policy was attempted. Strenuous efforts were made to change raw troops into an efficient army, to consolidate or distribute the means at hand for the best results to the service, to instill confidence into the troops, to secure the support of the people, and to initiate a policy that would make the department self-sustaining.⁸

The government, busy with its organization, its many perplexing problems, and the fiercer struggle raging nearer Richmond, had failed to provide for this remote department. When at last, in the spring of 1863, it realized the disastrous consequences of this short-sighted policy and attempted to avoid the embarrassments which the previous neglect had already brought about, it was really too late, for the commanding general was never able to overcome the handicap nor to avoid the injuries which resulted from this earlier inattention to the affairs of the Trans-Mississippi region.

2. The Commander and the State Authorities - the Marshall Conference

General Smith early realized that the isolation of his department and the unusual responsibilities which devolved upon him would force him to assume functions not ordinarily exercised by military officers under a constitutional government. Shortly after the fall of Vicksburg he wrote to the war office at Richmond: "*Without the assumption of extraordinary powers, my usefulness as department commander will be lost. If possible, instructions and orders to meet this emergency should be sent by special*

⁶ General Orders No. 1, March 7, 1863, *Off. Recs.*, XXII, ii, 798. See also Davis to Holmes, February 26, 1862, *idem*, LIII, 849-850, and Davis to Garland, March 28, *Ibid.*, 861-863. Edmund Kirby Smith, a native of Florida, was educated at West Point and in 1845, was assigned to the infantry. He fought under General Scott in the Mexican War and was promoted to the rank of First Lieutenant, then to that of Captain. After the war he taught mathematics at West Point till 1852, when he was sent against the Indians on the Texas frontier. When Florida seceded, he resigned his commission in the United States army and entered the Confederate service as lieutenant-colonel. During the first two years of the war, he was promoted step by step to the rank of lieutenant general, and in 1864, he attained the rank of general. During the last two years of the war his life was closely interwoven with the history of the Trans-Mississippi. At his death in 1893 he was professor of mathematics in the University of the South, at Sewanee, Tennessee.

⁷ Major General Magruder had succeeded Major General Hebert in the fall of 1862. *Off. Recs.*, XV, 826, 880; XXIII, ii, 803.

⁸ Seddon to Davis (annual report) November 26, 1863, *Off. Recs.*, Series IV, Vol. II, 1016. The Trans-Mississippi Department included an area of approximately 735,000 square miles. Its population, exclusive of Indians, was, in 1860, about 2,728,870. The white male population of military age, from 18 to 45 inclusive, was, exclusive of those in the territories, approximately 500. (This area is computed from Redway and Hindman's *Natural Geography*. The population is taken from the *United States Census Report for 1860*, but the division of the state of Louisiana and the failure of some counties to report the census at that time make it impossible to get very accurate figures.)

messengers ... I feel I shall now be compelled to assume great responsibilities, and exercise powers with which I am not legally invested ... I entreat him [the President] to send heads of departments west of the Mississippi, with extraordinary powers for the organization of a government."⁹

Despite these and other urgent messages, the Federals were in full control of the Mississippi before any response came from Richmond. By this time the people in the west were in the depths of despondency and mutterings against the government were heard from disaffected spirits. There were rumors that the states of this department would secede from the Confederacy.

General Smith, realizing the danger in this crisis and fearing that this spirit of despondency and hopelessness might lead to measures harmful to the department and to the Confederacy, had sent a circular letter, July 13, to the governors of the four states of his department asking them, with the judges of their Supreme Courts, to meet him in a conference at Marshall, Texas, August 15, 1863. His purpose, as he stated it, was to acknowledge the civil government supreme over the military; to invoke the power of the states to aid him; to try to make the people feel that a government remained to them capable of administering to their wants and necessities; and to secure the confidence, advice, support, and co-operation of the leading spirits and judicial minds of his department.¹⁰

Before time for the conference to assemble, the commanding general's position was greatly strengthened by suggestions from Richmond that he follow the very policy he had already entered upon. On almost the same day that General Smith had sent out his invitations to the conference, the President wrote advising him to explain so much of his plans to the governors as would prevent them from misconstruing his actions, and to confer with them, thus making them "*valuable coadjutors without surrendering any portion of the control necessary for a commander to retain.*" Secretary Seddon also recommended, July 14, that he call to his aid the ablest and most influential men of the country, and that he establish a civil and a military government for the department.¹¹

In answer to the commander's call, a group of prominent men gathered in Marshall, August 15, 1863. From Arkansas, came Robert W. Johnson, who represented Governor Flanagin, C. B. Mitchell, and W. K. Patterson; from Louisiana were Governor Thos. O. Moore, Colonel T. C. Manning, W. Merrick, and Albert Voorhies; from Missouri, Governor Thomas C. Reynolds; from Texas, Governor F. R. Lubbock, W. S. Oldham, Colonel Pendleton Murrah, and Guy M. Bryan. These were all men of ability who possessed the confidence of the people of their respective states; and there is no doubt but that their recommendations had great weight with the authorities at Richmond in determining the best means of administering this detached department.

At this first meeting, General Smith submitted the recent letter from the Secretary of War and asked the conference to consider the following questions:

1st.: "*The condition of the states since the fall of Vicksburg; the temper of the people; the resources and ability of each state to contribute to the cause and defense of the department, and the best means of bringing into use the whole population for the protection of their homes.*"

⁹ Smith to Cooper, July 28, 1863. *Off. Recs.*, XXII, ii, 949.

¹⁰ *Off. Recs.*, XXII, ii, 935-936.

¹¹ *Off. Recs.*, XXII, ii, 926, 1004.

2d.: *“The best means for restoring confidence, checking the spirit of disloyalty, and keeping the people steadfast, in the hope of the ultimate triumph of our arms.”*

3d.: *“The question of the currency, and the best method of securing the cotton of this department without causing opposition on the part of the people, and the best method of disposing of the same.”*

4th.: *“The extent of the civil authority to be exercised, referred to in the letter of the Secretary of War, July 14.”*

5th.: *“Appointment of commissioners to confer with French and Mexican authorities in Mexico”.*

6th.: *“Arms and ordnance stores.”*¹²

The conference was organized for business August 17, with Governor Francis R. Lubbock as chairman and W. K. Patterson as secretary. Committees were appointed to consider the questions submitted by the commanding general. The next morning the conference assembled to hear the reports of its committees. Judge Merrick made the report for the committee which had under consideration the extent of civil power to be exercised by the commanding general. The report, which was unanimously adopted, recommended that only such powers should be exercised by the commanding general as were then exercised by executive officers at Richmond, for, on account of his inability to communicate with Richmond, these were absolutely necessary in order for him to augment his army and put the department in the best state of defense; that such powers, which had not been granted by act of Congress to any general in the army, were only powers of administration, and should be exercised according to existing laws; that nothing should be changed except the agents by which the operations of the government in this department are carried on.

Extreme caution on the part of the committee is shown by reference to the fact that no act of Congress authorized such assumption of power and that the state governments still existed and had officers capable of exercising all power inherent in such local units. The members of the committee made no effort to define specifically what functions were to be assumed, but they were careful to assert that the civil power was superior to the military.

The second report was from the committee to which had been referred the following subjects: the best means of restoring confidence and of checking disloyalty; the condition of the states, the temper of the people, and the ability of each state to contribute to the defense of the department; plans for bringing the entire population of military age into service; and measures to secure arms and ordnance. Underlying the solution of these questions was that of the military administration of the department.

The report, which was adopted, declared that the mass of the people were still loyal to the cause of the Confederacy and had full confidence in the ability and integrity of the commanding general; it included a tabulated statement of the resources of the several states; and it showed that the supply of arms and ammunition received from the general government had not at any time been adequate, that now the loss of the Mississippi and the blockade of the Gulf coast had cut off the hope of receiving even a meager supply from that source and had thrown the department entirely on its own resources.

¹² The above and all reports of the conference are found in *Off. Recs.*, XXII, ii. 1004-1009.

“Beleaguered as we are by the enemy,” the report continued, “the commanding general can neither transmit reports nor receive orders from the capital. Hence the safety of our people requires that he assume at once and exercise the discretion, power, and prerogatives of the President of the Confederate States and his subordinates in reference to all matters involving the defense of his department. The isolated condition and imminent peril of this department demand this policy, and will not permit delay; and we believe that all may be done without violating the spirit of the constitution and laws of the Confederate States, and without assuming dictatorial powers.”

It was thus agreed that the general should assume war powers in this department, for the right to exercise the discretion, power, and prerogatives of the President and his subordinates in the defense of a department in imminent peril could hardly be less than war powers.

The report of the committee on the appointment of commissioners to confer with the French and Mexican authorities in Mexico was presented by Mr. Murrah. This report, which was also unanimously adopted, declared in substance that an understanding between the Confederacy and the different authorities in Mexico was very essential, partly because of the hostile relations between those French and Mexican authorities, but chiefly because of the entire dependence of the Trans-Mississippi Department on the ports of Mexico for supplies and for communication abroad. Such an understanding, it was stated, could best be reached by correspondence, which in the present state of affairs could not be conducted effectively through the Richmond offices; and as the correspondence would pertain strictly to the interests and immediate needs of this department, *“the law, whenever the law speaks, and propriety, where the law is silent, points out the military commander of the department as the proper official”* to conduct it. It was also suggested that an agent, intelligent, well-informed, one adapted to inspire confidence by his knowledge and discretion and not likely to be misled by flattery, be appointed and sent to Mexico.

This agent, though perhaps not recognized by any rank or title, should have authority to find out the attitude of both governments toward the Confederacy, to see what arrangements each would make with regard to trade, to make explanations, to represent this department in matters of reciprocal interests to both parties, and to adjust differences concerning imports consigned to this department.

This is the first reference to and, as far as is known, the only authority for the assumption of this diplomatic or quasi-diplomatic function by the commanding general. Of course these state officials had no constitutional authority to confer such power on any person; and it seems that no recognition of it was ever made by Confederate officials. However, negotiations through Richmond would be impracticable; and the situation in the department required a representative who understood not only the vital needs of the department but also border and trade conditions and who could report to and receive instructions from the head of the department.

Since money is the barometer not only of issues but of nations, it was appropriate that the report dealing with currency and the best means of securing the cotton of the department be made very exhaustive. Senator W. S. Oldham, chairman of the committee, read the report which is summarized briefly here. It stated that cotton was the only safe and reliable means of supporting and defending the department; that the impressment acts gave authority for the use of cotton for military necessity; but, since it was impossible to secure treasury notes to buy the cotton and since to pay for it with them would increase the number of such notes in circulation and thereby tend to

depreciate the currency still more, the committee proposed: *“That certificates be executed and delivered to the owners of the cotton purchased, pledging the Government for the payment of the price agreed upon in 6 per cent coupon bonds, the interest to be paid semi-annually from the date of the certificate in specie...”*

The interest for the first two years was to be paid from the proceeds of the cotton, but after that time it was expected that the government would pay it. General Smith was advised to take charge of all cotton in the department, except such as he should decide would be needed for the welfare of the people. This, it was believed, would take the cotton trade out of the hands of speculators and thereby prevent the further accumulation and therefore the further depreciation of the Confederate notes in the department.

As to the currency, it was suggested that, since money could not be obtained from Richmond, the commander, in the exercise of the special powers conferred upon him by the President, cause the Confederate notes not bearing interest, which had been funded with the various depositories within the department to be re-issued and used for the support of the army. It was considered that the government would accept these notes for bonds of the same rate of interest as the new issue. This report was unanimously adopted except the clause which recommended the issuance of the specie payment coupon bonds. On this the vote was a tie, but the records do not indicate who opposed it.

After all reports had been made, a resolution was passed voicing the confidence of the members of the conference in the skill, ability, and personal integrity of General Smith and of his regard for law. The general then expressed his gratification for the work accomplished, and the conference adjourned.

For the double purpose of stimulating popular zeal and of recognizing and endorsing the commanding general and his work, the four governors, R. W. Johnson acting for Governor Flanagin again, prepared and published an address to the people of the department. Its bombastic tone and the fact that the measures of the conference were so artfully and completely omitted indicate the terrible tension of the people and the serious apprehensions of these men for the success of the plans they had devised.

From a legal point of view, the work of the conference had no constitutional sanction whatever, but at the time, the commanding general, the President, and the secretary of war, as well as the state officials, considered it necessary and wise. If the people opposed it, the few newspapers available give no evidence of criticism. Its measures seem to have been accepted generally, and there can be little doubt of its salutary effect in the department. The authorities of the four states had not only compared resources and come to realize fully their great needs; but they had given to the commander of the department, who alone was able to assume the general direction of affairs, a moral support without which his every effort would have been futile.

3. Powers Delegated by the Confederate Executive

The Richmond officials appreciated at once the difficulties of both civil and military administration which the fall of Vicksburg and Port Hudson had placed upon the conduct of the government west of the great river. Two weeks before General Smith had sought from them official sanction for his plans or instructions as to what other course he should pursue, both the President and the Secretary of War, as we have already seen, had written him on the same subject.

The President's letter touched on every phase of the military service in the department - the probability of invasion by the enemy, the operations that would be most possible, the agricultural resources, the mineral wealth, and the efforts that had been made to establish factories and mills in the department, - but in no way did he intimate that the commander should extend his authority over civil affairs and he referred to the anomalous conditions west of the Mississippi only in general terms: "*By the fall of our two fortified places on the Mississippi ..., your department is placed in a new relation, and your difficulties must be materially enhanced. You now have not merely a military, but also a political problem involved in your command.*"¹³

Secretary Seddon's letter of the same date has not been preserved, but from references to it, its tenor is easily inferred. The general was told that he would have to assume large military powers, "*to exercise powers of civil administration,*" and that he would have to form a civil and military government. It seems, however, that Seddon gave no definite instructions and merely suggested that the military administration be carried on by means of bureaus corresponding to those of the war department in Richmond. It was this letter, later referred to by Seddon as unofficial, which Smith had laid before his conferees at Marshall on August 15. Shortly afterwards, August 3, and before Smith's letter of July 28th could have been received, the secretary wrote that it would be impossible to give special instructions at such a distance, and that what measures should be adopted must be left largely to the commander's discretion, but suggested that Smith put himself in touch with the governors of the Trans-Mississippi states in order to maintain a cordial understanding and co-operation in carrying out his plans, and that he further seek the advice and influence of leading citizens throughout his department - the very things that Smith had already undertaken to do.¹⁴

The advice of Davis and Seddon lacked much in definiteness with respect to the most delicate problems which confronted General Smith. But they must have found it difficult to know what to say. This vast Trans-Mississippi department, comprising practically half of the country, was cut off from its government and its chief source of military supplies. It was impossible for the civil officers of the general government at Richmond to continue to direct affairs in that remote region; but there seemed to be no constitutional way by which important political functions could be entrusted to a military officer, even though the logic of the situation required that he who was responsible for the well being of the department should have all powers necessary to maintain and defend it.

Moreover, Congress was not in session, and there was no way of determining to what extent that body would support the delegation of special civil powers to a military chieftain. To do all that the situation seemed to demand even with the support or the express authority of Congress, might easily arouse anew the opposition of that troublesome faction who insisted upon a strict adherence to the constitution regardless of other considerations. The consequences were problematical, especially since there was believed to be an element in the Trans-Mississippi Department which was clamorous for separation from the Confederacy.¹⁵

It was probably considered unwise either to bind General Smith with precise instructions or to confer upon him unreservedly authority over civil affairs - if, in fact,

¹³ *Off. Recs.*, XXII, ii, 925-927. Although the context is not clear, it is probable that Davis had in mind chiefly the necessity of removing the causes of dissatisfaction in Arkansas and of composing possible state jealousies.

¹⁴ Seddon to Smith, August 3, 1863. *Off. Recs.*, XXII, ii, 952-953.

¹⁵ Davis to Johnson, July 14, 1863. *Off. Recs.*, LIII, 879.

so much thought was given the matter. If his powers were vaguely defined there was less likelihood that he would be charged with exceeding them. If he was to fulfill the expectations of the government in making it self-sustaining, it would be impossible to confine his powers within the narrow limits of the law. It is said that the President once told General Smith's aide, Major Cucullu, whom the general had sent to him for instructions, that he did not dare to put on paper the powers which the general must exercise, because they were so great.¹⁶

This statement, if accurate, indicates that Davis, who always sought to avoid the appearance of departing from constitutional methods, was inclined to wink at the assumption of powers which he was unwilling expressly to authorize Smith to assume.

The documentary evidence points in the other direction. When the general's letter of July 28, requesting approval of his assumption of extraordinary powers, was laid before the President, Mr. Davis endorsed upon it: "... *My confidence in the discretion and ability of General Smith assures me that I shall have no difficulty in sustaining any assumption which may be necessary. Able heads of departments should be selected and large discretion allowed.*" But this concession, as is evident from the letter of Seddon which conveyed it to Smith, referred not to other cabinet departments, but only to bureaus within the war department.¹⁷

If after this, any hope lingered in the mind of General Smith that the President would expressly confer upon him authority over the subordinates of the executive departments other than that of war, it must have been dispelled by the explicit declaration in a later communication from Seddon that his previous suggestion that Smith should "*exercise powers of civil administration ... only meant such matters of an administrative character as were naturally promotive of or connected with military operations and appropriately pertained to the executive functions of the Confederate Executive ... What I had particularly in mind were the various administrative branches of service that minister to the supply, equipment, and furnishing of arms in all their branches of service ... [These would be] analogous to our bureaus [in Richmond].*"¹⁸

As a matter of fact, Smith had anticipated the suggestions of his superiors with respect to these bureaus. By a series of orders during August and September, he had established commissary, quartermaster's ordnance, and medical bureaus at or near his headquarters and had placed over them officers from his staff. All subordinates who under ordinary circumstances would make reports and returns to the heads of these bureaus at Richmond were directed to make reports to these new bureau heads.¹⁹ He had

¹⁶ Major Cucullu made this statement to Dr. Chas. W. Ramsdell of the University of Texas in December, 1913, in New Orleans.

¹⁷ Seddon's language was: "*Heads to any of the branches of service which are needed from here will be sent with large powers as you suggest; but I would recommend as a mode of adding to your influence and avoiding dissatisfaction and jealousy, that as far as you have competent persons in your department, you engage and recommend such for confirmation by the department. ... I shall await your specific recommendations ... of such officers as are specially needed.*" August 30, 1863. *Off. Recs.*, LIII, 895.

¹⁸ Seddon to Smith, October 10, 1863. *Off. Recs.*, XXII, ii, 1039. Seddon added by way of illustration: "*Now, the main offices of our bureaus may be executed effectively by assigning or placing at the head of each an existing military officer or agent already appointed for your department by one of the bureaus here. A chief commissary may discharge the duties, with the aid of appropriate subordinates, of the Bureau of Subsistence. A leading quartermaster, a competent adjutant, a chief of ordnance, the agent appointed by the Niter and Mining Bureau for your department may each, with appropriate assisting officers, discharge the duties of the corresponding bureaus here.*" *Ibid.*

¹⁹ See General Orders, Nos. 37 and 41 in *Off. Recs.*, XXII, ii, 969, 991, and Smith to Davis, September 11, 1863, *Ibid.*, 1004.

even gone further by the creation of a “cotton bureau,” which had never been authorized anywhere, either by act of Congress or by order of the President.²⁰

He had also asked that the appointing power be delegated to him, subject to the approval of the President, until communication should be reopened with Richmond. He especially desired authority to issue invitations to appear before medical boards, to appoint staff officers of new organizations, to accept resignations, and to fill all vacancies. In this, however, he was trenching upon a constitutional prerogative which Davis cherished with jealous care. The President endorsed upon the request: “*The power to appoint cannot be delegated. The Constitution confers it upon the President only, by and with the consent of the Senate. Promotions, elections, examinations may occur and be acted on for the time, officers may be assigned to staff duty, and thus the difficulty, recognized to the full extent described, may be practically removed. All which can be legally done will be performed by the Executive branch of the government to diminish, if it cannot remedy, the evil.*”²¹

The authority to regulate medical boards and to extend invitations to appear before them had already been accorded.²²

The failure of the secretary of the treasury to make a satisfactory arrangement for the supply of funds in the department had greatly hampered General Smith from the first and now caused him acute anxiety. No means were in sight for paying the troops or for providing for other needs of the army during the coming winter when a campaign against the federal forces was in prospect. After repeated appeals to Richmond, in one of which he threatened to attempt to raise a loan directly from the people, an arrangement was made by which he was to be supplied with funds by the restamping and reissuing of old notes at the depositories within his department.²³

Agents were appointed from Richmond to carry this plan into effect, but Smith was given no authority over them, and they were unable to afford adequate relief. The net result, therefore, of General Smith’s request for the grant of larger powers by the executive department was, first, an extension of authority over those bureaus of the war department hitherto not usually under the orders of commanders in the field, but directly under the secretary of war; and, second, the permission, grudgingly given, to make temporary assignment of officers to rank pending appointment and confirmation at Richmond. Over the operations of other cabinet departments no authority was definitely granted.

4. Powers Authorized by the Confederate Congress

The first Confederate Congress met in its fourth session, December 7, 1863, five months after the fall of Vicksburg. The extraordinary events which had transpired since its adjournment in May furnished numerous questions for its consideration, and one of them was the policy which it should adopt for the administration of the Trans-Mississippi Department.

²⁰ General Orders, Nos. 35, August 3, 1863. *Off. Recs.*, XXII, ii, 953. See also Seddon to Davis, January 23, 1865, *idem.*, LIII, 1039-1040. Smith’s delegation to the cotton bureau of general control over the purchase and exportation of cotton on government account resulted in vigorous protests from Major Simeon Hart, quartermaster, to whom the secretary of war had previously entrusted the same task. Seddon, however, refused to interfere and explained to Hart that the whole matter must rest in the hands of General Smith. *Off. Recs.*, LIII, 904-905, 908-909.

²¹ Smith to Seddon, September 12, 1863, with endorsements. *Off. Recs.*, LIII, 895-896.

²² Seddon to Smith, September 7, 1863. *Off. Recs.*, XXVI, ii, 213.

²³ Smith to Davis, September 28, 1863. *Off. Recs.*, XXII, ii, 1028; Seddon to Smith, October 10, 1863, *Ibid.*, 1040.

In his official report for the year 1863,²⁴ the secretary of war explained the conditions in this department, due to its isolation, and urged that it would be judicious for “*some extraordinary powers of military administration*” to be entrusted to the general commanding, and that legislation should be enacted providing for the establishment there of separate offices under competent heads for the various cabinet departments, and of bureaus of the war department under the commanding general analogous to those at Richmond.

The president’s message summarized the conditions resulting from Federal control of the Mississippi, the difficulties encountered by the executive and the heads of departments in administering the Trans-Mississippi Department at that time, and the impossibility that officials east of the river should control operations west of it. He recommended that representatives of the post-office and treasury departments be placed west of the river with authority in the head of each department to vest in the assistant full power to operate the sub-department; while for military affairs, he advised that the president and secretary of war be authorized to “*delegate to the commanding general so much of the discretionary power vested in them by law as the exigencies of the service shall require.*”²⁵

Resolutions were at once adopted in each house looking toward the legislation recommended. On January 5, a bill entitled “*An act to authorize the appointment of an Assistant Secretary of the Treasury west of the Mississippi*” went to the senate from the house. This bill amended to read “*agent*” instead of “*Assistant Secretary*” became a law January 27. This act empowered the president by and with the advice and consent of the senate to appoint an agent of the treasury who should reside west of the Mississippi and discharge such duties as should be assigned him by the secretary of the treasury. The secretary could empower the agent to discharge any duty or function west of the river that the secretary himself could discharge.

To make this branch office effective, other bills were passed in a short time providing for the establishment in this department of two bureaus of the treasury, the one of the auditory and the other of the comptroller. The chiefs of these bureaus were to receive and disburse all the public money for the department; to keep the necessary accounts; to file evidences of all claims against the government in this department, which hitherto had been required to be filed in the state department; to receive instructions from and to report all transactions to the agent of the treasury for the department.²⁶

On February 10, 1864, President Davis approved a bill authorizing the establishment of an agency of the post office department west of the Mississippi. This bill gave him the power, by and with the consent of the senate, to appoint a post office agent for and resident in this department. The postmaster general, or if necessary the president, was authorized to vest said agent with such power as would enable him to perform all duties that might be required of him to keep up the postal service in that part of the Confederacy. The bill further provided that funds for this branch of the post office should be deposited with the treasury agent there and should be transferred to the different postmasters by orders of the postmaster general; the funds so transferred were

²⁴ November 26, 1863. *Off. Recs.*, Series IV, Vol. II, 1016-1017.

²⁵ December 7, 1863. *Off. Recs.*, Series IV, Vol. II, 1045-1046; also in Richardson, *Messages and Papers of the Confederacy*, I, 377-378.

²⁶ For the history of these bills see *Journal of the Confederate Congress*, Vols. III, IV, VI, VII, *passim*. For the laws, see *Statutes at Large of the Confederate States*, 1st. Cong., 4th Sess., pp. 176, 230.

then to become subject to the post office agent for all liabilities. All acts of the agent were to be subject to revision by and to the approval of the postmaster general, the proper accounting officers of the treasury, and when necessary to the approval of the president.²⁷

At the beginning of the session the committee on military affairs was instructed “*to inquire into the expediency of organizing and strengthening the Trans-Mississippi Department by the appointment of an Assistant Secretary of War.*” On February 13, the committee at its own request was discharged from further consideration of the matter, probably because of Seddon’s opposition to it. He explained that, even though it was intended to make such agent subordinate to the commanding general, he feared the name or title would cause embarrassment. He preferred to leave General Smith in supreme control west of the river, and to organize auxiliary bureaus there.²⁸

An act was passed on February 17, 1864, providing for the establishment of such bureaus or agencies of the war department west of the river as the public service might require and auxiliary to those established by law at Richmond. This act empowered the general commanding this department under the authority of the president, or the secretary of war, to direct these bureaus, to assign staff officers and clerks to duty in them or to make appointments therein, subject to the approval of the president.²⁹

Congress evidently intended that General Smith’s control over the military administration in his department, though subordinate to the president and secretary of war, should be analogous to and as broad as that of his superiors. All later acts passed with reference to the military administration also reveal this intention. Only two such acts are shown here.

The president, February 15, 1864, approved an act to suspend the writ of habeas corpus in certain cases. This act declared the writ suspended, but that such suspension should apply only in cases of persons arrested or detained by order of the president, secretary of war, or the general commanding the Trans-Mississippi Department by the authority and under the control of the president. It further stated that during the time of suspension no military or other officer should be compelled to appear in court or to return the body of any person or persons in answer to any writ of habeas corpus held by him by order of the three named executive officials.³⁰

An act was passed February 17, 1864, authorizing the secretary of war or the general commanding the Trans-Mississippi Department to employ, or in case they could not do that, to impress free negroes and slaves to work on fortifications and perform other labor connected with the defense of the country.³¹

It is evident that Congress treated the Trans-Mississippi Department as a somewhat detached part of the Confederacy. Not only did it legalize the delegations of authority made by the president and secretary of war, but it extended the commander’s powers in this field even beyond those granted by the executive officers. The department for all administrative purposes was repeatedly recognized as practically distinct from the Cis-Mississippi states. At any rate, the question of military administration was now settled though without prejudice to the president’s superior authority.

²⁷ *Statutes at Large of C. S.*, 1st Cong., p. 184.

²⁸ *Journal of Congress of C. S.*, III, 453, 728; Seddon to Smith, June 15, 1864. *Off. Recs.*, XXXIV, iv., 672.

²⁹ *Statutes at Large of C. S.*, 202-203.

³⁰ *Statutes at Large of C. S.*, pp. 187-189.

³¹ *Statutes at Large of C. S.*, p. 235.

Some interpretations by executive officers of the extent of the powers granted to General Smith are interesting and perhaps necessary in this connection. From a study of the bills referred to above and other sources, as has been shown, it does not seem that Congress considered granting any civil functions to the commander in the west. However, April 9, 1864, Davis explained to Governor Allen of Louisiana, with respect to the protection of citizens from unjust seizures by impressment officers, that General Smith had power to do everything in his department that he, Davis, could do. "*He has power to execute the laws and that is the only authority I have.*"³²

In writing to General Smith concerning the work of Congress, he said: "*As far as the constitution permits, full authority has been given you to administer to the wants of your department, civil as well as military.*"³³

However, the context here does not make clear the exact meaning of the term "civil." In his annual report, dated April 28, 1864, Seddon said: "*The legislation of the late Congress for the Trans-Mississippi Department was both liberal and provident. Provision was made for the peculiar needs incident to its comparative isolation from the supervision of the central government, and all the agencies of a partially independent government were authorized. In the same spirit has been the action of the executive. Added rank and dignity have been bestowed on the able commander and administrator at its head, and to him have been entrusted the full measure of executive powers, which, under our constitutional system, could be exercised by others than the president.*"³⁴

In another letter to Smith shortly afterwards the president declared that it had been his endeavor to extend the general's powers to the utmost limit consistent with law and the nature of the government; and that to meet the extraordinary circumstances in which the department was placed laws had been passed granting the commander fuller powers.³⁵ Seddon also wrote that he thought General Smith, besides his position as military commander of the department, should combine with his strictly military duties somewhat of the relation of the secretary of war to the department and the president.³⁶

Communication with Richmond was uncertain; it was months after laws were passed by Congress before they were received west of the river. The commanding general received few letters from chief officials during the winters of 1863-64 and 1864-65. He was beset with many difficulties; he had no means; there were conflicting claims and conflicting authorities; and copies of the laws which would have helped him were not received until months after their enactment.

Under these circumstances, he had found it necessary in 1863, when organizing the cotton bureau, to assume control over treasury agents in the department. In December, 1864, the question of his authority to do this came up in the house, and the president was requested to submit to that body copies of all instructions from the secretary of war to General Smith by which the latter claimed the right to assume control over agents of the treasury. The data was submitted January 25, 1865, but so far as can be determined no action was taken.³⁷

³² Davis to Allen, April 9, 1864. *Off. Recs.*, LIII, 981-982.

³³ April 28, 1864. *Off. Recs.*, LIII, 986.

³⁴ *Off. Recs.*, Series IV, Vol. III, 341.

³⁵ Davis to Smith, June 14, 1864. *Off. Recs.*, XXXIV, iv, 671.

³⁶ Seddon to Smith, June 15, 1864. *Off. Recs.*, XXXIX, iv, 672.

³⁷ Journal of Cong. of C. S., VII, 403-404; also see Seddon to Davis, January 23, 1865. *Off. Recs.*, LIII, 1309.

In this matter of granting civil powers, then, it seems that the executive officers early realized the necessity that some such authority be given to the commander of the department, but were unwilling to commit themselves definitely; that Congress was silent on the question of the control by the general of the non-military agencies it established in the department; that the executive officers, after the meeting of Congress, were inclined to interpret the delegation of power as extending over the civil administration, but they saved themselves by artfully inserting the qualifying phrase “*so far as the constitution permits,*” and that when General Smith, under pressure of necessity, assumed some of those functions, the authorities at Richmond acquiesced.

5. Extraordinary Military Powers

We have seen that first the president and later Congress had agreed to the establishment of the various war department bureaus in the Trans-Mississippi and of other necessary agencies of the government. It now remains to indicate General Smith’s actual relations of these bureaus in operation and his control over the promotion and appointment of officers, the exchange of prisoners, and the suspension of the writ of habeas corpus.

General Smith had established his headquarters at Shreveport, Louisiana, because it afforded easy communication with the several district headquarters and was sufficiently near the frontier lines in both Arkansas and Louisiana. From this capital he issued orders to subordinates, received their reports, and made his final decisions on questions submitted to him much as did the president and his cabinet officials at Richmond. From here on July 25, 1863, he issued a general order to the effect that, on account of interruption of communication with the seat of government, all officers and agents connected with the army on duty in the department and acting under orders from Richmond, would in future receive their instructions from the department commander; and each officer and agent was ordered to report at once the nature of his duty, the authority under which he was acting, and the extent of his operations.³⁸

Agents who had been sent out from Richmond were thus made responsible to the commander. He proceeded next to organize his military bureaus and announced a chief for each branch of the service; then he ordered all officers and agents connected with that branch to report to this chief. The ordnance bureau was located at Marshall, Texas, under Major General Benj. Huger; the quartermaster’s, subsistence, and medical bureaus at Shreveport until removed to Marshall in May, 1864, under Lieutenant Colonel L. W. O’Bannon, Major W. B. Blair, and Surgeon J. M. Haden, respectively.³⁹

All other bureaus were in Shreveport. T. G. Clemson was made head of the nitre and mining service, July 11; Colonel B. Allston was appointed inspector general for the department; Brigadier General E. Greer was made head of the conscript service, and R. S. Thomas of the army intelligence office. Later the labor bureau and others, even a navy office, were organized in the same manner. All returns and reports which the Regulations of the Army required should be sent to the heads of bureaus in Richmond,

³⁸ General Orders No. 31, *Off. Recs.*, XXII, ii, 948.

³⁹ See various General Orders, *Off. Recs.*, XXII, ii, 828, 969, 991; also Huger to Johnson, *Ibid.*, 1139, and Smith to Davis, *Ibid.*, 1003-1004.

were hereafter to be sent to the chiefs of the respective bureaus in the Trans-Mississippi Department.⁴⁰

This established a complete military administrative system for the department separate from but patterned after that at Richmond. It is hardly profitable here to trace step by step the evidences of the commander's control of these agencies. Officers were removable at his will; and in some instances, he refused to remove officers appointed by himself to make a place for others sent from Richmond with instructions to be assigned to a particular place.⁴¹

A few of the most important bureaus only need be considered here. Organization was made of first importance in these agencies. A special form of bond was devised and required of each officer in the quartermaster's and subsistence bureaus. Accuracy was insisted upon. Returns were required of quartermasters and commissaries, first quarterly, later by the fifth day of each month, in order to weed out incompetents.⁴²

To aid the bureau of subsistence, the department was divided into four districts; the agents were empowered to impress supplies where necessary, but must send complete reports to department headquarters. The clothing bureau was in charge of a quartermaster and was a subdivision of the quartermaster's bureau. Its work was extensive. There were depots for hats at Shreveport, Louisiana, and Jefferson, and Tyler, Texas; for shoes at Washington, Arkansas; Shreveport, Louisiana; Jefferson, Tyler, Houston, and Austin, Texas. Looms, factories and foundries were located at these and other important points, in which were made all kinds of clothing, blankets, tents, and other textiles which were needed for the army. The commander kept a close surveillance over all these activities.⁴³

Officers in charge of depots were ordered to issue supplies only under instructions from, or, on requisitions approved at, department headquarters. Frequent inspection of district depots was ordered, and all reports were directed to be sent to the commander.⁴⁴

The chief of ordnance, Major Rhett, was a member of General Smith's staff, but the ordnance bureau was at Marshall under Major General Benj. Huger. The former had control of the location of foundries, the contracts for the manufacture of arms and ammunition, and the approval, subject to the commanding general, of the requisitions for arms and ordnance stores. Major Huger received the returns, examined, recorded, and when necessary corrected them; then, as opportunity afforded, sent them to Richmond. He also distributed funds when they were available, and saw that they were properly spent. The purchase of ordnance stores that could not be furnished by the foundries in the department was made by General Smith through his agents, whom he sent to Mexico, to the West Indies, and to Europe for this purpose.⁴⁵

In March, 1864, Surgeon J. M. Haden was made chief of the medical bureau, and Surgeon D. W. Yandell succeeded him as medical director. Under these were placed all the surgeons and medical purveyors of the four districts. A system of hospitals was developed. The commander appointed all medical and military examining boards and issued the necessary invitations to persons to appear before them. These boards became

⁴⁰ Smith to Cooper, July 11, 1863, *Off. Recs.*, LIII, 876-877; General Orders No. 33, May 30, 1864, *idem.*, Vol. XXXIV, iv, 635-636; Vol. XLI, iv, 1030, 1082; *The Galveston Weekly News*, March 13, 1865.

⁴¹ Smith to Cooper, December 3, 1864, *Off. Recs.*, XLI, iv, 1094. But see *Ibid.*, 1122.

⁴² *The Galveston Tri-Weekly News*, March 11, 1865.

⁴³ See generally, *Off. Recs.*, XXII, ii, 1080, 1134-42.

⁴⁴ General Orders No. 7, March 3, 1864, *Off. Recs.*, XXXIV, ii, 1014.

⁴⁵ Various bureau reports to Johnson, *Off. Recs.*, XXII, ii, 1139-42.

permanent in 1864, and in December were ordered to report January 1, and quarterly thereafter, both to the medical bureau and to the medical director at department headquarters.⁴⁶

Authorities on both sides of the river realized the great importance of strengthening the conscript service in this department. Soon after the conscription bureau was organized under Brigadier General Greer, Smith authorized him to enroll all men of military age. This plan for a strict enforcement of the conscription law had been agreed to by the State authorities in the Marshall conference and not only did the secretary of war approve the order but he maintained from the first that a separate and special branch of the conscript service should be set up in the Trans-Mississippi. On July 25, 1863, the commander announced that the "*enrollment of conscripts is solely under the direction of the conscript bureau, the officers thereof acting under orders from department headquarters,*" and all other officers were forbidden to enroll persons of conscript age for any purpose whatever, unless authorized by the department commander.⁴⁷

All clerks and employees of military age were ordered to enroll; all able-bodied men, except artificers and mechanics, serving in staff departments, were instructed to join their companies, unless specially detailed by district commanders, who had to prove the necessity for their services. Men disabled for active service were to be assigned to the places thus made vacant.⁴⁸

The commanding general alone controlled the detail of conscripts. General Smith thus exercised the powers, in this and other bureaus in his department, which the secretary of war would normally exercise over the whole military area of the Confederacy.

In the matter of appointments, General Smith's power, as has been shown, was limited by the president; but peculiar conditions in the department made it necessary for him to exercise this executive prerogative notwithstanding. On assuming command, he found that the organization of the army was defective. Many brigade and regimental staffs had no bonded nor commissioned disbursing officers. The quartermaster and subsistence bureaus had none. To correct this evil, a bond was prepared and required to be executed by all purchasing and disbursing officers.⁴⁹

The president, though acquiescing in the bonding of officers, was very jealous of interference in the appointment of field officers. General Smith, in 1863, appointed men to command the volunteer organizations of the Indians and assigned a few officers to advanced rank, but the president refused to agree to these promotions.⁵⁰

However, after the campaigns in Louisiana and Arkansas in 1864, when it was necessary to reward valor and good service, the general used this prerogative to a greater extent. In April, he advanced two officers to the rank of major-general, two others to that of brigadier, and appointed two captains; in May, four brigadiers, one colonel, one captain, and one lieutenant were promoted, each to the next higher rank, subject to the approval of the president. The men thus promoted were usually addressed

⁴⁶ General Orders No. 9, March 25, 1864, *Off. Recs.*, XXXIV, ii, 1082; see inspection report of J. P. Johnson to Cooper, February 16, 1864, *idem.*, XXII, ii, 1129-33; General Orders No. 99, December 28, 1864, *idem.*, XLI, iv, 1130.

⁴⁷ General Orders No. 31, July 25, 1863, *Off. Recs.*, XXII, ii, 948.

⁴⁸ General Orders No. 36, August 14, 1863, *Off. Recs.*, XXII, ii, 967

⁴⁹ Smith to Seddon, November 7, 1863, *Off. Recs.*, XXII, ii, 1061; also inspection report of J. P. Johnson to Cooper, February 16, 1864, *idem.*, 1128.

⁵⁰ Seddon to Smith, September 7, 1863, *Off. Recs.*, Vol. XXVII, ii, 212-213; *The Galveston Tri-Weekly News* (Houston), September 18, 1863.

and ranked with the advanced titles from the date of Smith's orders announcing the advancement.⁵¹

At the first opportunity, the general sent his report with the list of his promotions to the president for his approval. Secretary Seddon replied: "... *There is one subject on which it will be expedient you should be as careful and abstinent as the imperative needs of your department will allow. It is on the delicate subject of assignments and appointments to office and command. These under our constitutional system are reposed in the president as a personal trust, the responsibility of which is fully realized by him, and which he cannot transfer.*"⁵²

The secretary also stated that it would be better, when possible to do so, for the general to make his recommendations to Richmond before assigning anyone to command. The president appointed only two of the nominees, because he lacked full returns of the forces in the department; he deferred others because, from the returns on hand, it appeared that with the new promotions there would be more general officers in the department than divisions and brigades for them to command.

In October, the names of the two lately nominated captains were dropped from the rolls as officers, because the president had failed to appoint them; other officers, however, were continued in the places to which they had been advanced despite the president's failure to approve them. October 28, the commander in reporting to General Cooper the returns for the army for September, 1864, urged through him the confirmation of the nominations, stating that the officers were acting with advanced rank. The returns referred to showed twenty-nine brigades organized into eleven divisions and four corps. To command these, there were one general, eight major-generals, and twenty-two brigadier generals. General Smith called attention to these divisions to show that he needed the advanced officers, but General Cooper maintained that three of the corps were little larger than divisions and should be consolidated, and the general would be supplied with officers.

"*The president instructs me,*" Cooper concluded, "*to say that it is improper for you to announce the promotion of general officers and assign them to duty before they are appointed by him ... Action here must take place before they can be promoted and assigned to duty.*"⁵³

From this and Seddon's letter, the attitude of the president is sufficiently clear, but it is difficult to harmonize it with his own endorsement of October 2, 1863, when he said: "*Promotions, elections, examinations may occur and be acted on for the time.*" General Smith made at least thirty promotions, probably more, and it appears that only five of them were approved.

These differences seem to have been the result of considering the organization of the army from different points of view. General Smith's organization was the result of conditions; the large territory he had to defend, the long line of frontier he had to guard, and the depleted ranks of his army made it necessary, in some instances at least, to have divisions and corps composed of fewer men than the army regulations required. On the other hand, the officials at Richmond seem to have computed from his reports the number of officers he needed by mathematical application of the regulations. There is justification for both sides, but working at such cross purposes forced General Smith, in

⁵¹ *Off. Recs.*, XXXIV, iii, 764, 768, 770, 823, 828; *The Galveston Tri-Weekly News* (Supplement), May 22, 1864.

⁵² Seddon to Smith, June 15, 1864, *Off. Recs.*, XXXIV, iv, 672.

⁵³ Cooper to Smith, December 23, 1864, *Off. Recs.*, XLI, iv, 1121-22.

this instance, to exercise so extraordinary a power that it might easily be interpreted as insubordination; for only in rare cases does it appear that officers advanced to higher rank were ever dropped there from, and so, to all practical purposes, the promotions were actually made.

Field commanders anywhere were permitted to exchange men whom they had captured for prisoners from their own commands; but, if a commander held a surplus of prisoners, the exchange was made by a special officer, usually an agent of exchange. By September, 1863, there was so large a surplus of prisoners west of the Mississippi that the problem of taking care of them was becoming difficult. At the suggestion of Colonel Robert Ould, agent of exchange, Major Szymanski was sent from Richmond to the Trans-Mississippi Department by the secretary of war with instructions to collect and report information about the prisoners, to instruct commanders as to the form of lists and paroles, and, where possible, to make exchanges.⁵⁴

Major Szymanski's instructions did not mention the relation that he should sustain to the commander of the department; but it seems at first that he acted solely under orders from Richmond. By the last of November he had established headquarters at Alexandria, Louisiana, from which place he wrote the district commanders, enclosing a copy of his instructions with proper forms for paroles and requesting each of them to send him lists of all prisoners with the necessary information concerning them.⁵⁵

If these reports were made, the files available do not contain them. In May, 1864, General Smith in two general orders required lists, including all necessary data, of all prisoners captured and of all paroles to be made in duplicate, one copy to be sent to department headquarters and the other to be kept on file by the officer making the capture. In neither of these orders is Major Szymanski mentioned, but he appears soon afterwards acting under Smith's orders.⁵⁶

After this the general often sent the major to negotiate cartels; in each case authorizing him to what extent to act. On July 4, Major Szymanski was announced head of exchange for the department by General Smith.⁵⁷

Lists of all prisoners captured, and all paroles made were ordered sent to him, and his headquarters were soon moved to Shreveport. At times, his instructions sent him to arrange cartels for the different districts; again, he was authorized to arrange one which should be general throughout the region where the Union forces were serving in the Department of the Gulf; while at other times, as September, 1864, he was empowered to arrange for the exchange of naval prisoners; but, in each instance, his instructions came from Smith and all points not covered in the instructions were referred to Smith and were decided by him.

The suspension of the writ of habeas corpus was a war power of the Congress of the Confederate States. Although General Smith was authorized by the act of February 15, 1864, to exercise this power, he avoided it as much as possible because he knew that the people disliked any subordination of the civil to the military authority. Available

⁵⁴ Ould to Seddon, September 10, 1863, *Off. Recs.*, Series II, Vol. VI, 278; Ould to Szymanski, September 25, 1863, *Ibid.*, 320-321, and numerous other places in this volume show the general regulations for exchanging man for man and officer for officer in a command.

⁵⁵ Szymanski to Yancey, November 29, 1863, *Off. Recs.*, Series II, Vol. VI, 559-560.

⁵⁶ General Orders No. 31, May 28, 1864, *Off. Recs.* Series II, Vol. VII, 174-175; General Orders No. 32, May 29, 1864, *Ibid.*, 179; Szymanski to Canby, June 17, 1864, *Ibid.*, 375.

⁵⁷ General Orders No. 50, July 4, 1864, *Off. Recs.*, Series II, Vol. VII, 440.

records show no attempt of the commander to use this prerogative before he was authorized to do so by Congress.

In Texas, there were few cases of suspension of this writ, and usually these were followed by a clash with the State courts. In the fall of 1863, several persons suspected on strong evidence of treasonable designs were arrested and confined in jail by Magruder. The next spring others of their confederates were arrested. Soon all these prisoners appealed to the state supreme court for release on writ of habeas corpus. Smith ordered them detained and the writ suspended in their cases and the military officers under Magruder took the prisoners from the custody of the court.

The court held that the law of February 15, 1864, did not apply in this case; that the act even conferred no power on the high officers, who were authorized to suspend the writ, to take a person from the custody of the court; that the law did not "*forbid or suspend the issuing of the writ,*" unless it appeared from the application that relief could not be granted, it should be issued by the court; and that "*it is in all cases the duty of the party, to whom it is directed to answer it.*" In other cases, the decisions rendered were practically the same, especially, in the opinion that it is the privilege of the court to determine whether the writ can be granted or not. The criticisms of these courts were directed at the act chiefly and not at the right of the general to exercise the functions delegated to him by the act.⁵⁸

In Louisiana, a number of citizens were arrested and refused trial. In both Arkansas and Louisiana several persons were arrested for trading with the enemy and, in some cases, giving him information. If there were appeals against suspensions of the writ in these states, they are not shown in the available court reports, but in both these states the Confederate state governments were greatly limited in the areas of their jurisdiction. There is other evidence, however, of conflict and protest.⁵⁹

6. Civil Functions Exercised by the Commander

The necessity of exercising certain purely civil functions constituted one of the most difficult problems that General Smith had to solve. It has been shown that both Richmond and state officials realized the necessity that the commander exercise some civil authority; and that when Congress had passed acts establishing west of the Mississippi branches of the treasury and post office departments and authorizing the general to assume the administrative duties of the war department, the president seemed to regard his powers as adequate for the effective administration of the remaining business of his command. As for the state authorities, Smith understood that both the people and the state officials would be jealous of the accumulation of civil powers in the hands of a military officer. Civil functions, therefore, were assumed reluctantly, and those that were not necessary to his military administration were exercised, in most instances, with the proviso, "*subject to the approval of the president.*"

A primary source of his embarrassments was the condition of the finances. The currency in particular presented a very difficult problem, namely, to obtain a sufficient amount of treasury notes to keep the department from bankruptcy while preventing their further depreciation. From the fall of Vicksburg until the establishment of the treasury

⁵⁸ *Off. Recs.*, Series II, Vol. VII, 217-220, and Vol. VI, 560-565; State vs. Sparks, 27 Texas, 627; State vs. Sparks and Magruder, *Ibid.*, 705; *Houston Daily Telegraph*, April 18, 1864.

⁵⁹ Dorsey, Sarah A., *Recollections of Henry W. Allen*, 247.

agency, July 1, 1864, this entire problem devolved on the commander, who, it appears, was made responsible for all money expended in the department. Throughout the first year of his incumbency he had repeatedly demanded more money in usable form; the Marshall Conference had advised him to procure money for the army by reissuing Confederate notes which had been funded in the depositories, and also instructed him to take charge of the cotton of the department in order to procure funds and prevent speculation and the further depreciation of the currency.

General Smith tried to stop the depreciation of the Confederate notes, but the causes were beyond his control. The reverses at Gettysburg, Vicksburg, and Chattanooga, the funding acts, which were looked upon as an acknowledgment that the government could not pay its debts, and the fact that Texas was not only competing with the government in buying cotton but was paying higher prices with bonds hypothecated on the public lands, all contributed to depreciate the currency.⁶⁰

Speculation in the notes increased. Some people refused to accept government money and were promptly reminded by the commander that they were violating the law and were liable to summary punishment.⁶¹ But his threats were of little avail and financial conditions became more and more discouraging. Efforts were made to send money from Richmond, but it was usually confiscated *en route*; while those remittances which arrived were usually in the form of drafts on Richmond and so large that they could not be cashed.⁶²

Treasury agent sent over in the winter of 1863 could give but little relief. Soldiers often were not paid for months; and many families of deceased soldiers suffered for want of pay long overdue.⁶³

By December, 1864, only \$8,000,000 had been received of the new issue authorized by the act of February 17, while the outstanding indebtedness of the department had reached \$60,000,000 in spite of the fact that the commander had utilized a great part of the cotton of the department to help supply his needs.⁶⁴

The treasury agency, authorized by Congress in January, 1864, was opened for business in Marshall, Texas, July 1, 1864. P. W. Gray, the agent, assumed charge of the regulation of the currency under the several funding acts, received, deposited, and controlled the funds, and supervised all accounting of the finances. It is difficult to determine the exact relation between the commander and the agent, for though under the strict letter of the law the latter was accountable only to his superiors at Richmond, there are indications that he not only frequently deferred to the wishes of General Smith but in one important matter left under his control business that belonged rather to the treasury than to the military.

The funds of this agency came chiefly from two sources, the proceeds from the sale of the government cotton in the department and the funds sent over from the treasury at Richmond. Of the former, Smith exercised general control; his cotton bureau bought cotton and under his orders exported and sold it; he then allowed the treasury agent, Gray, to receive the proceeds, and required him to pay out the same on requisitions approved at department headquarters.⁶⁵

⁶⁰ Schwab, *The Confederate States of America*, 26.

⁶¹ *The State Gazette*, Austin, September 30, 1863.

⁶² Johnson to Cooper, November 6, 1863, *Off. Recs.*, XXII, ii, 1060-1061.

⁶³ Smith to Davis, November 15, 1863, *Off. Recs.*, XXII, ii, 1069-1070.

⁶⁴ Smith to Davis, December 13, 1864, *Off. Recs.*, XLI, iv, 1109.

⁶⁵ Smith to Gray, October 6, 1864, *Off. Recs.*, XLI, iii, 984.

Over remittances from Richmond he exercised no direct control, and these funds were disbursed by the treasury agent upon requisition of the commander.⁶⁶ He detailed men to carry on the work of the agency and interfered by force of arms wherever it was necessary to enforce or protect the collection of revenues.⁶⁷

In December, 1864, the control of the cotton was turned over to the treasury agent, but by special arrangements between Gray and the commander, the cotton bureau was given till February 1, 1865, to close up its business. After this, all orders concerning cotton and its exportation were made from the treasury agency at Marshall.⁶⁸ The regulations for the overland trade with Mexico were also now made from the treasury agency. One other connection with the finances is found in the collection of taxes. The act of Congress of May 1, 1863, "*for the assessment and collection of taxes*" had provided for the appointment by the president of a state collector for each state, who should in turn appoint local assessors and collectors.⁶⁹

Evidently not all of these appointments had been made by the president when communication was interrupted, for early in September, General Smith, claiming to act under the authority of the president, appointed a tax "commissioner" [collector?] for Arkansas, whom he authorized to appoint in turn county assessors and collectors.⁷⁰

He required that the commissioner prepare printed schedules showing the objects of taxation and the tax on each, require proper bonds from officers appointed, and demand that report be made monthly and that collectors deposit the funds on the last day of each month in the nearest sub-treasury of the government. Until the arrival of an agent of the treasury, duplicate reports were to be sent to headquarters. Delinquents were to be reported promptly to the commander, in order that "*corrective and coercive measures*" might be adopted. No person could be appointed collector or assessor of taxes who was liable to conscription. These provisions were all in accordance with the act of Congress of May 1.

The tax in kind, levied by the act of April 24, 1863, was collected by a different set of commissioners.⁷¹ It was intended that a tithe of the produce made in the year 1863 should be delivered by the farmers to the post-quartermasters not later than March 1, 1864. The plan did not work well in the Trans-Mississippi Department and on September 1, 1864, the commanding general established a bureau at Marshall, Texas, charged with the supervision of the collection of the tax in kind. Major Benjamin A. Botts, quartermaster, was made chief, and all papers in reference to this tax were ordered forwarded to him.⁷² These were the chief agencies for the collection of taxes.

On September 1, 1864, the post-office agency was organized in the department. Although the commanding general detailed men for carrying on its work, as he did for the treasury, there is no evidence that he exercised any direct control over it.

In one other respect the acts of the commander were at least potentially important. The Marshall Conference had counseled sending an agent to Mexico; and plans were begun in August, 1863, to establish amicable relations with both the French authorities

⁶⁶ Meem to Gray, October 21, 1864, *Off. Recs.*, XLI, iv, 1006.

⁶⁷ Smith to Walker, December 27, 1864, *Off. Recs.*, XLI, iv, 1123-4.

⁶⁸ *The Galveston Tri-Weekly News*, November 6, and 23, 1864.

⁶⁹ *Statutes at Large of C. S.*, 1st Congress, 140-142.

⁷⁰ Circular, September 4, 1863, *Off. Recs.*, XXII, ii, 990-991. Singularly enough, the Circular does not give the name of Smith's appointee, nor has any specific authorization by Davis of this action been found. It is possible of course that this commission, though dated and signed, was never actually delivered to any one.

⁷¹ *Statutes at Large of C. S.*, pp. 122-125; Schwab, *The Confederate States of America*, 292-294.

⁷² General Orders No. 67, September 1, 1864, *Off. Recs.*, XLI, iii, 904.

there and the governors of the North Mexican States. Agents were dispatched to the crossings on the Rio Grande, and later others were sent to points in the interior to look after the interests of the Trans-Mississippi Department.

This quasi-diplomatic function seems to have been exercised only with reference to the French and Mexican powers. The agents on the border were to look after commercial interests, while those in the interior were personal representatives of the commanding general, serving without rank. The Mexican authorities urged General Smith to appoint Captain Ducayet, the chief of these, with rank, but the commander felt that this was beyond his power. He appealed to the president to confer the rank on his agent, but to no effect. Through the alertness and influence of these agents, trade was continued, property and lives were protected, and the Trans-Mississippi Department was to some extent provided with money and supplies.

In November, 1863, certain funds, \$16,000,000, *en route* by sea from Richmond in the hands of Clarence C. Thayer, an agent of the government, were seized for accounts and claims against the department by a Mexican firm of Monterey, P. Milmo & Co., to whom they had been entrusted for shipment from Matamoras to Eagle Pass, Texas. This company also immediately bought up all debts claimed against the department by small companies and, supported by Governor Vidaurri at Monterey, declared its intention of seizing all cotton shipped through border points until the debts were paid.

The agent protested and demanded his funds, but without success. General Smith took the matter in hand and sent three commissioners to Mexico with instructions to demand that the funds be turned over to the revenue agent. He prohibited all exportation of cotton to Mexico, refused to allow any property belonging to Mexicans to cross the river, and announced that all transfers of such property would be illegal the date of his order. His letter to Governor Vidaurri was diplomatic but firm. He expressed his surprise at the occurrence and his hope for a speedy settlement; he declared his agents clothed with ample powers to adjust this difference, that debts justly due Mexicans would be paid, and that "*a refusal to release the funds after their attention had been called to their illegal detention would seem to raise for discussion and action the unpleasant questions whether or not the Mexican government had or intended to assume a hostile attitude to the government of the Confederate States.*" The matter was amicably adjusted.⁷³

Some of the general's relations with the French are worth noting. He sent by special agent, in September, 1863, to Mr. Slidell, the Confederate commissioner at Paris a summary of the conditions in his department and urged him to use every effort to secure the intervention of Napoleon III.⁷⁴

He pointed out the several advantages such a policy would bring to the French protectorate in Mexico. With this same thing in mind in 1864, he gave one of his officers, Major Polignac, a Frenchman, leave of absence for six months, without referring the matter to the president, in order that Polignac might go to France and if possible arouse interest in the cause of the Confederacy.⁷⁵

Again when the French seized Confederate arms off Matamoras, General Smith applied directly to Mr. Slidell to secure their release. One other matter of civil character, the control of trade, was so important that it has been reserved for a separate discussion.

⁷³ For the whole affair see *Off. Recs.*, LIII, 931-951; *Galveston Tri-Weekly News*, March 11, 1864.

⁷⁴ Smith to Slidell, September 2, 1863, *Off. Recs.*, XXII, ii, 993-994.

⁷⁵ Polignac, C. J., "Polignac's Mission," in *Southern Historical Society Papers*, Vol. 35, pp. 326-334.

7. Control of Trade

There is no subject in the wide range of General Smith's activities in this department in which the extent of his power is better shown than in his control over the trade in cotton. It involved both the civil and military powers.

"My power in the Trans-Mississippi Department," he is quoted as saying, "was almost absolute. I bought cotton through my cotton bureau at three or four cents a pound and sold it at fifty cents in passed in constant streams by several crossings on the Rio Grande, as well as through Galveston to the agents abroad."⁷⁶

Conditions made necessary the control of the cotton trade. The department had never been well supplied with money or munitions of war, and when the burden devolved solely upon the states, they were unable to sustain it. Munitions of war had to be imported, and the only means with which to pay for them was the one great commodity, cotton.

Before the department was severed from the Cis-Mississippi States, efforts were made by the military officers in the department to control the cotton by restricting its exportation. Opposition was raised, and the orders were finally revoked by the direction of the war department as illegal.⁷⁷

This action had serious consequences for the government, especially in Texas. The keen demand in Mexico, where foreign buyers congregated and offered gold, and the continued depreciation of Confederate currency, had raised prices enormously. Speculators multiplied. Government agents could not buy enough cotton, partly because speculators raised the price of cotton beyond what they were authorized to pay and partly because they lacked money. These agents asked the government for power to impress cotton, but neither the president nor the secretary of war would consent.⁷⁸

Such was the condition when General Smith became head of the department. Quartermasters, agents and even Major General Magruder appealed to him to authorized impressment, urging the immediate need of the staple. In June, 1863, the *Sea Queen* and other vessels come to the mouth of the Rio Grande with army supplies for which they were to receive cotton; but as the government officials at Brownsville had not been able to procure it, General Smith, June 27, ordered Magruder to impress the cotton and transportation necessary for meeting the immediate wants of the department and for sustaining the credit of the government.⁷⁹

Impressing officers were sent throughout south and central Texas, but were required to exempt from impressment cotton exported by the state, by associations for the benefit of soldiers' families, and by Major Hart, quartermaster and special agent of the war department, and all his subordinates. Planters were allowed to export free of impressment thirty bales for each one hundred slaves owned.⁸⁰

Later, by Magruder's orders, the planter was allowed forty bales to one hundred slaves, but he was forced to pay a twenty per cent impressment tax if he shipped by way of the Rio Grande. If he shipped by sea, no tax was charged, provided he had a contract

⁷⁶ Noll, Arthur Howard, *Life of General E. Kirby Smith*, 225. I have not been able to verify this statement.

⁷⁷ Joint Resolution, Ninth Legis. (Texas), March 7, 1863; Gammel, *Reprints of Texas Laws*, V, p. 625; Seddon to Holmes, January 28, 1863, *Off. Recs.*, LIII, 845.

⁷⁸ Hart to Seddon, with endorsements, June 20, 1863, *Off. Recs.*, LIII, 873.

⁷⁹ Smith to Magruder, *Off. Recs.*, LIII, 885.

⁸⁰ *The Galveston Tri-Weekly News*, September 9, 1863.

to bring in arms equal to the amount of cotton exported, or if he brought in arms equal to the value of one-fourth of his return cargo.⁸¹

The second step in securing control of this staple came August 3, 1863, when the commander established a cotton bureau under Lieutenant-Colonel W. A. Broadwell as chief, with headquarters at Shreveport, Louisiana.⁸²

All officers and agents engaged in the purchase, collection or other disposition of government cotton were ordered to report to and receive instructions from him. As the area of the department was too great to be administered efficiently from a single office, subordinate offices were established at Houston, Texas, and Monticello, Arkansas.⁸³

The purpose of the creation of the bureau was to insure uniformity of policy and method in making available the one marketable resource of the country and to guarantee centralization of control at the commander's headquarters. But this plan, especially the order forcing all agents under the control of the bureau, was opposed by those who had been sent out by the war department. However, the executive officers at Richmond sustained the commander.⁸⁴

Of the sub-bureaus, that known as the "*Texas cotton office*" at Houston, was the most important because of the area of its operations, the great amount of cotton produced in Texas, and its close proximity to Mexico, which was the chief outlet for the staple. Lieutenant-Colonel W. J. Hutchins, a capable and well-known business man of Houston, was placed in charge of this office and was instructed to make plans for it satisfactory to the Texans, just, uniform, and effective. This cotton office became, by order of the commander, the purchasing bureau of all supplies, through the medium of cotton, for the district of Texas, and agents already purchasing cotton in the district were made subject to it.⁸⁵

From the first the cotton office was beset with difficulties. Its funds were meager, and it was forced into unequal competition with the state agent and the speculator, both of whom could pay higher prices with better money. Frequently, indeed, cotton that had been engaged by Confederate agents was delivered to the speculator or the state for a higher price. Smith protested to Governor Murrah against the state plan for purchasing cotton; while on the other hand, the governor questioned the legality of the cotton bureau.⁸⁶

The efforts of government agents were paralyzed. It became evident to military officers that the needed supplies could not be procured under those conditions. The commander sent Guy M. Bryan to Richmond to urge congressional authorization of the cotton bureau, and when that failed he appealed to the people in an address, June 1, 1864, in which he emphasized the needs of the army and the impossibility of feeding and clothing it without half of the cotton in the department, and urged them to sell their cotton to the government at reasonable prices, lest he be forced to impress it.⁸⁷

⁸¹ General Orders No. 304 [Magruder], November 8, 1863, *Off. Recs.*, XXXIV, ii, 882. See also Oldham to Davis, January 4, 1864, *Ibid.*, 820-821.

⁸² General Orders No. 35, August 3, 1863, *Off. Recs.*, XXII, ii, 953.

⁸³ Special Orders No. 198, November 22, 1863, *Off. Recs.*, XXVI, ii, 437, 438. When the Arkansas office was established cannot be determined, but it was probably not until the summer of 1864.

⁸⁴ *Texas Republican*, December 9, 1864; *Off. Recs.*, Series IV, Vol. II, 1016.

⁸⁵ *The Galveston Tri-Weekly News*, March 28, 1864; *The Weekly State Gazette*, October 26, 1864.

⁸⁶ Smith to Murrah, April 5, 1864, *Off. Recs.*, XXXIV, iii, 734. For other correspondence on this subject see *Ibid.*, 730; XXXIV, iv, 645.

⁸⁷ "To the Citizens of the Trans-Mississippi Department," June 1, 1864, *Off. Recs.*, XXXIV, iv, 638-639. See also Smith to Davis, May 12, 1864, *Off. Recs.*, XXXIV, iii, 821-822.

On the same day he ordered his agents to purchase, or if they could not purchase, to impress one-half of the cotton in the department. Soon after this the state voluntarily retired from the market and Smith was in a position to seize the cotton which was passing in streams to the Gulf coast and across the Rio Grande. The trade across the Mexican border was harder to control than that by the sea. From the first year of the war rumors of official connivance with speculators had drifted up from the Rio Grande. Although special agents of the government had been sent to the several crossings on the river in 1863, they were too far away from headquarters to be effectively supervised; while the temptation to profit was very near at hand.

At any rate, rumors continued that government agents purporting to buy for the government were actually selling for themselves and introducing practically what they pleased. General Smith endeavored to control the situation and hoped to stop speculation by placing the whole business under the uniform direction of the cotton bureau. The wholesale exportation in 1862 and 1863 of products needed for home consumption caused Congress, in February, 1864, to pass an act "*to impose regulations upon foreign commerce,*" which prohibited the exportation of cotton, tobacco, military and naval stores, sugar, molasses, and rice, except under uniform regulations to be made by the president.⁸⁸

This act was received by General Smith, in all probability, in June. He had just ordered the impressment of one-half the cotton in the Trans-Mississippi Department; and, since it was necessary to send this cotton out and since the president's regulations were not received at department headquarters along with the copy of the new law, General Smith published regulations of his own for the overland trade with Mexico.⁸⁹

They provided that all cotton, tobacco, military and naval stores, sugar, molasses, and rice intended for overland transportation to Mexico must be entered and registered with the collector of customs at an established port of entry and receive a permit from him after payment of export duties. These articles must either be proven the property of the Confederate government, or of a state, or they must have been received in exchange for army supplies furnished the government, or be intended for export to pay for machinery or agricultural or mechanical instruments.

The people were hardly over the shock of the order for the impressment of half the cotton, when these regulations were published. Governor Murrah objected to the order for impressment, because it interfered with his own scheme for the purchase of cotton by the state. However, in a conference at Hempstead, Texas, the commander convinced him of the necessity of this policy and Murrah suspended his own plans.⁹⁰

The regulations drawn up by the president for the overland trade with Mexico reached department headquarters the last of July while General Smith was in the field. He did not see them till about the first of August, after his own regulations had been in operation about two months. He then decided by virtue of his "*large discretionary powers*" to continue his own system, since it seemed to be working well, while the scheme devised by the president⁹¹ was more complicated and less practicable and would

⁸⁸ *Statutes at Large of C. S.*, 1st Cong., p. 181.

⁸⁹ General Orders No. 35, June 4, 1864, *Off. Recs.*, XXXIV, iv, 643-644.

⁹⁰ *Houston Daily Telegraph*, July 20, 1864.

⁹¹ The regulations for overland trade, signed by Memminger and Seddon, and approved March 11, 1864, are found in *Off. Recs.*, Series IV, Vol. III, 206-207. See, also, *The Galveston Tri-Weekly News*, January 13, 1865. They allowed anyone to export the prohibited articles who could get a permit from General Smith or some one delegated by him to issue such permits; but both carrier and owners of the articles must have permits, both must give, under oath, lists of goods to be exported, names of owners, drivers, routes and points of destination. The owner or owners of goods

require more men to perform the duties entailed. It would also be much less profitable to the government because it opened the trade to all citizens again, while Smith's regulations secured a virtual monopoly. It would have paved the way for further trouble with speculators. Then, too, when Governor Murrah gave up his state plan, General Smith had promised that the system he had inaugurated under his own regulations should be kept.⁹²

Under the general's system, the trade was carried on for months, the cotton bureau by this means keeping the army in the field and relieving the immediate wants of the people. Early in 1865, the full control of cotton and therefore the control of trade passed to the agent of the treasury. The cotton bureau had been opposed by the private exporter, the speculator, the governor and legislature of Texas; and their complaints caused the authorities at Richmond to decide upon a change which would relieve the bureau of incessant attack for its questionable legality. It was December, 1864, however, before the instructions of the secretary of war were received west of the river, and the commander and treasury agent set February 1, 1865, as the date for the latter to assume control.⁹³

Despite the watchfulness of the Federal blockading squadron off the coast of Texas, blockade runners carried on a thriving trade with such ports as Nassau, Havana, and Matamoras. These vessels brought in general necessities, such as munitions of war, arms, powder, lead, caps, saltpeter, hardware, bagging, rope, drugs, dry goods, shoes and salt, and received pay for the cargoes in cotton.⁹⁴ Before the order for the impressment of cotton in June, 1863, army stores often had to be stored in Havana till cotton could be procured. Some of the blockade runners were owned by private parties and some by the government. In 1863, the officers of the Trans-Mississippi Department increased the number of government boats by dismantling a number of warships that were captured on the Texas coast, placing the guns in the forts, and fitting out the vessels as blockade runners. Then the *Harriet Lane*, the *Clifton*, the *Sachem*, and a number of others were loaded with cotton and sent to Havana, where both vessels and cargoes were to be sold; but as there was no ready sale for the vessels, they were used as blockade runners.⁹⁵

A number of other ships, as the *Frederick the Great*, the *Sea Queen*, the *Good Year*, the *Love Bird*, were all active blockade runners through the years 1863 and 1864. Some of these had been engaged in private business, but as the government, through General Smith's orders, appropriated more and more of the cotton, private shipping decreased.

It is impossible to make even an approximately correct estimate of this trade by sea. On one hand, it cannot be separated from the trade through Mexico and, on the other, accurate lists of all imports are not available.

The following evidence will give some idea of its character: One vessel was captured with 12,000 stands of arms on board; another was run in with 10,000 guns, 5,000,000 caps, and 2,000,000 rounds of small ammunition on board. In October, 1863, the

exported must give bond, in Confederate money, to import in sixty days merchandise to the value of one-half his exports.

⁹² Smith to Murrah, August 25, 1864, *Off. Recs.*, XLI, ii, 1083.

⁹³ Trenholm to Seddon, July 21, 1864, and Seddon to Smith, August 3, 1864, *Off. Recs.*, LIII, 1016; General Orders No. 101, Shreveport, December 30, 1864. *Ibid.*, Vol. XLI, iv, 1133. *The Texas Republican* of May 26, 1865, contains an order from General Smith, May 19, 1865, relieving Colonel Broadwell from duty as chief of the Cotton Bureau.

⁹⁴ *The Official Records of the Union and Confederate Navies*, Vol. XXI, contain much evidence concerning this trade.

⁹⁵ Magruder to Seddon, September 29, 1864, *Off. Recs.*, XLI, iii, 963-4.

following goods were reported en route to Marshall, Texas, for the Ordnance Bureau: 30,000 pounds lead; 50,000 pounds English powder; trace chains, wood screws, canvas, axes, flannels, paper, files, etc., in fair quantities.⁹⁶ A year later Captain Lynch of Brownsville, Texas, reported that from October 4, to December 9, he had forwarded from that port alone 600,000 pounds of army stores.⁹⁷

All these goods and many others were paid for with cotton. When by the president's regulations under the act of February 6, 1864, a special port for the exportation of cotton had to be designated, Houston, by the commander's order, became that port. Soon afterwards the control of this trade passed to the treasury agency.

8. Conflicts with the State Authorities

The exercise by a military officer of these extraordinary powers and functions in communities thoroughly committed to the political philosophy of the old South inevitably brought on misunderstandings and conflicts with the state authorities. In many instances the governors opposed the operation of certain laws of Congress more than the assumption of unusual powers by General Smith, but since he was vested with the military administration of the department and therefore charged with the execution of these laws, he was drawn into the conflicts. As practically all of Missouri and large portions of Arkansas and Louisiana were under the control of the enemy, while Texas was not only intact but comprised nearly all that remained of the department, it was in this state that most of the trouble arose.

Much of this misunderstanding was over the control of state volunteer organizations, reserve corps, and the operation of the conscript law. In both Arkansas and Louisiana the governor demanded that the volunteer state troops be left in the state for its protection, or if called to service under the Confederate commander that the governor be permitted to appoint officers to command them.⁹⁸ Later these organizations were turned over entirely to the Confederate service.

In Texas, there were several points of conflict between state and Confederate laws. The Confederacy demanded the service of all white men of conscript age and required its military officers to draw these into the army and organize them into companies, regiments, and battalions. The Texas legislature, in 1863, provided for the reorganization of state troops into brigades and authorized the governor at the end of six months to muster out all previously enrolled. Acting on this authority, Governor Murrah gave furloughs to all men over forty-five in state companies and by proclamation urged all still liable to military duty not to join any organization, except one composed of state troops. This greatly demoralized portions of the army, for many of those who were of conscript age serving in state organizations, believing that this proclamation applied to them, went home.

In a conference between the governor, General Smith, and Major General Magruder, Murrah claimed that the state had a right to the conscripts, giving as his reason that when "*the Confederate states and the state had concurrent jurisdiction, the party which occupied the ground first was entitled to the exclusive jurisdiction.*" Both military officers opposed the principle on which this claim was based and denied the right of the

⁹⁶ Rhett to Johnson, October 22, 1863, *Off. Recs.*, XXII, ii, 1141-1142.

⁹⁷ *Texas Republican*, Marshall, December 9, 1864.

⁹⁸ Flanagan to Holmes, October 18, 1863, *Off. Recs.*, LIII, 901-902; Davis to Allen, April 9, 1864, *Ibid.*, 981-983; Allen to Seddon, June 25, 1864, *Ibid.*, 1003; "Note of Agreement" [August 10, 1863?], *Ibid.*, XXII, ii, 962.

state to claim the conscripts. This point was finally compromised to allow conscripts to go directly into the Confederate service or first into the state service and at the end of six months into the Confederate army. Under the Texas law the state troops were offered to the military officials organized into brigades, while the acts of the Confederate Congress prohibited the Confederate officials from recognizing such organizations. The controversy continued until Banks's campaign up the Red River brought danger to the door; then Murrah yielded and agreed to urge the state troops to organize under the laws of Congress.⁹⁹

Nothing could be more productive of utter demoralization than the stubborn attitude of Governor Murrah or better illustrate the difficulties which General Smith had to face. It was probably in keeping with the governor's theory that the state had prior jurisdiction over its conscripts that the legislature provided for the enrollment into a frontier regiment of all the bona fide citizens of military age within the frontier counties.¹⁰⁰

This regiment when organized was to be turned over, under certain conditions, to the Confederate commander. It was reported to contain 4,000 able-bodied men, of whom two-thirds were liable to conscription.¹⁰¹ The regiment remained under state control, and General Smith appealed to Governor Murrah to obtain either a repeal of this law or the enactment of another directly transferring the frontier regiment to the Confederate service. The result of this was a resolution by the legislature authorizing the Governor to discharge any member of the regiment who was not on July 1, 1863, a bona-fide citizen of the frontier.¹⁰²

The governor, however, suggested to the commander, as a matter of policy, that this organization should not be interfered with by the Confederate military authorities until Congress should definitely settle the matter in the coming session.¹⁰³ In February, General Smith reported the entire matter to the president, enclosing copies of the law, the resolution, and all correspondence and general orders on the subject. It seems that the regiment was finally turned over to the general government.¹⁰⁴

Probably the sharpest controversy between the Texas officials and the Confederate military commander was over the control of cotton. We have already seen that General Smith as a means of procuring funds and supplies had begun the purchase or impressment and exportation of cotton and had placed the business under the charge of a bureau which he had established without direct authorization from Richmond. The state also, through its military board, began purchasing cotton for exportation and, under Governor Murrah's "state plan", allowed any owner a license or permit to transport his cotton to the Rio Grande on condition that he there sell half to the state at the prevailing market price. Payment was made in seven per cent state bonds redeemable in money or state land. Of course, the state offered protection to the vendor against interference by Confederate officials or agents.¹⁰⁵

⁹⁹ For this entire controversy see *Off. Recs.*, XXXIV, ii, 886, 905, 973-975, 1087-1095, 1103; *Ibid.*, iii, 726, 735, 739, 747-750, 769.

¹⁰⁰ Approved December 15, 1863. Gammel, *Laws of Texas*, V, 677-679; amendment, May 31, 1864, *Ibid.*, 771.

¹⁰¹ Smith to Davis, February 10, 1865, *Off. Recs.*, XLVIII, i, 1373-1376.

¹⁰² Approved May 24, 1864, Gammel, *op. cit.*, V, 773.

¹⁰³ *Off. Recs.*, XLVIII, i, 1374-1379.

¹⁰⁴ *The Galveston Tri-Weekly News*, February 22, 1865.

¹⁰⁵ See Murrah's message to 10th Legislature, May 11, 1864, *Executive Record Book* No. 280., pp. 86-90, in Texas Archives. Also, Broadwell to Smith, April 4, 1864, *Off. Recs.*, XXXIV, iii, 730-732; Smith to Murrah, April 5, 1864, *idem.*, 734.

State agents and speculators, eager to secure this new permit, flocked into the field and purchased the best of the cotton, in many cases obtaining by higher prices cotton already engaged by Confederate agents. It was reported that Murrah bought 12,000 bales. General Smith appealed to the governor urging the great need of cotton to supply his army, explaining the purpose of the cotton office and showing that its efforts were useless so long as the "state plan" was in operation. Although the governor replied that he designed no interference with the plans of the government for the acquisition of cotton, he refused to give up his scheme. The work of government agents was further hampered by a state law forbidding, under heavy penalties, all impressments of cotton or other trade restrictions not authorized by the laws of Congress.¹⁰⁶

As previously shown, efforts had been made to get Congress to legalize this bureau but without result. General Smith did not in fact claim any statute authority for the bureau, but he maintained that the military necessity was sufficient to justify it. He sent Major Guy M. Bryan to Austin to urge the governor to co-operate with him, but without success. Correspondence of this subject was continued till July, 1864, when the governor finally yielded, suspended purchases under the "state plan," and relinquished his contracts for cotton to the Confederate authorities.¹⁰⁷

This opposition to the operation of certain laws of Congress and to policies of the administration was not confined to state officials. During 1863 and the spring of 1864 the attitude of the press and, presumably, of the people toward Smith was one of friendly co-operation; but after he began enforcing the conscript law, impressing cotton and transportation, and using his own regulations for trade, discontent was manifested and many people openly supported the contentions of the Governor. It was not popularly known, in fact, how much power had been delegated to the general; and apprehension was expressed that unless the state asserted its rights it would be overthrown.

The Texas papers, which realized that General Smith's power alone prevented anarchy, defended him by maintaining that the cotton office was legal, that impressments were necessary, that the state governments were in greater danger from the enemy than from the Confederate military authorities, that the affairs of the department were administered well, and that he should be sustained. *The Houston Telegraph*, *The Arkansas Telegraph*, *The Galveston News*, *The Texas Republican* (Marshall), *The Patriot* (La Grange), all supported the commander's policy, usually in the strongest terms; while *The State Gazette* (Austin), the Natchitoches papers, and perhaps others, opposed it just as vehemently. Citizens, as well as newspapers and state officials, were divided in their opinions as to the right of the commander to exercise his great powers.¹⁰⁸

Throughout the latter half of 1864, especially, there was evidence of a growing discontent, an increasing opposition to the entire system of the department's government. While in most cases the wiser citizens and editors were silent or defended the general and his administration whenever they could, yet there was clearly a strong feeling that this peculiar government could not stand the test of law.

The Marshall Conference in the face of danger had readily agreed for the general to assume unusual powers; but when that immediate danger was removed by the defeat of

¹⁰⁶ General Laws, Called Session, Tenth Legis., pp. 12-13; Trenholm to Seddon, July 21, 1864, *Off. Recs.*, LIII, 1016.

¹⁰⁷ Murrah to Nichols, July 16, 1864, printed copy in Texas Archives. Also, Smith to Murrah, August 25, 1864, *Off. Recs.*, XLI, ii, 1082-1084.

¹⁰⁸ *State Gazette*, August 24, and October 26, 1864.

Banks and Steele, the continued exercise of these powers brought on misunderstandings and conflicts. The enforcement of the conscription law and the suspension of the writ of habeas corpus aroused the people.

The feeling existed, too, that these assumptions of authority were unconstitutional; the demand for half of the cotton touched the sensitive popular nerve of personal property rights; and the decision of the general to continue his own regulations after he had the president's in his hand looked to some as if he intended to disregard the constitutional government altogether. However great this opposition to the administration, there was no violence; General Smith continued his policies and in a short time the wave subsided. With some exceptions, the leaders, the open minded, most of the courts, and a large number of the people sustained the commanding general.

It is clearly evident that the governmental arrangement adopted for this detached department was the result of conditions therein and of the interruption of communications with Richmond.

All parties responsible for the defense of the department agreed that it must be administered separately from the Cis-Mississippi states and that the commander should become the administrator. He was therefore empowered to act on all questions of military administration and encouraged and supported in his assumption of a part of the civil functions of the chief executive of the government. In the former, such vexing problems as defending his vast territory, guarding the long line of frontier, securing and distributing the necessary supplies, manufacturing ordnance and other needed munitions, were all overcome, to a great extent at least, through his organization of the army and the operations of his war bureaus.

The civil powers exercised by General Smith were not expressly delegated by act of Congress, and they were assumed reluctantly and used with caution. Only those necessary to the strengthening of his military administration were used at all. Until the organization of the treasury agency in the department, he practically controlled the finances; he assumed responsibility for the expenditures, and he controlled the collection of the taxes of various kinds; with the consent of the state authorities, he took control of the cotton and, to obtain this commodity and through it the necessary supplies, he assumed control of the trade.

To secure the greatest benefit from this trade, he sent agents abroad to make his purchases, and he dispatched representatives to Mexico to secure the co-operation of the French and Mexican authorities in order to keep open the only door through which his products and supplies could pass. In administering this department under these peculiar conditions, he was beset with many difficulties and was often forced for the sake of harmony with the state authorities to agree to compromises which a commander, exercising only the usual powers of such an officer, could not have considered. He became, in fact, the agent of the general government exercising the functions of the president and those of the members of the cabinet so far as such functions were necessary for the administration and defense of the department.

While not dangerous in the hands of a man of his integrity and high principles, the care with which these powers were screened, even under the tensest stress of circumstances, is eloquent of the strong attachment of the South to constitutional forms of government. It was in a large measure due to the ability, patriotism, and untiring zeal of the commanding general in the use of these extraordinary powers that the Trans-Mississippi Department did not break down of its own weight long before the surrender of the Confederate armies east of the river.