

COMMUTATION: Democratic or Undemocratic?

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THE ENTHUSIASM CHARACTERISTIC of the first months of any war must eventually ebb. In Ohio the ardent response to Lincoln's call for volunteers in 1861 was proof of the fierce patriotic spirit that swept the North. Yet, within two years the threat of conscription was needed to stimulate volunteering, and by the spring of 1864 conscription itself was instituted under the "Act for Enrolling and Calling Out the National Forces," commonly called the Conscription Act.

The most objectionable of all the provisions in the Conscription Act was section thirteen, which provided –

That any person drafted and notified to appear, may, on or before the day fixed for his appearance, furnish an acceptable substitute to take his place in the draft; or he may pay to such person as the Secretary of War may authorize to receive it, such sum, not exceeding three hundred dollars, as the Secretary may determine, . . . and thereupon such person so furnishing the substitute, or paying the money, shall be discharged from further liability under that draft.¹

The practice of furnishing a substitute was not new in 1863, for it had been the practice as far back as colonial days to hire a substitute for service in the local militia.² As long as there was only a single call or draft this practice did little damage. But the scope of the Civil War necessitated repeated calls for men, and the immunity from service derived from furnishing a substitute reduced the available manpower pool on each successive draft. The commutation clause, without precedent in America, was widely believed to be "a concession to the man of means." While this provision, allowing a man to pay a sum of money and thus avoid military service, is contrary to present-day standards of justice, as it was to some a century ago, it did place a ceiling on the cost of escaping personal service.

The Peace Democrats claimed the commutation clause was undemocratic in that it favored the rich and highborn, thus constituting a flagrant piece of class legislation. They argued that the poor and middle classes could not afford to pay the necessary \$300 commutation fee, while the richer classes could. This argument soon became the mainstay of anti-draft agitators and the Achilles' heel of the conscription law. "The rich man's money against the poor man's blood" or "The rich man's war and the poor man's fight" were slogans which epitomized the opposition to the commutation clause; the objection to such discrimination, on the basis of the ability to buy exemption, soon produced great excitement in the North.

As President Lincoln maintained, the reason many approved the hiring of a substitute, but objected to the commutation provision, was that the former was an established practice. The very purpose of commutation, he argued, was to correct the inequality introduced by the

¹ *Congressional Globe*, 37 Cong., Sess., pt.2, Appendix, p. 210.

² Arthur J. Alexander, "How Maryland tried to Raise Her Continental Quotas," *Maryland Historical Magazine*, XIII (1947), 193-195; Arthur J. Alexander, "Pennsylvania's Revolutionary Militia," *Pennsylvania Magazine of History and Biography*, LXIX (1945), 15-25; Emory Upton, *The Military Policy of the United States* (Washington, D.C., 1907), p. 35.

substitute clause, by permitting men too poor to hire a substitute to escape service. If the commutation clause had not been included in the law, no avenue of escape would have been left to the poor men since they would not have had the money necessary to compete with wealthier men in an open substitute market, where the price often rose above \$300. "Is an objectionable law," asked Lincoln, "which allows only the man to escape who can pay a thousand dollars made objectionable by adding a provision that anyone may escape who can pay the smaller sum of three hundred dollars?" The commutation clause, which enabled poor men to avoid personal service, could hardly be prejudicial to the poor. On the contrary, the inequality between the classes was alleviated by the inclusion of the clause. Perfect equality could be achieved by deleting both provisions, but then public opinion would consider the law "more distasteful than it is now."³

Preliminary investigation in Ohio suggests that Lincoln's views were correct.⁴ If the commutation clause did constitute a flagrant piece of class legislation, as the Democratic opposition argued, it favored the poorer classes more than it did the wealthier minority. The modification of this clause on July 4, 1864, so that only "noncombatants" could pay commutation,⁵ was *unfair* class legislation because it took from the poor man his only chance to escape service and left only the wealthy an avenue of escape in the substitute clause. The draft records of the First, Fifth, Twelfth, and Eighteenth Districts in Ohio support the thesis that the majority of the draftees from the lower economic groups could pay commutation but could not raise the sum necessary to hire a substitute.⁶

The First District, which included half of Hamilton County and Cincinnati, was forced to conduct drafts on three separate occasions in 1864. The first of these drafts, held in March, clearly demonstrated the equality of commutation. The draft records show that 3,119⁷ men were drawn, predominantly from the labor and skilled labor classes (1,010 and 932 men respectively). At the same time, 443 merchants, 274 clerks, and 115 manufacturers were drawn. Of the laboring class almost 18 per cent found it cheaper to pay commutation money while only 4 per cent could afford to hire substitutes. Among skilled laborers 21 per cent paid commutation fees and 5 per cent hired substitutes. Of the merchants, whom the Peace Democrats described as a privileged group which could afford to buy its freedom, almost 25 per cent paid the \$300 and about half that, 12 per cent, found substitutes. Although few farmers were drawn, 33 per cent paid money rather than fight. The farmer, like the laborer, found he could afford commutation but could not afford the price of a substitute.⁸

In the last two calls of 1864 only noncombatants could pay commutation money, which meant that the majority had to hire substitutes if they wished to escape the draft. This produced a sharp

³ John G. Nicolay and John Hay, *Abraham Lincoln: A History* (New York, 1917), VII, 53-55.

⁴ Eugene C. Murdock substantiated the same conclusion in a "per capita valuation," study of the New York State provost-marshal districts. See Murdock, "Was it a 'Poor Man's Fight'?", *Civil War History*, X, (1964), 241-245.

⁵ *Congressional Globe*, 38 Cong., 1 sess., pt. 4, Appendix, pp. 140-141. Non-combatants were designated as members of religious denominations who were opposed to the bearing of arms. They could, if drafted by the military service, serve in hospitals, care for freedmen, or pay a sum of \$300; the money was used for the benefit of sick and wounded soldiers.

⁶ The sample districts were selected on the basis of geographical location, population, and occupation. The First and Eighteenth were districts with growing metropolitan cities and a large variety of occupations. The Fifth and Twelfth districts consisted of rural farming families. In all four districts the lower economic groups were prevalent and among these groups the Copperheads had their greatest appeal.

⁷ In James B. Fry, *Final Report to the Secretary of War by the Provost Marshal General* (Washington, 1875), I, 179, the number drawn is listed as 3,209. The actual draft records show 3,119 men drawn.

⁸ Muster and Descriptive Book of Recruits, Substitutes and Drafted Men, First Ohio District, Provost Marshal General Collection, National Archives. All the Muster Books cited are found in this collection.

contrast between laboring and nonlaboring classes in the First District. The poorer classes simply could not afford to pay the price of substitutes, while the richer classes could. During these calls 1,125 men were drawn for service, 433 failed to report, and 514 men were exempted. Of the 166 men accepted for duty, 109 men hired substitutes, mostly from the nonlaboring category. Only 6 per cent of both the labor and skilled labor classes could employ a replacement, while the so-called "white collar" lawyer, banker, and broker class averaged almost 22 per cent. The merchant class was slightly below this with 20 per cent hiring substitutes. Almost 11 per cent of the clerks hired representatives while the mechanics hired 14 per cent; teachers, 25 per cent; and public servants, the highest of all classes, 27 per cent.⁹

The Fifth District in northwestern Ohio had seven counties within its borders and all were rural, with only the hint of future urbanization.¹⁰ The land surface was level and the black fertile soil produced great quantities of livestock and farm produce. In such an area, it was only natural that out of the 469 drawn in the March, 1864, draft, 365 listed farming as their occupation. Fifty-nine were workingmen or laborers, twenty-eight were skilled in a particular trade, and only six classified themselves as merchants. About 50 per cent of the farmers chose to pay commutation money, compared to only 1 per cent of the laboring class paid the \$300, while only 2 per cent found replacements. Close to 67 per cent of the merchants paid commutation, the highest in the district; only six men from this class were drafted. Skilled laborers were second with 64 per cent paying rather than fighting.¹¹

The Fifth District drafts, held in the summer and winter of 1864, again clearly showed that the lower classes could not afford to hire substitutes. Only 15.5 per cent of the farmers, 12.7 per cent of the skilled tradesmen, and 8.6 per cent of the ordinary laborers could meet the price of a substitute. On the other hand, 26 per cent of the merchants and 38 per cent of the clerks drawn were able to hire replacements. The highest average was registered by the public servant class; of the two drawn, one failed to report and the other hired a substitute. Further proof of the lower classes' inability to pay for substitutes can be found in the number of persons held to personal service from the different occupational categories. Thirty per cent of the skilled laborers were drafted into the service and 28 per cent of the laborers, while only 2.3 per cent of the merchants were held to actual service.¹²

The Twelfth District encompassed six counties in south-central Ohio.¹³ Located in the Scioto River Valley, the western counties of this district were corn-growing areas; the eastern counties were composed of elevated table-land and mountains abundant in iron, coal, and building stone. Like the Fifth District, this section contained a predominant number of farmers; of the 962 men drawn in the March draft of 1864, 557 were farmers, 58 were skilled laborers, and 44 were common laborers from the mines and quarries. Only seventeen merchants were selected, along with nine school teachers and five ministers. The farmer class was the only occupational group to hire substitutes during the draft and that amounted to only 2 per cent of the total drawn. On the other hand, 56 per cent of the farmers paid the \$300, as did 34 per cent of the unskilled and 41 per cent of the skilled laborers. Although relatively few merchants were drawn in comparison to the number of farmers and laborers, it is significant that 88 per cent took advantage of

⁹ *Ibid.* See tables for detailed breakdown of local district drafts.

¹⁰ Counties in the Fifth District were: Van Wert, Mercer, Allen, Auglaize, Hancock, Hardin, and Wyandot. Peace Democrats were particularly active in this district during the war.

¹¹ Muster and Descriptive Book of Recruits, Substitutes and Drafted Men, Fifth Ohio District.

¹² *Ibid.*

¹³ Counties in the Twelfth District were: Pickaway, Ross, Pike, Fairfield, Hocking, and Perry.

commutation (as did 67 per cent of the school teachers). Of the five ministers mentioned above, three were exempted because of poor health and the other two paid commutation.¹⁴

The increased prosperity was particularly noticeable in the western counties of the Twelfth District during the last two drafts of 1864. Twenty-eight per cent of these corn-growing farmers hired substitutes at an average price of \$474.25.¹⁵ This economic boom had also benefited the merchants since 47 per cent of them hired replacements during the last two calls of the war. Twenty-six per cent of the laborers, skilled and unskilled, also hired substitutes, a high proportion for this group. The farmers had the largest number drawn as well as the most held to personal service, while the skilled laborers of the eastern counties of the district were second.¹⁶

The Eighteenth District, which included Cuyahoga, Summit, and Lake Counties, was located in the northeastern section of the state. Cleveland, the largest city within the district, and Ohio's second largest in 1864, had, by the middle of the Civil War, changed from strictly a commercial community to one of manufacturing and transportation. The area around Cleveland was given the fruit orchards, truck and poultry farms. The dominant occupations tended to be farming and varying classes of labor. During the district's first draft, to fill the March 14, 1864, quota, the records reveal that 1,145 men were drawn; of this number 309 were farmers, 450 ordinary day laborers, and another 309 skilled in one trade or another. The tendency to pay commutation rather than hire a replacement was reversed by several occupational groups during the draft. Farmers, merchants, mechanics, and skilled laborers followed the traditional course of paying rather than hiring, but the clerks and ordinary laborers found it much easier to find substitutes because the average bounty was only about \$150 at the time.¹⁷

Twenty-nine per cent of the farmers paid the commutation money; 17 per cent hired substitutes. Of the merchants, 20 per cent made the payment of \$300 and 17 per cent hired a replacement. Thirty-five per cent of the mechanics found it cheaper to pay, while only 9 per cent thought it cheaper to hire. Of the 450 laborers drawn, 93 men, or 21 per cent, hired substitutes and 78 men, or 17 per cent, paid the commutation fee. Of the clerks drawn, 33 per cent paid a substitute and only 10 per cent paid the government fee.¹⁸

The September draft was the second and last call for the Eighteenth District. As was the case in the Twelfth District, the war prosperity had its effect on the hiring of substitutes. Some 1,640 names were drawn; 127 failed to report, 1,070 were examined, and 450 were exempted from service. A total of 273 substitutes were hired, mostly by the skilled and unskilled laborers, merchants, farmers, and clerks. Of this group 29 per cent of the clerks hired substitutes, followed by the farmers with 28 per cent, the skilled laborers with 28 per cent and the merchants with 26 per cent.¹⁹

While this study of four Ohio draft districts has been directed toward an occupational exploration of those who were able to pay the commutation fee, it has also uncovered additional information which might, with further sifting, change our thinking about some aspects of the Civil War. For example, the majority of those who paid commutation in the spring of 1864, and furnished substitutes in subsequent drafts, were over thirty years of age. Furthermore, the

¹⁴ Muster and Descriptive Book of Recruits, Substitutes and Drafted Men, Twelfth Ohio District.

¹⁵ U.S. War Dept., *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies* (Washington, 1880-1901), Ser. III, V, 746.

¹⁶ Muster and Descriptive Book of Recruits, Substitutes and Drafted Men, Twelfth Ohio District.

¹⁷ *OR*, Ser. III, V, 746.

¹⁸ Muster and Descriptive Book of Recruits, Substitutes and Drafted Men, Eighteenth Ohio District.

¹⁹ *Ibid.*, The availability of substitutes, particularly Negroes and foreigners, kept the price of substitutes low. The city at the time was only paying \$100 in bounty fees.

substitutes were in their late teens and early twenties. While not surprising, it is interesting to note that those who furnished money and substitutes in the First District listed their place of birth as Germany, 3 to 1, with Ohio and Ireland running a weak second and third. In the other districts Ohio was the predominant place of birth, with Germany, Pennsylvania and New York ranking in that order. The Peace Democrats might have been more correct in stating that the “Great Tragedy” was “abolitionist politics, middle aged money and a young man’s fight.”

On the 157,883 men raised by Ohio during the last two years of the war, only 5 per cent can be attributed to the direct effect of the draft. The indirect effects of the draft in encouraging enlistments cannot be accurately assessed, but that those effects were important seems certain. On the other hand, many Ohioans escaped military service altogether by paying the \$300 commutation fee. Those opposed to conscription argued that it favored the wealthy classes and made the poor man do the rich man’s fighting. In the four Ohio districts examined, the records show that section thirteen, the “inequality clause,” was eminently just. It tended to hold down the price of substitutes and at the same time provided an avenue of escape for those of the poorer classes. This study suggests that during 1863 most draftees wanting to escape service paid commutation. In 1864 those wishing to avoid service had to hire a substitute, and although the laboring classes did hire substitutes, the percentage was not as great as those who paid commutation the year before. To pay \$300 for exemption from each draft was not beyond the financial capacity of the average farmer and laborer in the 1860’s; to hire a substitute was.

Draft in Four Ohio Counties²⁰

March 14, 1864

Dist.	Drawn	Failed to Report	Number Examined	Held to Service			Total Accepted	Total Exempted
				Personally Held	Furnished Substitute	Paid Commutation		
1 st	3,209	1,074	2,135	37	179	588	804	1,331
5 th	469	49	420	40	5	220	265	155
12 th	962	106	856	76	13	380	469	387
18 th	1,491	271	1,220	23	223	286	532	688

July 18, 1864

1 st	1,113	433	680	52	109	5	166	514
5 th	2,070	576	1,411	489	316	4	809	602
12 th	2,118	361	1,414	387	270	7	664	750
18 th	1,640	127	1,070	31	249	20	300	450

December 19, 1864

1 st	12	---	---	---	---	---	---	---
5 th	396	94	259	7	18	1	26	233
12 th	414	---	74	10	1	2	13	61
18 th	---	---	---	---	---	---	---	---

Recapitulation of District Drafts in Ohio, 1864

Mar. 14	6,131	1,500	4,631	176	420	1,474	2,070	2,561
July 18	6,941	1,497	4,575	959	944	36	1,939	2,316
Dec. 19	822	94	333	17	19	3	39	294
Total	13,894	3,091	9,539	1,152	1,383	1,513	4,048	5,171

²⁰ *Final Report to the Secretary of War by Provost Marshal General*, I, 179, 189, 203.

First District – March 14, 1864²¹

Occupation	Number Drafted	Paid Commutation		Hired Substitute		Failed to Report	Exempted	Held to Personal Service
		Number	Per Cent	Number	Per Cent			
Laborer	1,010	179	17.7	43	4.2	385	397	6
Skilled Laborer	932	199	21.4	47	5.0	216	445	25
Merchant	443	110	24.8	52	11.7	104	176	1
Clerk	274	54	19.4	20	7.2	76	124	---
Manufacturer	115	1	---	3	2.6	39	72	---
Public Servant	14	4	28.5	1	7.1	1	8	---
Doctor, Lawyer								
Banker, Broker	38	11	28.9	---	---	9	18	---
Boatman	53	3	5.7	---	---	37	11	2
Mechanic	46	7	15.2	1	2.2	17	21	---
Farmer	21	7	33.3	---	---	5	6	3
Gambler	4	---	---	---	---	1	3	---
Student	8	---	---	---	---	4	4	---
Teacher	13	5	38.4	1	7.7	1	6	---
Minister	12	2	16.6	2	16.6	---	8	---
Artist	29	6	20.7	1	3.8	11	11	---
Soldier	8	---	---	---	---	6	2	---
Bird Fancier	1	---	---	---	---	---	1	---
Unknown	63	---	---	---	---	30	33	---

First District – July and December, 1864²²

Occupation	Number Drafted	Hired Substitute			Failed to Report	Exempted	Held to Personal Service
		Number	Per Cent				
Laborer	205	12	5.7		90	84	19
Skilled Laborer	337	20	5.9		160	142	15
Merchant	211	43	20.4		62	97	8
Clerk	205	22	10.7		77	98	8
Manufacturer	34	---	---		12	21	1
Public Servant	11	3	27.4		4	4	---
Doctor, Lawyer							
Banker, Broker	23	5	21.7		2	16	---
Boatman	1	---	---		---	1	---
Mechanic	7	1	14.3		3	3	---
Farmer	7	---	---		---	7	---
Gambler	6	---	---		4	2	---
Student	10	---	---		3	7	---
Teacher	8	2	25.0		2	4	---
Minister	2	---	---		1	1	---
Artist	14	1	7.1		4	9	---
Soldier	3	---	---		---	2	1
Landlord	1	---	---		---	1	---
Unknown	30	---	---		9	21	---

²¹ *Draft Book No. 7*, First Ohio District; all Draft Books cited are in the National Archives.

²² *Draft Books No. 8 and 9*, First Ohio District.

Fifth District – March 1864²³

Occupation	Number Drafted	Paid Commutation		Hired Substitute		Failed to Report	Exempted	Held to Personal Service
		Number	Per Cent	Number	Per Cent			
Farmer	365	181	49.6	4	1.1	35	117	28
Laborer	59	14	23.7	1	1.7	7	29	8
Skilled Laborer	28	18	64.2	---	---	4	2	4
Teacher	3	1	33.3	---	---	1	1	---
Public Servant	1	1	100.0	---	---	---	---	---
Merchant	6	4	66.6	---	---	---	2	---
Artist	2	---	---	---	---	---	2	---
Clerk	1	1	100.0	---	---	---	---	---
Mechanic	4	---	---	---	---	2	2	---

Fifth District – July and December, 1864²⁴

Occupation	Number Drafted	Hired Substitute		Failed to Report	Exempted	Held to Personal Service
		Number	Per Cent			
Farmer	1,602	249	15.5	444	550	361
Laborer	150	13	8.6	53	42	---
Skilled Laborer	205	26	12.7	51	66	62
Teacher	13	3	23.1	3	2	5
Public Servant	2	1	50.0	1	---	---
Merchant	39	10	25.6	12	8	9
Clerk	8	3	37.5	3	1	1
Mechanic	18	3	16.6	2	8	5
Minister	13	1	7.7	2	9	1
Doctor, Lawyer						
Banker, Broker	14	3	21.4	3	4	4
Student	2	---	---	1	1	---
Manufacturer	4	3	75.0	1	---	---

Twelfth District – March 1864²⁵

Occupation	Number Drafted	Paid Commutation		Hired Substitute		Failed to Report	Exempted	Held to Personal Service
		Number	Per Cent	Number	Per Cent			
Farmer	557	312	56.0	13	2.3	24	156	52
Laborer	44	15	34.3	---	---	---	17	12
Skilled Laborer	58	24	41.4	---	---	---	25	9
Merchant	17	15	88.2	---	---	---	1	1
Public Servant	2	1	50.0	---	---	---	1	---
Mechanic	5	2	40.0	---	---	---	2	1
Teacher	9	6	66.6	---	---	---	3	---
Miner	3	---	---	---	---	1	2	---
Doctor, Lawyer								
Banker, Broker	2	2	100.0	---	---	---	---	---
Minister	5	2	40.0	---	---	---	3	---
Boatman	1	---	---	---	---	---	---	1
Unknown	259	---	---	---	---	81	178	---

²³ *Draft Book No. 23*, Fifth Ohio District.

²⁴ *Ibid.*

²⁵ *Draft Book No. 16*, Twelfth Ohio District.

Twelfth District – July and December, 1864²⁶

Occupation	Hired Substitute			Failed to Report	Exempted	Held to Personal Service
	Number Drafted	Number	Per Cent			
Farmer	840	239	28.5	55	273	273
Laborer	59	15	25.4	---	21	23
Skilled Laborer	101	26	25.7	1	29	45
Merchant	30	14	46.6	---	13	3
Public Servant	1	---	---	---	1	---
Mechanic	2	---	---	---	2	---
Teacher	19	7	36.8	---	7	5
Miner	2	---	---	---	2	---
Doctor, Lawyer						
Banker, Broker	5	---	---	---	4	1
Minister	5	2	40.0	---	2	1
Boatman	7	1	14.3	---	---	6
Student	1	---	---	---	1	---
Clerk	5	2	36.8	---	2	1
Leisure	4	1	25.0	---	2	1
Unknown	1,392	36	25.9	305	1,203	---

Eighteenth District - March 1864²⁷

Occupation	Paid Commutation			Hired Substitute		Failed to Report	Exempted	Held to Personal Service
	Number Drafted	Number	Per Cent	Number	Per Cent			
Farmer	309	91	29.4	51	16.6	18	141	8
Laborer	450	78	17.3	93	20.6	5	256	18
Merchant	115	23	20.0	19	16.5	15	58	---
Clerk	81	8	9.8	27	33.3	4	41	1
Minister	8	5	62.5	---	---	---	3	---
Teacher	5	3	60.0	1	20.0	---	1	---
Sailor	55	10	18.2	---	---	17	25	3
Skilled Laborer	309	51	16.5	25	8.1	147	77	9
Manufacturer	7	3	42.9	---	---	---	4	---
Student	15	3	20.0	---	---	4	8	---
Mechanic	46	16	34.7	4	8.7	3	23	---
Editor	2	---	---	---	---	---	2	---
Doctor, Lawyer								
Banker, Broker	10	3	30.0	1	10.0	3	4	---
Public Servant	3	---	---	2	66.6	---	1	---

²⁶ *Ibid.*

²⁷ *Draft Book No. 51, Eighteenth Ohio District.*

Eighteenth District – July and December, 1864²⁸

Occupation	Hired Substitute			Failed to Report	Exempted	Held to Personal Service
	Number Drafted	Number	Per Cent			
Farmer	135	38	28.1	36	57	4
Laborer	382	107	28.0	48	219	8
Merchant	93	24	25.8	9	60	0
Clerk	51	15	29.4	4	32	---
Minister	6	---	---	---	6	---
Teacher	5	1	20.0	---	3	1
Sailor	74	8	10.8	24	40	2
Skilled Laborer	310	70	22.6	1	228	11
Mechanic	33	8	24.2	4	18	3
Manufacturer	9	---	---	---	8	1
Student	5	---	---	1	4	---
Doctor, Lawyer						
Banker, Broker	2	1	50.0	---	1	---
Public Servant	3	1	33.3	---	1	1
Artist	3	---	---	2	1	---



²⁸ *Draft Book No. 50, Eighteenth Ohio District.*