

SLAVES, CONTRABANDS, AND FREEDMEN
UNION POLICY IN THE CIVIL WAR

A thesis presented to the Faculty of the U.S. Army
Command and General Staff College in partial
fulfillment of the requirements for the
degree

MASTER OF MILITARY ART AND SCIENCE

by

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B.S., United States Naval Academy, 1982

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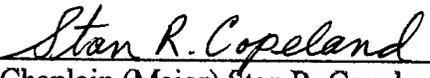
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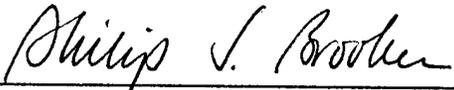
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ABSTRACT

SLAVES, CONTRABANDS AND FREEDMEN: UNION POLICY IN THE CIVIL WAR by CDR Michelle J. Howard, USN, 156 pages.

This study examines Union slave policy in the Civil War. Prior to the initiation of hostilities, President Abraham Lincoln stated that the conflict between the states was over the preservation of the Union, and not over slavery. The administration was concerned that a war policy centered on slavery would result in the loss of the Border States. The war started without a slave policy promulgated from the administration to the War Department.

By May of 1861, fugitive slaves had entered Union lines and were retained by military commanders as "Contraband of War." The Union employed over 200,000 fugitive slaves before the war ended. Military commanders were forced to create slave policy to handle overwhelming numbers of runaway slaves. Local military policy impacted the administration's agenda. In response, the administration would variously support, dismiss, or ignore the commanders. As the war progressed, Union slave policy caused conflict within and outside the military chain of command.

As the conflicts became publicized, President Lincoln created or agreed to slavery policies that conformed to changing congressional and public opinion. The administration had been forced to deal with the issue it had sought to avoid. Military decisions in the field had impacted national goals.

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CHAPTER ONE

INTRODUCTION

Disputes over territory, power, religion, and way of life have all led to war. In the American Civil War, several issues dominated the national debate in the months prior to the secessionist shots fired on Fort Sumter. Citizens were willing to die to preserve the Union, to defend their homeland, to abolish slavery, or to continue a way of life. When South Carolina seceded from the United States, President Abraham Lincoln and his administration were forced to deal with the causes of war. The president felt strongly that the struggle was over the preservation of the Union. If slavery abolition was the issue, the North might lose support of proUnion slavery states. Lincoln thought their support was critical to the war effort. Lincoln's administration would not allow slavery to be the issue for which the war was fought. Announcing his convictions in his inaugural address, Lincoln led the country to war for a cause that omitted the most contentious issue of the day. The president's attempt to divorce slavery from the roots of the war would fail.

In the same month volunteers were raised by presidential order to quell the rebellion, the Secretary of State urged the president to shape the public belief that the war was not over the political question of abolition, but over the preservation of the United States.¹ This concept permeated the country, the White House, and the military. The war started with no guidance to the military about the status or handling of slaves from the

¹John G. Nicolay and John Hay, *Abraham Lincoln: A History* (New York: The Century Co., 1890), 3:445-446.

commander-in-chief. This lack of guidance did not prevent the military from having to deal with slaves or slavery policy. Lincoln's personal secretaries, John Nicolay and John Hay, later recounted, "The first movement of armed forces proved that the slavery question was to be as omnipresent in war, as it had been in politics."² One of the causes of war was coming home to roost.

In the first eighteen months of the American Civil War, Union field commanders created military policy concerning the legal status and employment of the fugitive slaves that entered their lines. The range of military solutions to the thousands of black refugees that flooded Union lines reflects the various social, religious, and military beliefs of the commanders, as well as the economic and political environments of their military departments. Their solutions impacted local political objectives, unity of command and occasionally national goals. Despite the administration's efforts to frame the war in terms of preservation of the Federal Union, the disjointed military use of fugitive slaves kept the slavery issue at the front of national debate.

Lincoln found that slavery and slave policy could not be avoided. Without guidance, military commanders created their own regional policies. Military departments with antislavery policies sometimes bordered departments with proslavery policies. The speedy establishment, reorganization, and disestablishment of departments added to the confusion of policy dissemination and enforcement. Military Department Organizational Charts for 1861 to 1864 are figures 1-4 beginning on page 141. Within the military,

²Ibid.,4:385.

dissension over slave policies caused resignations, courts-martial, infighting, and occasional armed clashes in the Union Army. Adding to the turmoil, the president sometimes overruled and dismissed officers whose policies countered his vague or unstated national political objectives. Eventually, bowing to public sentiment and congressional pressure, the president adopted slave policies that originally had been proposed by the field commanders. Once Lincoln decided to emancipate slaves in secessionist states, other issues came to the forefront.

The escaped slaves themselves were an omnipresent and significant factor in the Union's efforts to wage war. By the spring of 1865, over one million blacks were within Union lines with over 230,000 supervised by government appointees.³ This large assemblage of humanity could not be overlooked. In his book, *Reconstructing the Union, Theory and Policy during the Civil War*, Herman Belz, states that "inextricably connected with reconstruction were other questions, among which freedom and status of the emancipated slaves were the most important."⁴ Eventually, President Lincoln realized that former slaves must be integrated into the reconstruction policy of the postwar society. President Lincoln's changes to slave policy reflected his new focus.

Military commanders were ordered by the War Department to employ former slaves wherever possible. The president eagerly sought information on military supervised or directed free-wage systems in Union occupied regions. The successful

³ Louis S. Gerteis, *From Contraband to Freedman* (Westport, CT: Greenwood Press, Inc., 1973), 193.

⁴ Herman Belz, *Reconstructing the Union: Theory and Policy during the Civil War* (Ithaca, NY: Cornell University Press, 1969), vii-viii.

military employment of freed blacks would be the basis for Reconstruction concepts. The president was using the military to test labor situations for the future freedmen. Having been cast in the role during the war, in the end, the military became the appointed overseer of the blacks' transition from slavery to citizenry in America's reconstruction years.

The commander-in-chief began the war by declaring the cause to be the defense of the constitution and the perpetual continuation of the union of states. President Lincoln and his cabinet thought that men would fight, if the war was about preserving the Union. Having distanced the cause of the war from slavery, the administration felt no pressure to create a national slave policy. The war started without any slave policy guidance promulgated to the military. The fugitive slaves themselves forced the issue by entering Union lines in such numbers that military commanders were required to deal with their increasing presence. The president then had to handle the political fallout that accompanied the disjointed military policy. The administration could not divorce the war from one of the underlying causes. Having decided not to issue unequivocal guidance to control military policies on slaves, the administration could only respond to slavery policies after they were implemented. Despite choosing not to mandate guidance on an important political and social issue of the war, the administration's goals, nonetheless, were impacted. Slavery now had to be eliminated for the conflict to end and for the Union to be preserved.

An examination of the military and the Lincoln administration's slave policy requires an understanding of slavery language used by Civil War era lawyers, journalists, and the average citizen. Many words can be used to describe African Americans. During

the period of the Civil War, the words “blacks,” “negroes,” and “members of African descent” were used in official correspondence, congressional acts, and newspaper reports. In keeping with the period, these words will be used in this paper when describing African Americans.

The concept of color became entwined with bondage in America’s colonial days. As the need for labor to harvest crops grew the laws concerning blacks and perpetual servitude were codified. “Slaves” were humans in bondage for life. A person born to a slave woman was also a slave. In 1860 there were 488,000 blacks that were “free” in the country and 4 million blacks in slavery. The “free blacks” had limited citizenship rights and suffrage. Most of the free blacks lived in the North and South Atlantic States. For many speakers and writers of the Civil War period, free blacks were an invisible group and the words “negro” and “black” were synonymous with “slave.”⁵ In private letters or confidential correspondence, the derogatory terms of “nigger” and “black sambo” were used. If used, these words will be employed only in direct quotation.

The American judicial concept of slavery developed so that black human beings kept in bondage were “property” or “chattel.” They were not persons under the law. The “owner” or “master” owned the slave and the slave’s labor. Although offensive to some, these words will be used when they most closely depict the original meaning of a policy,

⁵Detailed discussion of the legal history of race and bondage in the United States is found in Winthrop D. Jordan, *White Over Black, American Attitudes Towards the Negro, 1550-1812* (Williamsburg, VA: The University of North Carolina Press, 1968); A. Leon Higginbotham, Jr., *In the Matter of Color, Race & the American Legal Process, the Colonial Period* (New York: Oxford University Press, 1978); and John Hope Franklin and Alfred A. Moss, Jr., *From Slavery to Freedom* (New York: McGraw Hill, 1994.)

letter, or report. Some policies and congressional acts refer to “persons of labor” or “servants of labor,” when describing slaves. “Fugitives from service or labor” or “fugitive slaves” were runaways who were by law bound to servitude. When appropriate, “fugitive slave” or “runaway” will be used to describe a slave who has fled captivity.

During the war, General Benjamin F. Butler initiated the concept that fugitive slaves who entered Union lines could be legally seized by the military as “contraband of war.” Runaways kept by the Union were known as “contrabands.” “Contrabands” began to replace the word “negroes” from newspaper headlines in the *New York Times*. Within months of its creation “contrabands” became the accepted word for fugitive slave.

Manumission was the act of freeing a slave and issuing the former slave a certificate of freedom. Contrabands were freed under an act of Congress in July 1862. Lincoln emancipated all slaves in the states of rebellion in January 1863. After he proclaimed emancipation, the word “freedmen” began to appear in some articles and correspondence. However, “contrabands” would prove to be a popular word through the war and would stay in use until the war’s end. In discussing freed men and women, the words “freedmen,” “exslave,” and “former slaves” will be used. “Contrabands” will be used to describe slaves who have escaped and found refuge or employment in Union camps.

The complexity and the connotations of slavery language are an indication of the same complications surrounding slavery’s existence in America. The “peculiar institution” was wrapped up in the political, social, economic, and moral fabric of the country’s society. Slavery’s existence or demise was an issue that affected the livelihood and religious beliefs of most Americans. Military commanders created slave policy

that should have come from the administration. Their choices reverberated throughout the public and Congress. By not mandating slave policy from Washington, Lincoln's policy options were ultimately shaped by the decisions of his commanders.

CHAPTER TWO

SLAVES AS CONTRABAND OF WAR

The Lincoln administration was not going to let slavery become an issue. If slavery was portrayed as the cause of the war, the coalition of northern states could be pulled apart, and the Border States would be pushed into choosing sides. For the administration, Congress, and the loyal states it made sense to distance the war from slavery. With the focus on the preservation of the union, it never occurred to the administration or the military to establish a coordinated policy on how to deal with slaves. The lack of senior official guidance meant any action or inaction by any commander would have repercussions up to the national level.

When the first escaped slaves appeared in Union lines, Brigadier General Benjamin F. Butler, the on-scene commander, would make decisions as to their legal status and treatment. Butler's method of dealing with the former slaves would lay the groundwork for future commanders. The public would applaud Butler's actions, but the administration would be publicly silent on the issue. The silence ensured other field commanders made policy decisions in a vacuum. Subsequently, commanders who implemented aggressive military-based policies might find their decisions countermanded by the president.

Greater appearances of runaways combined with the Union's march into hostile territory resulted in more commands creating fugitive slave policies. Since the northern army consisted of pro and antislavery soldiers, fugitive slave policy rarely pleased everyone. If the superior commander's fugitive slave policy was not in accordance with

their conscience, subordinate officers and soldiers would outright defy it. The slaves themselves believed the war and the Union army were meant to free them. Although defined by the Supreme Court as “property,” slaves were human property with souls. They had hopes, beliefs, and dreams. Desiring freedom, they were eager to flee slavery and find refuge with the Union army. Slaves sped to Union lines and kept the issue of slavery in the forefront of military and national agendas.

Within days of being appointed commander of Fortress Monroe in Virginia, General Butler would find himself in the middle of the slavery conundrum. Without standing military or administrative guidance, Butler implemented a course of action that would define policy on fugitive slaves for most of the war. Although it was random chance that the fugitive slaves first appeared in Butler’s lines, he was right person to chart the course for future Union policy.

General Butler was a democrat. He was a volunteer, appointed to his rank by Republican President Lincoln. Like many appointed volunteer generals, his appointment had as more to do with the administration balancing political needs as with his military competence. Butler was also a lawyer.

The 31 May 1861 edition of the *New York Times* stated, “in the combined branches of commercial, criminal, and real property for jurisprudence, no man in Massachusetts is so generally employed, or so successful in results.”¹ He was also a man of supreme confidence. Several months after his decision on the fugitive slaves, he wrote

¹“Brig-Gen. B. F. Butler,” *New York Times*, 31 May 1861, 5.

President Lincoln, “My Dear Sir: Gen. Wool has resigned. Gen. Fremont must. Gen. Scott has retired. I have an ambition, and I trust a laudable one, to be Major General of the United States Army. Has any body done more to deserve it?”² Both his confidence and legal expertise would be needed to find a solution for the runaway slaves that appealed to the northern society and the administration.

On 23 May 1861, three fugitive slaves approached the pickets of Fort Monroe for refuge. The escapees were taken to General Butler for a personal interview. The field hands stated that Colonel C. K. Mallory, a member of the 115th Virginia militia, owned them. Suspecting they were going to be sent away to work on rebel fortifications, the slaves chose to serve with the Union army instead. General Butler had already received reports of the Confederacy employing slaves to build rebel fortifications. In addition, his quartermaster required labor. He decided to keep the slaves and send a receipt to Colonel Mallory for his property. In a letter to the Lieutenant General of the Army, Winfield Scott, Butler justified his actions as a sensible course. Discussing his decision in terms of military gain or loss, he wrote, “Shall they [the Confederacy] be allowed the use of this property against the United States, and we not be allowed its use in the aid of the United States?”³ The enemy quickly challenged Butler’s judgment.

²James Ames Marshall, ed., *Private and Official Correspondence of General Benjamin F. Butler* (Norwood, MA: Plimpton Press, 1917), 1:274.

³“Fortress Monroe, Saturday Evening,” *New York Times*, 27 May 1861, 1; and Marshall, *Correspondence of Butler*, 1:105-106. (Colonel Mallory’s full name was not given.)

Calling for a truce, Major John B. Carey, then in command of four volunteer Virginia rebel companies, requested a conference with General Butler on 24 May.

Twenty years later in a letter to General Butler, Major Carey recalled,

We discussed many questions of great interest (to me, at least), among them the return of *fugitive slaves* who had gone within your lines. I maintained the right of the master to reclaim them, as Virginia (so far as we then knew) was a State of the Union; but you positively refused to surrender them (or any other property that might come into your possession), claiming that they were "Contraband of War"; and that all such property would be turned over to your Quartermaster, who would report to the Government, to be dealt with as might be subsequently determined.⁴

The New York Times reported that Major Carey asked General Butler if he felt constitutionally obligated to return Mallory's slaves under the Fugitive Slave Act.⁵

The fugitive slave act of 1850 required the return of runaway slaves regardless of state boundaries and authorized punishment for individuals who assisted fugitive slaves. The law authorized the use of civil authorities to return slaves and specifically prohibited interfering with an owner, his agent, or attorney who were in the act of apprehending a fugitive slave.⁶ Major Carey expected that the Act was still enforceable. Butler, the lawyer, thought otherwise.

General Butler responded to Major Carey's question with "the act was not of force to a foreign country."⁷ He added that he would allow Colonel Mallory to collect his slaves if the Colonel would take an oath of allegiance to the government. One month

⁴Marshall, *Correspondence of Butler*, 1:103.

⁵"General Butler and the Contraband of War," *New York Times*, 2 June 1861, 1.

⁶*Fugitives from Service Act, Statutes at Large* 1845-1851, sec. I, 462-5 (1850).

⁷"General Butler and the Contraband of War," *New York Times*, 2 June 1861, 1.

after Lincoln called for troops to preserve the Union, the policy line on slavery, which the president hoped to avoid, was becoming reality.

General Butler's decision proved to be masterful. By claiming the slaves were contraband or confiscated property, Butler was not challenging the constitutional issue of slavery, but simply the labor resource slavery gave the Confederacy. Butler was upholding the right of slavery, but at the same time assisting the Union effort. By defining the seceded states as foreign countries, the Union was not obligated to enforce federal requirements to return fugitive slaves. His decision seemed to strike the middle ground on how to handle fugitive slaves. For President Lincoln, the action was potentially trouble. Was it really in the interests of the United States to claim the states in rebellion were foreign countries? What would that mean for future reconstruction? Should the administration ignore, endorse, or overrule Butler's actions? A cabinet meeting to discuss the fugitive slave policy was scheduled within a week of Butler's action.

"I suppose by this time you will hardly think my opinion necessary to convince you that you were right when you declared secession niggers contraband of war," wrote Postmaster General Montgomery Blair to Butler.⁸ Blair, an influential member of Lincoln's cabinet, was writing to appraise Butler of the scheduled 30 May cabinet meeting to discuss his policy. Blair continued that General Scott was "merry" over "Butler's fugitive slave law." The president was concerned that the policy would cause

⁸Marshall, *Correspondence of Butler*, 1:116.

more negroes to enter Union lines. The president's instincts were correct. By 1865 over one million blacks would be inside Union lines.⁹ At this point in the war, no one in the administration realized the extent to which the fugitive slaves would impact the military. Tables 1-4 (page 145-146) illustrate the large numbers of contrabands some of the military departments handled until 1865. If someone had foreseen the numbers of fugitive slaves about to come under Union control, Butler's policy might have been adopted for the entire army. The cabinet was more concerned with the policy's effect on the public.

As Blair noted, Butler's fugitive slave policy, was greeted with approval by the North. Edward Pierce, an abolitionist and influential friend of many higher ranking Republicans, wrote in the *Atlantic Monthly* that the same man who protested the Union freeing the slaves, had no objections to them being confiscated as contraband.¹⁰ The term "contraband of war" struck a balance between the northern abolitionist and the conservative. The administration decided to maintain that balance.

Butler's action was narrowly defined, justified, and approved. On 30 May 1861, Secretary of War Simon Cameron wrote Butler that his "action in respect to the negroes

⁹Marshall, *Correspondence of Butler*, 1:116; and Louis S. Gerteis, *From Contraband to Freedman* (Westport, CT.: Greenwood Press, Inc., 1973), 14, 193. Gerteis interprets the "He" in "He called it Butler's fugitive slave law," as President Lincoln. Referencing Blair's letter, Gerteis states the President saw the policy as a "serious matter." Gerteis uses the letter to support his view that the cabinet deliberately took no action on Butler's policy. However, on 30 May 1861, the Secretary of War approved Butler's action.

¹⁰Peyton McCrary, *Abraham Lincoln and Reconstruction, the Louisiana Experiment* (Princeton, NJ: Princeton University Press, 1978), 71.

who came within your lines from the service of the rebels is approved.”¹¹ The letter explained that although the Government could not “recognize the rejection by any State of its Federal obligations,” the government’s own obligation to suppress a rebellion was a greater responsibility. The administration was saying that they were not dismissing the fugitive slave law, just setting it aside until the rebellion was suppressed. The letter went on to provide advice for future steps. Cameron wrote, “You will permit no interference, by the persons under your command, with the relation of persons held to service under the laws of any State within which your Military operations are conducted ... refrain from surrendering to alleged masters any persons who may come into your lines.”¹² Butler was being told, do not interfere with slavery, but do not give up any fugitive slaves from rebel masters who come into your lines. The administration sanctioned the keeping of escaped slaves but wanted to prevent Union soldiers from encouraging them to flee. Slaves, however, would not need the soldier’s encouragement to run away. The soldier’s presence would be enough encouragement to cause chattel slaves to risk running for their freedom.

As Lincoln feared, the new policy caused more slaves to flee from their erstwhile owners into Union lines. No one in the administration seemed to realize how many slaves would seek sanctuary with the Union Army. As the Army marched into former

¹¹Marshall, *Correspondence of Butler*, 1:119.

¹²*Ibid.*

slave states, the slaves came into their lines.¹³ First they appeared in small numbers and, later, they came by the hundreds. The fact that escaped slaves were not returned to their homes was sufficient incentive for other slaves to run away.

One of the first fugitive slaves at Fort Monroe was asked how many more slaves would show up. His reply was, "a good many more, and if we's not sent back, you see dem 'fore tomorrow night." When asked why, he said, "Dey understan' if we's not sent back, dat we are among our friends."¹⁴ Ten days later, 150 fugitive slaves were reported as having escaped to Fort Monroe. When one contraband was asked why he came to the fort, he said, "'Cause I knowed you was friend o' the cu'lud folks."¹⁵ The contrabands also managed to communicate their successful escapes back to slaves in captivity.

Captain Charles B. Wilder, Superintendent of Contrabands at Fort Monroe in 1863, testified to the American Freedman's Inquiry Commission that the communication between the refugees and slaves left behind went back 200 miles. The Superintendent of Contrabands at Hilton Head told the Commission that since slaves were treated well by

¹³Barbara J. Fields, *Slavery and Freedom on the Middleground*, (New Haven, CT.: Yale University Press, 1985), 100-101; Victor B. Howard, *Black Liberation in Kentucky, Emancipation and Freedom, 1862-1884* (Lexington, KY: The University Press of Kentucky, 1983), 12; James Welch Patton, *Unionism and Reconstruction in Tennessee 1860-1869* (Chapel Hill, NC: The University of North Carolina Press, 1934), 144; and C. Peter Ripley, *Slaves and Freedmen in Civil War Louisiana* (Baton Rouge: Louisiana State University Press, 1976), 16.

¹⁴"Negroes at Fort Monroe," *New York Times*, 7 June 1861, 1.

¹⁵"A scene at Fort Monroe," *New York Times*, 16 June 1861, 3.

the Union army, they would return to the plantations to get their families, and their stories would spread.¹⁶ The slaves thought they were running to freedom. They were not.

Prior to the war, overhearing their master's conversations, the slaves had believed that Lincoln's election meant their freedom.¹⁷ Lincoln was their friend and because they were not returned to their masters, the slaves believed the Union army was also their "friend." The Union army and freedom had become synonymous to the slaves. However, not being returned to a slave-owner, was not the same as being freed. Once the fugitives were defined as contraband, they were still property. If they were not free, what was their status? Who owned them? Who was responsible for the contrabands? As the refugee slaves flooded the Union lines, the military was forced to ask and answer those questions.

Within two months of creating the "contraband of war" policy, General Butler found himself in control of approximately 900 former slaves, 600 of which were women and children, in Virginia's Hampton Roads area. The increase in numbers plus the added complication of women and children forced him to delve deeper into the issue of contrabands and their relationship to the military. He also raised another significant issue. Brigadier General Irvin McDowell had given orders "forbidding all fugitive slaves

¹⁶Ira Berlin et al., eds., *Freedom: A Documentary History of Emancipation 1861-1867*, vol. 1, *The Destruction of Slavery* (New York: Cambridge University Press, 1985), 89, and Ira Berlin, et al., eds., *Freedom: A Documentary History of Emancipation 1861-1867*, vol. 3, *The Wartime Genesis of Free Labor: The Lower South* (New York: Cambridge University Press, 1990), 113.

¹⁷Howard, *Black Liberation in Kentucky*, 4.

from coming within his lines.”¹⁸ General McDowell commanded the Department of Northwestern Virginia, while Butler controlled the Virginia Hampton Roads area. Butler wanted to know if McDowell’s policy was applicable to all departments.

On 30 July 1861, he wrote to the Secretary of War for guidance on the contrabands:

What shall be done with them? and, *Second*. What is their state and condition? Upon these questions I desire the instructions of the department ... Are these men, women, and children slaves? Are they free? Is their condition that of men, women, children or property, or is it a mixed relation? What their status is under the constitution and laws, we all know. What has been the effect of a rebellion and a state of war upon that status? When I adopted the theory of treating the able-bodied negro fit to work in the trenches as property liable to be used in the aid of the rebellion, and so contraband of war, that condition of things was so far met, as I then and still believe, on a legal and constitutional basis.... women, the children, certainly, cannot be treated on that basis; if property, they must be considered an incumbrance rather than the auxiliary of an army, and ... in no possible legal relation could be treated as contraband.¹⁹

The expert on property law, Butler continued his thoughts down a legal path. He considered the women and children abandoned property. If that was in fact the case, then the rights to the property belonged to the salvager. The next question became, what if the salvager, in this case the military, did not need the property? By relinquishing their right to the abandoned property the military was forfeiting any “proprietary [*sic*] relationship.” Once the slaves were no longer owned, they became men, women, and children. “If not born free, yet free, manumitted, set forth from the hand that held them, never to be reclaimed.”²⁰ He further questioned the military’s ability to determine whether the slave

¹⁸Marshall, *Correspondence of Butler*, 1:186-7.

¹⁹*Ibid.*

²⁰*Ibid.*, 1:187.

had run away from or been abandoned by a master. The military had no means to distinguish who was born free from those born into slavery.²¹ His thoughts were remarkably prescient, for by December 1861; the Union army would find themselves in control of thousands of slaves in South Carolina who had been abandoned by fleeing masters. A direct response to his questions might have given Brigadier General Thomas West Sherman and his Expeditionary Corps firmer guidelines to work under when they reached South Carolina. Instead, while Secretary of War Cameron was contemplating a response, Congress passed the First Confiscation Act on 6 August.

The First Confiscation Act supported Butler's fugitive slave policy by revoking rebel masters' claims to their slaves. Anyone, who used their slaves in any form of employment against the United States Government, forfeited their claim to the slave's labor.²² Secretary of War Cameron would answer Butler, using the act as his guidance. He would highlight political objectives, but leave unanswered the harder questions of Butler's letter and the war.

Two days after the First Confiscation Act passed, Secretary of War Cameron responded to General Butler's letter. He emphasized that the president wanted to ensure all existing States' rights were observed. He explained, "The war now prosecuted on the part of the Federal Government is a war for the Union, and the preservation of all constitutional rights of States."²³ Repeating the theme of the 30 May letter, he stated that

²¹Ibid., 187-8.

²²*Fugitives from Service Act, Statutes at Large 1859-1863, sec. I, 317 (1861).*

²³Marshall, *Correspondence of Butler*, 1:201-2.

there were times when the rights of States had to be “subordinated to the military exigencies created by the insurrection.”²⁴ Citing the First Confiscation Act, he said the military could not recognize the claims of rebel masters. He then proceeded to discuss the status of slaves belonging to masters loyal to the government. Here he gave Butler some leeway by stating, “It seems quite clear that the substantial rights of loyal masters will best be protected by receiving such fugitives, as well as fugitives from disloyal masters, into the service of the United States, and employing them.”²⁵ Cameron then stated that a record of the slaves employed, their circumstances, and whether the master was loyal or disloyal should be kept. The records were to document the slaves’ work for later accountability when peace was restored.

The Secretary of War believed that Congress would eventually compensate loyal masters after the war for their slaves’ services. Ever mindful of the Border States, Secretary Cameron closed with a warning that Union soldiers would not interfere with the “servants” of peaceful citizens, nor encourage them to leave their masters.²⁶ Butler now had some answers. As long as military necessity was the reason, fugitive slaves from both loyal and rebel masters could be employed by the military.

On the other hand, the actual status of the contrabands was left unresolved. They were under the control of the military, but they were not free. Secretary Cameron also did not respond to Butler’s question on the implementation of a policy that forbade

²⁴Ibid.

²⁵Ibid.

²⁶Ibid., 1:202-3.

fugitives from entering Union lines. Theoretically a commander could avoid interfering with servants of peaceful citizens by stopping the slaves before they came into camp. Secretary Cameron also sidestepped the issue of women and children. In the end, regardless of the intent behind the First Confiscation Act, the Secretary's guidance was vague enough that each commander was left to develop his own policy. In a 15 August letter to Edward Pierce, Butler stated, "The reply of the Secretary of War seems to me evasive, unsatisfactory, and inconclusive.... This matter is not to be hid under a bushel, it must be met, and woe to the country if we try to shirk it."²⁷ General Butler was right. The matter was about to come dramatically to light in a different department of the war.

On 31 August 1861, General John C. Fremont, Major General Commanding of the Western Department, declared all the slaves of rebel masters in Missouri free. His emancipation of slaves was just one of several steps in establishing martial law in his department. By 2 September the *New York Times* carried reports that his announcement had the general approval of the public.²⁸ It did not, however, have the approval of the president. What made military sense to General Fremont was political anathema to the president. Concerned about the support of the Border States, Lincoln was unprepared to free slaves, even those of rebel supporters. The struggle between the General and the commander-in-chief's desires would contribute to Fremont's removal and bring the military no closer to a coordinated policy on slaves.

²⁷Ibid., 1:216.

²⁸"Proclamation of General Fremont," *New York Times*, 1 September 1861, 1; and "Special Dispatch From Washington," *New York Times*, 2 September 1861, 1.

General Fremont's proclamation was intended to suppress rebel guerilla activity in Missouri. By confiscating the property of rebels and freeing their slaves, he hoped to eliminate their resources.²⁹ General Fremont was also antislavery and had no motivation to maintain the institution. In *Grant Moves South*, Bruce Catton describes Fremont as the man who "carried the banner for the Republican party when the fight against slavery ... was a high and holy thing," and that Fremont believed "abolitionist principles were the stamp of a true Union man."³⁰ Lincoln was nonplussed. A former political rival and popular general was taking the war in a direction he wished to avoid.

In a private and confidential letter dated 2 September, he requested that Fremont come closer to the intention of the First Confiscation Act. Concerned about the unity of the Border States, Lincoln wrote, "I think there is great danger ... in relation to the confiscation of property, and the liberating slaves of traitorous [*sic*] owners, will alarm our Southern Union friends, and turn them against us--perhaps ruin our rather fair prospect for Kentucky."³¹ Fremont refused to modify his order. Feeling that his authority was being undermined, in an 8 September letter, he requested Lincoln openly order the revision. Lincoln complied. The front page of the 15 September 1861 edition of the *New York Times* carried Lincoln's modification of the proclamation. Lincoln

²⁹Benjamin Quarles, *The Negro in the Civil War* (Boston: Little, Brown, and Company, 1953; reprint, Boston: Da Capo Press, 1989), 67 (page citations are to the reprint edition).

³⁰Bruce Catton, *Grant Moves South* (Boston: Little, Brown, and Company, 1960), 33.

³¹Roy P. Basler, ed., *The Collected Works of Abraham Lincoln* (New Brunswick, NJ: Rutgers University Press, 1953), 4:506.

ordered that the clause liberating slaves conform to the provisions of the First Confiscation Act.³² The deed was done. The fallout was just starting. Fremont's proclamation started a fissure in the policies on how to deal with slaves. Although focused on keeping the Border States within the Union, Lincoln was apparently unable to communicate clearly a centralized policy to his cabinet or to his commanders. Within four months of the proclamation, General Fremont and the Secretary of War would be casualties to the president's silence on the subject.

Fremont's removal as commander of the Western Department began the day after he refused to modify his order. On 9 September, Lincoln wrote to General David Hunter, asking him to provide assistance to General Fremont. Lincoln told Hunter, "Gen. Fremont needs assistance which is difficult to give him. He is losing the confidence of the men near him, whose support any man in his position must have to be successful. His cardinal mistake is that he isolates himself, & allows nobody to see him; he does not know what is going on in the very matter he is dealing with."³³ The instigator behind this unusual request was Frank Blair, the brother of Postmaster Montgomery Blair. An officer on Fremont's staff and a member of a powerful Republican Party family, Frank Blair was exceedingly displeased with Fremont and thought he should be relieved. Frank Blair wrote to his brother Montgomery in early September about his perceptions of

³²Allan Nevins, *Fremont: Pathmarker of the West*, vol. 2, *Fremont in the Civil War* (New York: Frederick Ungar Publishing Company, 1939; reprint, New York: American Classics Series, 1961), 506 (page citations are from reprint edition); "Letter From the President to Gen. Fremont," *New York Times*, 15 September 1861, 1; and Basler, *Collected Works of Lincoln*, 4:506-507.

³³Basler, *Collected Works of Lincoln*, 4:513.

Fremont. Later, Fremont's arresting Frank Blair for insubordination not just once, but twice, complicated the situation.³⁴ In early October, Lincoln would write to Brigadier General Samuel Curtis, asking him, "Ought Gen. Fremont to be relieved from or retained in his present command?"³⁵ Lincoln also sent the Army Quartermaster, Brigadier General Montgomery Meigs and possibly the less than objective Postmaster Blair to inspect conditions in Missouri.³⁶ Strangely enough, it never seemed to have dawned on the president that his writing to other Generals, questioning Fremont's capability, and sending an investigation team may have subverted Fremont's authority.

Fremont's proclamation was a factor in his relief in early November. However, the tangled political and familial relationships in the department were also key to his removal. The collaborators behind Fremont's removal, Generals Hunter and Curtis, would each command the Western Department. Hunter would reign for less than a week after Fremont's departure. In March 1862, Curtis would march through Arkansas and free several slaves along the way. His action would bring no censure from the administration. He would assume the command of the Department of the Missouri, Fremont's old Western Department in late 1862. Ironically, before the end of the civil war, both Generals would have disputes over slave policy with the administration. The disputes would be contributing factors to their removal from command.

³⁴Basler, *Collected Works of Lincoln*, 4:513; and Nevins, *Fremont: Pathmarker of the West*, 509-513, and 520-531.

³⁵Basler, *Collected Works of Lincoln*, 4:549.

³⁶*Ibid.*, 4:513.

The president's thoughts on fugitive slaves were not clear to the commanders or his staff. Although General Butler's policy had been approved and General Fremont had been overruled after freeing slaves, no universal policy existed. On 5 November 1861, Brigadier General Alexander McDowell McCook wrote General William T. Sherman saying that he was in Kentucky. The contraband subject was of "vital importance" to the local citizens. Fugitive slaves were entering his camps, and he was expecting a "general stampede" of negroes. He suggested that he send for their masters and deliver them on the other side of Green River. Although the First Confiscation Act was in effect, Sherman told McCook not to let the slaves take refuge in camp. Ignoring the previous guidance of the Secretary of War, Sherman said he had "no instructions from the government," and as far as he was concerned the laws of Kentucky were "in full force."³⁷ While Sherman was unwilling to act without specific instructions, another commander was taking action.

On the day after Lincoln publicly overruled Fremont, the *New York Times* printed an article that stated Major General George B. McClellan was holding fugitive slaves in camps and jails, while waiting for their masters to claim them.³⁸ McClellan was responsible for the Department of the Potomac. The *Times* stated, "This is in contradiction of the spirit of the letter addressed by the Secretary of War to Gen. Butler,

³⁷Ibid., 519-520.

³⁸"Special Dispatch from Washington," *New York Times*, 13 September 1861, 1.

for it constitutes our troops but an army of negro catchers.”³⁹ Instead of the prompt action as seen in Fremont’s case, McClellan’s action went unchecked by the administration until December.

On 6 December, Secretary of State William Seward wrote on behalf of the president requesting McClellan to comply with the First Confiscation Act. Specifically, McClellan was told slaves escaping from rebel employment were to be protected by the military.⁴⁰ During the same month McClellan was ordered to comply with the act, Secretary of War Cameron’s downfall began.

Secretary Cameron was a victim to the lack of national guidance from the president. Despite being the drafter of the Department of War’s fugitive slave policy, Cameron himself was caught off guard when Lincoln revoked Fremont’s order. Ready to telegraph Fremont congratulations, Cameron was stunned by Lincoln’s response.⁴¹ The president would surprise him again.

Despite Fremont’s removal, by the fall of 1861, Cameron assumed the administration was ready for more radical steps in employing former slaves. Cameron may have taken as an indicator the fact that on 16 December 1861, Lincoln ordered Cameron to appoint Senator James Lane of Kansas a Brigadier General of Volunteers.⁴² As a Kansas militia officer who had been actively involved in a bloody cross-border fight

³⁹Ibid.

⁴⁰Berlin, *Destruction of Slavery*, 175.

⁴¹Dudley Taylor Cornish, *The Sable Arm* (Lawrence, KS: University Press of Kansas, 1956; University Press of Kansas, 1987), 13.

⁴²Basler, *Collected Works of Lincoln*, 5:71.

with Missourians, by October 1861, Lane had employed contrabands in his brigade as teamsters and servants.⁴³ The *Times* stated, "It is true that where the Kansas men march slavery disappears, as Gen. Lane in the United States Senate declared it would."⁴⁴

Three months before Cameron was dismissed it was public news that Colonel Charles R. Jennison, former commander of "Jennison's Jayhawkers," planned to place Negroes into the Kansas Home Guard. Cameron came to the conclusion that the administration would be willing to arm black troops. He wrote up his annual report as Secretary of War advocating that the slaves of rebels be armed or freed. Unfortunately, he did not consult with the president prior to publishing his report. Lincoln was furious. He had Cameron expunge the offending paragraphs.⁴⁵ Lincoln then announced on 14 January 1862 that Secretary Cameron was the new ambassador to Russia.⁴⁶

In the same month Cameron was fired, General Lane announced at a public reception in Chicago that "old Abe" had authorized him to collect 34,000 contraband for support of his army. Lane stated, "The government now proposes that these loyal slaves shall feed and clothe our army and fight upon our side."⁴⁷ While Secretary Cameron lost

⁴³"Affairs in Kansas," *New York Times*, 11 November 1861, 3.

⁴⁴*Ibid.*

⁴⁵Dudley Taylor Cornish, "Negro Regiments in the Civil War," *Kansas Historical Quarterly*, vol. 20, February 1953, 418; and Cornish, *The Sable Arm*, 22-23 (Cornish argues in *The Sable Arm* that Cameron's decision was obviously well beyond any previous proposals by the administration to date, and Cameron "overplayed his hand.")

⁴⁶"The Retirement of Secretary Cameron from the War Department," *The New York Times*, 14 January 1862, 1.

⁴⁷"Gen. Lane on His Way Westward," *The New York Times*, 29 January 1862, 3.

his job in the conflicting world of fugitive slave policy, Fremont's relief in the Western Department took the conservative approach and discovered his policy also created difficulties.

Whether in response to General Fremont's sacking or a true military desire to control his environment, General Henry W. Halleck, the latest commander of the Department of Missouri (formerly the Western department), went the route of General Irvin McDowell and prohibited fugitive slaves in his lines. General Order No. 3 was published 20 November 1861. It read,

It has been represented that important information respecting the numbers and conditions of our forces is conveyed to the enemy by means of fugitive slaves who are admitted within our lines. In order to remedy this evil, it is directed that no such persons be hereafter permitted to enter the lines of our camp, ... and that any now within such lines be immediately excluded.... The General commanding wishes to impress upon all ... the importance of preventing unauthorized persons of description from entering and leaving our lines.⁴⁸

What seemed a straightforward order, was about to run into obstacles. When writing General Order No. 3, Halleck considered only the enemy, not his men. He would find ever-increasing resistance and criticism of the policy within his ranks. Before the end of his tour in the department, Halleck and his commanders would be forced to redefine what the policy meant.

There are various ways to get around orders without direct insubordination. Extreme techniques, such as, following the orders explicitly to the letter, or simply not enforcing the order, would all be tried by the men serving under General Halleck. General Order No. 3 was in conflict with the beliefs of the men on the ground, and they

⁴⁸Ira Berlin et al., eds., *Free at Last, A Documentary History of Slavery, Freedom, and the Civil War* (New York: The New Press, 1992), 17-18.

meant to follow their consciences. The first indication of difficulties was that within two weeks of the order, Halleck had to issue General Order No. 23, directing commanders of all regiments and batteries to comply with General Order No. 3.⁴⁹

On 18 December, Circular Number 2, issued by Halleck's staff, was the second hint of difficulties. After redirecting full compliance with the previous orders on the exclusion of fugitive slaves, commanders were to report their compliance in writing. The Commander of the Fremont Hussars Major George E. Waring replied to the order on 19 December. He stated that all the Negroes in his camp had been examined, and "it was reported to me that they all stoutly asserted that they were free."⁵⁰ Since Halleck's orders covered fugitive slaves, and the commander only had free negroes in camp, he was in compliance with the directive. Major Waring also said that he was following orders, because General Order No. 3 discussed exclusion of "unauthorized persons," and because his free Negroes were authorized because the army employed them.⁵¹ Adding that he met the intention of the order, he stated "I trust I may be excused for awaiting more explicit instructions before doing an extra-official act--at which my private feelings revolt."⁵²

Some officers simply chose not to comply with General Order No. 3. A month after the order was issued, Brigadier General Ulysses S. Grant, a commander under General Halleck, had to correct Colonel Cook, Commanding Officer of Fort Holt.

⁴⁹Berlin, *The Destruction of Slavery*, 421.

⁵⁰*Ibid.*, 420-1.

⁵¹*Ibid.*, 422.

⁵²*Ibid.*

Hearing reports that Cook had fugitive slaves in his camp, on Christmas day, Grant wrote, "I do not want the Army used as negro cat[c]hers, but still less do I want to see it used as a cloak to cover their escape. No matter what our private views may be on the subject there are in this Department positive orders on the subject, and these orders must be obeyed."⁵³ The longer General Order No. 3 was in effect, the more it required endorsements and clarification. General Halleck was finding that defining slave policy was not a simple task.

General Order No. 3 also was used as a reason to return freedom-seeking slaves to their masters. General Halleck discovered that acting Major General Alexander Asboth, Commander of the 4th Division, had directed an officer to return a fugitive slave to his master. Returning fugitive slaves violated the First Confiscation Act passed by Congress. Halleck wrote to General Asboth on 26 December, saying his actions were "contrary to the intent of General Orders No. 3."⁵⁴ The orders purpose was not to make soldiers "negro catchers," or "negro stealers." In the future, masters would have to go through the courts or local civil authorities to lawfully recapture their slaves.

Halleck now seemed to agree with Major Waring's logic. He added a Waring type of statement: "Orders No. 3 do not apply to the authorized private servants of officers, or to negroes employed by proper authority in camps; it applies only to 'fugitive slaves.'" General Halleck also allowed that, in the name of humanity, clothing and food

⁵³John Y. Simon, ed., *The Papers of Ulysses S. Grant* (Carbondale, IL: Southern Illinois University Press, 1967), 3:342-3. (Colonel Cook's full name was not given.)

⁵⁴Berlin, *Destruction of Slavery*, 423.

could be given to fugitive slaves outside the lines to prevent suffering.⁵⁵ As Halleck was reinterpreting his own orders so were other officers. There was a humanitarian element not discussed in the order that some officers could not ignore. When faced with a difficult situation they would do what they thought was best. In addition, the war had gone on longer than anyone originally estimated. Officers and soldiers were beginning to see the connection between slavery and labor for the confederacy. As that understanding grew, the support for General Order No. 3 fell.

In the New Year of 1862, apparently sensitive to the labor contribution of the slaves, General Grant wrote to Colonel Leonard F. Ross, directing that slaves of masters supporting the rebellion not be restored to those masters by military authority. In a sharply worded explanation, Grant stated, "The General Commanding does not feel it his duty to feed the foe, or in any manner contribute to his comfort."⁵⁶ By February 1862, being aware of the slaves being used to build rebel fortifications, Grant enforced General Order No. 3, but allowed that captured slaves instead of being returned to their masters could be used by the quartermaster department. Keeping the slaves as labor seemed to be Grant's new mode of operation. On 17 March, he wrote General W. T. Sherman, demanding the investigation of the 7th Illinois Volunteers, who reportedly had slaves in camp. Grant had previously given directions to the same unit to comply with General Order No. 3. He told Sherman to arrest the commanding officer if slaves were found in

⁵⁵Ibid.

⁵⁶Simon, *Papers of Grant*, 3:374.

his camp. However, he also stated that the slaves, if found, should be turned over to the quartermaster to be used as teamsters until their status was decided.⁵⁷

From the humanitarian aspect, in March 1862, Brigadier General John Schofield decided to keep in camp fugitive slaves who had been used as guides for his unit. He realized that by expelling them from his lines, they could be “subject to severe punishment, even death.”⁵⁸ He directed that the guides stay under the protection of his troops, assuming his headquarters would approve the action.⁵⁹ General Order No. 3 was not easy to enforce or endorse as a slave policy. By the time Halleck was promoted to General of the Army, the order was overtaken by action from Congress. Removing the slave as a source of labor was becoming an objective for military commanders and the public. For Thomas W. Sherman and his Expeditionary Corps the slave issues were different. Fighting through hostile territory, Sherman was apt to see the fugitive slaves only as a plus or minus, depending on the military situation. Slave policy in his command would foreshadow the administration’s reconstruction goals.

Sherman received guidance from the Department of War on fugitive slave policy in mid-October 1861. Enclosing the letters sent to General Butler on fugitive slave policy, the Assistant Secretary of War Thomas A. Scott directed Sherman to use his own discretion as the Commander of the Expedition. Then Sherman was licensed to do what no one else would receive permission to do, until a year later. He was authorized to avail

⁵⁷Simon, *Papers of Grant*, 4:290, and 4:382-3.

⁵⁸Berlin, *The Destruction of Slavery*, 429.

⁵⁹*Ibid.*

himself of the services of any person, “where fugitives from labor or not,” and employ them in any other capacity he saw as beneficial to the corps.⁶⁰ If needed, Sherman could organize black troops. However, Sherman’s actions towards fugitive slaves would barely comply and sometimes counter directives.

General T. W. Sherman and his Expeditionary Corps had an easy entrance into Port Royal, South Carolina. After being bombarded by the Union Navy, the white inhabitants fled, leaving behind material property and thousands of slaves. As General Butler had predicted, here were slaves who were truly abandoned property. These slaves had not entered Union lines. They had been left behind by their masters. Where did they fit into the First Confiscation Act? Sherman used his discretion as authorized by the Department of War.

On 3 December 1861, he appointed an agent to inventory and store cotton. The agent was given the authority to employ negroes in picking and packing the cotton. The slaves would be paid by his Quartermaster. Within two weeks of this order, Sherman was expressing his displeasure over the local labor. Writing to the Adjutant General of the Army Lorenzo Thomas, he called the slaves, “naturally slothful and indolent.” Overwhelmed by their numbers, he said, “It is really for the Government to decide what is to be done with the contrabands.”⁶¹ The government was going to decide by handing the military the issue.

⁶⁰Ibid., 114.

⁶¹Willie Lee Rose, *Rehearsal for Reconstruction: The Port Royal Experiment* (Kansas City: The Bob-Merril Company, Inc., 1960) 12-17; and Berlin, *The Wartime Genesis of Free Labor: the Lower South*, 117,119.

The Union Army was unprepared to provide care to thousands of slaves. Sherman was not equipped to handle the supervision and management of several plantations. By February 1862, he was requesting “the benevolent and philanthropic of the land” to provide clothing for the slaves. He decided to divide the occupied territory into districts and to manage the planting and harvesting of cotton under appointed agents. In the end, the Port Royal slave policy became that of the military as plantation owner. Edward Pierce was appointed by the government as superintendent to oversee the cultivation of the lands. Working with the military, he developed a plan to ease the slaves into citizenship and manage the plantations at the same time.⁶² As the war progressed, the slaves would find they were less citizens than field hands. In another department, slaves were not waiting long for their freedom.

In February of 1862, while General Sherman was reestablishing plantations in South Carolina, Major General Samuel R. Curtis, Commander of the army of the Southwest was advancing into Arkansas. As his army marched, he encountered obstacles built by slaves. Citing the First Confiscation Act as guidance, he decided to issue to slaves whom he encountered “certificates of freedom.”⁶³ In actuality, it would be five more months before Congress would declare slaves of rebel masters legally free. General Curtis, however, unlike General Fremont, was not directed by the administration to

⁶²Rose, *Rehearsal for Reconstruction*, 20, 22-31; and Berlin, *The Wartime Genesis of Free Labor: the Lower South*, 154.

⁶³Berlin, *Destruction of Slavery*, 25.

rescind his action. By March of 1862, Congress took the lead in the fugitive slave policy by passing an article of war that forbade members of the Army and Navy to return fugitive slaves to rebel owners. Here was some clarification to policies that had been unenforceable or vague. The act was too little in the arena of slave policy, and as the war progressed Congress surpassed the more radical military proposals of 1861.

By March of 1862, slave policy for the Union Army had taken basically two routes: (1) claim fugitive slaves as contraband, or (2) prohibit them from entering Union lines. Claiming slaves as “Contraband of War” had public approval, but left the slave in an undetermined status. Prohibiting slaves from entering Union lines did not receive full support from the officers and units who were to enforce the policy. Regardless of Union policy, the slaves themselves entered Union lines whenever the Army appeared, forcing action by the on-scene commanders. Two Generals had emancipated slaves. One was removed from command, and the other was ignored. The administration’s lack of clearly expressed intention led more commanders to develop their own policies as the Union army advanced and occupied Southern territory. The issue would remain as complex and confusing as it was at the start of the war.

Even General Butler, who had created the contraband of war policy and understood the complexity of the issues, would underestimate its divisiveness. In July 1861, he wrote to Postmaster Blair, soliciting his support in achieving a promotion to General for Colonel Phelps of Vermont. Butler knew that Phelps carried a deep religious

conviction about slavery. Downplaying the fact that Phelps was an abolitionist, and differed in politics from Butler, Butler recommended him “for the good of the cause.”⁶⁴ Within a year the man he helped promote would resign because he had a direct dispute with Butler over military slave policy.

⁶⁴Marshall, *Correspondence of Butler*, 1:177.

CHAPTER THREE

THE COMMANDERS TAKE CHARGE

The military commanders took charge. Lacking firm guidance from the administration, and with the dawning reality that fugitive slaves were the responsibility of the army, Generals became more aggressive in establishing policy. Military leaders would determine the most appropriate policy for their commands. In describing the period that reached to July 1862, General William T. Sherman in his *Memoirs* said, "Up to that date neither the Congress nor the president had made any clear, well-defined rules touching the negro slaves, and the different generals had issued orders according to their political sentiments."¹ Some generals would continue to exclude fugitives from camp, but most would employ them as labor. The first attempt to arm the contrabands would occur. As the contrabands integrated into army life, their contributions to the army were recognized and internal conflicts over the contrabands as a resource started.

Military commanders found themselves in conflict with both their subordinates' leadership and President Lincoln's administration. Officers and their men would not follow policy they did not agree with. Lincoln would summarily overturn policies he thought infringed upon the president's executive authority. By the summer of 1862, Congress saw the impact the fugitive slaves were making in the war effort. While serving as teamsters, cooks and mechanics, the contrabands reduced fatigue duty

¹William Tecumseh Sherman, *Memoirs of General W. T. Sherman* (New York: Library Classics, 1990), 285.

requirements of the white soldiers, allowing them to be employed for fighting. In July, both houses of Congress supported military commanders by passing legislation, codifying the more radical military contraband policies in the Second Confiscation Act and Militia Act. Days after the Second Confiscation Act was passed, Lincoln approached his cabinet on the subject of the Emancipation Proclamation. Having decided to let military commanders choose fugitive slave policy, the administration eventually was forced to follow the path set by the commanders.

The administration deliberately avoided providing policy about fugitive slaves to commanders. According to John Nicolay and John Hay, Lincoln's secretaries throughout the war, the president's "true policy lay in making the question in every case a matter of local determination, to be governed by military necessity, and to be devolved upon by the responsibility of the local commander."² This meant that commanders were forced to decide upon every aspect of dealing with the contrabands. The commanders decided if the contrabands were free or impressed as workers of the government. They made policy concerning the contrabands employment, shelter, and pay. Commanders discovered that even the seemingly simple decisions could later mire the command in related issues. Nor did the lack of guidance free the government from dealing with the slavery issue. Nicolay and Hay concluded, "Still in one form or another, the negro problem was continually forcing itself upon the attention of the Government."³ With the commanders

²John G. Nicolay and John Hay, *Abraham Lincoln: A History* (New York: The Century Co., 1890), 4:391-2.

³*Ibid.*, 4:392.

handling the contrabands, the government would be forced to handle the issues brought about by their commander's decisions.

Brigadier General John Wool, who relieved Butler as Commanding Officer of Fort Monroe, was the first military commander to establish a pay scale for the contrabands. In September 1861, Wool wrote to Secretary of War Cameron requesting guidance on the influx of slaves. He asked whether it was his responsibility to feed and shelter the women and children. General Wool felt humanity demanded that women and children receive care. In November 1861, apparently lacking an answer and the proper resources to support the infirmed and the children, Wool decided to pay the able-bodied men, but withhold most of their wages to create a welfare fund. Men were authorized \$18 a month plus rations. Boys twelve to eighteen and sickly men were paid \$5 a month plus rations. The Quartermaster furnished clothing. However, the men only received \$2 a month in cash, and all others received \$1 month in cash. The remainder was used to pay for the clothing and provide subsistence to women, children, and those unable to work.⁴ This apparently straightforward arrangement had a weakness. The subsistence holding fund would prove to be trouble.

In 1862, the contrabands charged the Fort Monroe Quartermaster with fraud and withholding pay. Congressional inquiries forced General Wool to investigate his own department. Finding the situation at Fort Monroe "wholly objectionable," the commission felt Wool's system had been overcome by events and was no longer

⁴*The War of the Rebellion: A Compilation of Official Records of the Union and Confederate Armies*, vol. 4 (Washington DC, 1880), 614; and Berlin, *Free at Last*, 168-9.

necessary.”⁵ Wool’s orders had not kept pace with the changing congressional legislation of 1862. Women and children could not be compelled to work under the guise of military necessity. Without established military necessity, women and children were being kept in “quasi-slavery.”⁶ Here was the crux of Butler’s questions that had surfaced to the administration almost a year earlier. If women and children were not contraband of war, because they did not contribute to the confederate effort, what was their status? The administration’s unwillingness to answer the harder questions had come back to haunt the Commander of Fort Monroe. General Wool’s payment of contrabands raised other questions.

If fugitive slaves were truly “contraband of war,” why pay them at all? They were, after all, the property of the U.S. Army. They should no more expect pay from the U.S. Government than they did from their previous owners. The answer lay in future reconstruction of the country and the contraband’s place in society. If they were not going to burden society, contrabands had to be self-supporting. In order to become productive citizens, contrabands had to become wage earners. As the war progressed this thought would grab hold of several commanders and lead to the establishment of wage-paying cotton plantations manned by contraband families. Until the government fixed uniform wage scales, contrabands would be paid widely varying salaries in the different departments.

⁵Berlin, *The Wartime Genesis of Free Labor: The Upper South*, 115.

⁶Ibid.

In January 1862, two months after Wool set his wages, the Department of the Potomac Quartermaster advertised for Negroes for up to \$20 a month. The same month, General T. W. Sherman set the South Carolina pay scale for laborers between \$5 and \$12 a month. The District of Columbia hired teamsters for \$25 a month and others for \$20 a month. Wages raised another issue. The Union Army's quartermasters had no guidance on which money sources to use for payment. In April 1862, the Chief Quartermaster of North Carolina wrote to the Quartermaster of the Army, Brigadier General Montgomery C. Meigs, requesting guidance and regulations on contraband pay. The North Carolina Quartermaster had already hired 600 contrabands under the direction of his commanding general at \$8 a month. Meigs gave him authorization to employ those who were necessary to military labor, but authorized him to give rations only to prevent starvation.⁷ The variety of pay among the commanders would not come into focus until the contrabands' status was transformed from a liability to an asset. Then wages became a source of conflict for military departments as they attempted to hire or impress the dwindling labor sources into service. Until then, the commanders were occupied with other issues. Each had to decide how to employ the contraband, if at all. Some commanders were taking fugitive slave policy into areas still not supported by legislation or the administration. Commanders would employ contrabands as soldiers. Their successes or failures were scrutinized by the media and Congress and in some cases caused other commanders to consider similar steps.

⁷"Negroes Wanted," *The New York Times*, 25 January 1862, 2; Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 146, 269; and Berlin, *The Wartime Genesis of Free Labor: The Upper South*, 122.

In April 1862, a month after passing the article of war forbidding the Navy and Army to return fugitive slaves to their rebel masters, Congress authorized financial aid to any state adopting gradual emancipation and abolished slavery in the District of Columbia (DC). Lincoln had been the impetus behind monetary compensation for emancipation. He hoped financial assistance would push the Border States towards freeing their slaves. Although Lincoln approved of abolishing slavery anywhere, when Congress abolished slavery in DC, he felt it was premature. Lincoln wanted the Border States to take the lead in graduated emancipation.⁸ It would be his military commanders who would take the lead.

Throughout the summer of 1862, Halleck's General Order No. 3 in the Department of the Missouri, which had prohibited fugitive slaves from Union lines, and similar orders in other departments, were sources of conflict in the Union Army. Prohibiting contrabands from the lines was encountering greater resistance. Nicolay and Hay stated that although Generals Sherman, Halleck, and Buell's intention might have been to have nothing to do with the contraband, "the undercurrent of practice ... ran in an opposite direction," because for officers, "considerations of self-interest were more active than moral theories or legal responsibilities."⁹ Departments or commands that excluded slaves from Union lines were forced to deal with dissension from inside and outside their camps.

⁸Benjamin Quarles, *Lincoln and the Negro* (New York: Oxford University Press, 1962; reprint, Boston: Da Capo Press, 1990), 102-4 (page citations are to the reprint edition).

⁹Nicolay and Hay, *Lincoln: A History*, 4:395.

In March 1862, after the fall of Fort Donelson, Congress was awash with rumors that General Grant had returned twelve slaves to their masters. General Grant's compliance with General Order No. 3 had raised speculation as to his support of the First Confiscation Act. Although the returning of slaves to loyal masters was acceptable under the Confiscation Act, the issue in Congress seemed to be whether any slaves should be returned at all. General Order No. 3 complied with the law, but not the changing mood of Congress. Refuting the Washington accusations, Grant wrote to Congressman Elihu Washburne of Illinois that he supported the orders of his superiors regardless of his own views. Grant would resign if Congress enacted laws "too odious" for him to carry out.¹⁰ There were, in fact, officers who found the policy too odious: some protested and some resigned.

On 5 June 1862, General Thomas Williams, Commander of 2nd Brigade in Baton Rouge, Louisiana, issued a general order to turn out all fugitives from the regiments. Colonel H. E. Paine, of the Fourth Wisconsin volunteers, protested having to return fugitive slaves to their masters. He stated he could not follow the order, and he was placed under arrest.¹¹ He was not the only officer to refuse to carry out disagreeable orders.

On 11 March 1862, Brigadier General Ormsby Mitchell, Commander 3rd Division of the Department of the Ohio, issued General Order No. 79 expelling fugitive

¹⁰Simon, *Papers of Grant*, 4:408-9; and Henry Wilson, *The Rise and Fall of Slave Power in America* (New York: Houghton, Mifflin and Co., 1877), 3:294-5.

¹¹Edward McPherson, *The Political History of the United States of America during the Great Rebellion* (Washington, DC: J. Philp & Solomons, 1864), 251 (Colonel Paine's full name was not given.)

slaves from camp. Order No. 79 complied with the guidance given by General Don Carlos Buell, the Commanding General (CG) of the department. In April 1862, Colonel L. A. Harris of the second Regiment of Ohio Volunteers resigned in protest. In June, the policy would be the cause of another resignation. Colonel Daniel Anthony of the 7th Kansas Cavalry was opposed to Buell's and Mitchell's policies. Forced to read Mitchell's General Order No. 79 to his regiment, he countermanded with his own General Order No. 26, which punished any officer or soldier who returned a fugitive slave to his master. Mitchell's superiors arrested Anthony for insubordination. Senator Lane of Kansas intervened in July and all charges were dropped. Colonel Anthony discovered that his regiment had been turned over to another officer in his absence. Anthony resigned in protest.¹² When General Mitchell found the policy difficult to follow he would not resign but would appeal to higher authority.

Disobeying his own CG's guidance, General Mitchell himself wrote Secretary of War Edwin Stanton in May 1862, requesting to protect Negroes who were watching 120 miles of riverfront for his division. He stressed that the slaves were providing valuable information and without their presence he would require reinforcements. Referring to protection of those who provided information as "a High Duty," Secretary Stanton forwarded his approval, saying that General Mitchell was "fully justified" in employing slaves for the "security and success" of his mission.¹³ Despite this guidance, General Buell, Mitchell's superior, would have to be ordered in writing to modify his policy.

¹²Berlin, *Destruction of Slavery*, 274-6 (L. A. Harris' full name was not given), discussion of Colonel Anthony, 277-8.

¹³*Ibid.*, 275-6.

General Buell was strongly behind the Union Army's noninterference with slavery. To demonstrate the Army's support of the law, in a March letter to the Chair of the Kentucky Military Committee, Buell stated that several times masters had applied to retrieve their fugitive slaves, and in every case their slaves were returned. Secretary Stanton questioned his actions. Requesting an examination into the matter of slaves being given up, Stanton reiterated his decision on protecting informants. Regardless of color, or condition of freedom, or whether or not a promise was explicitly made, persons providing information or services to the Government were to be protected.¹⁴ Stanton's overriding of Buell's policy and direct instructions to Buell's subordinate could have been interpreted as a new fugitive slave policy from the Department of War. However, rather than issue a single policy for all departments, Stanton seemed intent on responding to individual situations. Commanders continued to make policy with and without the War Department's review.

General W. T. Sherman upheld Halleck's General Order No. 3 on fugitive slaves. Appointed as the Commander of 5th Division in the Army of Tennessee, he issued General Order No. 43. Published 18 June 1862, the order stated, "The well-settled policy of the whole army is now to have nothing to do with the negro. Exclude them from camp is General Halleck's reiterated order. We cannot have our trains encumbered by them, nor can we afford to feed them ... The Laws of Congress command that we do not surrender back the Master a Fugitive slave, that is not the soldier's business, nor is it his

¹⁴McPherson, *The Political History of the United States*, 250; and *Official Records*, vol. 16, part I, 583.

business to smuggle him away.”¹⁵ Violators of General Order No. 43 were to be punished and fined. Despite Sherman’s strong statements, “having nothing to do with the Negro,” was neither the policy of the entire army nor of General Halleck. In fact, the most progressive action was occurring with General Halleck’s guidance.

On 23 March 1862, General Halleck wrote to General Samuel Curtis, CG of the Army of the Southwest. The enemy was employing 100 Negroes in salt peter works. Noting that only one company guarded the slaves, Halleck stated, “A detachment of cavalry from Springfield could destroy these works and free the negroes, as being employed in enemy’s services.”¹⁶ Freeing the slaves of the enemy was the policy that had contributed to Fremont’s removal. In March of 1862, Congress had supported military leaders by allowing them to keep fugitive slaves of rebel masters, but no guidance on freeing slaves had been issued. General Halleck did not explain how he had arrived at the conclusion that he could authorize emancipation of slaves. Regardless, General Curtis followed Halleck’s advice and applied it to other situations.

On 23 May 1862, a correspondent for the *New York Times*, reported that General Curtis’ troops gave manumission papers to twenty-eight slaves of a noted rebel. On 31 July 1862 General Curtis wrote to Halleck, saying, “ I have given free papers to negroes who were mustered by their rebel masters to blockade my way to my supplies.”¹⁷ Freeing

¹⁵Berlin, *Destruction of Slavery*, 278-9.

¹⁶*Official Records*, vol. 8, 636.

¹⁷“General Curtis’ Column,” *New York Times*, 23 May 1862, 2; and *Official Records*, vol. 13, 525.

slaves was still a radical action and General Curtis' emancipation did not always carry other commander's approval or support.

Responding to a Confederate general about Curtis, General Sherman admitted that Curtis had manumitted slaves who had supported the rebel war effort. Pointing out that he freed no slaves himself, Sherman added, "I have no control over General Curtis, who is my superior, but I take for granted that some just and uniform rule will soon be established by our common superior to all cases alike."¹⁸ While Sherman was waiting for long overdue guidance, mixed policies would continue to divide commanders.

Brigadier General William Steel inherited Curtis' Arkansas Department. He wrote to Halleck in November 1862, after Halleck's promotion to general-in-chief of the Army. Steele complained that due to Curtis' actions the department was geared to political interests first when determining military policy. He wrote, "General Curtis, in my opinion, violated both law and orders, and instituted a policy entirely different from that indicated by our president in regard to slaves."¹⁹ Interestingly enough, although General Curtis' freeing slaves was publicized in the newspapers, the president never countermanded his policy, an indication that he approved of Curtis' acts. It's possible that Lincoln was watching the debate in Congress. If Grant was chastised on a rumor of returning slaves to possibly loyal masters, how would Congress behave if the president overruled Curtis, who was freeing slaves of rebel masters? Lincoln stayed silent on Curtis' action. General Steel, on the other hand, may have formed his opinion

¹⁸*Official Records*, vol. 17, part II, 172.

¹⁹*Official Records*, vol. 13, 775.

about Lincoln's slave policy from the president's handling of another military commander. At the time Curtis was freeing slaves, General Hunter proclaimed emancipation in his department. The president rescinded Hunter's proclamation.

General David Hunter replaced General T. W. Sherman in South Carolina. The department was expanded to include Florida and Georgia and renamed the Department of the South. Hunter tired two avenues with the fugitive slaves. He freed them and armed them. The president would overrule Hunter's first action. The Secretary of War allowed Hunter's regiment of contraband soldiers to be disbanded and then authorized the concept under a new commander. The Public and congressional response to these situations would force Lincoln to rethink his hands-off attitude towards slavery.

General Hunter first emancipated slaves on 13 April 1862. He issued General Order No. 7, which freed the slaves who were used by the enemy at Fort Pulaski and Cockspur Island, Georgia. Similar to General Curtis in Arkansas, Hunter's order went unchecked by the administration. Perhaps emboldened by the lack of censure, he issued General Order No. 11 on 9 May, which freed all the slaves in Georgia, Florida and South Carolina.²⁰

Like Fremont and Cameron, General Hunter issued his order without coordinating with the president. According to Nicolay and Hay, a week passed before Lincoln knew of Hunter's emancipation act. The mails from South Carolina came by boat, and the president learned of Hunter's order after it was printed in the newspaper. The president's repeal of the order was immediate. On May 19, Lincoln had his proclamation published

²⁰*Official Records*, vol. 14, 333-334.

in the newspapers. He stated that he had no knowledge of and had not approved Hunter's General Order No. 3. Voiding Hunter's act, he also stated, "Neither General Hunter, nor any other commander, or person, has been authorized by the Government of the United States to make proclamations declaring the slaves of any State free ... in any case, ... to exercise such supposed power, I reserve to myself."²¹ By this proclamation, Lincoln now had clearly stated the boundaries of fugitive slave policy for his commanders. Nicolay and Hay felt his statement "drew a sharp distinction between the limited authority of commanders in the field, and the full reservoir of executive powers."²² The sharpness of the distinction may have been lost on the commanders.

Lincoln's 19 May 1862 proclamation reserved the right *to free entire states* to the executive branch. He did not revoke the authority of military commander's right *to free individual groups of slaves* as a military necessity. Lincoln had permitted both Generals Hunter and Curtis to free slaves who were specifically found to be in the service of the Confederacy. After Lincoln issued his proclamation overruling Hunter, stories of General Curtis freeing slaves were still being reported in the newspaper, but the president did not rescind this action. Lincoln's steps and proclamation indicate that commanders could free slaves in individual situations, but the freeing of an entire state's populace was the exclusive right of the commander-in-chief. His reticence would force commanders to pick and choose policy, without the assurance that their actions would be upheld. In the same month, there was another new distinction for the administration to draw.

²¹Nicolay and Hay, *Lincoln: A History*, 6:90-4; and Basler, *Collected Works of Lincoln*, 5:222.

²²Nicolay and Hay, *Lincoln: A History*, 6:95.

Without coordinating with the Secretary of War, General Hunter decided to arm his contrabands. His efforts would generate congressional interest, but no support from the administration.

The same day that Hunter emancipated the slaves in the Department of the South, he ordered Brigadier General Henry Benham, Commander of the Northern District, to forward "all able bodied negroes capable of bearing arms."²³ Hunter felt that he had justification to arm contrabands. The day before he had written a letter to General Isaac I. Stevens, commander of the 2nd Brigade in the Northern District, saying he had authority from the War Department to organize "negroes into squads, companies."²⁴ Hunter was referring to the authority that had been given to General Sherman by Secretary of War Cameron in October 1861. As head of the South Carolina Expeditionary Corps, T. W. Sherman had permission to organize blacks into fighting units when required by military necessity. Cameron's letter of guidance had been included in Hunter's turnover with General Sherman. Hunter did not let the fact that the letter was written by the previous Secretary of War deter him from his decision. The fact that Cameron had been fired less than five months before for recommending that the administration arm Negroes, might have caused some commanders to seek guidance. Hunter plowed ahead. In addition to the administration, his own junior and senior leadership had some issues with the arming of slaves.

²³Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 189-90.

²⁴*The War of the Rebellion: A Compilation of Official Records of the Union and Confederate Armies*, vol. 2, *Union Correspondence* (Washington, DC, 1880), 30.

General Stevens wrote for further guidance on raising the black regiments. Stevens wanted to know which contrabands were to be picked for service. He had hundreds employed as stevedores, teamsters, loggers, and field hands. Sending contrabands away would transfer the labor load to the white troops.²⁵ Stevens needed Hunter to decide what proportion of blacks were to go into service and what proportion was to be left for labor. Stevens had difficulties complying with the orders. The contrabands also would have difficulties with the orders.

Although the former slaves had shown their bravery on several occasions, they were not inclined to fight their former masters. Encountering difficulties with recruitment, Hunter resorted to impressing to create his unit.²⁶ Word of Hunter's activity made it back to Washington. The House of Representatives formally requested the Secretary of War to provide information on the organizing and mustering of fugitive slaves into the army. Secretary Stanton forwarded the request to Hunter, who replied immediately. Noting that he had the authority of the letter issued to General Sherman that was turned over to him, Hunter stated that he was not organizing fugitive slaves, only persons whose late masters were "fugitive rebels." He felt the experiment of raising a black regiment had been a success. If given permission, he expected to recruit 40,000 to

²⁵Berlin, *Wartime Genesis of Free Labor: The Lower South*, 189.

²⁶Rose, *Rehearsal for Reconstruction*, 145, 187; and Cornish, *The Sable Arm*, 37-38.

50,000 former slaves to fight for the Union.²⁷ Hunter never received permission or support, but he did spark a debate that had repercussions for Congress and the administration.

Hunter's attempts did not go unreported or unnoticed. Stoutly defending Hunter's actions in his *History of the Negro Troops in the War of the Rebellion*, George W. Williams stated there was "no more effective measure adopted than to deplete the vast Negro population of his Department that were bread-winners for a hostile army."²⁸ The same notion circulated through Congress, and in the weeks following Hunter's "experiment," Congress passed legislation authorizing the recruitment of blacks for the military. The Militia Act of July 1862 gave the president authority to raise regiments of black troops. Neither Lincoln nor Secretary Stanton acted on the legislation on Hunter's behalf. After three months of drilling troops with no pay, on 10 August 1862, General Hunter wrote to the Secretary of War, stating, "Failing to receive authority to muster the First Regiment of South Carolina Volunteers into the service of the United States, I have disbanded them."²⁹ Hunter stayed in command of the Department of the South for another year. Like Fremont, his removal resulted from controversy over slave policy and failure to win battles. However, while he was still CG of the Department of the South, he would see his idea vindicated and implemented.

²⁷*Official Records*, vol. 2, *Union Correspondence*, 196-198.

²⁸George W. Williams, *A History of the Negro Troops in the War of the Rebellion: 1861-1865* (New York: Harper & Brothers, 1888), 95.

²⁹*Official Records*, vol. 2, *Union Correspondence*, 346.

Two weeks after Hunter disbanded his black regiment, Secretary of War Stanton granted permission to General Rufus Saxton, military governor of South Carolina, to arm 5,000 black men.³⁰ General Saxton immediately set about reorganizing Hunter's volunteer regiment and appointed Thomas Wentworth Higginson, a Northern Abolitionist as commander of the first regiment. Stanton was immediate in his granting permission to Saxton to raise troops. He responded to the letter from the military governor within a week. The authority to raise troops was at his disposal, and yet, Secretary Stanton had allowed Hunter to struggle along to failure. Two possible reasons for his action seem possible: (1) either the administration had not yet fully made up its mind on arming black men, and General Saxton was the beneficiary of excellent timing, or (2) the administration was attempting to distance itself from Hunter and his actions. The second accounting seems plausible in the fact that by August, Lincoln had already made up his mind to emancipate slaves. In two months he would go from overruling an emancipator to becoming the great emancipator. Following Congress' lead, Lincoln would shortly announce a fugitive slave policy identical in concept to the proclamations made by Fremont and Hunter.

Congress was galvanized by the debate over Hunter's actions. In May 1862, a bill was introduced that proclaimed freedom the fundamental law of the country. Slavery would be prohibited in territories and lands under Federal control. Here was an attempt to emancipate slaves in Union occupied territory, the basic proclamations made by

³⁰Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 269-70.

Fremont and Hunter. The bill caused its own debate, but in the final form, prohibited slaves in the territories only.³¹ Approved by Congress and the president in June 1862, it was a mere stepping stone to the first statute to free the slaves.

The time had come for the leadership of the country to make a decision. The time had arrived to decide between preserving slavery as a constitutional right or emancipating the slave as part of the war effort. In describing the debate and the consequences, author Henry Wilson, stated "Indeed, the right answer and a definite and accepted policy upon this one single issue had become a necessity."³² The conflict between the president and the military over slave policy was making the front pages. The country could not effectively fight a war where military leadership would be undermined over political ends. Freeing slaves removed resources from the South. Commanders in the field were freeing slaves to better fight the war. They needed the political branches to mandate policies that contributed to the war effort. Congress understood their military needs and passed two major acts of legislation that settled the harder questions of Union slave policy.

On 17 July 1862 the Second Confiscation Act became law. Ordering imprisonment or death for all those convicted of treason, it declared that their slaves would be set free. The act upheld the original proclamations of Fremont and Hunter, under Section 9, stating:

That all slaves of persons who shall hereafter be in engaged in rebellion against the Government of the United States, or who shall in any way give aid or comfort thereto, escaping from such persons and taking refuge within the lines of the

³¹Wilson, *The Rise and Fall of Slavery*, 3:320-33.

³²Ibid., 331-346.

Army; and all slaves captured from such persons or deserted by them and coming under control of the Government of the United States, and all slaves of such persons found on [or] being within any place occupied by rebel forces and afterward occupied by the forces of the United States shall be deemed captives of war, and shall be forever free of their servitude, and not again held as slaves.³³

Not only were Fremont and Hunter vindicated, but also General Butler's questions to the Secretary Cameron were answered. Slaves taking refuge were captives of war, but they were also free, as in the case of Fort Monroe. Slaves abandoned by their owners were free, as in the case of the Port Royal, South Carolina. Slaves in territory formerly held by rebel forces and later occupied by the Union were free, as in the case of Louisiana. The Second Confiscation Act gave further legally binding guidance.

The act strengthened the March Article of War that had prohibited military personnel from returning fugitive slaves. Slaves could not be "delivered up, or anyway impeded or hindered" in their liberty and persons claiming fugitive slaves first had to take a loyalty oath.³⁴ Military personnel could not decide on the validity of such claims or could surrender anyone "on pain of being dismissed from the service." Finally it stated that the president had the authority to employ persons of African descent as he required to suppress the rebellion.³⁵ As if fearful that the president would not realize the opportunity Congress had laid at his doorstep, the Militia Act was also passed.

The Militia act specifically authorized the president to employ blacks to construct entrenchment, and perform camp service. It also stated that competent persons of

³³*Official Records*, vol. 2, *Union Correspondence*, 275.

³⁴*Ibid.*, 276.

³⁵*Ibid.*

African descent could be used for any labor in the Army or Navy, and allowed the president to enroll and organize them under regulations consistent with the Constitution and the president's guidance. Section 15 stipulated that persons of African descent employed under the act were to receive \$10 a month, with \$3 being withheld for clothing allowance and a ration.³⁶ A ration was basically a month's worth of meals. Here was Lincoln's right to recruit and train black soldiers. The president hesitated. Despite the path clearly being laid by Congress, the president was still concerned about the Border States. He would give them one more chance before he moved forward.

While the controversy raged over Hunter's proclamation, many military commanders began to see the connection between slavery and the strength of the Confederacy. Many officers believed that Union victory was not certain. Although many had joined to preserve the Union, Lincoln's action caused several to rethink the war. In describing this period in *The History of Negro Troops*, George Williams said, "Changes of opinion were numerous and many."³⁷ Among those who softened their stance in advising the commander-in-chief, was Major General George B. McClellan.

Writing to the president on 7 July 1862, in the middle of the maelstrom surrounding Hunter's freeing and arming fugitive slaves, McClellan pushed for the administration to consider manumission as an appropriate tool for the military. After stating that military power should not impair the right of the master, McClellan continued with,

³⁶Ibid., 281-2.

³⁷Williams, *A History of Negro Troops*, 80.

Slaves, contraband under the act of Congress, seeking military protection should receive it. The right of the Government to appropriate permanently to its own service claims to slave labor should be asserted.... This principle might be extended, upon grounds of military necessity and security, to all slaves of a particular State, thus working manumission in such State; and in Missouri, perhaps in Western Virginia also, and possibly in Maryland, the expediency of such a measure is only a question of time.³⁸

Times had changed. One of the most conservative generals on fugitive slave policy was advocating emancipation statewide as a military necessity. He was recommending that slaves in Missouri, Maryland, and West Virginia be freed, because it was going to happen anyway. Lincoln decided once again to test the issue with the Border State elected officials.

Calling the Border States' representatives to the White House on 12 July, Lincoln read them a prepared address. Stating that the point of the meeting was to encourage them to adopt gradual emancipation, he discussed the American's people reaction to his reversal of General Hunter's emancipation proclamation. Lincoln said, "I gave dissatisfaction, if not offence, to many whose support the country can not afford to lose. And this is not the end of it. The pressure, in this direction, is still upon me, and is increasing."³⁹ Lincoln pressed the congressmen to consider the country as well as their states. His efforts failed. Two days later the Border State representatives replied that they could not endorse his proposition. The representatives had made up their minds and so had Lincoln.

³⁸McPherson, *Political History of the United States*, 385-6.

³⁹Basler, *Collected Works of Lincoln*, 5:318.

Lincoln had reached his point of no return. Congress was close to passing the Second Confiscation Act. The fallout over Hunter made the president realize that the Northern Public wanted slavery's manpower removed from the South. The North was ready for the South to suffer. Lincoln was going to support his military commanders.

The president called his cabinet together and announced his intention of making an emancipation proclamation. He would free all the slaves in the states of rebellion. Congress had legislated the freedom of slaves belonging to individuals. Lincoln was about to free whole states. He was now at the point where he would take the same action as Fremont and Hunter had done months before. His cabinet was supportive of his position. However, he was persuaded to hold off on the announcement until the Union had achieved a battlefield victory.⁴⁰ With the passage of the Second Confiscation Act and the Militia Act, he also considered what other steps to take in recruiting blacks for military labor or service.

A memorandum from July 1862 shows the president having "no objection," to recruiting free blacks, recruiting slaves of disloyal owners, or recruiting slaves of loyal owners with their consent. He "objected" to recruiting slaves of loyal owners without their consent unless the situation was urgent, and to the "carrying away of slaves not suitable for recruits."⁴¹ The *New York Times* reported the president's decision, in a 23 July article. It stated that Lincoln, through the Secretary of War, had just issued orders

⁴⁰James McPherson, *Battle Cry of Freedom* (New York: Ballentine Books, 1989), 503-4.

⁴¹Basler, *Collected Works of Lincoln*, 5:338. The editor is unsure of the date on the memo, but reports in the newspapers of similar policy confirm the likelihood that the concept was approved July 1862.

clarifying military policy. Commanders were to employ as laborers as many slaves as needed for military purposes. The article echoed the prevailing sentiment of the day, and possibly Lincoln's, when it said, "Whatever the difference of opinion as to arming slaves, there can be objection to using them to do the heavy labor of the camp and the trenches, while our soldier's are left free for the duties of drill or the proper work of the field."⁴²

In August 1862, the *Times* reported that Lincoln had told a delegation he would not accept Negro troops, but he would accept their services as laborers.⁴³ Awaiting his Union victory, Lincoln was not going to commit to the steps that were in his own emancipation proclamation. He was biding his time to take action.

Lincoln, Congress and the commanders had traveled a long way in fugitive slave policy in the course of a year. Volunteers, who joined the fight in the summer of 1861, wanted to preserve the Union. The influx of fugitive slaves, and the increasing awareness of their contributions to the Southern effort, forced changes in military policy. Freeing slaves, as well as employing them as contraband of war supported the Union efforts. The commanders in the field were the first to free the slaves. These commanders considered manumission a military necessity. Their actions were too early and radical for the president. Concerned about Border State support, Lincoln rescinded General Hunter's proclamation of freedom in the Department of the South. When General Hunter armed the contrabands, he found neither the president nor the War Department were

⁴²"Two Important Points of Military Policy Settled," *New York Times*, 23 July 1862, 4.

⁴³"The President and Negro Regiments," *New York Times*, 5 August 1862, 1.

prepared to support that action. Congress stepped in and codified the measures that had been tried by the military. Congress freed slaves of rebel masters and the contrabands and gave the president the authority to arm Negroes. Understanding that the tide had turned, Lincoln appealed one last time to the Border States to free their slaves. Turned down by those State's representatives, Lincoln adopted the policies of the commanders he had overruled. He decided to free the slaves in the secessionist states. Even as the president reached this monumental decision, the conflict over fugitive slave policy was affecting commanders' policies in other military departments.

CHAPTER FOUR

COMMANDERS AND THE CONFLICT OF POLITICS

Throughout the Civil War, individual military commanders had to decide on the best fugitive slave policy for each of their own departments. In the summer and fall of 1862, as the Union Army moved into formerly rebel held territory, sometimes policy had to adjust to the local social and political environment. Watching the administration's and the public's reaction to General Hunter's decision to free and arm blacks, commanders realized choices were getting harder to make. During this period it was easy to be wrong. Policy that pleased the locals might not appeal to the northern public or to subordinates. Definitive answers from the Department of War could be slow or non-existence, as the administration gauged public reaction to new policies. As Congress codified slave policy, military policy would either support or contradict congressional guidance. One department would leap beyond presidential authority and form black military units without permission. The president's preliminary announcement of the freedom proclamation would create only more conflict within the ranks.

With the president announcing his intention to free slaves in rebel states, abolitionist-minded, mid-grade commanders felt justified in countermanding restrictive slave policies. Loyal slave-owning commanders felt betrayed and were apt to support local slave-owners. As internal military controversy continued, the preliminary emancipation proclamation encouraged more fugitive slaves to enter Union camps.

Forced to deal with the large numbers of contrabands, the Union designated superintendents and commissions to oversee and investigate the contrabands' new living conditions.

President Lincoln shied away from creating slave policy, to maintain the unity of a fragile coalition of northern states. In an effort to keep slavery out of the National debate, the issue was passed down to commanders of the various military departments. For the commanders, the politics surrounding issues of freed slaves proved as divisive at the military level as the executive level.

General Benjamin F. Butler, the former commanding officer of Fort Monroe, and the creator of the "Contrabands" concept, was appointed Commander of the Gulf Department early in 1862. Convinced that many of the local plantation owners wanted to preserve local peace rather than wage war, Butler pursued a different policy than his fugitive slave policy of Fort Monroe. Abandoning the contraband concept, in May 1863 he issued Special Order No. 45, which excluded blacks not employed by the Government from Union camps.¹ Special Order No. 45 would prove as difficult to enforce as General Order No. 3 in the Department of the Missouri.

Trouble came early. The March 1862 congressional article of war prohibiting officers from returning fugitive slaves had already been published. One of Butler's senior officers, Brigadier General John Phelps of Vermont, a noted abolitionist, was not willing to comply with Special Order No. 45. By the end of May, General Phelps had at least 150 contrabands in his headquarters of Camp Parapet, with no intention of returning

¹*Official Records*, vol. 15, 446.

them to their masters. He ignored written orders from General Butler to exclude anyone black or white who did not have a pass from Headquarters, Department of the Gulf. Irate, local plantation owners forwarded their complaints about Phelps to Butler. Adding pressure on General Butler, the President of the Police Jury, a local law enforcement agency, stated that Butler could avoid the whole situation if he would only adopt General Buell's policy of excluding fugitive slaves from Union camps.² The President of the Police Jury gave Butler no advice on how to get Phelps to comply with this policy. Butler had already adopted the exclusion policy before the local Police Jury President wrote. Sensing the issue was coming to a head, General Butler wrote to Secretary of War Stanton for guidance.

General Butler carefully laid out the differences between Louisiana and Fort Monroe, and why he could no longer support his own previous contraband policy. He argued that the size of the territory under occupation alone was an obstacle to enacting his old policy. Due to the size, there were simply too many slaves to be employed by the government. He could not feed them all. In fact, he was having difficulty feeding the white men under his command. Since there were too many fugitive slaves to employ gainfully, the concept of contraband no longer applied, because there was no military necessity to confiscate them. The local populace was generally peaceful, and Butler felt it was the responsibility of the Government to protect their property and rights as long as

²Marshall, *Correspondence of Butler*, 1:524-527.

peace was maintained. It just so happened a large share of the property to be protected was slaves.³ He went on to address a few other issues as well.

Butler was very much aware of General Hunter's order freeing the slaves in the Department of the South, and of Hunter's efforts to arm Negroes. Addressing the question of making Negroes soldiers, Butler said that the local blacks had "acquired a great horror of firearms, sometimes ludicrous in the extreme."⁴ Butler felt the military necessity did not exist in the Department of the Gulf for him to arm Negroes. He had sufficient numbers of loyal white males to maintain a local defense. On the issue of emancipation, Butler stated that freeing the slaves gave the enemy a moral victory, and halted any local cooperation efforts with the Union Army. Butler's opinion on these two points was politically safe. A week had passed since Lincoln had publicly overturned Hunter. Butler finished by saying that the policy of excluding all slaves not employed should continue within the Department of the Gulf.⁵ It would be a month before he got an answer that was no answer at all.

While General Butler awaited a response from Washington, General Phelps moved ahead. Fugitive slaves were received into Camp Parapet without Butler's directed pass from headquarters, while owners were denied entrance, making it impossible for them to recapture their slaves. Plantation owners continued to complain to General Butler. The situation came to a head in June 1862, when pursuant to General

³Ibid., 1:516-521.

⁴Ibid.

⁵Ibid.

Phelps orders, several slaves of a self-proclaimed loyal planter were told they would be free if they went to the General's camp. Concerned that Phelps was using Louisiana as a test case for congressional acts, Butler wrote again to Secretary Stanton. Requesting an answer to his May dispatch, Butler asked that the president provide guidance on his policy.⁶ Secretary Stanton forwarded his letter to the president as requested.

On 20 June, the Secretary of War wrote that Butler's thoughts on the Department of the Gulf fugitive slave policy had impressed him. Secretary Stanton did not think it was necessary for him to "fetter" Butler's "judgement with any special instructions."⁷ He went on to say that he expected Butler to deal with the situation "so as to avoid any serious embarrassment to the Government, or any difficulty with General Phelps."⁸ In effect, Butler had been temporarily brushed off. Secretary Stanton must have known that without specific policy from the Department of War, Butler and Phelps would be deadlocked. General Phelps complying with acts of Congress and General Butler making contradictory decisions as the Head of the Department caused a stalemate. Butler could only hope that the president would make a decision soon, but before he had the president's answer, he received some cabinet level advice.

The Secretary of the Treasury, Salmon P. Chase, wrote to Butler on 24 June to discuss several issues, but focused on Butler's slave policy. Stating that he had started the war believing that slavery was untouchable, Secretary Chase indicated that he had

⁶Ibid., 1:613-615.

⁷Ibid., 2:9-10.

⁸Ibid.

changed his mind. He now felt that in order to preserve the Union, slavery must go. Chase felt that Hunter's proclamation should have been sustained, and added that the president had not made his mind up on the issue. Secretary Chase felt that the time was coming soon when it would be necessary to free the slaves. In closing, he told Butler to let it be known that he was "no pro-slavery man."⁹ Butler would eventually heed his advice.

A week after the Secretary Chase wrote, Butler had his reply from the president. On 3 July 1862, Secretary Stanton wrote that the president had considered the fugitive slave situation in Louisiana, and

He is under the opinion that, under the law of Congress, they cannot be sent back to their masters; and that in common humanity they must not be permitted to suffer want of food, shelter, or other necessaries of life: that, to this end they should be provided for by the Quartermaster's and Commissary's Department; and that those who are capable of labor should be set to work and paid reasonable wage.... In directing this to be done, the President does not mean, at present, to settle any general rule in respect to slaves or slavery, but simply provide for the particular case under the circumstance.¹⁰

Butler had his response. General Phelps had his way. Knowing that Congress soon would pass the Second Confiscation Act, the president was directing the Department of the Gulf to comply with the First Confiscation Act. Starving soldiers aside, Butler was now responsible for feeding all contrabands within his lines. The president had also reserved for himself the right to decide future slavery policy. Although delayed, the clearness of the response should have made life easier for Butler and Phelps. It did not. The politics of slavery could overcome the simplest of policies.

⁹Ibid., 1:632-634.

¹⁰Ibid., 2:41-42.

Butler did not quit on his new policy so easily. He feared that the president's decision would lead to a slave uprising. Writing to his wife towards the end of July, he stated, "The Government has sustained Phelps about the Negroes, and we shall have an insurrection here I fancy. If something is not done."¹¹ Butler tried one last appeal to the President Lincoln. On 30 July he sent the former Louisiana State Attorney General, Mr. Roselius, to discuss with the president the slavery issues raised by General Phelps' actions. He hoped that Lincoln would consider a local expert's guidance on "the wishes, opinions, feeling and thoughts of the people of the State of Louisiana, upon the question of slavery as interwoven with the integrity of the Union."¹² His timing could not have been worse. Just before Mr. Roselius' trip, the Second Confiscation Act and Militia Act had been passed by Congress and signed by the president. By the end of July, Lincoln had decided to emancipate slaves in rebel states. Having decided to employ contrabands as military labor, the president was still debating whether to arm them. Butler's policy and messenger were going in the wrong direction. The day after Butler sent his Mr. Roselius to Washington, Secretary Chase wrote to enlighten him of the change in the administration's game plan.

Secretary Chase strongly stated that the annulling of Hunter's order was a mistake that would not be repeated by the administration. He did not see how slavery could continue to exist after the recent acts of Congress had been passed. Chase wrote that when Hunter was mentioned the president was expressing far less dissatisfaction with the

¹¹Ibid., 2:109.

¹²Ibid., 2:123-4. (Mr. Roselius' full name was not given.)

commander's action than he had weeks before. There was "a great change in the public mind," and the North was now willing to sacrifice slavery to maintain the Union.¹³ He gave Butler two pieces of advice in the letter; get the local slaveholders to start paying their slave labor, and stop the local policemen from returning fugitive slaves to their masters. To drive home his point he included correspondence from the president to a Louisiana citizen.

Chase sent to Butler a copy of a letter that the president had written to a Reverdy Johnson. The president's letter said Louisiana should return to the Union or worse evils than General Phelps would befall them. Hinting of emancipation or arming the Negroes, the president also warned Mr. Johnson that he would not leave the game with any unavailable card unplayed.¹⁴ Chase wanted Butler to understand where the administration was going in policy. Apparently the changing public sentiment, and a few choice thoughts from his wife, led Butler to follow Chase's suggestions.

The day before Secretary Chase wrote to Butler, General Phelps again moved forward in his employment of contrabands. Casually writing for supplies to sustain three regiments of blacks, Phelps told Butler that he planned to use the regiments for local defense. Butler, trying to sidestep Phelps' maneuvering, replied that he wanted Phelps to employ the contrabands for cutting down trees around his camp. He did not discuss Phelps' request for arms and equipment. Phelps was angered. Stating that he was no

¹³Ibid., 2:131-135.

¹⁴Ibid., 2:135-136.

“mere slave driver, ” he resigned his commission.¹⁵ Butler replied immediately. He could not accept Phelps’ resignation and he needed the War Department’s approval to raise and supply black units.¹⁶ Butler forwarded a dispatch on the situation to the Secretary of War.

Butler understood that the recently passed Acts of Congress required the president’s permission to raise Negro units. Sensing that Washington was not yet firm on a policy course, Butler once again requested guidance on how to handle the situation. Phelps, not satisfied with Butler’s response, forwarded his version of the situation and his resignation to the Army’s Adjutant General.¹⁷ Describing the events in a personal letter to his wife, Butler’s statements are an indication of how he personally felt about the creation of black soldiers. He wrote, “Phelps has gone crazy. He is organizing negroes into regiments and wants me to arm them.”¹⁸ He told her that he had forwarded the whole matter to the president. Her reply would give him pause to think.

On 8 August Mrs. Butler responded to her husband. Although the preliminary emancipation proclamation was 6 weeks away, the business of the administration did not seem to be a secret. Mrs. Butler wrote that emancipation and arming the Negroes was going to be in check a little while longer. However, she felt the president’s veto of

¹⁵Ibid., 2:125-127.

¹⁶Ibid., 2:143.

¹⁷Ibid., 2:142-147.

¹⁸Ibid., 2:148.

Hunter had not been decisive. She told her husband that Phelps's policy would win the day.¹⁹ Butler finally heard her and Chase's voices.

In a follow-up letter to his resignation, dated 2 August, General Phelps wrote to General Butler that it was his duty to report that the free blacks of New Orleans had offered their services as volunteers. In a 12 August reply to his wife's letter, claiming that he needed troops for defense, General Butler wrote that he intended to arm the free blacks of New Orleans.²⁰ Two days later he wrote to Secretary Stanton stating, "I have determined to use the services of the free colored men who were organized by the rebels into the "Colored Brigade," of which we have heard so much. They are free and have been used by our enemies, whose mouths are shut, and they will be loyal."²¹ Without giving credit to Phelps, Butler felt he had hit upon the perfect solution. Since the Louisiana free blacks were originally raised by the Confederacy, the rebels could not create arguments over the impropriety of arming blacks. The militia would be comprised of free men, so Butler was avoiding the foul cry of local slave owners if he employed the contrabands. There was one loose end. As he had reminded General Phelps, only the president could approve the arming of blacks.

On 22 August he signed the order authorizing the formation of the Native Guards (Colored) as volunteer troops subject to the approval of the president. Arming free blacks for Union service had neatly filled a niche, just as his original creation of

¹⁹Ibid., 2:163-164.

²⁰Ibid., 2:146, 186-6.

²¹Ibid., 2:191-192.

contrabands had done in the early months of the war. Despite the popularity of his action, Butler would be forced to write the administration several times, requesting presidential approval for the raising of the Native Guards. In November 1862, he wrote to the Secretary of War, saying that since he had not heard a reply on his actions, he assumed the formation of the Guards was approved.²² However, his work with slave policy was not done, and Department of the Gulf policy was going to draw even more interest from the public.

Although the president had supported Phelps' position in his July response, commanders were apt to go their own way on policy. General T. W. Sherman, who was now the Commander of the 1st Division in the Department of the Gulf, kept to the letter of the policies and went no farther. On 17 October, he issued General Order No. 14. Noting the excess contrabands in camps, he directed his subordinate commanders to return all contrabands not on duty to their colonies. As he had done in South Carolina, when he encountered the Port Royal slaves, he set local wages for employment.²³ His returning of off duty contrabands would be overlooked; his establishment of wages was not.

From April to October of 1862, plantation owners had been unable to keep slaves working faithfully. Once the Union was present, slaves either ran away or engaged in work slow downs. Butler finally heeded Chase's advice on getting the planters to pay wages. In November, he wrote to Secretary of War Stanton saying that he had organized a commission to save the sugar plantations, and his experiments with free labor were

²²Ibid., 2:209-211, 459.

²³Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 380.

successful. He enclosed a copy of a contract as proof of the new labor system in effect.²⁴ Stanton was pleased by Butler's work and showed his letter to the president. The president was fascinated. Here was a stepping stone to reconstruction.

Wage systems had to be implemented in order for blacks to transition to citizenship. If the pay for labor concepts could be enforced prior to the end of the war, the post war conversion would be easier in newly emancipated states. Lincoln wrote to Butler requesting he report on the extent of the wage arrangements, stating he was very anxious to hear of the results.²⁵ Butler responded in great detail on the plantation operations in Louisiana, and the reasons for its success.

Stating that slavery was doomed, Butler felt there were major advantages to paid labor. First, it showed black labor could be as profitable in freedom as in slavery. He also thought it demonstrated that blacks could be organized and worked "with safety to the white," while pointing out "this can be best done when under military supervision."²⁶ His letter was the beginning of sharecropping for contrabands under military control. Butler's initial efforts in Louisiana would be expanded by his successor, Brigadier General Nathaniel Banks. By the end of the Civil War, plantations under military supervision would have spread throughout the various departments.

²⁴Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 383; and C. Peter Ripley, *Slaves and Freedmen in Wartime Louisiana* (Baton Rouge: Louisiana State University Press, 1976), 44.

²⁵Basler, *Collected Works of Lincoln*, 5:487.

²⁶Marshall, *Correspondence of Butler*, 2:450.

In December 1862, the Commander of forces at Baton Rouge wrote to Headquarters Department of the Gulf, wanting to know if the Union was required to provide protection to plantations using contraband labor.²⁷ His letter shows that five months after the fallout between Phelps and Butler, the conflict over fugitive slave policy had allowed Louisiana to return to her previous status quo. Although wage earners, the majority of blacks were back on the plantations, now under the title of contraband vice slave. The Union army was providing protection to the plantations, as Butler had desired many months before. Phelps had won a little too. By November 1862, three regiments of the Native Guard (Colored) had been formed.

In the conflict over Union fugitive slave policy, it was the slaves who had the greatest loss. For several thousand slaves, hopes of freedom would end on the same plantations where their dreams had started. In December 1862, 18 months after Butler created the “contraband of war” policy, there were 3,000 contrabands at Fort Monroe. By July 1863, 7 months after Butler reported on the Louisiana wage system, more than 12,000 blacks were employed by the Union Army on 33 plantations.²⁸ General Butler had made his mark in Union slave policy twice in the war.

For many Union officers during the final six months of 1862, fugitive slave policy was in a conundrum. General Phelps, whose actions had been supported by the president, but not by his boss, was compelled to resign. His departure seemed to make

²⁷Berlin, *Wartime Genesis of Free Labor: The Lower South*, 400.

²⁸Berlin, *Destruction of Slavery*, 67; and Peyton McCrary, *Abraham Lincoln and Reconstruction: The Louisiana Experiment* (Princeton, N.J.: Princeton University Press, 1978), 141.

little impact on the Department of War. Instead of unifying commands under one national policy, the administration continued with commanders managing each department. The Confiscation Acts forced proslavery commanders to choose between their ideals and Union regulations. Commanders in the Border States had the difficult job of enforcing policies that could not simultaneously satisfy local citizens and subordinates. Antislavery soldiers would comply with congressional regulations or the intention of the president's proclamation, instead of with departmental policy. Union soldiers falling on different sides of slavery debate would clash. In regions where labor shortages existed, military employers of contraband struggled for their services.

Contrabands themselves added to the discord. News of congressional acts and the president's preliminary emancipation proclamation caused even more blacks to escape to Union lines. In *Grant Moves South*, Bruce Catton, said, "Generals might hopefully announce that the Army would have nothing to do with the Negro, but that was like saying it would have nothing to do with the weather."²⁹ Policy or nonpolicy, the Union had to deal with the fugitive slaves.

Two departments, Ohio and Missouri had been home to the policy of excluding slaves from Union lines. The influx of slaves overran these policies. In one case, their services were essential to Union success. In September 1862, the Chief Engineer of the Department of Ohio wrote to the Army Chief of Engineers. Manpower shortages had forced him to hire 1,300 Negroes. He needed approval to employ them.³⁰ His letter

²⁹Catton, *Grant Moves South*, 356.

³⁰Berlin, *The Wartime Genesis of Free Labor: The Upper South*, 389-390.

requesting permission to employ contrabands was repeated throughout several departments as officers struggled with interpretations of congressional mandates. With the passing of the Confiscation Acts, some commands were less willing to comply with the exclusion policies.

Governor Samuel Kirkwood of Iowa wrote to Secretary Stanton in September 1862, requesting that Iowa men stationed in Missouri serve under Iowa brigadier generals. Governor Kirkwood felt that the senior military leadership in Missouri had views about the “vexed and ever-recurring contraband question directly in opposition to the convictions of our officers and men.”³¹ Kirkwood said the men of Iowa would not be compelled to drive from their lines slaves of rebel masters, who by the laws of Congress were now free. Secretary Stanton refused the Governor Kirkwood’s request. Regardless, the Department of Missouri’s slave policy was about to undergo a change.

General Samuel R. Curtis, who had freed slaves in Arkansas in 1862, was appointed the new military commander of the Department of the Missouri. His feelings about slavery and the war were stated in an October 21, 1862 letter to Brigadier General Carr. He wrote, “The enemy must be weakened by every honorable means, and he has no right to whine about it. The rebellion must be shaken to its foundation, which is slavery, and the idea of saving rebels from the inevitable consequences of their rebellion is no part of our business if they persist.”³² As Commanding General of the Department

³¹*Official Records*, vol. 13, 642-643.

³²*Official Records*, vol. 13, 756.

of the Missouri, General Curtis had no misgivings about complying with congressional regulations or the preliminary emancipation proclamation.

Citing the Acts of Congress and Presidential Orders, General Curtis issued General Order No. 35 on 24 December 1862. General Order No. 35 directed that the Provost Marshals protect the freedom of captives or emancipated slaves. Anyone disobeying the orders of Provost Marshals in relation to emancipated slaves would be arrested. Provost Marshals would issue papers of protection to confiscated Negroes. The order included an extract from the Second Confiscation Act, stating those officers who returned fugitive slaves were eligible for Court Martials.³³ Curtis was bringing Missouri into line with presidential intention and congressional statutes. His enthusiastic compliance would be the cause of his removal in 1863. In other regions, fugitive slave policy was starting to parallel the Confiscation Acts. As contraband numbers increased, policy shifted.

General W. T. Sherman, Commander of the 5th Division of the Army of Tennessee, published General Order No. 67 in August 1862. The order complied with the laws of Congress concerning the receiving and employment of fugitive slaves, but had detailed restrictions on the use of contrabands. Rather than let his commanders decide the numbers of fugitive slaves to be employed, Sherman laid out hiring limitations section by section. If the Engineer employed any blacks, he had to maintain lists of the employees. Any interested party could inspect these lists. Quartermasters could hire drivers and herders, but no more than one Negro per team, or one to every six animals to

³³Berlin, *The Destruction of Slavery*, 441-444.

be herded. Regiments were limited to five teamsters per company.³⁴ Sherman would allow contrabands in camps, but no more than he thought necessary. He added his own personal clauses to the Confiscation Acts.

Although no slaveowners were allowed in camps, General Sherman directed that “no influence must be used to entice slaves from their masters.”³⁵ Fugitive slaves who wanted to return to their masters would be permitted to return. Stating that there was a concern the Army’s motives would be misunderstood, officers and generals were not permitted to hire fugitive slaves as personal servants.³⁶ The question remains: “Who would misunderstand the Army’s motives?” Officers complying with the Confiscation Acts were not likely to raise any eyebrows in the North. A possible explanation of Sherman’s thoughts behind the order is in a letter to a childhood friend.

Within a month of publishing General Order No. 67, Sherman wrote to a former schoolmate who was a rebel. Sherman told his friend that if any of his slaves were in Sherman’s camps, he could not forcibly return the contrabands, but would give them the option of returning to their master. Sherman did not believe the slaves should be freed, but “even without the Confiscation Act, by the simple laws of War, we ought to take your effective servants ... to use their labor & deprive you of it.”³⁷ He added that he did not employ former slave women and children, only the men. In the end, Sherman felt it was

³⁴Ibid., 289-291.

³⁵Ibid.

³⁶Ibid.

³⁷Ibid., 292-294.

his duty to execute the law, not make it. Sherman's tightly written General Order No. 67 was to keep the opinions of rebel slaveholders in check. Sherman was willing to uphold the law, but kept command compliance to the letter rather than the spirit of the acts. In other parts of Tennessee, the rising numbers of contrabands were overwhelming the Quartermasters and policy.

The Quartermaster of the District of Jackson, Tennessee wrote to the Quartermaster of the Army in September 1862. Large numbers of fugitive slaves were coming into camp. He was able to employ the men, but had no duties for the women and children. He wanted authority to provide food and clothing to the women and children. The Quartermaster of the Army, General Meigs, advised the Quartermaster to use the temporary measure of crediting the men with labor, and withholding a portion of their pay to feed and clothe the women and children.³⁸ This same process was the cause of Congressional inquiry at Fort Monroe at the start of the year. The administration had already directed the Department of the Gulf to feed and clothe women and children for humanity's sake. One uniform policy by senior leadership could have saved time and energy many commands spent on this redundant issue. Two months later the question was asked again.

In November 1862, from LaGrange, Tennessee, General Grant wrote to Major General Halleck, the General of the Army, complaining "Negroes coming in by wagon loads. What will I do with them?"³⁹ Halleck wrote that the direction from the Secretary

³⁸Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 666.

³⁹Simon, *The Papers of Grant*, 6:615.

of War to Grant was to employ the Negroes as teamsters and laborers. Grant was also to use the fugitive slaves for picking and removing cotton for the benefit of the Government.⁴⁰ The success of Butler's sugar plantation experiment in Louisiana was becoming duplicated. General Grant decided to delegate the issue of contrabands permanently.

On 14 November 1862, General Grant appointed Chaplain John Eaton, Jr. of the Ohio Infantry Volunteers to control all fugitive slaves. Chaplain Eaton was to establish a camp at Grand Junction, Tennessee and organize them into companies for harvesting cotton. Commanding Officers were to send fugitive slaves entering their lines to Grand Junction. One regiment would provide guards for fugitive transfer, and the surgeons were to care for the sick. With an order, Grant had formalized the presence of contrabands into the 13th Army Corps organization.⁴¹ The job of military overseer and plantation driver was now established. In Arkansas, it would take a while longer to get to the same outcome.

On 24 July 1862, the Quartermaster at Helena, Arkansas wrote to the Chief Quartermaster of the Southwest, "there is a perfect 'cloud' of negroes being thrown upon me for Sustenance & Support... What am I to do with them?"⁴² The Helena Quartermaster went a long time without an answer. The Chief Quartermaster forwarded the Helena letter to the department head, with the recommendation that an officer be

⁴⁰Ibid.

⁴¹Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 670-671.

⁴²Ibid., 659-60.

appointed as superintendent of the blacks. Markings on the package suggest that the letter and recommendation were filed without further action. A superintendent would not be appointed until January 1863.⁴³ While the quartermaster was complaining about the numbers of contrabands, his commander was complaining about the lack of available workers.

On 22 August, the Commander of the Post of Helena, Brigadier General C. C. Washburne, wrote to General Curtis, then commander of the Department of the Southwest. Washburne said that it was impossible to get laborers at the Fort, "because every other soldier in the Army of the South West has a negro servant."⁴⁴ Although an exaggeration, his comments show how important contraband labor was becoming to the Union. A month later, he would echo the complaints of the Helena Quartermaster.

In September, General Washburne reported to the Secretary of War that there were 400 Negroes at Fort Helena working on fortifications. In addition, he had 500 women and children requiring care. General Steel, who had relieved General Curtis and then later complained about Curtis' manumission papers, told Washburne that there was no authorization to feed or clothe the women and children. General Steel had not approved of General Curtis' freeing of fugitive slaves in the Southwest Department, and many of the former slaves at Post Helena carried Curtis' manumission papers.⁴⁵ Unhappy with the political focus of the Southwest Department, Steel's stinginess may

⁴³Ibid.

⁴⁴Ibid., 660. (Washburne's full name was not given.)

⁴⁵Ibid., 665.

have been misdirected towards the former slaves. The War Department simply instructed Washburne to continue feeding the women and children and to employ as many of the freedmen as possible. Many commanders found it difficult to deal with the surge of fugitive slaves. In Kentucky, the conflict over fugitive slave policy would bring Union units to the edge of combat.

For Kentucky, a Border State, fugitive slave policy was a source of hostility between military commanders. Local state law made it illegal to assist fugitive slaves. Criminal acts included enticement or concealment of slaves. Victor Howard in *Black Liberation in Kentucky* surveyed all the available records of regiments serving in Midwest Kentucky from 1861-1862. Over 90 percent of the units violated the state fugitive slave law. Only Kentucky regiments had any type of compliance.⁴⁶ The president's desire to appease the Border States was not working at the soldier level. His preliminary emancipation proclamation only caused the tension in the state to increase.

Fifty-three year-old William Third, a hospital steward with the 76th Regiment of Illinois Volunteers, wrote to the president about Company E's cook, Bob. Bob was a fugitive slave who was forcibly returned to his master, allegedly by the order of General I. F. Quimby. Stationed in Columbus, Kentucky, the regiment was daily witness to masters searching camps for fugitive slaves. Speaking for his fellow soldiers, William wrote to Lincoln, "The Regemet feel indignut about it. The most of us enterd the service with the understanding that there was to be an end to such dirty work ... we appeal to the Government to see to it so far as it is posable, that the late laws touching this subject be

⁴⁶Victor Howard, *Black Liberation in Kentucky*, 16-19.

executed ... as a citizen of the Republic I do most earnestly entreat Your exelency to Shield us from this infernal business, of negro catching, or of witnessing it in our camps."⁴⁷ The hospital steward was serving under a General who had an exclusion policy. General Quimby had his own version of the situation.

In his endorsement to William's letter, General Quimby stated that only slaves of loyal masters had been returned in his department. Quimby felt obligated to protect chattel property as well as carry out the laws of Congress. He denied the charges of William Third, and was not aware of having violated any orders of Congress or his superiors. He applauded the president for waiting to voice his opinion on slavery.⁴⁸ Quimby offered that Lincoln's wise abstention from the slavery argument had the approval of Union men. In the same state, another officer appreciated that the president was finally taking a stand.

In November 1862, Colonel Smith D. Atkins, commander of the 92nd Illinois regiment wrote to a friend that his superior officers had ordered him to give up blacks to their masters. Atkins felt that because of the president's proclamation, "I cannot conscientiously force my boys to become slavehounds of Kentuckians & I am determined I will not."⁴⁹ He predicted his own military arrest and court martial over the issue. He would face civil warrant for his arrest instead.

⁴⁷Berlin, *The Destruction of Slavery*, 525-526. (Steward's and general's full names were not given.)

⁴⁸*Ibid.*, 526-528.

⁴⁹*Ibid.*, 528-529.

Early in November, Major General Gordon Granger, Commander of the Army of Kentucky, issued a general order that prohibited all citizens and noncombatants from entering Union Lines. Without specifically using the words, he had issued a fugitive slave exclusion policy.⁵⁰ Within a few weeks of the policy, the antislavery exploits of the 92nd Illinois would make the Cincinnati newspaper.

While camped at Sterling, Kentucky, fifteen slaves of rebel masters came into Colonel Atkins' camp. Knowing the fugitive slaves were now freedmen under the Second Confiscation Act, the 92nd officers immediately employed them as personal servants. The masters applied to General Granger for the return of their property. Granger reminded the 92nd that no one, black or white, was allowed to come into Union lines. Colonel Atkins responded by moving his regiment away from Sterling. Enroute to Lexington, local citizens and the 14th Kentucky Regiment threatened to take back the former slaves. Atkins responded by having the 92nd march through the next town with loaded guns and fixed bayonets. At Lexington, a citizen tried to take one of the blacks. Colonel Atkins threatened to fire a volley into the gathered crowd, which caused the group to disperse. A local warrant for the return of the Negroes, and for Colonel Atkins to appear in court or face contempt, was issued. Atkins refused to comply with the summons.⁵¹ The Illinois regiment was not the only unit defying local policy.

The Colonel of the 18th Michigan regiment was arrested by his commanding officer in November for refusing to return fugitive slaves. Soldiers of the 19th Michigan

⁵⁰Ibid., 534.

⁵¹Ibid., 530-37.

Infantry Regiment defied local whites and refused to give up a fugitive slave. Colonel William Utley of the 22nd Wisconsin Infantry ignored his commanding general's orders and harbored contrabands in his camp. In mid-November, the 77th Illinois Infantry retrieved contrabands taken by Frankfort, Kentucky citizens by a show of force. A squad of soldiers from the 79th Illinois Regiment expelled a slaveholder at bayonet point.⁵² Squabbles were not limited to civilians and soldiers.

Kentucky troops raided the rear of the 23rd Michigan on 4 November to seize a black servant of a Michigan officer. Hostilities between regiments were so great that Kentucky units refused to appear in a dress parade with Michigan and Pennsylvania cavalry in December 1862. Before the end of 1863, the 18th Michigan Infantry and the 7th Kentucky Cavalry would fight each other at a social event in Nashville. One Michigan soldier would be killed.⁵³ As antagonisms built, the military commanders appealed for support of the exclusion policy in an attempt to defuse the situation.

General Granger wrote to the Commander of the Department of the Ohio on 18 November 1862. Citing complaints from Kentucky citizens and the blatant seducing of Negroes by northern regiments, Granger requested a department wide policy to maintain good order and discipline. General Horatio Wright, CG of the Department of the Ohio, forwarded Granger's request for a more clearly defined policy to General Halleck. Wright proposed excluding all personnel not in the military. Halleck's response was "In regard to treatment of fugitive slaves, I respectfully refer you to the law of Congress of

⁵²Howard, *Black Liberation In Kentucky*, 20-27.

⁵³Ibid., 27-28.

last session, the president's proclamation and the printed orders of the War Department."⁵⁴ While avoiding his specific request for policy, Halleck was steering General Wright to comply with the latest statutes. If General Wright found the guidance difficult to enforce, Kentucky officers found it impossible.

Colonel Mundy of the 23rd Kentucky Infantry wrote to President Lincoln in late 1862. The 18th Michigan Infantry had taken his and his neighbor's slaves. Mundy had called upon the commander of the regiment and requested the return of the fugitive slaves. He was refused. Obtaining a civil summons for his property, the Michigan unit resisted the county sheriff. On top of injury, Colonel Mundy had insult. He had obtained information that abolitionist officers were telling slaves they would be free come January, and had the right to kill any master who attempted to hold them. As a loyal Union man, Colonel Mundy felt the president could not condone such wrongs. Although a supporter of the confiscation of rebel property, Colonel Mundy did not believe any slaves should be freed. There is no historical evidence that his letter was ever answered.⁵⁵ As long as northern units were on Kentucky soil, solutions would be hard to obtain.

After touring Kentucky in the winter of 1862, a New York republican, Thos. Davis sent a letter to Secretary of State, William Seward. Kentucky was in trouble. Fearing "armed collision" between units or civilians and soldiers, Davis recommended a "consiliatory [*sic*] course toward her loyal citizens."⁵⁶ Davis was too late. Lincoln would

⁵⁴Berlin, *Destruction of Slavery*, 544-545.

⁵⁵*Ibid.*, 546-547.

⁵⁶*Ibid.*, 547-548.

eventually spare Kentucky, by excluding her from the emancipation proclamation. However, the president's conciliatory action would not stop the conflict between the Union regiments. While officers in Kentucky could not get specific guidance on fugitive slave policy, Kansas' officers would ignore guidance from the War Department.

Senator James H. Lane of Kansas was on the cutting edge of slave policy throughout the Civil War. In the early months of the war he received permission to raise a Kansas army supported by contrabands, and was appointed a Brigadier General by President Lincoln. Once Congress approved the enlistment of blacks into the service, Senator Lane jumped at the opportunity and began recruiting blacks in Kansas. Lane issued General Order No. 2, as Recruiting Commissioner of Kansas on 2 August 1862. Order No. 2 allowed recruiters to bring blacks into the military. Claiming the Second Confiscation Act as authority, Lane freed slaves of rebel masters.⁵⁷ Lane was as far ahead of the War Department in Kansas, as General Hunter had been in South Carolina. The July acts of Congress had specified that only the president retained the authority for the enlistment of black troops. Lane had yet to coordinate his actions with the Secretary of War.

Four Days after General Order No. 2, Lane communicated to Secretary Stanton, "I am receiving negroes under the late act of Congress. Is there any objection? Answer by telegraph. Soon have an army."⁵⁸ Apparently overwhelmed by Lane's audacity, Stanton referred the issue to the General Halleck. The general-in-chief reported to

⁵⁷Ira Berlin, Joseph P. Reidy, Leslie S. Rowland, eds., *The Black Military Experience* (New York: Cambridge University Press, 1982), 68.

⁵⁸Official Records, vol. 3, *Union Correspondence*, 311.

Stanton that Lane had no authority to enlist black troops.⁵⁹ Lane was directed to stop his black recruiting efforts. First, the money was cut off, and then he was told no.

On 19 August 1862, Thomas Vincent, assistant Adjutant General of the Union Army, corresponded with the Disbursing Officer of Fort Leavenworth, Kansas. By order of the Secretary of War, Negro regiments would not be paid bounty and premium. On 23 August, Secretary Stanton wrote to Lane that the president had not given him authority to raise black troops in Kansas. Negro regiments could not be accepted into the Union Army.⁶⁰ The Secretary of War's denial to General Lane is puzzling in the fact that two days later he would give General Saxton permission to arm 5,000 black soldiers in South Carolina. The Secretary's "no" had little impact. General Lane was not about to stop raising black troops because of minor details like direct orders.

Lane continued his recruiting campaign. A Leavenworth newspaper of 28 August reported that the colored regiment had received 100 volunteers in the previous 24 hours. Most of the volunteers were fugitive slaves from Missouri. At the start of the war, thousands of slaves had fled across the border to refuge in Kansas. The population census tells the story. In 1860, 627 blacks were registered in Kansas. In 1865, the black population had grown to 12,527. The colored regiments of Kansas recruited

⁵⁹Berlin, *Black Military Experience*, 68.

⁶⁰ Official Records, vol. 3, *Union Correspondence*, 445.

approximately 2,000 blacks; the majority recently escaped slaves.⁶¹ Lane's tenacity paid off. By the fall of 1862, he had a colored regiment.

The Chief of Staff of the Department of Missouri, Colonel N.P. Chipman inspected the 1st Kansas Volunteers at Fort Lincoln on 16 October 1862. In a letter to his CG, General Samuel Curtis, he recommended the troops be mustered into their department. He wrote, "Inspection was highly satisfactory... They exhibit proficiency in the manual and in company evolutions truly surprising and the best company is officered by black men."⁶² He continued that Senator Lane had not turned the troops over to the Federal Government because he feared they would be disbanded.⁶³ There is little wonder that Lane was concerned with the continuing existence of the regiment since he had not received permission to recruit the black soldiers in the first place. The same month they were inspected, the 1st Kansas was in a skirmish with rebel guerillas near Butler, Missouri, probably the first battle of the war in which blacks fought as soldiers.⁶⁴ Lane had accomplished what Hunter had not. He had raised and trained a regiment of Negro troops without the permission of the administration. Lane's regiment was a hint of the regiments to be raised in 1863. As if expecting to be called, Contrabands trained for the transition.

⁶¹Richard B. Sheridan, "From Slavery in Missouri to Freedom in Kansas: the Influx of Black Fugitives and Contrabands Into Kansas, 1854-1865," *Kansas History*, Spring 1989, 28-47, and Albert Castel, "Enlistment and Conscription in Civil War Kansas," *The Kansas Historical Quarterly*, Autumn 1961, 313-319.

⁶²Berlin, *The Black Military Experience*, 70-71. (Chipman's full name not given.)

⁶³ *Ibid.*

⁶⁴Cornish, *The Sable Arm*, 77.

As 1862 progressed, Contrabands became more integrated into army life. They were employed as teamsters, field hands, nurses, cooks, and servants. Their services and pay were formalized in regulations and policy. Through it all, the fugitive slaves themselves seemed to expect something better. After finishing their work at the end of the day, contrabands would practice military drill in the evening.⁶⁵ For the contraband there was the hope of not just fleeing for freedom, but fighting for their freedom.

Lincoln would answer that dream with the emancipation proclamation in January 1863. The president designated Arkansas, Texas, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and certain counties of Virginia and Louisiana as in rebellion. Then as previously announced, he freed all slaves in the states of rebellion. He then added the clause, not discussed in the preliminary proclamation, that freedmen of suitable condition could be received into the armed services. The contrabands' hopes were rewarded.

1862 was a year in which the politics of slavery had divided commander from commander, and leaders from soldiers. As the Union Army advanced, the large numbers of contrabands forced commanders to deal with their presence. Policies that excluded fugitive slaves from Union lines were undermined by the perseverance of fugitive slaves and by abolitionist-minded units. There were no simple solutions in fugitive slave policy. Congress debated then codified the more radical policies. Radical policies were initially rejected, but later adopted by the president. In 1863, Lincoln executed the powers

⁶⁵Howard, *Black Liberation in Kentucky*, 5; and Sheridan, "From Slavery in Missouri," 43.

granted him in the Militia act and opened the way for contrabands to go from being slaves to being soldiers. 1863 was the year the Union Army struggled with the transition of the fugitive slave.

CHAPTER FIVE

FIELDS OF COTTON OR FIELDS OF FIRE?

On New Year's Day 1863, President Lincoln announced to the country his latest policy about former slaves. He emancipated the slaves in the states of rebellion, and authorized the enlistment of suitable Negroes into the military services. The administration's wavering over the employment of blacks was finished. The president had moved forward in a direction that paralleled the desires of the public and the elected representatives. To the administration, it must have seemed that the conflict over slave policy was behind them. However, the proclamation policy did not affect all departments. Departments under the policy neighbored departments not affected by the proclamation. Commanders serving in states of rebellion still had policy to formulate. The issue became whether or not they used the proclamation as a guide. The year 1863 would prove to be a trying year for both the civilian and military leadership on the issue of slaves.

President Lincoln was convinced that the employment of the Negro was the quickest way to end the war. He wanted his commanders to execute his new policy. The administration appointed officials and commissions to determine the level of compliance with the latest policy. The U.S. Colored Troops Bureau would be formed in May 1863 to standardize the process of black enlistment. Military commanders not conforming to the policy announced in the president's proclamation were quickly corrected or dismissed.

In other regions the emancipation proclamation only heightened tensions between the military and civilians. Citizens of the Border States clung to the "peculiar institution"

until the last months of the war. Commanders in departments not covered by the emancipation proclamation would find supporting the latest policy a political minefield. Zealous compliance with freeing or arming former slaves could draw the ire of the Border States' political leaders. Those commanders who could not navigate through the issues also found themselves relieved of command.

As always the contrabands themselves were an issue. With the authorization to enlist the newly freedmen as soldiers, commanders had to decide on the best employment for the contrabands. Was this manpower resource better used in fields of cotton or fields of fire? Where recruiting efforts were weak, some over-enthusiastic officers impressed blacks into the army. Impressment was not always limited to slaves of rebel masters, and the political voices of proUnion slaveholders who felt they had been robbed of their property added to the turmoil. The president's New Year's resolution had set a direction, but it brought complexities to slave policy as well.

Early in 1863, the administration was mindful that the potential existed for field commanders to ignore the president's latest policy. In March, two agencies were established as watchdogs of the new policy, a commission and a recruiting organization. Their role was to gather information concerning contrabands and the military's support of the proclamation.

On 16 March 1863, the American Freedman's Inquiry Commission was formed to collect data concerning the condition of the contrabands. They also were tasked to recommend measures for contrabands that included "self-support and self defense, with the least possible disturbance to the great industrial interest of the country, and of

rendering their services efficient in the present war.”¹ The commission’s members were not limited to the evaluation of the contrabands’ welfare. They were to determine the most effective method of contraband employment for the Union War effort. While the commission was interviewing the military and civilians associated with the contrabands, the administration sent an officer to the field to promote change.

The Adjutant General of the Army, Brigadier General Lorenzo Thomas, was sent to Mississippi to organize the recruitment of Negro troops in March of 1863. Additionally he was directed to assess the military’s acceptance of the president’s proclamation, and to determine the support of contraband employment. He was also tasked to herald the president’s desires. In section three of his appointment letter, the Secretary of War directed General Thomas to convince officers that their role was to “employ to the utmost extent the aid and cooperation of the loyal colored population in performing the labor incident to military operations, and also in performing the duties of soldiers under proper organization, and that any obstacle thrown in the way of these ends is regarded by the president as a violation of the acts of Congress, and the declared purpose of the Government in using every means to bring the war to an end.”² If the proclamation message had not been heard, the follow on message left no doubts about what direction commanders were to go. General Thomas’ role as an enforcer may not have been necessary. As he traveled, he reported that “the policy with regard to blacks is

¹*Official Records, vol.3, Union Correspondence, 73.*

²*Ibid., 100.*

enthusiastically received.”³ Most officers General Thomas contacted were pleased to implement the new policy. Similar support was not seen in every department. The administration was swift in making officers aware of their new obligations.

In March of 1863, the Secretary of War Stanton received reports that officers in the Department of Tennessee, under General Grant’s command, were forcing Negroes to return to their masters. General Halleck, now as general-in-chief, directed Grant to comply with the proclamation. At the end of March, he wrote Grant that the officers returning slaves were not only wrong but were countering the government’s policy. Halleck stated, “General, it is the policy of the government to withdraw from the enemy as much productive labor as possible. So long as the rebels retain and employ their slaves in producing grains, &c, they can employ whites in the field. Every slave withdrawn from the enemy is equivalent to a white man put *hors de combat*.”⁴ Halleck told Grant it was his duty to change the minds of his men. General Halleck had traveled as far as the administration in one year. The former field commander who had created General Order No. 3, to keep fugitive slaves from entering Union lines, was now endorsing the administration’s latest policy as the senior military commander. Just as he had supported General Order No. 3 in Missouri, Grant would support General Halleck’s latest guidance as well. After the War Department ensured military compliance with the spirit of the emancipation proclamation, they also took steps to formalize the arming of blacks.

³Ibid., 117, 212.

⁴Berlin, *Black Military Experience*, 143.

In January 1863, the president's authorization allowing the enlistment of black troops caused the initial organized regiments to rush to inception in the regular army. On 13 January, Senator Lane's irregularly recruited First Kansas Colored Regiment was mustered into service. On 31 January the South Carolina Volunteers were enrolled into the Army as well. The formerly trained contraband units were now fighting as approved United States troops. As the months passed, the number of requests to arm troops, and the haphazard method of raising regiments one at a time in various regions, became time consuming and inefficient. In May, the War Department consolidated all efforts for raising and organization of black units under the Adjutant General's office. The Bureau of the United States Colored Troops (USCT) was formed to standardize the selection and training of officers and enlisted men in Negro regiments.⁵ If the administration was going to jolt the South with the organization of black troops, the number of units had to increase significantly to make an impact.

President Lincoln made his views known on the subject of black troops in a letter to a James C. Conkling close to the end of March. The president meant for Mr. Conkling to use his letter as remarks at a meeting of proUnion men who were unhappy with the president and his emancipation proclamation. Lincoln stated that the commanders of the Union Army felt the combination of the emancipation proclamation and the arming of blacks was the greatest blow struck so far by the Union. To explain why he freed the slaves, Lincoln said, "I thought that in your struggle for the Union, to whatever extent the

⁵Joseph T. Glathaar, *Forged in Battle, the Civil War Alliance of Black Soldiers and White Officers* (New York: The Free Press, 1990), 10; and Cornish, *The Sable Arm*, 130-131.

negroes should cease helping the enemy, to that extent it weakened the enemy in his resistance to you.”⁶ By the fall, Lincoln would expand the recruitment of blacks beyond the limits of his explanation to Mr. Conkling.

A legal review of the Confiscation Acts of Congress, and the president’s emancipation proclamation was submitted to the Secretary of War in August 1863. The analysis stated that the Government was within its powers to seize property of the enemy, including slaves. The Government was also obligated to employ all physically capable persons regardless of color to support the war effort in order to protect the public. The review also stated that if the president chose to use slaves of loyal masters, an appropriate step would be to compensate those masters for their loss.⁷ The administration was determined to heed the lawyer’s advice while increasing black enlistment.

From January 1863, the recruitment of black troops was conducted in secessionist states and in the supportive northern states. In October 1863, the War Department ordered that blacks in the states of Maryland, Tennessee, and Missouri were eligible for enlistment. The order included free blacks, slaves of rebel masters, and with their permission, slaves of loyal masters. Following the legal guidance of two months earlier, the War Department compensated loyal owners \$300 for each slave. If recruiters did not make their quotas using these three pools of blacks, then they were authorized to enlist

⁶Basler, *Collected Works of Lincoln*, 6:406-409.

⁷*Official Records*, vol. 3, *Union Correspondence*, 695-6.

slaves of loyal masters without the owner's consent.⁸ By taking the slaves from loyal owners the administration had shifted policies again. The reason was military necessity.

On 1 October, Secretary of War Stanton wrote to President Lincoln proposing to recruit free blacks, and all slaves in Maryland and Tennessee. Stanton told the president he had met with Governor Bradford of Maryland and corresponded with General Andrew Johnson, Military Governor of Tennessee. Both men had agreed to the recruitment conditions proposed by Secretary Stanton. Maryland was fighting the war in the east. Her white soldiers were suffering from malaria in the vicinity of Fort Monroe. They were to be replaced by black troops. Tennessee was the center of the war in the west. Every physically capable and loyal individual was needed for the fight. Kentucky was excluded from the new recruitment policy because there was no viable military enemy remaining within her borders. Stanton stated, "There is, therefore, a military necessity in the State of Maryland and in the State of Tennessee for enlisting into the forces all persons capable of bearing arms on the Union side, without regard to color, and whether they be freeman or slaves."⁹ Lincoln concurred. Military necessity had created the "contrabands of war" concept; the emancipation of slaves belonging to rebel owners; and the enlistment of the new freedmen. Military necessity now compelled the enlistment of slaves of loyal owners. By the end of the war, blacks in all states would be eligible for enlistment. The war machine's needs forced the administration to modify policy. As the

⁸Quarles, *Lincoln and the Negro*, 163.

⁹*Official Records*, vol.3, *Union Correspondence*, 855-856.

administration grappled with the changing military requirements of the war, military commanders were determining the best slave policy for their individual departments.

General Nathaniel P. Banks relieved General Butler as CG of the Department of the Gulf. General Banks had received his generalship through political connections rather than military competence. In testimony to his ineptitude, less than a month after he took the Gulf command, President Lincoln asked Secretary Stanton to retrieve Butler and replace Banks.¹⁰ Unfortunately for the contrabands under his control, Banks remained in command.

The parishes of Louisiana under Union occupation had been spared the emancipation proclamation. In January, General Banks issued General Order No. 12, announcing his interpretation of the president's guidance. Union personnel would not encourage or entice slaves to leave their masters, neither would they force slaves to return to their owners. Everyone was to be employed. Negroes were to work on the plantations or on public works. Vagrancy would not be allowed. Banks formed a sequestration committee to regulate wages for Negroes. Plantation owners could confer with the committee. Banks claimed, "under this voluntary system of labor, the State of Louisiana will produce threefold the product of its most prosperous past."¹¹ Banks was about to impose this voluntary system as military law.

In February the sequestration committee published a circular and a contract form for the employment of blacks. Each Provost Marshal was to impel blacks to return to the

¹⁰Basler, *Collected Works of Lincoln*, 6:76.

¹¹*Official Records*, vol.15, 666-667.

plantation and ensure they worked for at least a year. Unemployed Negroes not in compliance had to labor on the public works. All Negroes without work were to be arrested as vagrants.¹² In the view of some, Banks had replaced civilian slavery with a military owner.

Having set the paltry sum of \$2 a month wages for men and \$1 a month wages for women, the commission certainly was not leading the way for a true free labor system.¹³

A former War Department Inspector reported to the American Freedman's Inquiry Commission in 1864 that the government regulation of wages made exslaves "surfs [*sic*]" not freedmen.¹⁴ In addition to the regulation of civilian plantations, the military supervised abandoned plantations with quartermasters.

A Plantation Bureau was created to lease and oversee the planting and harvesting of cotton. To obtain field hands, agents traveled through Louisiana, collected vagrant blacks and placed them on the plantations. Thirty-three plantations were under military control in 1863. In the summer of 1863, due to military competition for limited resources, idle blacks were just as apt to be impressed into the Union Army. The meaning of vagrancy broadened as the year progressed. According to C. Peter Ripley, in *Slaves and Freedmen in Civil War Louisiana*, "In many cases a vagrant apparently was

¹²Berlin, *Wartime Genesis of Free Labor: The Lower South*, 419.

¹³McCrary, *Lincoln and Reconstruction*, 118; and Ripley, *Slaves and Freedmen in Civil War Louisiana*, 48.

¹⁴Berlin, *Wartime Genesis of Free Labor: The Lower South*, 495.

defined as any black on the streets during working hours.”¹⁵ Adding to the Department of the Gulf issues of black impressment, and plantation oversight, the Department of Treasury would contribute to a turf war.

Secretary of Treasury Chase appointed a special agent, Benjamin Flanders, to collect and control abandoned property in Louisiana, Texas, and Mississippi. Although earlier the president had directed the military to care for all contrabands within their lines, Flanders felt it was an inappropriate use of public money to care for the ill or destitute. His solution to the situation was to have the military care for the 2,000 to 3,000 infirmed blacks, while he controlled the healthy population on the plantations¹⁶ Banks objected.

Writing to General Halleck, Banks protested the burden of caring for the sick using military funds. Earlier, he had been able to offset the cost with taxes levied upon rebel property. Since the Treasury Department now controlled all abandoned property, the charge of caring for the infirm would come out of military pockets. Requesting orders, he added, “The administration of these charities and providing for the negroes, has been a labor of far greater intensity than the creation of an army and the conduct of campaigns.”¹⁷ If General Banks truly felt that way, it is astonishing he didn’t request that the Treasury Department control all of the contrabands, both the able-bodied and the needy, in the same manner the military had cared for both. Halleck’s reply supported his

¹⁵Ripley, *Slaves and Freedmen in Louisiana*, 109; and McCrary, *Lincoln and Reconstruction*, 141-143.

¹⁶Ripley, *Slaves and Freedmen in Louisiana*, 52-55.

¹⁷Berlin, *Wartime Genesis of Free Labor: The Lower South*, 469-471.

commander. All civil authorities were subordinate to Banks. Banks could enforce regulations as he saw fit in his command.¹⁸ The opportunity for the military to rid itself of the time consuming contraband dilemma had passed.

General Banks had ensured that officers in the Department of the Gulf would be in the overseer role until the end of the war. Reconstruction efforts of Lincoln would henceforth occur under military control. Plantation management policies would be spread throughout the military departments. Perhaps General Banks did not want to give up control of the plantations because he would lose command of the manpower pool for black recruitment. In the Department of the Gulf recruiters were impressing blacks to make regiments. Banks may have envisioned future clashes with treasury agents over field hands. Ripley notes that by the end of the war, Louisiana had contributed 18,750 blacks to the military. Peyton McCrary in *Abraham Lincoln and Reconstruction: A Louisiana Experiment* puts the number at 24,000, more than any other state in the Union.¹⁹ If caring for contrabands was an ordeal, perhaps by 1863, finding soldiers for the war effort was an even greater hardship. As the war progressed, each department experienced difficulties meeting quotas for labor or recruitment.

In Virginia, North Carolina, and the District of Columbia, the two states and the district shared available black labor. Manpower shortages led to impressment in the region. The year ended with the regulation of employment and wages to enable states to meet recruiting goals.

¹⁸Ibid.

¹⁹Ripley, *Slaves and Freedmen in Louisiana*, 108; and McCrary, *Lincoln and Reconstruction*, 143.

The year started with a work stoppage in North Carolina. Lieutenant George F. Woodman wrote to Headquarters 18th Army. He had 100 blacks under guard, who refused to work. The contrabands thought they were hired to be soldiers. When told the 18th Army lacked permission to raise a black regiment, the contrabands decided not to work. Lieutenant Woodman eventually released them.²⁰ By the end of that year, contrabands would have no choice but to serve in the military.

In June, the Army of the Potomac Chief Quartermaster's aide, Captain Wagner, traveled the region requesting permission from local commanders to obtain contrabands for work in the District of Columbia. Faced with their own needs, the commanders refused his request. Captain Wagner was "mortified" at the result of his trip, and recommended to his boss the Negroes be put to work by "forcible persuasion."²¹ On 1 July, Secretary Stanton signed an order for the Quartermasters not to exceed impressing 1,000 Negroes in the vicinity of Fort Monroe and Norfolk.²² The need for labor and the impressment continued.

In November, the colored citizens of Beaufort, North Carolina wrote to the Commander of the Department of Virginia and North Carolina, complaining of the indiscriminate impressment of blacks. The next month, the Engineer at Fort Monroe, wrote to the Chief Engineer of the Army. Concerned that the army would draft his

²⁰Berlin, *The Black Military Experience*, 129.

²¹Berlin, *The Wartime Genesis of Free Labor: The Upper South*, 154-155.
(Captain Wagner's full name was not given.)

²²Ibid., 156.

Negroes, and impact the work at the fort, he had decided to hold onto his laborers, unless otherwise ordered by the Chief Engineer.²³ Orders would come quickly, but not from the senior engineer.

The Commander of the Army of North Carolina complained in mid-November to the Adjutant General of the Army that his recruiters could not compete with the area quartermasters. Black soldiers were limited to \$10 pay a month with \$3 withheld for clothing allowance. Quartermasters were paying up to \$25 a month for teamsters in the Army of the Potomac. General Benjamin F. Butler solved this problem.

In December of 1863, General Butler, was the Commander of Virginia and North Carolina. On 5 December he issued General Order No. 46 to remove the hiring wage inequity between recruiters and quartermasters. Stating that the recruitment of colored troops had priority in the Department, he limited all other government agencies in the Department to \$10 per month pay. He directed that with the exception of skilled laborers and mechanics, black men between eighteen and forty-five that were physically qualified, were to be employed as soldiers first. Butler declared, the “best use during the war for an able-bodied colored man, as well for himself as the country, is to be a soldier.”²⁴ Butler added that it was every soldier’s duty to bring blacks into the military and deprive the Confederacy of that power. Butler had now come full circle in his policies. In 1861, he had kept fugitive slaves as “contrabands of war” to remove support from rebel forces. In 1862, he had mandated employment of contrabands on plantations to keep the peace. He

²³Berlin, *The Wartime Genesis of Free Labor: The Upper South*, 166, 174-176.

²⁴Berlin, *The Black Military Experience*, 135-136.

now ordered his troops to remove black labor from the Confederacy. Commanders in other departments had come to the same conclusion. The issue was not whether to employ blacks, but whether to hire them as laborers or soldiers.

Kentucky was not covered by the emancipation proclamation. The hostilities between the army and the state's citizens would make black recruitment a virtual impossibility. However, the military's need for manpower was unchanged.

In April 1863, the Commander of the Department of the Ohio General Ambrose Burnside, who directed operations in Kentucky, issued a General Order that attempted to balance the requirements of the emancipation proclamation, the demands of Kentucky citizens, and the needs of the military. General Order No. 53 prohibited military members from interfering with the civil process, or assisting slaves in escape. Slaves could not be impressed without the consent of the owner unless military necessity existed. Slaves emancipated by Congress or the president had a right to their freedom. Sales of freedmen in the Department were void. Anyone violating the order would be arrested.²⁵ Four months had passed since emancipation had been proclaimed. General Burnside's order may not have been issued quickly enough.

The day after Burnside's order was posted, Secretary Stanton wrote to the General to ensure that the freedom proclamation was upheld in his Department. The president had received a newspaper report from Louisville that four contrabands, who were freedmen, were sold by their owners. Stanton stated the president was

much surprised to find that persons, who are free, under his proclamation, have been suffered to be sold under any pretense whatever, and desires me to remind you of the terms of the acts of Congress, by which the fugitive negroes of rebel

²⁵Berlin, *The Destruction of Slavery*, 573-574.

owners taking refuge within our lines are declared to be “captives of war.” He desires you to take immediate measures to prevent any ... “captives of war” from being returned to bondage or suffering any wrong prohibited by that act. A detailed dispatch, with instructions, will be sent today.²⁶

The administration was going to be very active in the enforcement of the proclamation. General Burnside issued his order too late to effect the events in Kentucky, and because of timing, the administration was probably unaware of the order’s existence. However, General Order No. 53 met the needs of the government, and the political needs of Kentucky. Burnside’s subordinate commanders would handle other related issues.

Although Kentucky slaves were not freed under the proclamation, slaves in nearby rebellious states were. The commanders were dealing with slaves who had crossed state lines to find the Union Army and attain their freedom. The Headquarters of the District of Western Kentucky under Brigadier General Jeremiah T. Boyle, issued instructions to deal with the contrabands. Slaves coming in from south of Tennessee and from rebel employment were captives of war. They would be employed to construct fortifications and redoubts. Any civil or military officers who had fugitive slaves in jail or custody were to give them up for military construction. The military would control all captives until they were released by the authority of the Government.²⁷ General Boyle’s instructions failed to clarify how, as required by acts of Congress, and the president’s proclamation, the Contrabands were to receive their manumission. Shortly after this order was issued, freedom was even less obtainable, due to impressment.

²⁶*Official Records*, vol. 23, part 2, 291.

²⁷Berlin, *Destruction of Slavery*, 574-575.

By August, General Boyle had assumed duties as Commander District of Kentucky. He needed roads to move the military. General Boyle issued an order to impress 6,000 Negroes for the construction of roads. Sensitive to loyal farmers, he allowed citizens with one slave to be exempt from the impressment. Citizens with four or more slaves would provide one-third for labor. All owners would be compensated. 10 days later he impressed 8,000 more slaves to build a railroad.²⁸ Although the decision would prove unpopular with locals, General Boyle would place the needs of his army first. His workforce, however, was dwindling.

In November 1863, General Boyle wrote to Secretary Stanton requesting permission to enlist 2,000 to 3,000 Negroes into the military as teamsters. General Boyle proposed to obtain the permission of Kentucky Governor Thomas Bramlette, compensate the owners \$300, and free the Negroes at the end of their employment.²⁹ Through October, Kentucky had been spared recruiting because the war was being fought in other departments, but by November, Boyle felt recruiting was necessary to support manpower requirements.

Secretary Stanton approved Boyle's request. By December, Boyle was forced to confess that he had not been able to procure all the teamsters he required. Kentucky owners who had supported impressment for the roads were not as supportive of military enlistment. Boyle stated owners who were willing to supply their slaves for roadwork, were less willing to supply them as soldiers. They were concerned about the increased

²⁸ Ibid., 585-587.

²⁹ Berlin, *The Wartime Genesis of Free Labor: The Upper South*, 660.

likelihood of the slave's death, and the property loss. An enclosed copy of a letter from Governor Bramlette stated that the citizens objected to the condition of freeing slaves at the end of their enlistment. Boyle had been forced to impress some free Negroes and slaves until the recruiting issues were resolved. His teamsters' plan was never implemented.³⁰ Kentucky citizens had avoided black recruitment again, but they had only prolonged the inevitable. Recruitment and impressment were also issues in Tennessee.

Major General William Rosecrans commanded the Department of the Cumberland. From his headquarters in Winchester, Tennessee, he issued General Order No. 72, on 23 July 1863. He charged officers to conscript able-bodied Negroes to work as teamsters, cooks, laundresses, and laborers. Slaves of loyal owners were only to be taken when it was an absolute necessity. Officers were forbidden to harbor runaway Negroes unless they required their services for humanitarian reasons. To protect the Negroes in the Engineer's Department and to ensure their wages were paid, they were to be organized into detachments and companies.³¹ His orders did not prevent conflicts in the Cumberland Department.

Major George Stearns was a commissioner for the organization of USCT regiments. Writing from Nashville, Tennessee to Secretary of War Stanton in September 1863, he was appalled at the impressment occurring in the region. He recommended the Quartermaster of the Army, General Meigs, investigate on his return trip through the

³⁰Ibid., 660-664.

³¹*Official Records*, vol. 3, *Union Correspondence*, 559-560.

area. Impressment was reducing his ability to recruit, since the Negroes no longer felt safe with the Union Army. He wrote, "The colored man here are treated like brutes; any officer who wants them, I am told, impresses on his own authority; and it is seldom they are paid. On Sunday a large number were impressed and one was shot; he died on Wednesday."³² Military needs were growing. If Stearns' work was curtailed by impressment, military labor was stopped by recruitment.

In October 1863, the Engineer at Nashville wrote to the Chief Engineer of the Department of the Cumberland. Lieutenant George Burroughs' work was at a standstill. He had lost all 500 of his Negroes when the Department organized the first regiment of colored troops. He needed them back.³³ He was not likely to win his battle. The administration made it costly for those who thwarted black enlistment.

On 23 September 1863, the Secretary of War wrote to Major General Stephen A. Hurlbut, commanding at Memphis. Secretary Stanton directed that he remove Colonel Martin, who was his subordinate, from command at Paducah, Mississippi, and assign an officer "who will not permit the surrender of slaves to rebel masters, nor oppose the policy of the Government in organizing colored troops."³⁴ Openly enforcing the proclamation by removing officers was a strong signal for the administration to send to the military. Coupled with the swift sending of letters to Generals where events in the

³²Ibid., 840.

³³Berlin, *The Wartime Genesis of Free Labor: The Upper South*, 410-411.

³⁴*Official Records*, vol. 30, part 3, 844. (General's and colonel's full names were not given.)

commands countered the latest policy, the goal seemed to be the reinforcement of the emancipation proclamation. The removal of General Curtis from the Department of the Missouri was a different signal altogether.

Hints of future difficulties for Curtis came early in the year. Ten days after the emancipation proclamation, Lincoln wrote to the General, "I understand there is considerable trouble with the slaves in Missouri. Please do your best to keep the peace on the question for 2 or 3 weeks, by which time we hope to do something here towards settling the question in Missouri."³⁵ Curtis had no idea that there were troubles in Missouri. He would know better by the end of the month.

President Lincoln sent a Mr. Broadhead to visit Curtis with suggestions for the slavery policy in Missouri. With Lincoln's endorsement, Mr. Broadhead wanted the November 1863 exclusion policy directed by General Granger in Kentucky to be put into effect in Missouri. General Curtis balked. He wrote to the president, "The order excludes 'all persons not belonging to the army from our camps.' This is General Halleck's Orders, No. 3, in different words and would not do in my command, where we are taking the 'bull by the horns.' If they would do so in Kentucky, I am confident you ... would have less trouble."³⁶ Curtis had missed the point. There could be only one reason why Lincoln was sending an envoy to endorse a policy that the general-in-chief of the Army had refused to support two months earlier. Lincoln did not want Curtis taking the bull by the horns. He wanted Missouri to have her slavery and support the

³⁵Basler, *Collected Works of Lincoln*, 6:52.

³⁶*Official Records*, vol.2, part 2, 88-89. (Mr. Broadhead's full name was not given.)

Union. However, since he was strong arming support for the emancipation proclamation in other departments, he needed a quiet transition back to the old exclusion policy in Missouri. General Curtis was the wrong man in the job for that to happen.

Conditions deteriorated in Missouri. The state started to separate into two factions, one under Governor Hamilton Gamble and one under General Curtis. By May, Lincoln had decided to relieve Curtis.³⁷ He decided to appoint General John Schofield his successor.

Lincoln wrote Schofield carefully explaining his reasons for removing General Curtis. The president felt the situation in Missouri had deteriorated to a quarrel between Gamble and Curtis. Since he could not remove Governor Gamble, an elected official, he had no choice but to remove Curtis. He advised Schofield that he had to enact military policy that would protect the state from invasion, but not persecute the people.³⁸ He did not tell him how to make this happen. Within six weeks General Schofield was requesting guidance. Painfully aware of how easy it would be to cross the government, he requested the Secretary of War's opinion on enforcement of the acts of Congress. He wanted to know if the military should issue certificates of freedom to slaves under the emancipation proclamation. Could military personnel provide evidence of freedom in a

³⁷Basler, *Collected Works of Lincoln*, 6:210-211.

³⁸*Ibid.*, 234.

slave suit? Was the military responsible for protecting civil officers from violence when in the act of lawfully arresting fugitive slaves?³⁹ As an indication of how volatile Missouri was, he received his answers the next month.

The Judge Advocate General's office sent Schofield replies to his questions in August. Civil Courts determined a slave's status. The military could issue certificates of freedom. The military could not intervene in any settlement of a slave suit. The military also could not protect a civil officer from violence. Civil officers had to act on their own authority, because support or protection from the military violated "posse comitatus [*sic*]," the statutory prevention of the army enforcing civil duties.⁴⁰ Lincoln would add his own guidance some three months later.

In October, the president wrote General Schofield with a few pages of policy guidance for government in Missouri. He included two specific statements that affected slave policy. Schofield must not allow anyone to enlist colored troops without his orders, or without the administration's orders. Lincoln also tasked Schofield to prevent the military from "either returning fugitive slaves, or in forcing, or enticing slaves from their homes."⁴¹ In September the Secretary of War had called for the resignation of an officer who was interfering with the enlistment of blacks. In October, the president withheld a department commander's delegation authority to enlist troops. Despite the announcement of the emancipation proclamation, politics was driving the

³⁹Berlin, *The Destruction of Slavery*, 461.

⁴⁰*Ibid.*, 464.

⁴¹Basler, *Collected Works of Lincoln*, 6:492-493.

administration's policy. Lincoln had narrowed Schofield's options in an effort to keep the peace in Missouri. The president's efforts would fail. Missouri citizens would call for General Schofield's removal just as they had called for Fremont's and Curtis'.⁴² Perhaps realizing Missouri's conflict was less about military leadership than slavery politics, Lincoln said no. Schofield stayed. While Lincoln was limiting the effects of his own policy in the Department of the Missouri, he was resolutely endorsing it in Mississippi.

Lincoln wrote to General Grant in August, noting that General Thomas had gone to the Mississippi valley to raise black regiments. Discussing black recruitment as an asset, he said, "I believe it is a resource which, if vigorously applied now, will soon close the contest. It works doubly, weakening the enemy, and strengthening us. We were not fully ripe for it until the river was opened. Now, I think at least a hundred thousand can, and ought to be rapidly organized along it's shores, relieving all the white troops to serve elsewhere."⁴³ Lincoln was proposing to use the Negroes as occupation forces to allow the Union troops to prosecute the war in a different theater. Grant had already received guidance from General Halleck on the employment of troops. He needed little prodding to support black recruitment.

On 23 August Grant wrote to Brigadier General Crocker, commanding at Natchez, Mississippi. He stated that the Secretary of War wanted all able-bodied Negroes to fill the black regiments. Grant directed that all blacks not employed with published orders were to be enlisted. His only caution was for General Crocker to make

⁴²Ibid., 6:499-504.

⁴³Ibid., 6:374.

a distinction between slaves of loyal owners and rebel owners. Recruiters could not visit Negroes of loyal owners. If slaves of loyal owners approached the recruiter and offered themselves for service then they could be enlisted. Negroes of rebel owners could be taken off the plantation without the owner's consent.⁴⁴ In accordance with Lincoln's guidance, the Negroes recruited from the Mississippi valley plantations weren't going far from home.

Charles A. Dana was acting Assistant Secretary of War in 1864. In 1863, he had served as a special investigator for the *New York Tribune* in the Mississippi valley. The American Freedmen's Inquiry Commission in 1864 questioned Dana. The commission wanted to know what happened to the Negroes at the surrender of Vicksburg. He replied, "I only know that a great many of them were employed upon the plantations from Vicksburg up to Lake Providence-distance of 100 miles."⁴⁵ A *New York Times* article confirms his response.

On 20 July 1863 the *New York Times* devoted a page to Union Army activities in Mississippi. The article discussed General Thomas' recruiting efforts. He had enlisted 20,000 blacks for regiments in his travels from Louisiana to Arkansas to Mississippi. Although Vicksburg had only fallen on 4 July, 60-70 plantations already were leased to Unionists who employed blacks under a wage system. The article ended by saying the plantations were under cultivation, and "The negro regiments which have been organized,

⁴⁴*Official Records*, vol.3, *Union Correspondence*, 735.

⁴⁵Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 766.

are affording them protection."⁴⁶ Grant was filling the president's expectations. He was using the black troops to protect the plantations, freeing white soldiers for fighting. Apparently not forgetting the guidance he received in 1862, he also was enforcing the plantation free labor system. Plantation labor would soon go the route of Louisiana. In 1864, blacks would be forced to serve in the military or on the plantation.

The president's emancipation proclamation had finally given clear direction to the military. Politics had caused some commanders to waiver. Controlled by states' politics and public opinion the administration did not consistently enforce its own policy. Commanders could be removed for supporting the policy or for not supporting the policy. As black workers were employed, the available pool shrank. Commanders were forced to impress for labor, and military services. Conflict between engineer support projects, agriculture, and war fighting caused commanders to mandate the employment of Negroes. Although legally emancipated, thousands of blacks were forced to work on plantations. Thousands more were recruited by the army. The issues would be no easier through the rest of the war.

From 1864 to 1865 the administration hoped and then knew that the Union was going to win the war. They began to believe that the war's end would be the end of slavery also. The president and his cabinet realized that the freedmen under military control would have to be integrated into society. Policy had to reflect the freedmen's transformation from involuntary government worker to wage laborer. In many cases, military policy laid the foundation for the transformation.

⁴⁶"Conversations with Gen. Thomas," *New York Times*, 20 July 1863, 3.

CHAPTER SIX
THE ROAD TO RECONSTRUCTION

At the end of 1863, President Abraham Lincoln made his annual address to Congress. Discussing the emancipation proclamation, he said that its announcement had given the nation hope. He understood debate had occurred over the measure. The proclamation had been both “supported” and “denounced by the nation.”¹ However, because of his decision, 100,000 blacks were now in military service, with half of them bearing arms. There was a double advantage to their enlistment. For every black serving, a white man was relieved of his duties. Shifting focus slightly, he said that he wanted emancipation to be a condition for any state to reenter the Union.² The president had delivered a message that would effect slave policy to the end of the war.

In the last eighteen months of the war, the administration, the public, and the military concluded that slavery was dying. In the Border States, the recruitment of blacks would undermine slaveowners’ efforts to keep the institution alive. As Sherman took the Union Army into Southern territory, thousands of blacks left the plantations. In 1865, Congress would pass a law that freed families of enlisted soldiers. Some states would pass legislation abolishing slavery from their constitutions. Slavery was going away. The issue then became how to handle the emancipated slaves.

The contrabands who had been integrated into the army were now free men or women. Contrabands were freedmen, but they had no education, employment, or

¹Basler, *Collected Works of Lincoln*, 7:36-51.

²Ibid.

opportunity. To prevent undue suffering, thousands were kept in camps and given government rations. Slowly the administration and military commanders realized policies had to enable the freedmen to transition from life with government welfare to life on their own. More policies would make vagrancy a crime, mandate employment, and establish military plantations. As the military competed amongst itself for the manning, impressment practices continued. Wage hiring disparities between quartermasters and recruiters still existed. The contraband was now a commodity. Military policies reflected their new status. The reconstruction focus of the administration and military leadership was not just about the reintroduction of rebel states into the Union, but the introduction of the freedmen into society.

Military orders were generated that reflected the manning priorities of the commanders, or the economic needs of the department. The increasing numbers of contrabands under military control would cause the War Department to establish rationing guidance. With an eye towards reconstruction, the administration would continue to evaluate the results of the emancipation proclamation.

In January 1864, the Adjutant General of the Army, under the Secretary of War's guidance, promulgated ration amounts to be issued to unemployed or destitute colored persons, "commonly called contrabands."³ For the first time, all quartermasters had guidance and authorization to feed the needy. This long overdue action probably saved many hours of the War Department answering the redundant question of "what shall I do with them?"

³*Official Records*, vol.4, *Union Correspondence*, 44.

The next month Adjutant General Lorenzo Thomas issued an order establishing permanent camps in Kentucky, Tennessee, and Missouri for the contrabands. The quartermasters would provide the material to build shelters. Able-bodied men coming into the camps would be mustered into the service. Women and children would perform labor. Wages were established with the top earner, black males, receiving not less than \$7 a month.⁴ The laborers' wage was thoughtfully \$3 less a month than the pay of the black soldiers. In another department plantations work was given priority over enlistments.

General N. P. Banks published General Order No. 23 on 3 February 1864 in the Department of the Gulf. In contrast to Banks' orders of 1863 that seemed to reinforce the slavery concepts, Order No. 23 was constructed with integration of blacks into society in mind. Pay was more than doubled with the top hand receiving \$8 a month. Flogging or cruel and unusual punishments were prohibited. Plantations were required to care for the sick and disabled. Contraband schools were established. A Free Labor Bank was started to provide a safe deposit for contraband wages. The local economy was given preference with the statement "enlistment of soldiers from plantations under cultivation is suspended."⁵ Times were changing, and the administration was watching.

The same month General Banks issued General Order No. 23, the president sent a general on travel to investigate the results of the emancipation proclamation. Major General Daniel Sickles was directed to visit Tennessee, Arkansas, Mississippi, Louisiana,

⁴Berlin, *The Wartime Genesis of Free Labor: The Upper South*, 440-441.

⁵Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 512-515

and Florida. General Sickles was to report on any reconstruction efforts he encountered. Lincoln wanted to know if the proclamation had made any effect on desertion rates of rebel soldiers. Lincoln charged Sickles to "Also learn what you can as to the colored people--how they get along as soldiers, as laborers in our service, on leased plantations, and as hired laborers with their old masters, if there be such cases."⁶ Sickles was evaluating the initial efforts of reconstruction under military control. The president needed to know if the policies were working, for the concepts might be applied to the entire nation at the end of the war. The generals themselves were coming to the same conclusion. Like Louisiana, cotton in many departments, not the military, was king.

In February 1864, General Grant wrote to Major General John Logan, commanding out of Huntsville, Alabama. He directed the general to have recruiters discontinue the impressment of Negroes who were working for the government. Summing up his reasons simply, Grant penned, "We want to encourage the cultivation of the soil."⁷ Other departments followed suit.

The Adjutant General of the Army reversed his priorities in March. General Thomas issued General Order No. 9, that with few modifications adopted the regulations of the Department of the Gulf. The primary point was that the enlistment of blacks from plantations was suspended.⁸ Two weeks later, the General Superintendent of Freedmen in Tennessee and Arkansas issued a more restrictive mandate.

⁶Basler, *Collected Works of Lincoln*, 7:185.

⁷*Official Records*, vol. 32, part II, 477.

⁸Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 802-803.

Chaplain John Eaton, Jr., who had been made Superintendent of Contrabands by General Grant in Mississippi, was now a Colonel and responsible for the freedmen in two states. On 26 March he published a circular that required all able-bodied people to labor. Freedmen receiving support from the government were to look for labor on the plantations. Everyone associated with the contrabands, military and civilian, was to encourage them to work. Able-bodied persons who refused to work would have their government rations halved. Those refusing to work could be required to labor under supervision in work parties or placed under guard. Colonel Eaton's goal was to contribute to the freedmen's progress by getting them to work. They needed to establish themselves, for the government would eventually remove relief assistance.⁹ Mississippi was also enforcing plantation labor.

Colonel Samuel Thomas, Superintendent of Freedmen in the District of Vicksburg, wrote to Colonel Eaton on 14 March. In the previous week he had removed 3,700 people from contraband camps to plantations. Since the start of 1864, 9,000 people had been sent from camps to labor. The size of the camps had stayed the same because Negroes were still coming in, escaping from rebel states. He reported, "The object has been to make every well person work that came within our lines of the camp as long as they remained, urging them to seek employment on plantations where they would be better paid for what they did, and find a more permanent home."¹⁰ Thomas and Eaton were training the freedmen for reconstruction. In Mississippi alone, by midsummer

⁹Ibid., 813.

¹⁰Ibid., 811.

1864, 47,000 acres were under cultivation, with over 11,000 freedmen under military supervision.¹¹ The program, however, was at the expense of other military requirements. Recruiters had to compete with both plantation and quartermasters' needs.

The Commissioner for the organization of the USCT in Middle and East Tennessee complained about the competition in a letter dated 11 April 1864. The local quartermaster paid \$25 a month plus a ration for laborers. Adding to the competition, was the fact that many black troops performed manual labor for the regiments instead of being used as soldiers. The Commissioner lamented, "of course no laborer with his eyes open will join the regiment for 'fatigue duty.'"¹² Pay discrepancy between military agencies was one factor that caused recruiters to impress blacks. Another factor was discrimination. Black men received less pay than white soldiers did. Adding to the recruiter's woes was the fact that as the war progressed, the quartermasters shrank the available pool with their hires. Congress addressed these issues in mid-summer 1864.

In June 1864, Congress passed legislation that equalized pay between black and white soldiers. In July, legislation was passed that opened up all areas under federal occupation to recruiters.¹³ This expanded the pool of available blacks for recruiters. Their action contributed to the demise of slavery, but the conflict within the military did not seem to diminish.

¹¹Gerteis, *From Contraband to Freedman*, 157.

¹²Berlin, *The Black Military Experience*, 181; and Glathaar, *Forged in Battle*, 182-185.

¹³Cornish, *The Sable Arm*, 254-258; Glathaar, *Forged in Battle*, 60-80; and McPherson, *The Negro's Civil War* (New York: Pantheon, 1965; reprint, New York: Ballentine, 1991), 206 (page citations are to reprint edition).

Recruiters hit Kentucky early. Kentucky had held out for months from having her Negroes enlisted into the army. The 10 July *New York Times* reported 25,000 black soldiers could be raised from Kentucky. The head recruiter had already set up shop in Louisville.¹⁴ Recruitment in Kentucky would prove more difficult than opening an office.

Slaves from Kentucky had already enlisted in the war by running away to join Tennessee and Ohio units. Draft requirements and recruitment inflamed the local population. Slaves and recruiters were discouraged with violence. Between May and June of 1864, eight slaves were killed for attempting to volunteer. Seven Provost Marshals were killed during the war due to conflict over slave policies in Kentucky.¹⁵ Despite these impediments, recruitment was causing slavery to disappear, either through the enlistment of blacks or through the wage system.

The *New York Times* reported in July that 12,000 Kentucky slaves had runaway to join the army in other states. Many owners were forced to pay their slaves wages to keep them on the plantation. Pay was as high as \$2.00 to \$2.50 a week, plus clothing.¹⁶ Slaveowners were not the only ones having trouble keeping labor. The military was having labor difficulties of its own.

In the District of North Carolina, Brigadier General I. N. Palmer decided to take the contrabands by force. Writing to the Assistant Adjutant General of the Department of

¹⁴“From Kentucky,” *New York Times*, 10 July 1864, 5.

¹⁵Howard, *Black Liberation in Kentucky*, 51-64.

¹⁶“From Kentucky,” *New York Times*, 23 July 1864, 5.

Virginia and North Carolina in September, he explained that “the country needs their services.”¹⁷ Impressment was becoming standard procedure.

Freedmen from Virginia wrote to the Department of Virginia and North Carolina in September 1864. After working four months at Roanoke Island, forty-five freedmen were forced at bayonet point to board a steamer to Dutch Gap. There they were put to work on the canal. Guards then roamed Roanoke Island, taking every man they could find, including sick men from their beds. The freedmen were asking for protection and justice. Their request went unanswered.¹⁸ The need for labor existed in every department. The resolutions were not always so painful.

General Banks was dealing with a boilermaker and machinist strike in New Orleans in September. He had a creative solution. The plantations were off-limits to recruiters, causing the recruiters to take any other available men. There was one labor pool left. There were still the men denied enlistment for failing to meet physical qualifications. On 7 September, Banks issued General Orders No. 122, which stated conscripted Negroes “rejected by the examining surgeon ... shall be delivered to the Quartermaster’s Department as laborers.”¹⁹ Black mechanics would receive \$15 a month. Laborers taken under the above guidance were given \$20 a month.²⁰ Rejection paid more than acceptance into the military. The local economy was more important.

¹⁷*Official Records*, vol. 42, part 2, 654. (Palmer’s full name was not given.)

¹⁸Berlin, *The Wartime Genesis of Free Labor: The Upper South*, 202-203.

¹⁹Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 549-550.

²⁰*Ibid.*

Throughout 1864, many commanders had to intervene on local issues. In some cases, the conflict over free labor seemed almost petty.

In many cases, infirmed freedmen, women, and children were encouraged or required to work in order to become self-supporting. In the Department of the South, the exslaves for their livelihood developed a few ingenious methods. The military as the controlling authority could approve or deny the freedmen profit from their labor.

In April 1864, an Army surgeon, W. J. Randolph, wrote to a Treasury Department Special Agent for justice on behalf of a lame colored man. Charles Gelston, a former slave, had diligently collected discarded Union Army rags over a period of five months. He had picked dirty rags up from streets and woods, cleaned them, and then stored them for a minimal rent in a barn. Randolph, acting as a middleman, sold the rags. The local Treasury Agent, Mr. Brown, immediately approached the surgeon. Mr. Brown claimed the rags were government property. Surgeon Randolph explained that one of Mr. Brown's clerks had told Charles Gelston he could collect the rags. Mr. Brown contended that the property still belonged to the government, but he could pay Gelston for picking up the rags. The fee offered would not have covered Gelston's storage rental cost. The Surgeon appealed to the South Carolina Special Agent, Brown's superior, for justice.²¹ The case was forwarded to the Secretary of Treasury for guidance.

The South Carolina Special Agent Austin Smith felt that the rags were abandoned property and had only acquired value through their being gathered and washed. Smith

²¹Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 312-313.
(Randolph's full name was not given.)

wrote, "This is a small matter, but it is one which may be distorted."²² Treasurer Secretary Chase resigned before he sent his response. His successor, William Fessenden, directed Brown to turn the rags over to Gelston or the purchaser, whoever he thought was the owner.²³ Gelston won his case. His fellow freedmen would also have to tackle the system to keep their livelihoods. Their requests would usually win the day. The government supported working freedmen to build the foundation for reconstruction.

The Commander of the Department of the South issued an order that required the seizure of small boats and dugouts. Major General John G. Foster, CG, was concerned that the boats were being used for smuggling of illegal goods to the enemy or deserters. Sailing boats could avoid confiscation by registering with the local Provost Marshal, and obtaining a permit for trade. Unrelated to the boat issue he added a moral restraint section on Negro women. Section III stated,

The practice of allowing negro women to wander about from one plantation to another, and from one Post or District to another, on Government transports, for no other purpose than to while away their time, or visit their husbands serving in the ranks of the Army, is not only objectionable in every point of view, both to the soldiers and to themselves, but is generally subversive of moral restraint and must be discontinued at once. All Negro women, in future, found wandering in this manner, will be immediately arrested and compelled to work at some steady employment on the Plantations.²⁴

The concept of freedom for exslaves was different than for other citizens. Section III

²²Ibid.

²³Ibid.

²⁴Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 318-319.

foreshadowed the black codes of a reconstruction South. At this point, the freedmen were less interested in the restriction of their liberties than the elimination of their ability to feed themselves.

On behalf of the freedmen, the plantation supervisor on Saint Helena Island, Theodore Holt, complained to the Military Governor, General Rufus Saxton. Boats were not only being confiscated some were being destroyed. Many plantations were accessible by water only. The plantation boats were for cutting marsh grass, transport of produce, and fishing. Many poor families depended on fish and oysters for their meals. He requested that the boats be returned.²⁵ General Saxton agreed with Theodore Holt.

Saxton wrote Foster that it was overkill to deprive the Negroes of their boats. Attacking the bureaucratic nature of the order, Saxton encouraged Foster to rescind his order. Saxton wanted the freedmen to retain “their Chief means of support.”²⁶ Foster amended his order.

In his endorsement General Foster allowed that if the Superintendent of Plantations would certify the boats were required, he would register those boats as well. He was still concerned about military security as he had evidence that “rascally whites” were using the free blacks’ boats for smuggling.²⁷ The freedmen’s need to work both for a current and a future social benefit was again supported by the military. Entrepreneurs were also rewarded for their efforts. In October, the Provost Marshal of Hilton Head

²⁵Ibid., 319-320.

²⁶Ibid., 320-321.

²⁷Ibid.

District authorized three blacks that had built a footbridge to collect tolls for its use. Soldiers on duty were exempt from a fare. Crossing ticket prices were delineated. Persons who did not purchase tickets to cross could be arrested.²⁸ Hard work was encouraged and promoted. Blacks had to be trained for a free labor post-war environment. In addition, Negroes working for the North were not working for the South. The government accepted the idea. Even the most recalcitrant of generals would be brought in line.

In December 1864, General Halleck wrote to General William Sherman after his march through Georgia. The letter was a friendly attempt to awaken General Sherman to the slave politics of the administration. Halleck was hearing from some cabinet members that Sherman's actions with regards to blacks were undermining government policy. Sherman had deliberately kept blacks from his lines while on the march. Had he allowed blacks into his camp, Savannah could have lost 50,000 freedmen, removing a vital source of labor from Georgia. Halleck assumed that Sherman had excluded the blacks from his ranks because he had no way to support them.²⁹ Halleck's purpose of writing was to enlighten Sherman to the administration's viewpoint.

Halleck explained, "In view of the scarcity of labor in the South, and the probability that a part, at least, of able-bodied slaves will be called into the military service of the rebels, it is of the greatest importance to open outlets by which the slaves

²⁸Ibid., 321.

²⁹*Official Records*, vol. 46, 836-837.

can escape into our lines.”³⁰ Halleck continued with the suggestion that Sherman open avenues of escape for Negroes while in Savannah. To support the slaves, he recommended placing them on the plantations on the coast. Sherman’s compliance would bring an end to his rival’s criticism.³¹ Sherman would respond to his senior’s advice. In March of 1865, the Commander of the District of Wilmington North Carolina would report that Sherman had 8,000 to 10,000 blacks in column as the army reached Fayetteville.³² Sherman had bowed to pressure. Under the Secretary of War’s direct supervision he issued a directive that supported reconstruction efforts in Georgia.

Secretary Stanton held a meeting in Savannah, Georgia with the local Negroes. Sherman was required to be in attendance. Representatives for the black population were regional leaders, many of whom were ministers. A few had been free men from birth. Several had purchased their freedom before the war. The rest were freedmen by Lincoln’s proclamation or the arrival of the Union Army. Secretary Stanton questioned the group as to their understanding of national politics, the institution of slavery and the purpose of the proclamation. He also wanted to know how the freedmen could best care for themselves.³³ Their response was immediate and true.

³⁰Ibid.

³¹Ibid.

³²Berlin, *The Destruction of Slavery*, 154.

³³Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 331-337.

The black leaders asked for land for their people. With land the freedmen could take care of themselves.³⁴ Secretary Stanton heard their request. According to Sherman's memoirs, Stanton tasked the General to draft an order providing land to the freedmen. Sherman complied. The Secretary made a few verbal modifications to the draft, and Special Order No. 15 was born.³⁵ The order gave the freedmen what they said they needed.

Special Order No. 15 reserved islands around Charleston, and land along the rivers, 30 miles back from the sea, for the settlement of Negroes. An Inspector of Settlements and Plantations was created to issue black families plots of land. The largest plots had 40 acres of tillable soil. Enlisted soldiers could relocate their families to the settlement.³⁶ Here was a reconstruction concept that had merit for the post conflict. With land the freedmen had an opportunity to advance in society. The idea would remain a wartime reconstruction effort. The war was coming to an end. The "peculiar institution" was dying. In 1865, Congress and the states were taking steps to help its demise.

In March 1865, Congress passed a resolution that the wives and children of colored soldiers were free. Maryland and Missouri had abolished slavery. Tennessee

³⁴Ibid.

³⁵Sherman, *Memoirs of General Sherman*, 730.

³⁶Berlin, *The Wartime Genesis of Free Labor: The Lower South*, 338.

would quickly follow.³⁷ The emancipation of all slaves was going to happen, there was one question left. Who would oversee their transition from slave to citizen? The answer was the military.

The Bureau of Refugees, Freedmen, and Abandoned Lands was established under General Order 91 on 12 May 1865. General Oliver Howard was appointed as commissioner.³⁸ The purpose of the organization was to supervise all issues related freedmen, and refugees in the occupied states. Congressman Kelly of Pennsylvania captured the specific concept for the organization in a speech. During the debate before legislation was passed, he argued eloquently in the House,

We have four million people in poverty, because our laws have denied them the right to acquire property; in ignorance, because our laws have made it a felony to instruct them; without organized habits, because war has broken the shackles which bound them, and has released them from the plantations from which were destined to be their world. We are to organize them into society; we are to guide them, as the guardian guides his ward, ... we are to watch over them: and if we do, we have from their conduct in the field and in the school, evidence that they will more than repay our labor.³⁹

The military was the most logical choice to meet the challenges of the Freedmen's Bureau.

The military had been the ward of the contrabands, later freedmen, from the start of the war. Commanders through their policy had employed, sheltered and fed thousands of black fugitive slaves. Policies had created plantation labor forces, schools, and banks.

³⁷*Official Records*, vol.4, *Union Correspondence*, 1228; and Quarles, *Lincoln and the Negro*, 219.

³⁸*Official Records*, vol. 5, *Union Correspondence*, 19.

³⁹Wilson, *Rise and Fall of the Slave Power*, 3:482.

Contrabands had enlisted in the service. The military had issued abandoned lands and controlled their work efforts. The evidence of the contrabands' success that Congressman Kelly mentioned, came from the execution of military policies throughout the war. The military was the natural choice to oversee reconstruction efforts.

The Civil War ended at Appomatox, Virginia, in 1865. President Lincoln was assassinated shortly thereafter. The commander-in-chief, who had long deferred decisions on slave policy to his military commanders, did not live to see the military become the legislated supervisor of policies after the war. Lincoln had distanced himself from slave policy. He felt the war was about the preservation of the Union and struggled to keep the slavery issue from coming into the war. The contrabands had persistently entered Union lines. No road, obstacle, master or policy could hold them. Their determination ensured the military had to deal with their ever-growing presence. The administration had to deal with the field commander's decisions. The administration became reactive instead of proactive. In an 1864 letter, discussing his actions throughout the war, Lincoln confided, "I claim not to have controlled events, but confess plainly that events have controlled me."⁴⁰ The fugitive slaves themselves were the cause of those events.

⁴⁰ Basler, *Collected Works of Lincoln*, 7:282.

CHAPTER SEVEN

CONCLUSION

The Contrabands had come far in the war. They had believed the information that filtered through the slave grapevine and had overheard their masters' conversations. War was coming--war to free them. Impatient for freedom, they ran away to the Union Army before the Union Army came to them. At first one or two would escape. When they did not return, more slaves ran away. Trusting in their dreams, they ran, by the hundreds and then by the thousands. By taking flight, many of them would become free. Some were returned to their masters. The Union Army employed hundreds of thousands. Others found themselves no farther from the plantation than at the start of the war, performing the same labor as they had as slaves, and under similar restrictions. In the end, all slaves were free. However, before the emancipation of the slaves occurred, Union slave policy would journey as far as the slaves themselves. Military commanders led the way. At the start of the war, there was no road to follow. There was no policy, no guidance from the military's political masters.

President Lincoln made it clear in many speeches, the Constitution had been written to exist in perpetuity. If conflict developed, he would not permit the union of states to be dissolved. The war, if it came, would be over the preservation of the Union. Although the president had been elected on the Republican Party plank of prohibiting slavery in any future territories, he had no intention of abolishing existing slavery. He did not intend to interfere with rights he felt were assured by the Constitution, which included the property rights of slavery.

Lincoln's cabinet agreed with his assessment. The administration focused on retaining the allegiance of the Border States. The cause of the war had to be distanced from slavery in order that the Border States support the Union cause. Once the war started the slavery problem was the last concern of the cabinet. The administration had not created policy regarding slaves. The Union Army went to war to suppress the rebellion. The administration thought the war would be over in ninety days. The first slaves entered Union lines four days after North Carolina succeeded from the United States.

By the end of May 1861, a military commander had laid the groundwork for Union slave policy. Fugitive slaves sought refuge with Brigadier General Benjamin Butler at Fortress Monroe in Virginia. Fortunately for the Union, General Butler was a lawyer experienced in property law. Butler initiated a policy of keeping slaves. Since the slaves were used by the Confederacy to build rebel fortifications, they could be considered as a source of labor for the Confederacy. Butler confiscated them as "contraband of war." His decision struck the right chord with the public. The concept proved so popular that Northerners soon referred to all Negroes as "contrabands." This policy was impossible to overturn, because of its immense popularity with the citizenry.

The administration now was saddled with a slave policy not of their own making. The president and the Cabinet had choices. They could overrule Butler. They could support his decision publicly, or they could support it silently. The administration decided to support the policy quietly. Lincoln wondered as to the effect the policy would have on the slaves still in captivity. He feared the policy would cause more slaves to runaway. He was right.

Strangely, no one in the cabinet thought about the extent of the impact of Butler's policy. Certainly no one predicted that hundreds of thousands of former slaves would come under Union control. If the administration had thought the policy through, and analyzed the impact of runaway slaves on the Border States, they might have created a military wide policy. Instead, Butler's "contraband of war" policy was narrowly defined and approved by Secretary of War Cameron. No other commands were required to adopt this new policy.

The administration wanted to appease the public, but bring no more attention to the "contraband" policy than had already been created. Within months of Butler's decision, other commanders created different policies. The administration then had to deal with the effects of each policy as it was created. By allowing the military commander's to create the policy, the president was forced to deal with the consequences of their decisions. Butler predicted that the Union would not be able to avoid the slavery issue. He was right.

Two major policies emerged shortly after the "contraband" policy was created. One policy prohibited fugitive slaves from entering Union camps. The second policy freed the slaves under martial law. Both policies created conflict and opposition.

General Halleck of the Department of the Missouri issued an order that prohibited fugitive slaves from entering Union lines. Halleck was concerned that intelligence from the contrabands would get back to the Confederacy. His policy proved unpopular with his subordinates. The Union army may not have been raised to free the slaves, but the common soldier was beginning to see that slavery enhanced the South's military capability.

As the Union Army advanced into enemy held territory, soldiers had to fight their way over obstacles and parapets built by the rebels' slaves. The soldiers realized that slaves working on confederate fortifications or on plantations freed white men to fight. In addition, the fugitive slaves escaping to Union lines provided not only labor but sometimes critical intelligence as well. For some of the northern soldiers, their first hand view of the "peculiar institution" came in the Army.

For the Union Departments that served in Border States, or had exclusion policies for slaves, many soldiers witnessed the return of runaways to their masters. Whether or not the soldiers were abolitionist minded when they joined up, the witnessing of "negro catchers" collecting slaves was repugnant to many of them. Soldiers were not hesitant to oppose policies they could not conscientiously uphold. As volunteers they were bound primarily by their own ethics.

Undermining of exclusion policies came in various forms. Some officers and soldiers outright disobeyed orders. Others wrote letters of protest to their commanding officers or to the commander-in-chief. Some officers drafted orders that countermanded higher authority direction. As the war progressed the policies were more and more in conflict. Military interaction became heated.

Conflict between department commanders and their subordinate officers had no middle ground. A few commanders would take officers to court martial when the officers disobeyed their slavery policies. Some officers resigned their commissions rather than submit to policies that they found unjust. Units physically clashed over the slavery policies. Although the conflicts were well documented and publicized, the administration still did not establish a unified slavery policy for the Union.

The slave policies of the military departments were reported and commented upon in the daily newspapers. Despite the publicity, the War Department continued to have each individual commander decide the slave policy for his department. Requests for clarification were either sidestepped or ignored. Lincoln continued to distance himself from the slavery issue. It did not dawn on the president or the administration, that by withholding guidance, sooner or later, a military commander was bound to initiate a policy that countered national objectives. Then, the first commander emancipated the slaves in his department.

In 1861, when General Fremont declared martial law in Missouri and freed the slaves, Lincoln was forced to act. The president was deeply concerned with how Fremont's proclamation would effect the Border States. The president overturned Fremont's decision to maintain a clear signal that the war was not about ending slavery.

After Fremont was overruled, and then later relieved, an opportune time existed for Lincoln to delineate a policy for the entire Union Army. If maintaining the Border States was crucial to the war effort, the administration should have unified the actions of the departments under a single exclusion policy, or at least clearly stated the limits of the commanders' authority in slavery policy. Instead, the military received mixed signals.

Under the "contraband of war" policy, thousands of fugitive slaves poured into Union lines. The Secretary of War gave permission to several commanders to employ the contrabands in the Army. At the same time, General Curtis in Arkansas was emancipating individual slaves who were identified as having worked for rebel masters. Curtis was not censured by the administration for his action, although his activity was reported in the newspaper. Without specific guidance from the Secretary of War, field

commanders were left to surmise which actions were correct from newspaper accounts of other policies and from the president's reaction. In this environment, General Hunter freed all the slaves in the Department of the South.

General Hunter had not coordinated his freedom proclamation with the Secretary of War prior to its announcement. Using military necessity as grounds to justify his action, Hunter was confident that he held sufficient authority to declare martial law and to free slaves. Lincoln's overruling of Fremont did not seem to enter into Hunter's decision-making process. However, at this point, Curtis was also freeing slaves in Arkansas with no repercussions from the administration. Lincoln's response to Hunter's action was immediate.

Overtaking Hunter's decision, Lincoln published a proclamation in the newspapers that stated he reserved the right of general emancipation to himself. The decision to free slaves had such national significance, that only the president had the right to order region-wide emancipation. His statement and actions must have seemed mismatched to the men in the field.

Contrabands were not returned to rebel masters. If necessary, slaves of loyal owners, with compensation, could be taken for military necessity. Individual slaves, by the hundreds, could be freed. Wholesale emancipation was not authorized. To the officers in the Army, there was probably very little difference between the wide-scale manumission granted by Curtis and the proclamations issued by Fremont and Hunter. To the administration, perhaps the difference was the distance from Washington.

Lincoln was concerned about retaining the Border States in the Union. Manumission and emancipation in Maryland, Kentucky and Missouri had grave political

consequences for the administration. Freeing slaves in states with substantial numbers of proUnion slaveholders meant risking that state's neutrality or participation in the war. The farther west the war, the less concerned the administration was about the support of the state or territory. Curtis' freeing slaves in Arkansas could not have the political impact of Fremont freeing slaves in a closer Border State, or Hunter freeing slaves within striking distance of Washington. Proximity to the capitol and publicity made a difference in the administration's reaction to policy. General Hunter did not learn this lesson. General Butler and Senator Lane used it to their advantage.

Having been rebuffed by the president, most military commanders might have been more cautious in future policy regarding contrabands. Hunter jumped right into one of the more debated issues regarding Negroes. Could they fight? Using orders issued to the previous commander of the Department of the South, Hunter armed the contrabands under his control.

The administration was taken aback. The Secretary of War discovered Hunter's activities through back channels. Deciding not to involve himself in the issue, he passed congressional inquiries directly to Hunter. Hunter defended his actions, belatedly requested permission to arm the black troops, and waited for an answer that never came.

Congress, perhaps tired of the administrations' lack of control over the slavery issue, had passed acts codifying emancipation of slaves belonging to rebel masters. They also gave the president the authority to employ blacks in the military, as he thought best. Under these conditions, since Hunter had already raised a regiment, it seems logical that the Secretary of War would have approved his course of action. This did not occur. Hunter was allowed to languish. Lacking pay for the black troops and support for his

actions, he eventually disbanded his unit. The administrations' lack of support can be tied to Hunter's earlier emancipation proclamation, and the subsequent publicity. Three weeks later, the military governor of the same department was given permission to raise a regiment of black troops. General Butler, who read the administration better than Hunter, raised a regiment as well.

General Butler was savvy to the doings of the administration through his wife and Secretary of the Treasury Chase. Forewarned of the changing mood and goals of the president, he decided to arm black troops in occupied Louisiana. Aware of public opinion, he carefully selected only free blacks to serve in a New Orleans' Guard. He was correct in his assessment. The public approved his steps. His efforts gave him the reputation of removing support from the Confederacy without challenging the right of slavery. General Butler was far removed from Washington, and in tune with the politics of the government. Senator Lane was in a similar situation in Kansas.

Jumping onboard Congress' act to employ blacks, Senator, also General Lane, like Hunter began to recruit Negroes without obtaining the permission of the Secretary of War. Once recruitment started to form, he then asked for the authority to recruit black troops. The Secretary of War denied Lane permission. Lane continued to enroll black troops. Ignoring the orders of the War Department, he raised the First Kansas Colored Regiment. There is significance to the fact, that the first black regiment raised in a free state versus a former slave state was recruited west of the Mississippi River. Kansas was far removed from Washington politics and concerns. The range of military policies and actions concerning former slave policies could not last the length of the war. It was time for the president had to make a decision.

The public and congress were moving to a new level regarding the politics of slavery. The war had gone on longer than anyone had anticipated. Citizens were no more likely to be wrapped up in the freedom of slaves than they had been at the start of the war. However, the average person was aware of slavery's contribution to the rebellion. The North was ready to remove the slavery pillar from the Southern fight. Lincoln had to listen.

The backlash over Lincoln's overturning of Hunter's proclamation was more than anyone in the administration expected. Public opinion did more to influence the president than open antagonism and hostilities between military units. The president felt it was time for the South to suffer as much as the North.

The emancipation proclamation should have been the unifying military policy. With the president's September 1862 warning, it should have been clear to all commanders that the administration was going to free the slaves of rebel masters. The announcement served to widen the chasm between proslavery and antislavery regiments.

Soon after, slave holding commanders complained that abolitionist motivated regiments were now unrestrained in their assistance to runaways. The emancipation proclamation was meant to hurt rebel owners, but no owner was safe from the effects of the announcement. Slaves continued to flee to Union lines. Whether Unionist or Secessionist, all slave holders felt the impact of the change in policy. The military took other steps to assist its demise.

Acting on the president's authority to enlist Negroes, the military began to actively recruit blacks. When enough manpower could not be obtained to meet the needs of the units, the Army turned to impressment to obtain the needed labor. In some

regions, contrabands were kept on plantations, but the wage system was introduced. The military was about to become the largest employer of the freedmen in the country. To the slaveholder, the end result was the same. Whether through compensation or impressment, owners were losing their slaves. Slavery was dying.

With slavery ending, Lincoln reasoned that reconstruction plans would have to include the Negro as a citizen. Readmission of states to the Union would occur only after the abolition of slavery was completed. While the war continued, the military would be the test model for training blacks to adopt self-sufficiency. Military departments would not only create wage labor systems; they would oversee the creation of schools and banks to ready blacks for society. The military had to supervise the transformation of contraband from slave to citizen in order to support the president's reconstruction goals. They would start the task during the war.

A former slave spoke at the opening of a school for blacks in the Department of the Gulf in February 1864. Relating his change from slave to freedman, he said,

I had been thinkin I was old man; for on de plantation I was put down wid de old hands, and I quinsioontly feeled myself dat I was a old man. But since I has come here to de Yankees and been made a soldier for de United States and got dese beautiful clothes on, I feel like one young man, and I doesn't call myself a old man nebber no more ... Fore I would be a slave gain, I would fight till de last drop of blood was gone. I has eluded to fight for my liberty, an for dis education what we is now to receive in dis beautiful new house what we has.¹

The unknown former slave was representative of the conversion Lincoln had wanted to

¹"Department of Gulf," *New York Times*, 20 February 1864, 1.

create through the military. Here was a citizen, unafraid to fight for his freedom. Here was a citizen who would become a contributing member of society after the war. The military's success supervising thousands of contrabands during the war ensured their continuation in that role after the war.

Union Slavery policy had traveled far during the Civil War. The administration had started off by trying to remove the issue of slavery from the debate. The military began the war with no guidance, and ended the war as the executor of policy, which they had in essence created, a policy that supported tremendous social change. Concerned with the Border States, the politicized cabinet was afraid to take a step in slave policy that was unrecoverable for the nation. The president deferred all slave policy issues to his commanders in the field. The ever-present fugitive slaves compelled Union commanders to deal with slavery. Commanders created policy in response to the military, social, or political demands of their Departments. The political fallout from some of their decisions ultimately forced the president to deal with the slavery issue. President Lincoln chose not to direct a slavery policy from the national level. In the end, his decision ensured that national policy was shaped by military policy.

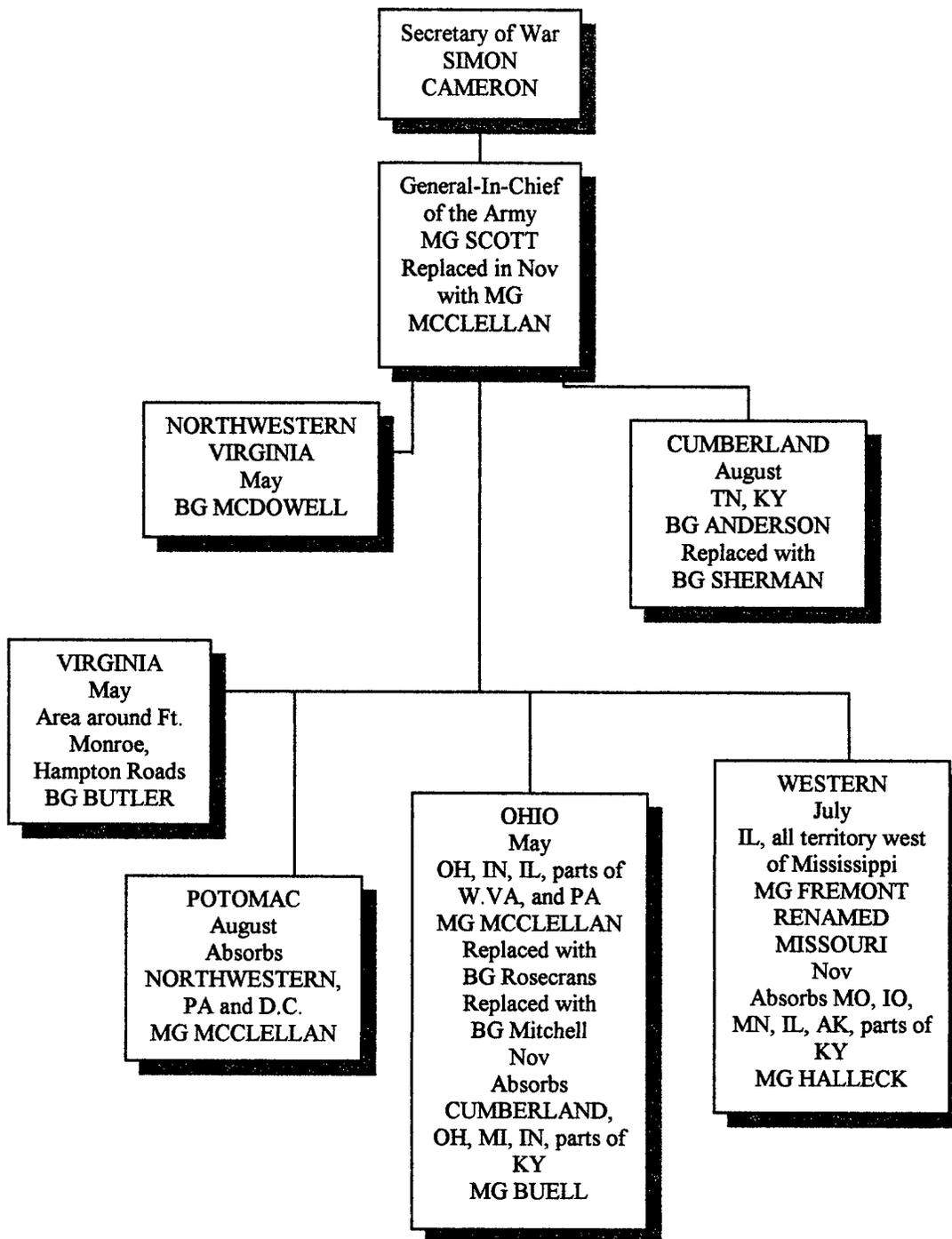


Figure 1. 1861 Union Organization Diagram

All organizations are departments unless otherwise noted. Organization Chart does not include all Departments created in 1861. Data in boxes is organized by Title of Department, Date Activated, Territory under control unless self-explanatory, Commanding General (s). Source: Patricia L. Faust, ed. *Historical Times Encyclopedia of the Civil War* (New York: Harper Perennial, 1991.)

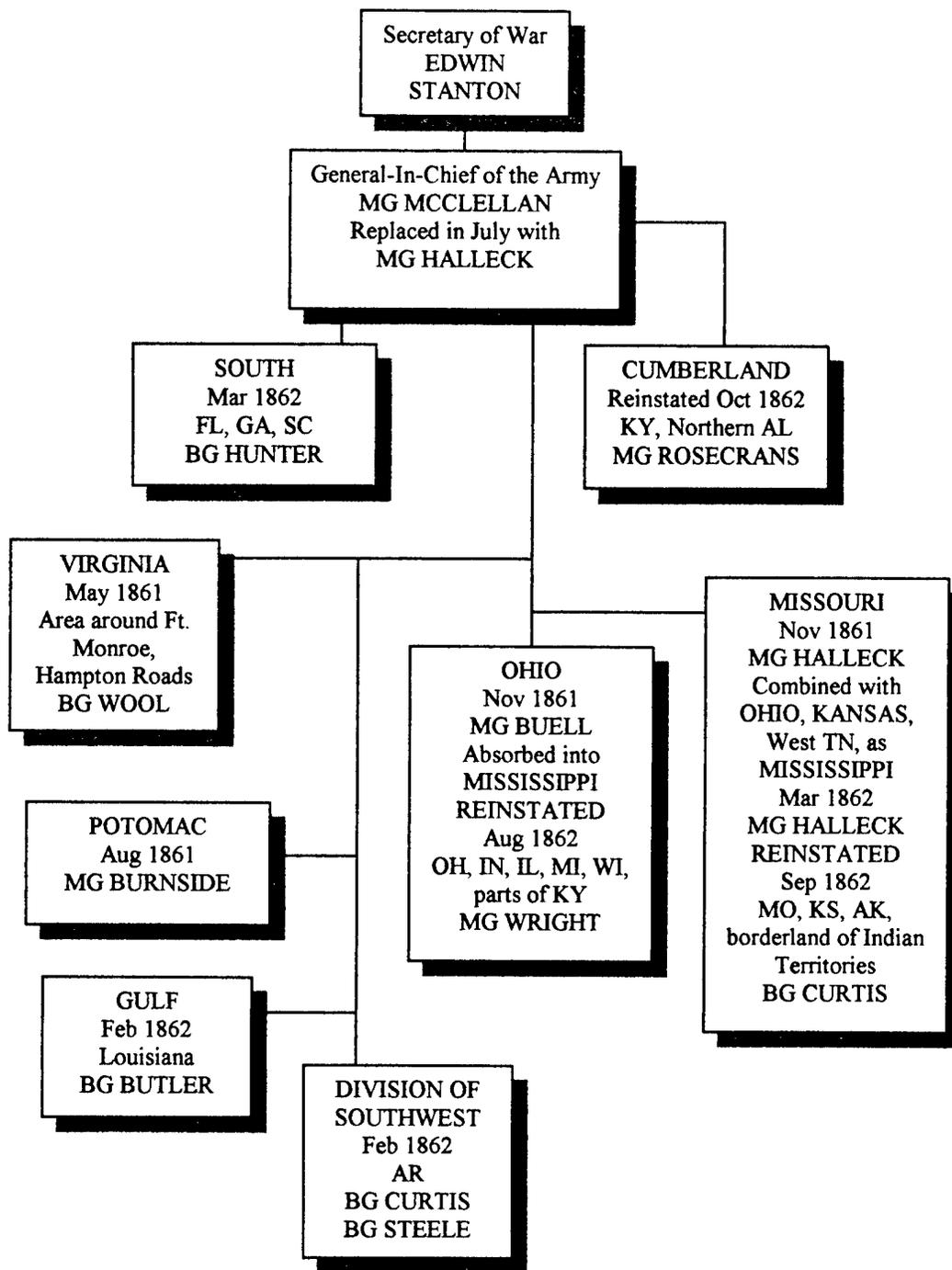


Figure 2. 1862 UNION ORGANIZATION

All organizations are departments unless otherwise noted. Organization Chart does not include all Departments created in 1862. Data in boxes is organized by Title of Department, Date Activated, Territory under control unless self-explanatory, Commanding General (s). Source: Patricia L. Faust, ed. *Historical Times Encyclopedia of the Civil War* (New York: Harper Perennial, 1991.)

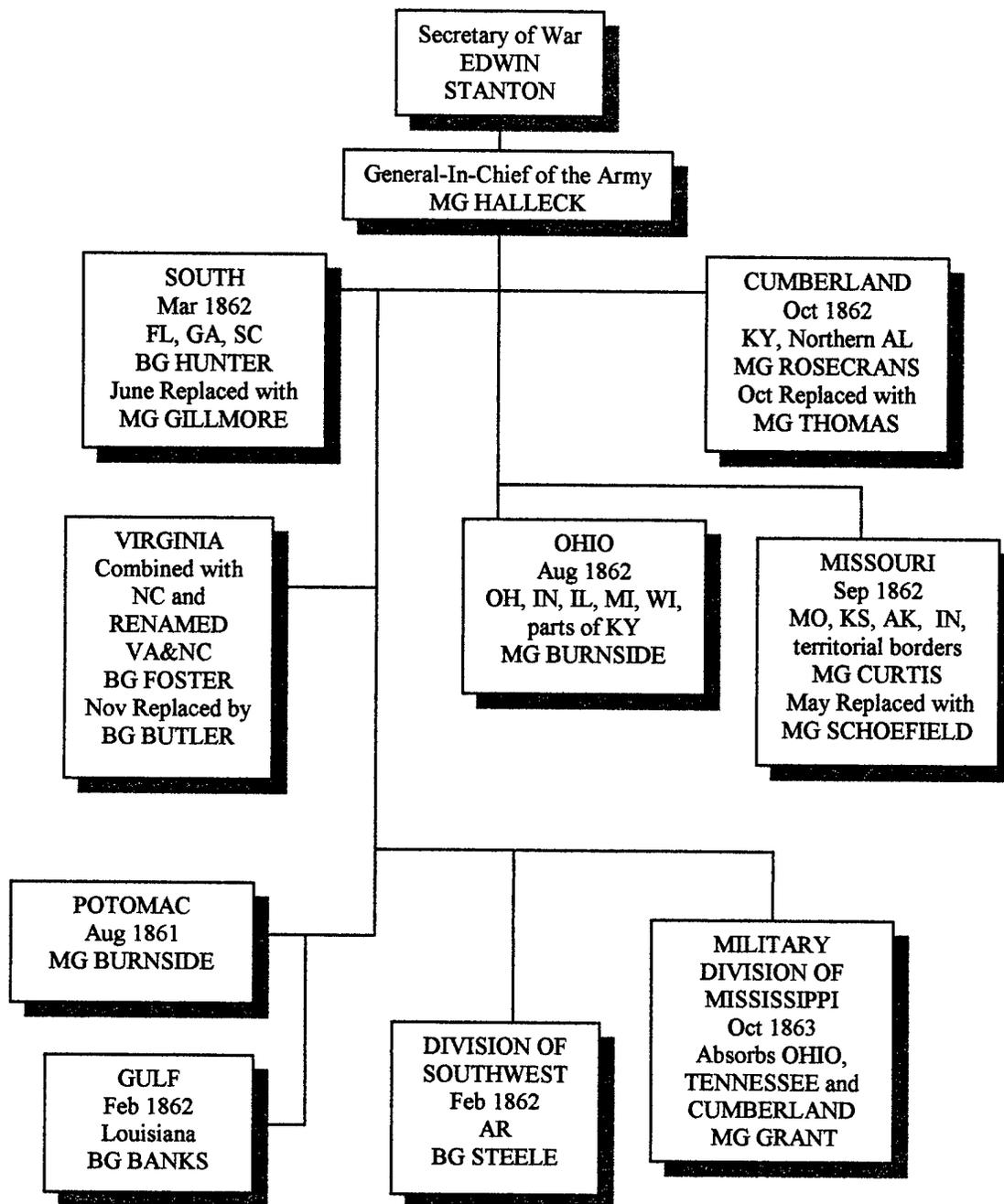


Figure 3. 1863 UNION ORGANIZATION

All organizations are departments unless otherwise noted. Organization Chart does not include all Departments created in 1863. Data in boxes is organized by Title of Department, Date Activated, Territory under control unless self-explanatory, Commanding General (s). *Source: Patricia L. Faust, ed. Historical Times Encyclopedia of the Civil War (New York: Harper Perennial, 1991.)*

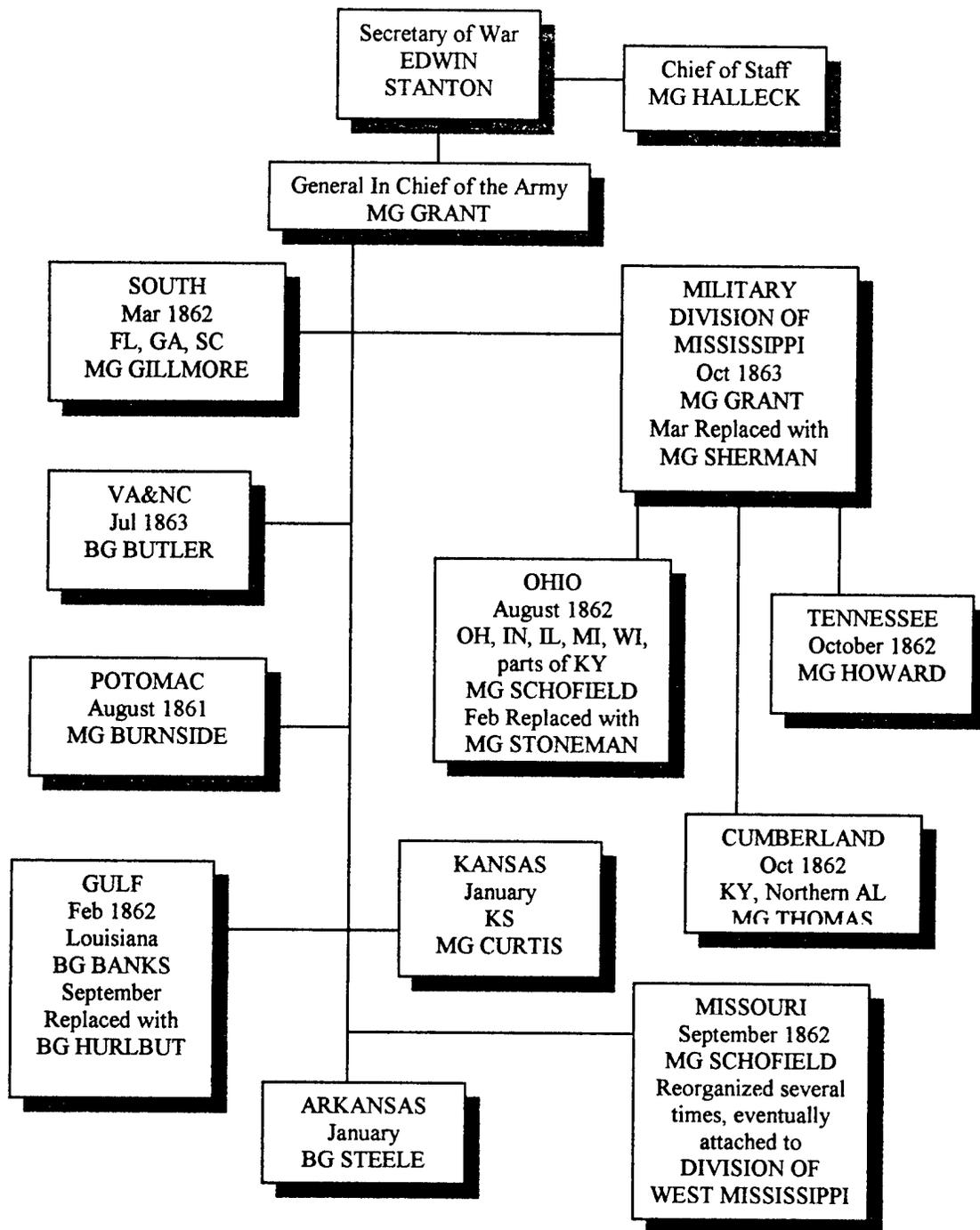


Figure 4. 1864 UNION ORGANIZATION

All organizations are departments unless otherwise noted. Organization Chart does not include all Departments created in 1864. Data in boxes is organized by Title of Department, Date Activated, Territory under control unless self-explanatory, Commanding General (s). Source: Patricia L. Faust, ed. *Historical Times Encyclopedia of the Civil War* (New York: Harper Perennial, 1991.)

The following tables show some of the contrabands under Union control or moving into Union lines for the years 1862 to 1865. The tables were constructed from statements in correspondence or reports and are illustrative of the number of contrabands under military control. Figures are numbers of contrabands unless otherwise indicated.

Table 1. Contrabands in 1862

Location/Military Dept	Under Control	Moving into Union Lines	Comments
NC	10,000		
VA	1,508		
Newport News, VA	656		Near or on Post
SC Islands	9,050		On plantations

Source: Ira Berlin, et al, eds. *Freedom: A Documentary History of Emancipation 1861-1867*, vol. 2, *The Wartime Genesis of Free Labor: The Upper South*. New York: Cambridge University Press, 1993 and Ira Berlin, et al, eds. *Freedom: A Documentary History of Emancipation 1861-1867*, vol. 3, *The Wartime Genesis of Free Labor: The Lower South*. New York: Cambridge University Press, 1990.

Table 2. Contrabands in 1863

Location/Military Dept	Under Control	Moving into Union Lines	Comments
Fort Monroe, VA	10,000		
Norfolk, VA	20,000		6 month period
Dept of VA&NC, 2nd Dist.		24,850	Came in 1863 alone
Washington D. C. Depot	309		Hospital Workers
Columbus, Ohio	963		On Post
Tidewater, VA	15,642		From Census
Dept of Gulf	11,000 families		Received rations
Benton Barracks, MO	100-600		In camp during year

Source: Ira Berlin, et al, eds. *Freedom: A Documentary History of Emancipation 1861-1867*, vol. 1, *The Destruction of Slavery*. New York: Cambridge University Press, 1985., Ira Berlin, et al, eds. *Freedom: A Documentary History of Emancipation 1861-1867*, vol. 2, *The Wartime Genesis of Free Labor: The Upper South*. New York: Cambridge University Press, 1993, and Ira Berlin, et al, eds. *Freedom: A Documentary History of Emancipation 1861-1867*, vol. 3, *The Wartime Genesis of Free Labor: The Lower South*. New York: Cambridge University Press, 1990.

Table 3. Contrabands in 1864

Location/Military Dept	Under Control	Moving into Union Lines	Comments
Washington D.C.	2,166		In Freedmen's camp
Dept of VA&NC, 1st Dist.		2,856	In 10 Months
Dept of Cumberland	38,500		In camps
Vicksburg, MS	12,700		Labor or on plantation

Source: Ira Berlin, et al, eds. *Freedom: A Documentary History of Emancipation 1861-1867*, vol. 2, *The Wartime Genesis of Free Labor: The Upper South*. New York: Cambridge University Press, 1993 and Ira Berlin, et al, eds. *Freedom: A Documentary History of Emancipation 1861-1867*, vol. 3, *The Wartime Genesis of Free Labor: The Lower South*. New York: Cambridge University Press, 1990.

Table 4. Contrabands in 1865

Location/Military Dept	Under Control	Moving into Union Lines	Comments
NC	8,000-10,000		Following Sherman
KY	28,818 enlist		Covers entire war

Source: Ira Berlin, et al, eds. *Freedom: A Documentary History of Emancipation 1861-1867*, vol. 1, *The Destruction of Slavery*. New York: Cambridge University Press, 1985., and Ira Berlin et al, eds. *Freedom: A Documentary History of Emancipation 1861-1867*, vol. 2, *The Wartime Genesis of Free Labor: The Upper South*. New York: Cambridge University Press, 1993.

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