

War in Earnest:
The Union and its Effort to Wage a Just War

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To Mackenzie and Pearl

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Introduction: Responsible to One Another and to God

On New Year's Eve 1863, an anxious George W. Lennard sought blessed assurance of his eternal fate. Lennard began the American Civil War as a private in an Indiana regiment and was eventually commissioned lieutenant colonel of the Fifty-Seventh Indiana Volunteer Infantry. He survived some of the most gruesome fighting of the Western Theater, from Shiloh to Stones River to Missionary Ridge. As another year of war dawned, Lennard confessed in a letter home that he dreaded nothing more than the thought of what awaited him after death. He longed for "a clear and well defined hope that all would be well with me in the world to come." "You will say," he wrote his wife, "why dont you be a Christian? I say, how can a soldier be a Christian?" He continued: "Read all Christs teaching, and then tell me whether *one engaged in maiming and butchering men* – men made in the express image of God himself – *can be saved* under the Gospel. Clear my mind on this subject and you will do me a world of good." Lennard was still searching for answers when he was killed in May 1864 as he marched toward Atlanta.¹

George Lennard doubted he could reconcile the gospel of the Prince of Peace with his duties as a soldier, and in that he was unusual among fellow Federals. But he was not alone in earnestly considering the moral dilemmas of warfare. Can a soldier be a Christian? Can a self-proclaimed Christian society send more than two million men off to "maim and butcher" other men? Is killing and destruction acceptable in war if done in service of a sacred cause? Is it possible for a soldier to fight for a just cause and himself remain just, or must he inevitably surrender his own righteousness before the brutal demands of war? Can a supposedly civilized people constrain the death and devastation unleashed by their armies? Is it possible to wage war justly?

¹ George Lennard, "'Give Yourself No Trouble About Me': The Shiloh Letters of George W. Lennard," eds. Paul Hubbard and Christine Lews, *Indiana Magazine of History* 76, no. 1 (March 1980): 26.

The loyal Union citizenry did not cast aside these moral questions in its war against the Confederacy, even as the war reached levels of carnage unforeseen and once unimaginable. From the headquarters of military commanders, to the camps of regular soldiers in the lull between battles, to the pulpits where clergymen untangled the war's mysteries, to the contention-filled halls of Congress, to homes across the loyal states whose wives and sons and daughters and fathers and mothers watched loved ones march off to battle – throughout the war the loyal citizenry contemplated a first order moral quandary: What does it mean to wage a just war? Their answers decisively shaped the nature of their war against the Confederacy, infusing it with stern measures to crush Confederate resistance that were also laced with humane restraints.

One year before George Lennard sat down to write his forlorn letter home, another man worked to resolve the moral quandaries that plagued Lennard's mind. Francis Lieber did so not by turning to the New Testament but to international law. Lieber was a scholar, not a soldier, a Berlin-born professor at Columbia College in New York City who taught history and political economy. He was also an acknowledged expert in the laws of war. In the winter of 1862, Lieber finally convinced the Lincoln administration to authorize him to produce a clear, practical set of rules of conduct for Federal soldiers distilled from the complex laws of war tradition. Lieber called his work "Instructions for the Government of Armies of the United States in the Field." Issued to Union armies in May 1863 as General Orders No. 100, it soon became known informally as the Lieber code. The code's 157 articles ranged widely from topics such as guerrillas to prisoners of war to private property to flags of truce. Taken together, they sought to instruct men like George Lennard how to wage a just war.

While Lieber's code authorized far-reaching destruction it also imposed inviolable constraints on Federal armies. Both were vital components of a just war, Lieber believed. Clearly

defining the limits of just warfare remained far more than an intellectual exercise for Lieber. His three sons fought in the Civil War. One lost an arm fighting for the Union at Fort Donelson, Tennessee. Another died fighting for the Confederacy on the Virginia peninsula. Mere months after his son's death Lieber began work on his code, motivated by an unshakeable conviction about morality in warfare: "Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God." Lieber sought to instruct the loyal citizenry how it might reconcile its obligations as a warring but still morally responsible people.²

Did Lieber succeed? The deaths of as many as 750,000 soldiers ought to give pause to anyone inclined to quickly answer yes.³ The war's death toll can make it easy to scorn Civil War Americans as zealously certain of the righteousness and divine sanction of their cause; so too is it easy to assume that their self-righteous zeal stoked near-limitless violence and destruction. And yet, the earnest meditations of northerners like George Lennard and Francis Lieber suggest there might be a more complicated and compelling story to tell about Americans who fought, suffered, and died in their nation's most calamitous war. I seek to tell that story by answering several

² "Instructions for the Government of Armies of the United States in the Field," article 15. The full text General Orders No. 100 appears in U.S. War Department, *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, 127 vols., index and atlas (Washington, D.C.: GPO, 1880-1901), ser. 3, vol. 3, 148-164 [hereafter *OR*]. The most important works on the life and thought of Francis Lieber include, Frank Freidel, *Francis Lieber, Nineteenth-Century Liberal* (Baton Rouge: Louisiana State University Press, 1947); Richard Shelly Hartigan, *Lieber's Code and the Law of War* (Precedent: Chicago, 1983); John Fabian Witt, *Lincoln's Code* (New York: Free Press, 2012), 139-324; Matthew J. Mancini, "Francis Lieber, Slavery, and the 'Genesis' of the Laws of War," *Journal of Southern History* 77, no. 2 (May 2011): 325-348; Burrus M. Carnahan, "Lincoln, Lieber and the Laws of War: The Origins and Limits of the Principle of Military Necessity," *The American Journal of International Law* 92, no. 2 (April 1998): 213-31; James F. Childress, "Francis Lieber's Interpretation of the Laws of War: General Orders No. 100 in the Context of His Life and Thought," *Am. J. Juris.* 34 (1976): 34-70. I will engage this existing scholarly literature more directly in chapter three of this dissertation.

³ J. David Hacker, "A Census-Based Count of the Civil War Dead," *Civil War History* 57, no. 4 (December 2011): 306-347. Hacker's article persuasively suggested that the often-cited 620,000 is far too low and was likely closer to 752,000.

questions about the loyal Union citizenry in the Civil War. What did they think it meant to wage a just war? What were the most significant ideas, assumptions, and bodies of belief that informed their thinking? How did Federal officials refine these ideas into military policies, and when and where did these policies first appear? To what extent did Union military and political leaders, as well as regular soldiers, abide by these policies and agree with their underlying vision of just warfare?

In answering these questions, I seek to explain why Federals waged the type of war that they did against the Confederacy. Union armies consistently acted in accordance with a set of prevailing ideas imbedded in nineteenth-century American culture about the nature of just warfare. I seek also to provide a clearer understanding of the nature of the war itself, particularly its paradoxical mixture of destructiveness and restraint. The Civil War witnessed immense carnage and destruction yet also earnest consideration of humane constraints in war. If we want to understand why this was the case, we must take seriously the array of ideas that informed the loyal Union citizenry's just war thinking – highly technical ideas drawn from the laws of war, as well as sometimes less precisely defined (but no less powerful) religious and political ideas widely circulating in northern society. These ideas about just conduct in war inspired and justified both great destruction *and* remarkable restraint, thereby giving the war its distinct character.

Historians have written a lot about the nature of the Civil War's violence, hotly debating its character, causes, long-term effects, and limits. Surprisingly, what the present historiography lacks is a comprehensive consideration of the content and significance of Union just war

thinking. Instead, Civil War historians interested in the nature of the war's destructiveness have tended to spill far more ink debating the question, "Was the Civil War a 'total war'?"⁴

This debate has undoubtedly produced nuanced, insightful arguments about the nature and limits of Civil War violence, despite a misguided tendency among some historians to dismiss just war ideas as ineffectual in affecting the actions of armies. Still, historians on both sides of the debate have tended to embrace too thoroughly an "either-or" mentality when thinking about violence and restraint in the war. This mentality assumes that violence and restraint were two irreconcilable impulses forever at war in the hearts and minds of northerners who usually gave way to one or the other – that is, to supporting total war tactics or not. Drawing a sharp dichotomy between violence and restraint fails to account adequately for a basic fact about the Union war effort: Federal armies perpetuated immense violence *and* persistently abided by certain restraints. Moreover, this dichotomous perspective also obscures what Federals themselves thought about the nature of justly waged wars. To them, both violence and restraint had important roles to play in a just war effort. They believed the two were not irreconcilably at odds but instead remained equally vital aspects of just wars.⁵

For this reason, I have set aside the longstanding "total war" debate. Doing so makes it easier to understand the loyal Union citizenry's ideas about just conduct in war on their own terms – as well as the effect these ideas had on how Federal armies waged war.⁶ However, the

⁴ For a helpful introduction of the term "total war," see Roger Chickering, "Total War: The Use and Abuse of a Concept," in *Anticipating Total War: The German and American Experiences, 1871-1914*, ed. Manfred E. Boemeke, et al. (Cambridge: Cambridge University Press, 1997), 13-15.

⁵ I will develop this idea at greater length in chapter three, for Francis Lieber and his code powerfully articulated precisely this vision of a just war – one marked by hard war measures and humane restraint.

⁶ What I caution here about taking serious mid-nineteenth-century just war ideas on their own terms, apart from hardly drawn "total war?" historiographical battles lines, is in a sense reminiscent of what other historians have cautioned when it comes to the study of Civil War era nationalism, especially Confederate nationalism. Attempts to study Confederate nationalism to uncover if it was "weak" or "strong" usually only hampered a careful understanding of the *content* of Confederate nationalism itself. The controversial

respective positions of that debate deserve brief summary. What historians have argued (and sometimes overlooked) about the nature of Civil War violence reveals why careful attention to the content and influence of Union just war ideas is essential to understanding the nature of the Civil War itself.

Historians who argued that the conflict was a total war helped build one of the more resilient “master narratives” of the Civil War: the idea that the war was unprecedented in the scope and scale of its death and destruction, thereby inaugurating a modern era of total war that climaxed in the twentieth century. James M. McPherson, for one, granted that while the Civil War was not a total war in the strictest sense, the label was still apt. Given “the overwhelming involvement of the whole population, the shocking loss of life, the wholesale devastation,” from the perspective of Americans who lived through the conflict, it “approached totality; it *seemed* total.” As Civil War armies embraced seemingly total war measures, Drew Gilpin Faust suggested, they also “introduced a level of carnage that foreshadowed the wars of the century to come.” This American Civil War is the great watershed in the history of modern global warfare, the grim prologue to the rise of total war. The war’s violence and destruction in this retelling appear particularly gruesome, often remorseless, and terribly unprecedented.⁷

historiographical questions sometimes need to be set aside in service of an empathetic, robust recovery of ideas held by those who lived in the past. For works that do this well when it comes to the study of Confederate nationalism, see, Drew Gilpin Faust, *The Creation of Confederate Nationalism* (Baton Rouge: Louisiana State University Press, 1989); Anne Sarah Rubin, *A Shattered Nation: The Rise and Fall of the Confederacy, 1861-1868* (Chapel Hill: University of North Carolina Press, 2005); Michael Bernath, *Confederate Minds: The Struggle for Intellectual Independence in the Civil War South* (Chapel Hill: University of North Carolina Press, 2010).

⁷ James M. McPherson, “From Limited to Total War, 1861-1865” in *Drawn With the Sword* (New York: Oxford University Press, 1996), 70; Drew Gilpin Faust, *This Republic of Suffering: Death and the American Civil War* (New York: Vintage, 2008), 271. For several additional representative works that affirm aspects of this master narrative, see Lance Janda, “Shutting the Gates of Mercy: The American Origins of Total War, 1860-1880,” *The Journal of Military History* 59. no. 1 (January 1995): 7-26; John Bennet Walters, *Merchant of Terror: German Sherman and Total War* (Indianapolis: Bobbs-Merrill, 1973); Michael Fellman, *Inside War: The Guerilla Conflict in Missouri During the American Civil War* (New York: Oxford University Press, 1989); Charles Royster, *The Destructive War: William Tecumseh*

This total war master narrative assumes the Union citizenry gave little to no serious thought to how their armies might wage war justly. Why did Federals in particular fail to impose just war restraints on their armies? Some historians blame the profoundly religious character of American society, namely northerners' belief that God favored the Union's sacred cause. Harry S. Stout, in his "moral history" of the Civil War, found among Americans a widespread "deeper-seated animal lust for battle." He concluded that self-righteous appeals to God's favor ensured "virtually no thought was given to how [war] should be waged or what, if any, limitations ought to be imposed for the sake of a justly fought war." George C. Rable's religious history of the war lacked Stout's polemical tone, yet Rable agreed few soldiers or clergy gave much thought to how to wage war justly. Even when they did, "closely connecting religious faith to military service made it all that easier to justify whatever means were necessary to pursue a holy war to victory."⁸

Historians who challenged this master narrative demonstrated that the Civil War's destruction was neither total nor unprecedented. Mark Grimsley and Mark E. Neely have argued

Sherman, Stonewall Jackson, and the Americans (New York: Knopf, 1991); Joseph G. Dawson III, "The First of the Modern Wars?" in *Themes of the American Civil War: The War between the States*, eds. Susan-Mary Grant and Brian Holden Reid (New York: Routledge, 2010), 64–80. For a perceptive analysis of this master narrative and its tendency to affirm a peculiar sort of American exceptionalism that places the Civil War as the fulcrum of the history of modern warfare, a harbinger of twentieth-century total war, see Wayne Wei-siang Hsieh, "Total War and the American Civil War Reconsidered: The End of an Outdated 'Master Narrative,'" *The Journal of the Civil War Era* 1 no. 3 (September 2011): 394–408. For an insightful reflection on the stark alternative this master narrative offers compared to other longstanding popular and scholarly narratives of the meaning and legacy of the Civil War, see Edward L. Ayers, "Worrying about the Civil War" in *What Caused the Civil War: Reflections on the South and Southern History* (New York: Norton, 2005).

⁸ Harry S. Stout, *Upon the Altar of the Nation: A Moral History of the Civil War* (New York: Viking, 2006), 80, 42; George C. Rable, *God's Almost Chosen Peoples* (Chapel Hill: University of North Carolina Press, 2010), 140. Charles Royster likewise credited the war's "scale of destruction" on the tendency of Federals and Confederates to resort to "drastic measures justified with claims to righteousness." Royster, *The Destructive War*, xi. Ira R. Chernus bluntly suggested, "The Civil War also cemented the idea that Americans need abide no limits on the violence and destruction they inflict in war, because their cause is always just." Chernus, "The Civil War, 'Religion, War, and Peace,'" *The Columbia Guide to Religion in American History*, eds. Paul Harvey and Edward Blum (New York: Columbia University Press, 2012), 177. For similar conclusions see, Sean A. Scott, *A Visitation of God: Northern Civilians Interpret the Civil War* (New York: Oxford University Press, 2010), 4; David R. Goldfield, *America Aflame: How the Civil War Created a Nation* (New York: Bloomsbury, 2011).

Union armies did not wage a war of limitless devastation devoid of all restraint. Grimsley favored “hard war” over “total war” as a more precise description of the spirit of Union military policy. While “hard war” is a somewhat ambiguous term, it is no more ambiguous than “total war,” and it helpfully signals that the Union war effort was not indiscriminate in its destruction. Grimsley defined the “common element” of hard war measures as “the erosion of the enemy’s will to resist by deliberately or concomitantly subjecting the civilian population to the pressures of war.” Most importantly, he suggested that even as Union armies embraced hard war policies they still unleashed only a “directed severity” against southern civilians – one not haphazard in its destruction, but targeted in rough accordance with a person’s loyalties. Mark E. Neely likewise insisted that even in the war’s final sixteen months Union armies rejected an unrestrained warfare of “slaughtered innocents and incinerated countryside.” Both affirmed the Civil War never acquired the defining characteristic of total wars: the systematic breakdown of the distinction between soldiers and non-combatants by enemy armies.⁹

Historians such as Grimsley and Neely have more or less won the “total war” debate. However, even as they convincingly chronicled restraint in the Union military effort they often proved less successful in fully explaining why this restraint existed. Grimsley persuasively emphasized both the “political logic” and “deep sense of moral justice” that undergirded the Federal policy of “directed severity.” He and Neely alike pointed to cultural and racial similarities between Federals and Confederates as sources of restraint. As Grimsley put it, “the claims of morality are stronger when one can recognize the enemy’s human face.” Neely argued

⁹ Mark Grimsley, *The Hard Hand of War: Union Military Policy Toward Southern Civilians, 1861-1865* (New York: Cambridge, 1995), 4-5; Mark E. Neely, *The Civil War and the Limits of Destruction* (Cambridge: Harvard University Press, 2007), 2. Neely also offered the helpful reminder that we must “look at behavior rather than language to understand the nature of the Civil War,” for some of the particular incendiary or extreme threats of violence issued by Union commanders “cannot be interpreted as marching orders and policy papers.” See also Neely’s earlier discussion of these issues in Mark E. Neely, “Was the Civil War a Total War?” *Civil War History* 37, no. 1 (March 1991): 5-28.

that the “central restraining force on the destructive abilities of Civil War soldiers was their visceral perceptions of racial identity.” White Federals and Confederates, despite all their mutual animosity, saw each other as members of the same civilized white race and therefore did not wage war against each other with the same unrestrained ferocity shown toward non-white Mexicans or Native Americans.¹⁰

Though persuasive in part, these arguments do not entirely explain why Union armies abided by certain restraints in their war with the Confederacy. Neither Grimsley nor Neely fully explained what exactly Federals believed constituted a justly waged war. Grimsley rightly suggested most Federals embraced the “political logic” and “moral justice” that guided the policy of “directed severity,” yet these ideas constituted only part of Union just war thinking. Neely rightly pointed to “racial beliefs” as a key reason white Federals abided by the restraints of “civilized” warfare against white Confederates. But these racial beliefs do not explain the specific substance and rationale of Federal just war policies. Put another way, a general recognition of “racial similarity” offered little specific guidance to Union soldiers when it came to justly handling perplexing wartime problems – such as what to do with civilian property or how to occupy a hostile city. Racial beliefs convinced many Federals they *ought* to wage a restrained, civilized war against the Confederacy; these same racial beliefs did not instruct Federals *how exactly* to do so. Moreover, some critics of the total war master narrative still embraced one of the narrative’s chief assumptions, that religious and legal ideas did not really restrain Union armies. As Mark Neely argued: “Like religion too the laws and customs of war were invoked against the enemy, most often, and seldom used to search the behavior of one’s

¹⁰ Grimsley, *The Hard Hand of War*, 2, 222-24; Neely, *The Civil War and the Limits of Destruction*, 219. For one recent acknowledgement that the Neely-Grimsley perspective has won the “total war” argument, see Barton A. Myers, “Military History,” in “Forum: The Future of Civil War Era Studies,” *The Journal of the Civil War Era* 2 no. 1 (March 2012).

own side.” Similarly, legal historian Stephen C. Neff bleakly concluded that the Civil War did not witness “the start of a much-needed clarification of the laws of war,” and, as a result, “the scope for civilian suffering” was immense.¹¹

The total war debate has reached a tired impasse. But its greatest shortcoming was that both sides failed to account adequately for the diverse range of ideas that informed Union just war thinking and the effect these ideas had on the conduct of Federal forces. As a result, an important question lingers not fully answered: why did Federal armies wage war in the manner that they did? The chapters that follow seek to remedy this omission by recovering the diverse content of mid-nineteenth-century ideas about just conduct in war. My goal remains to provide a more comprehensive framework for understanding the destruction unleashed by Union armies. I attempt to do so by explaining why and how Federals endeavored to wage a war they considered just in its prosecution.¹²

Several overarching arguments run through my explanation of the origins of early just war military policies, the efforts by Union officials to refine these ad hoc policies into coherent rules for all armies, and the extent to which Federal officials and soldiers abided by these rules in the war’s final two years.

The opening two years of the Union war effort in the Mississippi River Valley were the chief crucible of early Federal just war policies. Historians sometimes point to the initial months of the war in this region as the origin of “total war” or “hard war” policies that eventually

¹¹ Neely, *Civil War and the Limits of Destruction*, 36; Stephen C. Neff, *Justice in Blue and Gray: A Legal History of the Civil War* (Cambridge: Harvard University Press, 2010), 101. John Fabian Witt’s *Lincoln Code* is an important exception to this tendency to dismiss the efficacious of legal ideas in restraining Union armies. Witt, *Lincoln’s Code*, 371.

¹² Wayne Wei-siang Hsieh called for something similar in “Total War and the American Civil War Reconsidered,” 396.

defined the Union war effort.¹³ I argue instead that fighting in the region also inspired some of the earliest Federal efforts to define in precise detail what it meant to wage a just war. Precisely because the region posed challenges to waging war justly – such as subduing guerrillas and occupying major cities – it also prompted Federals to construct rules to constrain their armies. Put simply, hard war measures and humane restraints emerged simultaneously and inextricably in the Union war effort in the West.

Federal military and political leaders worked to refine this emerging vision of just warfare – equally “hard” and humane” – into concrete military policies applicable to all Union armies. The most adamant and articulate spokesman for this “moral vision” of just war was Francis Lieber. In his General Orders No. 100, Lieber masterfully distilled the prevailing vision of hard yet humane just warfare into a pithy set of rules. The rules Lieber drafted were significant not just because of their novelty in the laws of war tradition but also because they articulated a vision of just warfare embraced by the vast majority of the loyal citizenry – a vision first tested among Federals in the West and one that eventually defined Union military policy.

Taking note of the precise moment in the war that General Orders No. 100 appeared is vital, for it suggests something important and often overlooked about the development of the Union war effort. Some historians have argued that the middle months of the war, particularly most of 1863, marked a time of confusion in Union military policy. Because Federals had abandoned an earlier conciliatory policy yet still only lurched toward fully embracing a hard war

¹³ For example, see McPherson, “From Limited to Total War, 1861-1865,” 72; Grimsley, *The Hard Hand of War*, 35-39. For a more recent account of early events in Missouri that also emphasizes the path-breaking emergence of “hard war” measures – yet says nothing about the simultaneous emergence of guidelines of just conduct in war – see Christopher Phillips, “Lincoln’s Grasp of War: Hard War and the Politics of Neutrality and Slavery in the Western Border States, 1861-1862,” *The Journal of the Civil War Era* 3, no. 2 (June 2013): 184-210.

alternative, supposedly a degree of confusion and ad hoc pragmatic arrangements prevailed.¹⁴

However, the timing of General Orders No. 100's appearance suggests instead that this phase of the Union war effort witnessed newfound clarity about how Union armies ought to wage a just war against the Confederacy.

Abraham Lincoln was not involved in the drafting of General Orders No. 100. He entrusted this task wholly to Francis Lieber, Henry W. Halleck, and the committee formed to write the code. The document was not in any meaningful sense "Lincoln's Code." In fact, Lincoln plays a minor role throughout the entire story I tell about the inspiration, creation, and application of just war policies. Far more important to this story are Union commanders in the opening two years of the war stationed in the Mississippi River Valley, especially Henry Halleck and Ulysses S. Grant in Missouri, William Tecumseh Sherman in Memphis, and Benjamin Butler in New Orleans. Later on, away from the battlefield, Lieber, Halleck (then as general-in-chief), and, to a lesser extent, Secretary of War Edwin M. Stanton were chiefly responsible for constructing just war military policies applicable to all Union forces. Lincoln retained intimate control over many aspects of the Union war effort but this was not one of them. An important exception, which I cover in chapter four, concerned how to respond to Confederate atrocities against black Union soldiers. With that said, Lincoln undoubtedly endorsed the spirit of hard yet humane warfare at the heart of Union just war policies. Even as he recognized the folly of a "conciliatory" war effort, Lincoln spoke also of the need to temper the rough edges of hard war

¹⁴ Mark Grimsley has offered the most compelling and influential argument to this effect. In his retelling, while the Union military effort evolved from "conciliation" to "hard war," the middle phase of the war, lasting roughly from July 1862 to January 1864, marked a transitional, uncertain phase of "pragmatism." Grimsley, *The Hard Hand of War*, 4.

by trading malice for charity when prudent. But he did not take part in translating these broad ideas into specific military rules and policies.¹⁵

A final overarching argument concerns the nearly two years that elapsed after the issuance of the Lieber code before the Civil War ended. These two years did not mark the Union's descent into total warfare. Instead, in this final phase of the Union war effort, Federals fully implemented their moral vision of hard yet humane warfare. This vision largely defined the Union's treatment of Confederate soldiers and civilians. It also led Federals to justify once-unthinkable carnage while still imposing constraints on their armies.

Throughout this work, I also seek to recover the full range of ideas that shaped what the loyal citizenry thought it meant to wage a just war. These ideas were amorphous at times, not always precisely defined, and certainly hotly contested. Yet they remained fundamentally important to Federal notions of a justly waged war. What, then, were the most significant legal, religious, cultural, and political ideas and assumptions that shaped Union just war thinking?

In the realm of legal thought, the laws of war proved particularly influential in shaping Federal military policies meant to constrain the conduct of armies. The laws of war as understood and used by mid-nineteenth-century Americans was a component of international law that addressed legitimate justifications for and conduct in war. The laws of war emerged in part from centuries-long concerns over the legal nature of war. Stephen C. Neff has masterfully traced the history of these legal ideas from antiquity to the present day. His account of the

¹⁵ Prior to John Fabian Witt, no historian had labeled General Orders No. 100 "Lincoln's Code." In the chapter on the code in Frank Freidel's standard biography of Lieber, Lincoln scantily appeared and was in no way central to the code's history. Although Witt acknowledged that there is no evidence Lincoln was involved in the code's production, Witt still justified calling the code Lincoln's by arguing that it cohered with the president's prevailing vision of how the war ought to be waged and, more importantly, that Lincoln's decisive actions in favor of emancipation made the code necessary. The argument is doubly misleading. It distorts the significance of both Lincoln and emancipation to the history of the code's emergence, a topic I take up at greater length in chapter three. Contrast Freidel, *Francis Lieber*, 317-41 with Witt, *Lincoln's Code*, 212-19, 226-7, 229-32, 237.

watershed changes over time helps illuminate the nature of the laws of war tradition Civil War Americans inherited. In the centuries leading up to the early 1600s, a central premise took hold about the legal nature of war: the inextricable connection between justice and war. Legitimate wars were fought “for purposes made in heaven,” as Neff put it, above all the vindication of natural law. The Christian just war tradition as articulated by Augustine, Aquinas, and later medieval interpreters began from this basic premise: war was properly “a handmaiden of justice.”¹⁶

The seventeenth and eighteenth centuries witnessed a gradual yet unmistakable shift in thinking. War transformed “from a tool of God into a tool of men.” As nation-states emerged so too did the “natural-law framework” give way to a different means of governing their relations with one another, the law of nations. Thanks especially to Emmerich de Vattel, when it came to warfare the law of nations severed the longstanding link between war and justice. “International legal thought about war,” Neff argued, “was drifting steadily from Heaven down to Earth.” The law of nations advanced a “formalistic approach to war,” one concerned with the “external actions of states” without regard to the justness of a nation-state’s cause. Vattel certainly believed that severing the link between war and justice was the surest way to limit war’s carnage. He endeavored to construct a body of rules to govern equally both sides in a war without consideration of the justness of their cause. The goal remained moderation in warfare, yet Neff noted that the Vattelian approach was also “strikingly rational in its ethos ... [and] just as strikingly amoral.” In imposing restraints without regard to the justness of a nation’s cause, the

¹⁶ Stephen C. Neff, *War and the Law of Nations: A General History* (Cambridge: Cambridge University Press, 2005), 2-6, 10-11. For additional works that generally discuss legal restraints on the conduct of war, see Geoffrey Best, *Humanity in Warfare* (New York: Columbia University Press, 1980); Michael Howard, George J. Andrewopoulos, and Mark R. Shulman, eds., *The Laws of War: Constraints on Warfare in the Western World* (New Haven: Yale University Press, 1994); Alexander Gillespie, *A History of the Laws of War* Vol. 1-3 (Oxford: Hart Publishing, 2011).

law of nations bolstered “the ethos of the period”: “relentlessly utilitarian, with little place for sentiment, moralism, or ideology.”¹⁷

The nineteenth century witnessed the drastic culmination of this change. War was “frankly recognized ... as an accepted and routine means of conducting everyday international business.” Carl von Clausewitz (who almost no Civil War era Americans read, Lieber a rare exception) was the pre-eminent advocate of this view of war as an instrument of national interest. If war was once the “handmaiden of justice,” it was now the “handmaiden of state policy.” This scarcely precluded the desire of the preceding two centuries to craft a “laws and usages of war” to govern war’s conduct between legitimate belligerents. In fact, in the words of one historian, the latter half of the nineteenth century marked the laws of war’s “epoch of highest repute,” in no small measure because of the code Francis Lieber drafted.¹⁸

Expertise in the laws of war demanded a rigorous, extensive study that few nineteenth-century Americans undertook. Few professional army officers acquired even a basic knowledge of the subject, for it did not appear in the West Point curriculum. Still, the laws of war remained vitally important to the Union’s effort to wage a just war largely because of two men: Henry W. Halleck and Francis Lieber. Halleck and Lieber were America’s two leading authorities on the laws of war. It just so happened that Halleck and Lieber also were in positions of authority and influence to attempt to conform the actions of Federal soldiers to the laws of war.

Halleck began the war in the Western Theater but in late July 1862 Lincoln promoted him to general-in-chief of all Union armies, an office he held with decidedly mixed success for nearly two years before assuming the more strictly administrative role of chief of staff. In early 1861, Halleck published *International Law; or, Rules Regulating the Intercourse of States*

¹⁷ Neff, *War and the Law of Nations*, 4, 85-93. Witt, *Lincoln’s Code*, 16-17.

¹⁸ Neff, *War and the Law of Nations*, 4-5, 161-166; Best, *Humanity in Warfare*, 129.

in Peace and War. The book solidified his position as a leading expert on international law. It was wide-ranging and erudite – part historical overview of international law, part philosophical discourse on natural law and positive law, part guideline to resolving international disputes, and part treatise on *jus ad bellum* and *jus in bello*. Following Vattel, Halleck set forth detailed rules regulating the “means and instruments for carrying on war.” He addressed an extensive and familiar set of issues, including the just treatment of guerrillas, spies, and privateers; the use of tactics like poisons and assassination; the proper methods of occupation; and the legitimate treatment of non-combatants and private property, among many other concerns. Two assumptions ran throughout Halleck’s work. Not only did the laws of war compel belligerents to abide by certain restraints but wars sometimes also produced “immeasurable blessings” and “unspeakable goods.” Halleck explained: “Wars have frequently been, in the hands of providence, the means of disseminating civilization, if carried on by a civilized people.”¹⁹ The laws of war ensured that civilized people waged war in a civilized manner, Halleck believed.

Although Francis Lieber never held military office, he carried on a voluminous wartime correspondence with key Federal officials, especially Halleck and Secretary of War Edwin M. Stanton. Lieber and Halleck saw eye-to-eye on the laws of war, and Halleck and Stanton alike often looked to Lieber for advice on particular laws of war questions. Even as Lieber sought to construct clear rules to govern the prosecution of war, he remained profoundly critical of Vattel and the effort to divorce the justness of a belligerent’s cause from its conduct in war. Lieber shared with Halleck the assumption that war, for all its horrors, sometimes produced “blessings” and “goods.” As he put it, “Blood is occasionally the rich dew of history.” War contained “the

¹⁹ Henry Halleck, *International Law; or, Rules Regulating the Intercourse of States in Peace and War* (New York: D. Van Nostrand, 1861), 327. John F. Marszalek, *Commander of All Lincoln’s Armies: A Life of General Henry Halleck* (Cambridge: Harvard University Press, 2004).

spark of moral electricity,” Lieber wrote elsewhere; it was not utter amorality per se.²⁰ He believed it remained his responsibility to define for Federals in precise detail their moral obligations in war. Lieber and Halleck shared a passionate commitment to distill the laws of war into guidelines that regular Federal officers and soldiers could easily understand and follow. Both saw in the laws of war a robust justification for a hard yet humane military policy toward the Confederacy – a policy earnestly dedicated to vigorous measures to end the war swiftly, yet not entirely without certain legal restraints.

The laws of war usually remained in the domain of elite and learned men like Halleck and Lieber. Yet the wider literate public sometimes could acquire a working knowledge of key ideas, assumptions, and restraints central to the laws of war. From October 1861 to February 1862, for example, Lieber delivered a series of public lectures at Columbia College on the “Laws and Usages of War,” attended by as many as one hundred people and later published in New York newspapers in an abbreviated form. Newspapers, in fact, sometimes provided civilians an opportunity to improve their knowledge of the laws of war. In late 1861, the *St. Louis Daily Republican*, the city’s leading Democratic paper, ran a four-part editorial on the “Laws of Warfare.” These four lengthy editorials surveyed the laws of war for novices, written in a plain but not rudimentary style. “The great principles of morals apply to nations as well as to men, and the violation of national duties produces national injury, and may result in national ruin,” the newspaper declared. Adhering to the laws of war prevented national ruin. Not surprisingly, given Missouri’s problems with guerrilla warfare, the editorials focused extensively on how the laws of war distinguished legitimate combatants and noncombatants from illegitimate marauders, guerrillas, and murderers. The *St. Louis Daily Republican* sketched out the different punishments

²⁰ Francis Lieber to Charles Sumner and George Hillard, March 16, 1844, The Papers of Francis Lieber, Box 41, The Huntington Library, San Marino, California [hereafter cited HL]; Francis Lieber, *Manual of Political Ethics* (Boston: Charles Little and James Brown, 1839), 2: 632-633.

and protections each category of persons deserved. These editorials attempted to educate civilians and convince them “men in arms and in rebellion, must submit to the laws of war.”²¹

Opportunities existed, then, for loyal citizens to acquire some understanding of the laws of war, whether through reading newspaper editorials or the text of Lieber’s General Orders No. 100, widely reprinted in the North. Yet the laws of war remained essential to the Union effort not because most soldiers and civilians understood this technical body of legal thought in intimate detail. Instead, its significance resulted from its influence on *official* Union military policies, particularly General Orders No. 100, an influence indebted above all to the efforts of Henry Halleck and Francis Lieber.

In addition to the laws of war, a richly-varied body of religious ideas – less technical than ideas drawn from international law but certainly more widely-held – also shaped Union just war thinking. Some northerners rejected war outright but most did not, and in contemplating how to wage a just war they often posed to themselves and their fellow citizens a simple question: how ought a *Christian* people wage war?²² The question sparked contentious debate and often elicited half-formed or imprecise answers. But this debate shaped in profound ways northerners’ thinking about the nature of just warfare.

Christian just war thinking among the loyal citizenry rested on a few key assumptions. Chief among them was the idea that God providentially controlled the course of the war for his own sometimes-mysterious ends. “There is no agency, great or small, concerned in this war which [God] does not control,” a Philadelphia minister assured his congregation days after the

²¹ *St. Louis Daily Republican*, December 18, 1861; December 19, 1861; December 20, 1861; January 12, 1862. I discuss Lieber’s Columbia lectures at length in chapter three of this dissertation. Richard Shelly Hartigan, *Lieber’s Code and the Law of War* (Chicago: Precedent, 1983), 13; Witt, *Lincoln’s Code*, 181.

²² Comparatively little has been written recently on Civil War era pacifists except Thomas F. Curran, *Soldiers of Peace: Civil War Pacifism and the Post War Radical Peace Movement* (New York: Fordham University Press, 2003).

battle of Antietam. The war was more than absurd chaos; it was the working out of a grand divine design. When it came time to discern that design, many northern ministers revived the old jeremiad tradition and insisted God used war to chastise and purify. This chastising would prepare America to fulfill its glorious God-given destiny. “If God is to employ our nation, and is even now employing it in the erection of his kingdom,” one Presbyterian minister proclaimed, “he will now and then chasten and correct, and thus purify us.” This work of purification proceeded in the present war: “God is doing a good work upon us, and a good work for us, when he afflicts us in disciplinary chastisements.” Another minister agreed: “He has sent our present afflictions upon us, not as a crushing judgment, or a mere retribution, but as a fatherly chastisement, under which we shall repent of our sins, and by which we shall be sanctified for the great mission upon which He has sent us forth.”²³ Ultimately God might well use war for “his own purposes,” as Lincoln said in his Second Inaugural Address, a potentially unnerving conclusion that led many northerners to conclude that war was not always contrary to the gospel of the Prince of Peace.

But how were a Christian people supposed to wage war? Pulpits and presses rang forth with two common answers: war must be waged in a *humane* spirit and without any trace of vengeful hatred toward Confederates. God demanded both of a chosen people. “Let us leave indiscriminate slaughter, piracy, and desperate measures to desperate men,” proclaimed Henry Bellows, Unitarian divine and president of the United States Sanitary Commission. “We can

²³ Henry A. Boardman, *The Sovereignty of God, the Sure and Only Stay of the Christian Patriot in our National Troubles. A Sermon Preached in the Tenth Presbyterian Church, Philadelphia, Sept. 14 and in the West Spruce Street Church, September 25, 1862* (Philadelphia: William S. & Alfred Martien), 17; William P. Breed, *Faith and Patience ... preached in the West Spruce Street Presbyterian Church, Philadelphia, Thanksgiving morning, November 27, 1862* (Philadelphia: John Alexander), 18; S.M. Campbell, *The Light in the Clouds. A Thanksgiving Discourse, Delivered before the United Congregations of the Reformed Dutch, First Presbyterian and Westminster Churches, of Utica, N.Y. November 27, 1862, in the Reformed Dutch Church* (Utica: Curtiss & White), 13.

afford to be humane ... and we are bound to be so by the standard of our Christian civilization.” This was no call to lay down arms and embrace pacifism. “We cannot spare them our blows; for we have the holy cause of universal justice,” Bellows explained. And yet, he hoped this humane spirit would prompt Federals to “rid the contest of vindictiveness and personal hatred and malice.” One minister likewise called upon his fellow citizens in the late summer of 1862 to reject “any spirit of malignant vindictiveness” in its war against the Confederacy. Another clergyman proclaimed, “I would not have now, never have wished to have, any element of vindictiveness in our treatment of [Confederates].”²⁴ Northerners fiercely debated how exactly to wage war humanely and without vindictiveness. These virtues did not easily translate into military policies. Ultimately, ministers offered somewhat imprecise guidance to soldiers attempting to wage war justly. Still, religious ideas pervaded northern society during the war and helped the loyal citizenry determine the boundaries of just and *Christian* action in war.

No tidy line divided the religious and cultural considerations for waging just war. For many northerners, to ask how a *Christian* people ought to wage war was more or less the same as to ask how a *civilized* people ought to wage war. The loyal citizenry often used “Christian” and “civilized” interchangeably when speaking about the proper spirit of their war effort. As one Ohio man opposed to retaliation in kind against captured Confederates said, “How much nobler it will be to take a Christianized or civilized position in reference to the wrongs the rebels are inflicting upon our gallant soldiers.”²⁵

²⁴ Henry W. Bellows, *How We Are to Fulfill Our Lord's Commandment, "Love your Enemies," in a Time of War* (New York: Baker & Godwin, 1861), 10; Leonard Bacon, *Conciliation: A Discourse at a Sunday Evening Service, New Haven, July 20, 1862* (New Haven: Peck, White, & Peck, 1862), 6; L.J. Livermore, *Perseverance in the War, the Interest and Duty of the Nation: A Sermon, Preached in the Church of the First Parish, Lexington, Sunday, September 11, 1864* (Boston: T.R. Marvin, 1864), 14.

²⁵ L. Abbott to Charles Sumner, January 25, 1865, The Papers of Charles Sumner, Houghton Library, Harvard University, microfilm edition, series 1, reel 32.

When northerners contemplated the nature of civilized warfare, they usually first denounced Confederates for barbaric, uncivilized action. Frederick Douglass thought that Confederate armies had become “more savage, more fierce and brutal in their modes of warfare, than any recognized barbarians making no pretentions to civilization.” The *New York Herald* affirmed the same idea in even more explicitly racial tones. Confederate did not wage war like civilized (that is, white) people; instead, the “Chinese and the Sepoys have become the chosen models of Southern men.” Northerners generally also believed that Union armies should not imitate Confederate barbarities. As Charles Sumner put it, “We cannot be cruel, or barbarous, or savage because the rebels whom we are now meeting in warfare are cruel, barbarous, and savage. We cannot imitate that detested example.”²⁶ If northerners did not always precisely define “civilized warfare,” they certainly made clear that it constituted the exact opposite of how Confederates prosecuted the war. Rebels resorted to tactics befitting a savage, barbaric people, many northerners believed, especially, for example, in their treatment of captured Union soldiers.

By waging civilized warfare, northerners believed they would preserve America’s lofty moral standing in the world and in human history. Indiana Senator Henry Lane, for one, hoped that the Union would continue to fulfill its divinely ordained mission as a beacon of truly Christian, free civilization. He feared America might fail to do so if it followed Confederate armies and “with impunity trample upon all their obligations to God as Christians and all their obligations to the world to abide by the laws of civilized warfare.”²⁷ Northerners did not agree on how to define “Christian” or “civilized” warfare. But because both ideas were often ambiguous,

²⁶ Frederick Douglass, “The Slaveholders’ Rebellion,” in Philip S., Foner, ed. *The Life and Writings of Frederick Douglass* (New York: International Publishers, 1952), 3:242; *New York Herald*, April 16, 1864; *Congressional Globe*, 38th Cong., 2nd sess., pt. 1:382.

²⁷ *Congressional Globe*, 38th Cong., 2nd sess., pt. 1:279.

they also proved powerful and resilient in the minds of northerners who contemplated how best to wage war justly.

Distinctly political concerns also influenced how the loyal citizenry defined just conduct in war, particularly their thinking about why humane restraint was necessary. Two political concerns predominated: first, a desire to punish or target white southerners in rough accordance with their disloyalty; and second, a desire to ensure a lasting and magnanimous reunion by waging war humanely.

Mark Grimsley persuasively documented the “directed severity” Union armies showed southern civilians. He rightly suggested the overwhelming majority of Federal soldiers agreed with the basic political logic behind this “directed severity”: disloyal southern civilians ought to suffer from more war’s hardships than loyal or neutral ones. A key assumption behind this thinking was that the same Slave Power aristocracy that had long dominated southern society and politics had also duped (or coerced) the mass of white southerners into supporting the Confederacy. A just war effort, many northerners assumed, ought to unleash the hard hand of war to greater devastation against the aristocratic slaveholding class. This assumption revealed itself dramatically when in 1865 William Tecumseh Sherman’s army marched through South Carolina, especially Columbia, the supposed home of the most meddlesome and culpable members of the slaveocracy. One Iowa private, as he arrived in Columbia, reveled in finally making suffer “this hotbed of treason and the foul nest where secession was first hatched.” Another Ohio infantryman in Sherman’s army rejoiced that the oligarchic lords of the “Mother State of Secession” were now “severely yet justly reaping” the chaos and calamity they sowed

with secession.²⁸ Union armies needed above all not to devastate or punish most white southerners but disenthral them from the domineering control of the aristocratic slaveholding elite.

An equally important political consideration was a desire to ensure lasting peaceful reunion after Federal military victory. One Pennsylvania infantry captain who witnessed firsthand the devastation of the Shenandoah Valley in 1864 confided to his wife his concern that there was “no telling when & where all this is going to end. There is such a sea of bitterness & hatred between the two parties in this war that it occurs to me the prospect of peace is yet far distant.” In fact, many northerners assumed that how Union armies conducted the war had the power to make lasting reunion either possible or illusory. Humane restraint, especially toward Confederate civilians and their property, might prove essential to achieving President Abraham Lincoln’s dream: a just and lasting peace within a restored Union. As Senator Thomas A. Hendricks put it, Union armies ought to abide by rules “for the regulation of belligerents” not merely to avoid “inhumanity, barbarism, and cruelty,” but also “so that when the war is over there may be mutual respect and confidence, that the ancient relations of commerce and trade may return unimpaired ... [and] make us once more one Government and one people with one destiny.”²⁹ A just war waged with humane restraint might not simply be the most moral manner of waging war. It could also be the only effective way of achieving the great goal of the Federal war effort: permanent, peaceful reunion.

²⁸ Grimsley, *The Hard Hand of War*, 2, 222-25; Alonzo Abernethy, “Incidents of an Iowa Soldier’s Life, or Four Years in Dixie.” *Annals of Iowa* 12, no. 6 (October 1920): 427; W.C. Johnson Journal, February 5, 1865, Manuscript Division, Library of Congress, Washington, D.C. [hereafter cited LC].

²⁹ John Suter to Wife, November 25, 1864, John Suter Papers, The Harrisburg Civil War Roundtable Collection, Box 32, U.S. Army Military History Institute, Carlisle Barracks, Pennsylvania [hereafter cited USAMHI]; *Congressional Globe*, 38th Cong., 2nd sess., pt. 1:391.

These legal, religious, cultural, and political considerations all influenced what the loyal citizenry thought made for a justly waged war. Ultimately, one idea more than any other shaped most northerners' vision of just warfare. Francis Lieber articulated this idea as succinctly and forcefully as anyone, particularly in his code: "The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief." The loyal Union citizenry widely shared this belief that the most moral wars were usually the wars most vigorous in their prosecution – which Lieber understood to mean a military effort that energetically deployed all possible means (albeit within certain inviolable restraints) to achieve victory as swiftly as possible. While "sharp wars" might require an army to deliberately target enemy civilians and their property, "sharp wars" also presumably ended quickly and therefore occasioned less total suffering, destruction, and evil. As Lieber argued, "the shorter [war] is the better; and the intenser it is carried on, the shorter it will be." Or, as an Indiana infantryman put it bluntly, "The only way to stop the war is to fight it out."³⁰

This assumption could make it more difficult to impose certain humane restraints on the Union armies. If short wars were better for humanity, why should Federals *not* temporarily embrace cruel, un-Christian, and uncivilized tactics if they ended the war more quickly? Major Henry Hitchcock, a staff officer for Sherman during the March to Sea, recalled one conversation he had with a Federal captain on precisely this question during the march through Georgia. "Had quite warm discussion with Dayton," Hitchcock wrote in his diary, "I advocating our self-restraint, 'laws of war' etc., etc., he contending we should do whatever and as bad as the rebs,

³⁰ "Instructions for the Government of Armies of the United States in the Field," article 29; Francis Lieber, "Twenty-Seven Definitions and Elementary Positions Concerning the Law and Usages of War," The Papers of Francis Lieber, Box 2, Folder 15, Milton S. Eisenhower Library, The Johns Hopkins University, Baltimore, Maryland [hereafter JHU]; Charles Harding Cox, "'Gone for a Soldier': The Civil War Letters of Charles Harding Cox," Lorna Lutes Sylvester, ed., *Indiana Magazine of History* 68, no. 3 (September 1972): 221.

even to *scalping*.” To scalp Rebels would certainly be an “intenser” way to prosecute the war, and perhaps it would also lead to quicker victory. Hitchcock’s conversation suggests that the Union’s never-ending, contentious effort to wage a just war often boiled down to a contest between two potentially, but by no means automatically, compatible beliefs: a moral vision of just warfare that assumed vigorously prosecuted wars were moral wars, and a desire to adhere to certain inviolable restraints in war. In fact, Lieber and most loyal Union citizens remained committed to both. After all, as his code proclaimed, “Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.”³¹

This fundamental commitment to a hard yet humane military effort – to reconciling destructiveness and restraint – is what I have in mind by suggesting in the title of this dissertation that the Union waged “war in earnest” against the Confederacy. The earnestness cut both ways. The conviction that vigorous wars were just wars infused the Union war effort with an earnest, uncompromising determination to defeat the Confederacy as swiftly as possible, however immense the temporary carnage and hardship. At the same time, the loyal Union citizenry devoted earnest, sincere consideration to defining the boundaries of just conduct in war. Federals paired their earnest effort to end the war quickly with an equally earnest effort to wage war justly.

The following chapters show the legal, religious, cultural, and political ideas underlying this “war in earnest” in action as Federals constructed, refined, vigorously debated, and sought to abide by rules of just conduct in war. The first two chapters look to the opening two years of the

³¹ Henry Hitchcock, *Marching with Sherman: Passages from the Letters and Campaign Diaries of Henry Hitchcock, Major and Assistant Adjutant General of Volunteers, November 1864-May 1865* (New Haven: Yale University Press, 1927), 62; “Instructions for the Government of Armies of the United States in the Field,” article 15.

Union war effort in the expansive Mississippi River Valley – the broad swath of land that divided the Western and Trans-Mississippi Theaters – to explain the wartime origins of early Federal just war policies. Chapter one focuses upon Union army efforts to subdue guerrillas in Missouri. Chapter two examines the initial months of the Federal occupations of New Orleans and Memphis. Both guerrilla warfare and the occupation of major cities posed grave problems to waging war justly. I show in these chapters how Federals responded to these problems not simply with a resolute embrace of hard war measures but also with an earnest effort to establish rules of just conduct.³² This effort proved controversial at times. Federals hardly agreed on how to wage just war. Yet the vision of just warfare that emerged among Federals in this time and place consciously sought to reconcile the hard hand of war with humane restraints.

Chapter three explains how Union leaders refined this understanding of just warfare into a coherent body of rules applicable to all Federal armies. I focus on the life and work of Francis Lieber and his General Orders No. 100. Lieber's code sought to vindicate vigorously prosecuted wars as truly moral wars. The rules of just conduct set forth in the code instructed Federals at great length on how to reconcile in practice the hard hand of war with humane restraints. Remarkably, Lieber's code appeared in a moment of great despondency in the Union war effort hardly conducive to codifying rules to restrain Federal armies. I pay particular attention in this

³² This argument departs sharply from most of the existing literature on the Union war effort in the west, especially in guerrilla-ravaged Missouri – a state Michael Fellman influentially described as a place where “little remained under control, little remained forbidden.” I challenge in particular Fellman's arguments, assumed by many others as well, that Union forces in the state more often than not cared little about just restraints on war: “Knowing that they ought to maintain discipline by enforcing clear rules,” Fellman said of Federals in Missouri “they also wanted to destroy the enemy by any means available. Willy-nilly, they employed a moral and legal double standard.” Michael Fellman, *Inside War*, vi, 115.

chapter to explaining what inspired Lieber to draft General Orders No. 100, for understanding the "genesis" (as Lieber put it) of the code is essential to understanding its content.³³

Two concluding chapters reveal how Federals adhered to this moral vision of hard yet humane warfare in the war's final year. Chapter four looks to a topic Lieber labeled the "sternest feature of war," retaliation against Confederates. I examine at length several retaliation controversies – moments in the war when Federals threatened, debated, or carried out retaliatory measures. By tracing the ideas and actions of key Federal leaders involved in these controversies, I reveal that they also had largely internalized Lieber's attitude toward its use. The final chapter shifts attention from Union treatment of Confederate soldiers to treatment of Confederate civilians and their property. I focus on Philip H. Sheridan's 1864 Shenandoah Valley Campaign and William Tecumseh Sherman's March to the Sea and through South Carolina – both notoriously associated with the supposedly "total war" tactics of the latter stages of the Union war effort. Federal soldiers who participated in both campaigns, by and large, affirmed the essential beliefs and assumptions of the moral visions of warfare that Francis Lieber defined in detail. These campaigns witnessed great destruction and persistent restraint. Federals' moral vision of hard yet humane warfare produced both – for most Union soldiers believed both were necessary to a justly waged war.³⁴

³³ My interpretation of the "genesis" of Lieber's code departs significantly from a prevailing emphasis on emancipation as the chief impetus – a disagreement I detail at length below. The most explicit arguments for the emancipation reading include Witt, *Lincoln's Code*; Matthew J. Mancini, "Francis Lieber, Slavery, and the 'Genesis' of the Laws of War," *Journal of Southern History* 77 (2011): 325-348.

³⁴ My arguments in these chapters build upon the works of historians who have documented the limits to the violence and destruction in Sherman's and Sheridan's campaigns. For two particularly convincing examples, see Joseph Glatthaar, *The March to the Sea and Beyond* (New York: New York University Press, 1985); John F. Marszalek, *Sherman: A Soldier's Passion for Order* (New York: Free Press, 1993); William G. Thomas, "Nothing Ought to Astonish Us: Confederate Civilians in the 1864 Shenandoah Valley Campaign," in Gary Gallagher, ed., *The Shenandoah Valley Campaign of 1864* (Chapel Hill: The University of North Carolina Press, 2006).

Together these chapters tell an unmistakably human story of a people embroiled in the moral dilemmas of waging a war that became the most destructive and cataclysmic in their nation's history. I have tried along the way to avoid quick caricature or condemnation of Civil War Americans. If Francis Lieber was right, a day of terrible reckoning awaited those among them who failed to take seriously the moral dilemmas they faced. They remained accountable to God for their actions in war. My goal instead is to understand on their own terms the wide array of legal, religious, cultural, and political ideas that informed the loyal citizenry's thinking about the nature of just conduct in war. Not only that, I also explain how Federals endeavored to translate these ideas into workable military policies, and how this effort crystallized a particular moral vision of war that permeated the Union military effort. This moral vision justified hard war measures of vast destruction yet also demanded certain humane restraints on the conduct of Union armies. The two were often tenuously tied together, and however contradictory they might seem, Federals believed a hard yet humane war was the epitome of a just war and the surest path to victory over the Confederacy.

The story I tell is neither a romantic paean to the moral glory and superiority of Federal armies nor an attempt to sanitize the war's carnage by diverting our attention elsewhere. After all, even as Federals endeavored to wage war justly, they still committed themselves to a war vigorous in its prosecution, and therefore also great in its destruction. This is the essential and sobering point at the heart of this story: in the reigning Federal moral vision, just wars *were by necessity* wars in which armies did nearly whatever was necessary to end war as quickly as possible. It was precisely for this reason that Lieber could proclaim not long after the war began, "The gigantic wars of modern times are less destructive than were the protracted former ones."³⁵

³⁵ Francis Lieber, "Twenty-Seven Definitions and Elementary Positions Concerning the Law and Usages of War," The Papers of Francis Lieber, Box 2, Folder 15, JHU.

Civil War Americans such as Lieber lived at the cusp of a modern world in which war endured. They responded by embracing a particular vision of just warfare that they believed would limit the total suffering and destruction their war unleashed. Federals hoped that in waging hard yet humane war they would best fulfill their obligations to God and humanity as moral beings engaged in war.

Chapter One: Guerrillas in Missouri

A paradox lies at the heart of the opening months of the Civil War in Missouri. As the Union army embraced hard war measures to subdue rebel guerrillas and civilians, it also established rules of just conduct to limit the war's killing and destruction. The war in Missouri posed innumerable challenges to anyone committed to preserving a modicum of morality in war. Rebel guerrillas plundered civilians and destroyed railroad and telegraph lines. Zealous Jayhawkers carried forth the crusading spirit of John Brown and wreaked havoc in western Missouri. Union soldiers succumbed to the lure of punishing secessionists by raiding or destroying their property. Brash Confederate sympathizers exacerbated tensions among the bitterly divided citizenry and often eagerly aided guerrillas. Maintaining peace and order by any means would be no easy task. To do so according to the laws of war might prove impossible.¹

In early November 1861, Major General Henry W. Halleck assumed command of the Department of Missouri and appeared equal to the challenge. Halleck was a bookish West Point graduate, army engineer, and acknowledged authority on international law. When Halleck arrived in Missouri, *Harper's Weekly* proclaimed: "The country expects great things of General Halleck. His past record and his physiognomy encourage the belief that these expectations will

¹ "Hard war" can elude precise definition. Mark Grimsley, however, has offered a useful working definition of the "common element" of all hard war operations, from the destruction of economic resources to forced evacuations to uncompensated property confiscation: "the erosion of the enemy's will to resist by deliberately or concomitantly subjecting the civilian population to the pressures of war." Grimsley, *The Hard Hand of War*, 5. John Fabian Witt noted a similar paradox in the history of the laws of war in the American Civil War in Witt, *Lincoln's Code*, 2-3. For a general introduction to the Civil War in Missouri, see William E. Parrish, *Turbulent Partnership: Missouri and the Union, 1861-1865* (Columbia: University of Missouri Press, 1963); Louis S. Gerteis, *Civil War St. Louis* (Lawrence: University of Kansas Press, 2001); Adam Arenson, *The Great Heart of the Republic: St. Louis and the Cultural Civil War* (Cambridge: Harvard University Press, 2011); Dennis K. Boman, *Lincoln and Citizens' Rights in Civil War Missouri* (Baton Rouge: LSU Press, 2011).

not be disappointed.”² Halleck recognized the dire situation in Missouri posed acute problems to waging war justly. Did guerrillas deserve any rights usually afforded to regular soldiers? Or were they lawless marauders and murderers who deserved swift death? Could Union forces unleash the hard hand of war against non-combatants who supported guerrillas? When could Union soldiers confiscate or destroy civilian property? Could civilians in an area known to harbor guerrillas be held responsible for their killing and destruction? Did the all-important end of restoring order in Missouri justify any means?

To say that the Union army responded to these questions with stern measures that signaled the start of a more brutal and uncompromising style of warfare is to miss half the story. Civil War Missouri also bred some of the Union army’s earliest rules of just conduct in war. The guerrilla war in the state prompted Halleck and other Union officers, soldiers, and civilians to confront fundamental moral questions about the prosecution of the war. They responded by working to reconcile hard war measures with the constraints imposed by the laws of war and their notions of how a civilized people ought to wage war.³

From the spring of 1861 through the summer of 1862, Union officials in Missouri went about the messy business of codifying and implementing rules intended to ensure Federals waged war justly. This does not mean every Union soldier followed these rules at all times. No

² *Harper’s Weekly*, November 30, 1861, 754. The standard biography of Halleck is Marszalek, *Commander of All Lincoln’s Armies*. In 1861, Halleck published *International Law; or, Rules Regulating the Intercourse of States in Peace and War*, a book that solidified his reputation as one of America’s leading experts on international law. Marszalek, *Commander of All Lincoln’s Armies*, 98, 104.

³ These less technical notions of how a “civilized” or “Christian” people ought to wage war were essential in shaping how most Americans thought about just conduct in war. After all, most Americans knew little of the laws of war. What Mark E. Neely has noted about Ulysses S. Grant during his time spent in Missouri must be kept in mind: “Though a West Point graduate and a veteran of the Mexican War, Grant, like most other professional soldiers and sailors, knew little of international law or the so-called laws of war. The military academies did not teach such subjects.” Mark Neely, *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York: Oxford University Press, 1991), 33. Still, commanding officers like Henry Halleck had the power to implement policies derived from the laws of war that profoundly shaped the conduct of Union officers and soldiers. Even if they were not intimately acquainted with the intricacies of the laws of war, Union soldiers were not entirely beyond its reach.

army fully lives up to its standards of just conduct. Still, these rules did not hypocritically sanitize a war waged with indiscriminate fury. They instead endeavored to establish an approach to dealing effectively and justly with the guerrilla problem. Federals in Missouri believed in the possibility and necessity of waging a war both hard and humane.

In March 1862, John M. Schofield, then a brigadier general in command of the Union militia in Missouri, wrote to Captain Charles H. Warrens of the Fifth Missouri Cavalry to advise him on how best “to ferret out and bring to justice the insurgents” west of St. Louis. The politically shrewd Schofield reminded Warrens the importance of preventing his men from recklessly plundering civilian property. If Warrens did need to seize or destroy property then he should strictly follow the guidelines already handed down by the Union command, Schofield order. “The object is not so much to punish the rebels for what they have done as to prevent them from doing injury in the future,” Schofield told Warrens. Federals would best achieve this goal not through wholesale retribution but by wisely treating different types of civilians in different ways: “This is to be done by putting the incorrigible out of the way, either by death or imprisonment, and by securing the good conduct of others through the obligation of a bond and oath, while many may be reclaimed by justice mingled with kindness.” Some Missourians were irredeemably disloyal, but most might renew their loyalty to the Union if shown a “justice mingled with kindness.” To Schofield, this amounted to stern reprisals for guerrilla depredations that spared as much as possible innocent civilians.⁴

If the goal was to walk the narrow path of justice mingled with kindness, Federals also kept a clear eye on where that path ought to lead. Hard yet humane war intended to restore order and loyalty as quickly as possible. It did not seek to unleash maximum vengeance against the

⁴ *OR*, ser. 1, vol. 8, 607. For a modern biography of Schofield attuned to the “politics of generalship” faced by Union commanders in Missouri, see Donald B. Connelly, *John M. Schofield and the Politics of Generalship* (Chapel Hill: University of North Carolina Press, 2006), especially chapters 2-3.

disloyal population of Missouri. Just conduct in war was morally superior and politically adroit, particularly in a border state like Missouri.⁵

The first eighteen months of the Civil War in Missouri proved consequential but not because they inaugurated a style of near-total warfare that encompassed soldiers and civilians alike. Early encounters with guerrilla warfare in Missouri prompted Federal officers, soldiers, and civilians to embark on one of the first efforts of the Civil War to define just conduct in war as a shrewd combination of hard war measures and humane restraints.⁶

⁵ My argument here echoes Mark Grimsley's point that Union military policy toward southern civilians reflected "a deep sense of moral justice: a belief that whatever the claims of military necessity the innocent and helpless deserved some pity, and that even the guilty should suffer in rough proportion to the extent of their sins." This deep sense of moral justice – which I detect in Federals' just war policies in Missouri – was also, ultimately, infused with an important "political logic": southerners were to be treated in accordance with their loyalty to the Union. Grimsley, *The Hard Hand of War*, 2.

⁶ Michael Fellman enshrined the now pervasive image of Civil War Missouri as a state ravaged by a guerrilla war in which "little remained under control, little remained forbidden." Union forces, he argued, more often than not disregarded the laws of war and succumbed to lawlessness, immorality, and hypocrisy: "Knowing that they ought to maintain discipline by enforcing clear rules, they also wanted to destroy the enemy by any means available. Willy-nilly, they employed a moral and legal double standard." All that came from Missouri, in the end, was a "devastating challenge to any notion of civility or virtue in war." Fellman, *Inside War*, vi, 115, v. While the ensuing scholarship on guerrilla warfare did not always concur with Fellman, it has by and large perpetuated his vision of the war in Missouri as mostly bereft of civility, virtue, or restraint. Daniel E. Sutherland agreed that the guerrilla war prompted, "profound changes in Union military policies and strategy ... [and] produced a more brutal and destructive war that led to Confederate defeat." Daniel Sutherland, *A Savage Conflict: The Decisive Role of Guerrillas in the American Civil War* (Chapel Hill: The University of North Carolina Press, 2009), x. For additional works on guerrilla warfare and Missouri that reinforce Fellman's characterization, see Thomas Goodrich, *Black Flag: Guerrilla Warfare on the Western Border, 1861-1865* (Bloomington: Indiana University Press, 1995); Robert R. Mackey, *The Uncivil War: Irregular Warfare in the Upper South, 1861-1865* (University of Oklahoma Press, 2005); Christopher Phillips, "Lincoln's Grasp of War: Hard War and the Politics of Neutrality and Slavery in the Western Border States, 1861-1862," *The Journal of the Civil War Era* 3, no. 2 (June 2013): 184-210. Not all historians have concurred with Fellman. Mark Neely noted in a somewhat passing remark, "the principal direct effect of the Missouri experience ... was to cause the Northern high command to commission, codify, and publish rules to limit the destructiveness of war." Neely, *The Civil War and the Limits of Destruction*, 206. Andrew F. Lang similarly argued Federals "showed remarkable constraint when combating southern guerrillas," employing tactics such as "shaming an offender's masculinity, burning private property, or destroying local communities." Lang, "The Garrison War: Culture, Race, and the Problem of Military Occupation during the American Civil War Era," (Ph.D. diss. Rice University, 2013), 315.

The process of defining just treatment of guerrillas and non-combatants unfolded in Missouri in roughly four stages from May 1861 to August 1862. In late spring and summer of 1861, Federals first confronted the guerrilla problem mostly without clear guidelines from the highest levels of Union command. However, a few key ideas took hold about how to deal justly and effectively with guerrillas – above all, that civilians could be held responsible for ensuring guerrilla-free peace and order where they lived.

Throughout the late fall and winter of 1861, Henry Halleck launched a sustained effort to codify rules to govern Union troop behavior in everything from the seizure or destruction of property to the treatment of guerrillas and Confederate-sympathizing civilians. Although Halleck undoubtedly led this effort to refine Union thinking about just conduct in war, loyal citizens in Missouri, especially ministers and newspaper editors, also voiced their opinions.

By the spring and summer of 1862, Union forces then went about implementing, revising, and re-implementing these policies for subduing guerrillas. John M. Schofield made a particularly bold, and ultimately unsuccessful, effort to hold civilians responsible for ending guerrilla activity by calling up all able-bodied men to serve in the newly formed Enrolled Missouri Militia. These efforts failed to end guerrilla activity in Missouri, but they did signal Federals' embrace of a vision of just conduct as equally hard and humane.

This effort culminated in late August 1862, as Halleck, then general-in-chief of Union armies, looked to Francis Lieber for expert legal advice on how best to conquer guerrillas in the sternest possible terms allowed by the laws of war. Lieber's solutions to the problems in Missouri shaped the spirit and content of later Union just war policies, especially his own General Orders No. 100, issued to Union armies in the spring of 1863.

In confronting guerrillas in Missouri, Union officers, soldiers, and civilians reconciled two styles of warfare: one that sought stern, vigorous punishment of rebel guerrillas and their sympathizers, and one that adhered to restraints imposed by the laws of war and common notions of civility in warfare.

“To Preserve Peace is the Duty of All Good Citizens”: May to August 1861

Political and military tensions ran high in Missouri in the late spring of 1861, but the emerging guerrilla war raised the most significant questions about just conduct in war. Three in particular stood out: How should Union troops subdue and punish guerrillas? Should local civilians be held responsible for nearby guerrilla destruction? How could Union officers prevent and punish unwarranted abuses by their soldiers?⁷

These questions reflected fundamental problems facing Union authorities at the outset of the Civil War that impinged upon how Federals would prosecute the war. What exactly was the legal status of Confederates? Were they belligerents fighting for a legitimate enemy nation, or mere lawbreakers? President Abraham Lincoln, for one, insisted that secession was an illegitimate action and the Confederacy was not truly the Union’s equal as a nation. But did that mean Union forces would refuse to extend to rebel troops the rights normally afforded to regular soldiers by international law? These seemingly abstract legal technicalities took concrete form soon after the war began, especially in the exchange of prisoners and the Union blockade of southern ports. At the same time, Union authorities faced questions over the treatment of their own civilians during war, especially those not particularly loyal to the United States. This issue played out in dramatic fashion in Maryland in the early spring of 1861 when Lincoln’s

⁷ For an introduction to the political and military situation in Missouri at the onset of the Civil War, see Parrish, *Turbulent Partnership*, 1-48; Gerteis, *Civil War St. Louis*, 6-126; Connelly, *John M. Schofield*, 24-30; Boman, *Lincoln and Citizens’ Rights in Civil War Missouri*, 1-63.

suspension of the writ of habeas corpus and the subsequent arrest of John Merryman led to a constitutional standoff with Chief Justice Roger Taney.⁸

In Missouri, problems over how to define rebel enemies and treat civilians appeared most acutely in the irregular bands of guerrillas and their supporters. Guerrillas disturbed life in Missouri as soon as the Civil War began. When Henry Ankeny arrived in the state with his Iowa infantry regiment and surveyed the turmoil firsthand, he concluded, “this is the most uninviting country I ever saw.” James Overton Broadhead, a prominent lawyer in St. Louis, warned Secretary of War Edwin M. Stanton in early June 1861 that Confederate sympathizers not part of regular armies were “drilling, arming, manufacturing arms and preparing munitions of war, and where they have the power still threatening Union men and driving them from their homes.” Guerrillas destroyed railroad and telegraph lines. They harassed civilians and destroyed private property, often for mere plunder, often to intimidate Unionists. Guerrilla activity had wide repercussions on the course of the Civil War, not least because it raised three key questions about just conduct in war.⁹

⁸ In both prisoner exchanges and port blockades, an appeal to international law seemed also to do what Lincoln sought to avoid: acknowledge the Confederacy as a legitimate belligerent. Stephen C. Neff provides an insightful overview of the intricacies and implications of this broader question of how to define Confederate enemies in Neff, *Justice in Blue and Gray*, 15-29. Neff notes that this legal question led Union authorities to approach the war in a “dualistic, Janus-faced” spirit: at times they resorted to “sovereign rights” (that arise from the Constitution and ordinary laws of the land) and at other times resorted to “belligerent rights” (rights peculiar to a state of war, whose source is international law) as justification for their actions. Neff, *Blue and Gray*, 4. For a similar, if less technical, introduction to the same issues, see Burrus M. Carnahan, *Act of Justice: Lincoln’s Emancipation Proclamation and the Law of War* (Lexington: The University Press of Kentucky, 2007), 41-60. For more on the controversy over the suspension of the writ of habeas corpus in Maryland, see Neely, *Fate of Liberty*, chapter 1. Neely makes the important argument that the suspension of the writ of habeas corpus “was not originally a political measure, and it would never become primarily political.” Neely, *Fate of Liberty*, 9.

⁹ Henry G. Ankeny to Lina and Sis, August 25, 1861, Correspondence of Henry Giesey Ankeny, HL; James Overton Broadhead to Edwin Stanton, June 4, 1861, James Overton Broadhead Papers, Box 4, Missouri History Museum Archives, St. Louis, Missouri [hereafter cited as MHM]; For two representative examples of Union forces facing guerrilla-ravaged railroads, see Ulysses S. Grant, *Ulysses S. Grant: Memoirs and Selected Letters* (New York: Library of America, 1990), 970 and *OR*, ser. 1, vol. 3, 40-41.

How could Union forces subdue these irregular guerrillas in the most just and effective manner? Ad hoc arrangements worked out by Union officers prevailed in the war's early months. For example, Federals responded to an attack on the North Missouri Railroad outside St. Louis by hanging one man immediately, shooting another who sought to flee, imprisoning the remaining guerrillas, and seizing nearly thirty horses. Union soldiers relied on a variety of tactics fitted to unique circumstances, yet the *Daily Missouri Democrat*, St. Louis' leading Republican-leaning newspaper, insisted that Union punishment of guerrillas "must be swift, certain, and dreadful."¹⁰

Ulysses S. Grant, recently appointed brigadier general in the United States Volunteers, wrote to his wife from Mexico, Missouri that guerrillas should face stern retribution from the Union army. "They are great fools in this section of country and will never rest until they bring upon themselves all the horrors of war in its worst form. The people are inclined to carry on a guerilla Warfare that must eventuate in retaliation and when it does commence it will be hard to control." Grant believed when Missouri's guerrillas eventually suffered the same horrors of war they committed they would have no one to blame but themselves.¹¹ The coming months witnessed Unionists within and outside the army working to refine this desire for swift and dreadful punishment into specific, effective, and legitimate measures.

How to combat guerrillas inevitably raised a second question: what should be done to the civilians that aided guerrillas? When Brigadier General William S. Harney assumed command of

¹⁰ *Daily Missouri Democrat*, July 18 and 23, 1861.

¹¹ Grant, *Memoirs and Selected Letters*, 973. Grant's extensive letters to his wife and father during his time in Missouri certainly confirm Mark Grimsley's argument about the quick death of the "conciliation" policy in Missouri: "The irregular bands that quickly gathered created a situation in which a conciliatory policy seemed to reflect not moderation but impotence. Unable to strike directly at the bushwhackers, Union authorities quickly decided to make the civilian community responsible for their depredations." Grimsley, *Hard Hand of War*, 37. Grant's letters also confirm that the death of a conciliation policy hardly signaled the end of all rules of just and restrained conduct.

the Department of the West in mid-May 1861, he assured civilians he would not “harass or oppress the good and law-abiding people of Missouri” and would do all he could “to protect their persons and property from violations of every kind.”¹² Eventually, this commitment to protecting Missouri Unionists and their property prompted more severe measures against disloyal citizens aiding guerrillas.

Federals faced a sometimes difficult challenge in discerning who were the “good and law-abiding people of Missouri” and who were not. A person’s true loyalty or their involvement with guerrillas was not always readily apparent. Colonel Lorenzo Thomas warned Harney in late May that many of the state’s political leaders claimed loyalty to the Union but plotted with Confederates: “They have already falsified their professions too often and are too far committed to secession to be entitled to your confidence.” Galusha Anderson, pastor of Second Baptist Church in St. Louis, recalled the certain trepidation he felt in preaching each week as the war began. While he assumed his congregation contained staunch Unionist and Confederate sympathizers, he did not know the precise loyalties of most members.¹³ Uncertainties about a person’s true loyalty only made it all the more difficult for Union armies to deal justly with civilians.

Controversial questions quickly arose about the property treatment of civilian property. What exactly could Union soldiers seize or destroy? When and for what reasons? In the late spring 1861, Union officers relied on their own best judgment to answer these questions. One Union captain led an expedition to Potosi, Missouri in mid-May 1861 to subdue the secessionists in the city who had harassed Unionists and forced them to flee to St. Louis. He arrested over fifty men but decided not to destroy a vast quantity of rebel civilian property. Instead, he seized only

¹² *OR*, ser. 1, vol. 3, 370, 372.

¹³ *OR*, ser. 2, vol. 1, 185; Galusha Anderson, *The Story of a Border City During the Civil War* (Boston: Little, Brown, and Company, 1908), 120-146.

two smelting furnaces used to furnish lead to Confederate forces. Ulysses S. Grant pursued a similar line of reasoning. While he ordered his men to “allow no indiscriminate plundering,” he also authorized them to seize any property “used for the purpose of aiding the Rebel cause ... whether you require it or not.” Even then, Grant demanded soldiers under his command keep a detailed account of all the property taken, from whom, and its value.¹⁴ These sorts of guidelines, though imperfect and incomplete, reflected a desire among officers such as Grant to impose certain rules on the treatment of civilian property. The rules sought to prevent indiscriminate plunder, place the power to order seizures in the hands of officers alone, and protect the property of Unionist as much as possible.

In late July 1861, Brigadier General Nathaniel Lyon, then in command of Union troops in Missouri, issued one of the earliest comprehensive policies for the seizure of property in the state. Lyon promised to shield “all law-abiding citizens.” Even if they privately harbored Confederate sympathies, so long as they remained quiet and peaceful, Union soldiers would leave them and their property alone. Lyon sought to limit property seizures as much as possible to persons “exciting others to acts of rebellion, and are themselves in arms against the General Government.” He reminded Union troops that even when justified in seizing a person’s property they should do so only with the goal of “disarming and depriving them individually of power for mischief, and not to the injury of families or the wanton destruction of property.”¹⁵ Lyon’s

¹⁴ *OR*, ser. 1, vol. 3, 9-10; *The Papers of Ulysses S. Grant*, ed. John Y. Simon (Carbondale and Edwardsville: Southern Illinois University Press, 1967–), 2:136-7. The imprisonment of civilians was another controversial issue, and for a particularly revealing early episode of Union soldiers dubiously imprisoning a handful of leading secessionists in Jefferson City, Missouri, see Heinrich Boernstein, *Memoirs of a Nobody: The Missouri Years of an Austrian Radical, 1849-1866*, editor and translator, Steven Rowan (St. Louis: Missouri Historical Society Press, 1997), 325. Boernstein admitted “I did not have the slightest right to hold these people,” but considered himself justified in doing so, in part because “When the news of the arrests spread through town, everything became suddenly very quiet, and a good number of dubious or ambiguous individuals grew anxious and fled the next night.”

¹⁵ *OR*, ser. 1, vol. 3, 407.

guidelines formally authorized many actions already taken by officers. But it still inaugurated an effort by Union commanders in the region to codify rules that protected Unionist civilians and dealt justly with disloyal ones.

Lyon admitted he issued the guidelines because of “disgraceful” reports of Union soldiers engaged in “plunder, wanton destruction, disregard of personal rights,” and unjustified property seizures. This admission pointed toward a third key question: what should Union officers do to limit and punish soldiers prone to excessive harassment or destruction? When Ulysses S. Grant arrived at Mexico, Missouri in July 1861, he found some men in regiments now under his command had a history of reckless behavior, entering homes without justification and helping themselves to whatever food and drink they could find. Grant believed this behavior was unwarranted and counterproductive, so he prohibited soldiers from entering private homes uninvited and from seizing property without his authorized approval. Major John McDonald likewise admonished two soldiers during an expedition in eastern Missouri who drifted from their Illinois regiment and attempted to loot an abandoned house. Officers such as McDonald sought to end this behavior because they considered it unjust and a breach of military discipline.¹⁶

Missouri Governor Hamilton Rowen Gamble received many letters from aggrieved citizens protesting the actions of Union troops. L.W. Burris of Liberty worried soldiers were “making secessionists every day” by “the searing of private homes, drawers and trunks, where there is no need for suspicion.” A man from St. Joseph agreed excessive destruction hindered the

¹⁶ *OR*, ser. 1, vol. 3, 407; Grant, *Memoirs and Selected Letters*, 165-6; *OR*, ser. 1, vol. 3, 53. Daniel E. Sutherland suggested the “average Union army officer was not so much concerned about a few excesses on the part of his men as about the army's inability to control rebel guerrillas.” *A Savage Conflict*, 19. In a sense, he is surely right: Union officers, in the end, valued subduing rebel guerrillas more than strict adherence by their soldiers to rules of just conduct. Yet the subtle either/or premise of Sutherland's argument obscures the important fact that most Union officers also sincerely desired both to curtail Union soldier excesses *and* control guerillas. The two were not necessarily mutually exclusive.

Union war effort: “If we can only restrain the soldiers and make them behave themselves, our fight will be an easy one all over the state.” A Presbyterian minister from Chillicothe complained of Home Guards in his city who forcibly searched and arrested suspected secessionist men. “If the Home Guards persist the citizens of this county may become secessionist by the cause of the Government troops,” the minister warned.¹⁷ Gamble and Grant, among other Union leaders, sought to restore peace, order, and loyalty in Missouri. They often found that overzealous destruction by Federal soldiers impeded achieving this goal.

Guerrilla warfare, Confederate-sympathizing civilians, and destructive Union troops posed difficult challenges to maintaining just conduct in war. During the opening months of the war in Missouri all three drew the close attention of Union leaders, especially from the summer of 1861 to the summer of 1862 as they began to construct detailed rules of hard yet humane war.

Implementing these rules sparked controversy and conflict. The earliest major controversy arose in northeast Missouri and involved John Pope, a brash Kentuckian prone to hubris who then served as brigadier general of Volunteers.¹⁸ As Congress debated the First Confiscation Act, Pope issued General Orders No. 3 on July 31, the most vigorous effort to date to hold civilians responsible for nearby guerrilla activity. By late August, Pope found himself embroiled in a bitter fight over the responsibility of civilians in Marion County for a recent guerrilla attack on a train carrying Union troops. The controversy revealed the difficulty of subduing guerrillas and pacifying their civilian supporters in a way that deftly balanced measures both hard and humane.

¹⁷ L.W. Burris to Hamilton Rowen Gamble, August 8, 1861; Willard P. Hall to Hamilton Rowen Gamble, July 11, 1861; Horace L. Singleton to Hamilton Rowen Gamble, August 26, 1861, Hamilton Rowen Gamble Papers, Box 9, MHM.

¹⁸ For a largely sympathetic treatment of Pope, see Wallace J. Schutz and Walter N. Trenerry, *Abandoned by Lincoln: A Military Biography of General John Pope* (Urbana: University of Illinois Press, 1900). For a modern edition of Pope’s own memoirs, Peter Cozzens and Robert I. Girardi, eds., *The Military Memoirs of General John Pope* (Chapel Hill: University of North Carolina Press, 1998).

The guerrilla conflict in northeast Missouri was as violent, perilous, and irrepressible as anywhere in the state. The *Daily Missouri Democrat* reported in early August 1861 of the “tyranny ... of the most atrocious character” by secessionists in that portion of Missouri. Reports surfaced of Union men murdered “in an unprovoked and heartless manner ... for no crime but that they half kept their allegiance to a good government and advised their neighbors to do the same.” Guerrillas targeted railroads and harassed known Unionists. Congressman Francis Preston Blair, Jr. feared what might result from “quite alarming” struggle in northern Missouri. James Overton Broadhead agreed, and he warned a fellow Unionist that guerrillas were “overrunning the country and forcing all union men to take an oath not to take up arms against the state of Mo nor the confederate state. The Union sentiment is fast being crushed out.” Gert Goebel, a German immigrant in St. Louis, later wrote that the dire threat to loyal citizens guerrillas posed demanded a response: “continued clemency toward bands of murderers, who shrank from no crime as long as they were not punished, would have been an unjustifiable cruelty toward the unprotected Union people.”¹⁹

All the intractable problems of guerrilla warfare festered in northeast Missouri when Pope assumed command of the District of North and Central Missouri in July 1861. He immediately threatened quick retribution for anyone who attempted “to commit depredation upon the public or private property or who molest unoffending and peaceful citizens.” Pope desired to restore safety and security in the region, especially for Unionists, and he thought this required him to prevent the further destruction of railroads. By late July, Pope believed the best way to do so was to hold a civilian population responsible for nearby guerrilla destruction. Pope reasoned that citizens living along the often-attacked North Missouri Railroad “if not privy to

¹⁹ *Daily Missouri Democrat*, August 5, 1861; Francis Preston Blair, Jr. to Judge, September 1, 1861, Reel 2, Blair Family Papers, LC; James Overton Broadhead Papers, Box 1, July 31, 1861, MHM; Gert Goebel, *Laenger als ein Menschenleben in Missouri*, trans. M. Heinrichsmeyer, chapter 31, MHM.

these outrages, at least offered no resistance to them, and gave no information by which they could have been prevented.”²⁰

On July 21, 1861, Pope sought to provide “strong inducements” to those living along the North Missouri Railroad to protect it from destruction. Every time guerrillas destroyed part of the railroad, Pope pledged to hold citizens within a five-mile radius financially responsible for the destruction (only if there was no “conclusive proof of active resistance” by the citizens). If citizens did not immediately inform Union commanders of the whereabouts of those responsible for the destruction, Federals would seize money and property to cover the damage. The lifeblood of guerrilla activity was the aid and support of the local civilian population, Pope concluded. Remove this support and guerrilla strength would significantly deteriorate.²¹

Pope admitted in a letter to Major General John C. Frémont that his measures “may seem at first sight to be harsh,” but they were justified – even mild – given the true loyalties and subversive activities of many citizens in northeast Missouri. Supposedly loyal citizens made no effort to “resist these lawless acts of outrage,” Pope argued.²² He would not naively treat this behavior as anything less than open aid to the enemy. If supporting guerrilla activity resulted in severe financial duress, Pope wagered most civilians would help stop the destruction of railroads.

When Pope issued General Orders No. 3 on July 31, 1861, he crystallized two principles that would define the Union effort to deal justly with guerrillas and their supporters. First, the

²⁰ OR, ser. 2, vol. 1, 187. Pope later wrote that when he assumed command in north Missouri “the people were nearly equally divided in political sentiment. In some counties the Southern sympathizers predominated; in others, the Union men were in the majority.” *The Military Memoirs of General John Pope*, 17-18.

²¹ OR, ser. 1, vol. 3, 404. Mark Grimsley noted that while this specific policy “scarcely seemed conciliatory – by the standard of the time it was positively draconian,” it was still premised on a certain “mild” spirit: Pope believed a wide swath of the population “were cowed into submission by the secessionists in their midst,” and, instead of indiscriminate violent reprisals, the prudent action would be to provide civilians strong counter-incentives to aid the Union war effort instead. Grimsley, *The Hard Hand of War*, 38-39.

²² OR, ser. 2, vol. 1, 191-2.

principle of civilian responsibility: Federals could hold civilians responsible for guerilla lawlessness and destruction. The people of northeast Missouri were responsible for maintaining “the peace and quietude of their own section,” Pope said. To ensure that civilians fulfilled this obligation, Pope sought to establish in every county seat and major town a “committee of public safety” comprised of no more than five people responsible for maintaining peace and order. They had the power “to call out all citizens of the county to assemble at such times and places and in such numbers as may be necessary to secure these objects.” Pope warned that if civilians did not maintain peace themselves, Union troops “will perform the service, but the expenses must be paid by the county in which such service is necessary.” Well aware that many northeast Missouri residents loathed the permanent presence of “occupying” Union troops, Pope insisted that if citizens proved themselves able to ensure peace in their counties, “there will no longer be a necessity for the presence of armed forces.”²³

Pope did not clarify important details. What exactly constituted maintaining “peace and quietude”? Could a county avoid financial penalties if its committee of public safety made a genuine yet unsuccessful effort to maintain peace? Were there limits to the penalties that could be levied against a county? However, the orders did make one thing abundantly clear: Pope acted in the conviction that “[to] preserve the peace is the duty of all good citizens.”²⁴

Pope’s orders also crystallized the second principle of restrained punishment. While punishing civilians might weaken guerrillas and restore order, Federals could resort only to well-defined, limited, and legitimate punishments. The goal of General Orders No. 3 was to restore “the safety of person and property” and preserve “peace and order.” As Pope later wrote, his orders sought only “to adopt some machinery to keep the peace which would command the

²³ Ibid., 195-6. For further discussion of the formation and implementation of Pope’s orders, see Schutz and Trenerry, *Abandoned by Lincoln*, 65-68.

²⁴ *OR*, ser. 2, vol. 1, 196.

united effort of all citizens.” Pope described his policy as a restrained and humane way to deal with the guerrilla problem. He suggested he might have responded to the widespread disarray and destruction by sending out “in all parts of this region small bodies of troops, to hunt out the parties in arms against the peace, and follow them to their homes or places of retreat.” But this heavy-handed show of force would have resulted only in unnecessary violence, Pope reasoned. He thought his chosen course of action would restore peace and safety “with the least bloodshed, the least distress to quiet persons, and the least exasperation of feeling among the people.” General Orders No. 3 might seem harsh or imperfect but Pope insisted it effectively reconciled vastly different goals: winning the guerrilla war while respecting the person and property of Missouri citizens and sparing the “effusion of blood.”²⁵

Not everyone loyal to the Union deemed Pope’s policy wise and prudent. J.T.K. Hayward, a St. Louis resident, granted in a letter to Pope that large portions of northeast Missouri favored secession and aided local guerrillas. But Hayward also insisted Union troops committed some of the worst depredations in the region. More importantly, he feared Pope’s policy of holding civilians responsible for guerrilla destruction of railroads undermined Pope’s chief strategic goals: “retain all your present friends if possible, and strengthen their hands, while weaken the enemy, and give them the least possible just occasion to complain.” Hayward concluded General Orders No. 3 had not subdued guerrillas but did harm and anger innocent loyal civilians: “The principle of holding peaceable, quiet men responsible in a military contribution for damages done by lawless and violent men is one which can never meet with

²⁵ *OR*, ser. 1, vol. 3, 421; *The Military Memoirs of General John Pope*, 24; *OR*, ser. 1, vol. 3, 423-4. “The systematic pursuit of these small bands,” Pope later wrote of his response to guerrillas, “by detachments of soldiers would have carried disorder and dismay into every part of the country, alike to Secessionists and Union men.” *The Military Memoirs of General John Pope*, 22. Even if Pope did not have mere vengeance on the mind, Daniel Sutherland is still right to call Pope’s orders “the first move to crush guerrilla resistance,” certainly the first move that threatened severe punishment of civilians. Sutherland, *A Savage Conflict*, 20-21.

favor in the popular mind.”²⁶ Hayward criticized Pope’s policy for weakening Union sentiment and inevitably punishing genuinely loyal citizens who had the misfortune of living in an area largely supportive of guerrillas.

Opposition to Pope’s measures intensified as he embarked on an uncompromising effort to implement it in Marion County in late August 1861. Rebel guerrillas fired upon a train carrying Union troops as it left Palmyra, the county seat of Marion, killing one and wounding another. Federals killed five guerrillas as they scattered into the countryside after the attack. A furious Pope warned he would “inflict such punishment as will be remembered.” He gave Palmyra officials six days to deliver up those responsible for the attacks. If they failed to do so, Pope threatened to send a whole brigade into the area and levy a ten thousand dollar fine on Marion county and five thousand dollar fine on the city of Palmyra. “Some severe example is needed or we shall be harassed constantly by these robbers and assassins,” Pope reasoned.²⁷ Here was an opportunity to prove his preferred policy for waging the guerrilla war in Missouri was effective, feasible, and just.

Citizens of Marion County immediately protested Pope’s retaliation. A group of them begged John C. Frémont to rescind Pope’s orders. The Marion citizens denounced the measures as illegal and counterproductive. “It is without warrant of law,” they protested; it imposed penalties “prescribed by no law, civil, criminal, or military.” More importantly, the measures only alienated Marion County residents from the Union. “It is irritating to the people and deeply injurious to the union cause,” the citizens warned. By punishing equally the innocent and the

²⁶ *OR*, ser. 1, vol. 3, 434-5.

²⁷ *Ibid.*, 135, 212. Pope made it clear he believed General Orders No. 3 would be effective only if sternly enforced. He warned General Stephen A. Hurlbut on August 9, 1861: “Don’t fail to act promptly and vigorously according to orders. Go to the county where the marauders fired on the train. Force the people under penalty to tell where those men came from. If you cannot find out occupy with your forces the district and county seat and county in which the firing was done. Don’t fail in severity or in strict compliance with orders or upon yourself will rest a serious responsibility.” *OR*, ser. 2, vol. 1, 202-3.

guilty, the loyal and disloyal, the penalties have “already driven thousands from our ranks.” If Pope imposed the levy, four-fifths to five-sixths of the region would engage in “open rebellion,” the citizens predicted.²⁸ Pope argued his policy restored peace, security, and loyalty to the Union; his opponents protested that his measures did exactly the opposite, aggravating civilians and driving them away from the Union cause.

Pope wrote Frémont to respond directly to the appeal from Marion county citizens. His defense reiterated earlier arguments that the policies dealt fairly and humanely with guerrillas. Pope demanded a great deal of the civilians of northeast Missouri, he said, because the present war would end only “by making all engaged in it suffer for every act of hostility committed.” The proper limit to this suffering was a contested question, one that Union officers in Missouri would revisit time and again. For the moment, Pope justified his measures only by arguing they proved effective. Destruction by guerrillas declined, civilians aided them less often, and loyal citizens endured far fewer attacks by secessionists.²⁹

Pope warned his policy of civilian responsibility was effective only if strictly and consistently enforced: “One failure to enforce rigidly penalty will destroy all belief it will ever be enforced at all.” Pope expressed little discomfort over the prospect of genuinely loyal citizens unduly punished by his measures – in part because he believed the overwhelming majority in the Palmyra area sympathized with the guerrillas, and in part, as he put it in General Orders No. 3, because he believed every citizen had a duty to preserve peace.³⁰ The only way to ensure

²⁸ *OR*, ser. 2, vol. 1, 214-15. There were also repeated accusations of irregularities and abuses in the implementation of Pope’s orders in Marion County. Sutherland, *A Savage Conflict*, 21.

²⁹ See *OR*, ser. 2, vol. 1, 218-220 for a starkly different picture of conditions in northeast Missouri from J.T.K. Hayward, an employee of the Hannibal and Saint Joseph Railroad, who details not only continued attacks against railroads, but also, in Hayward’s opinion, excessive and unjustified responses from Union troops.

³⁰ *Ibid.*, 215-16, 195.

civilians took seriously their responsibility to guarantee peace and order was to insist that the responsibility fell equally on all civilians regardless of their loyalties.

The editors of St. Louis' *Daily Missouri Democrat* agreed with Pope that Federals would win the war in Missouri not through leniency but "the stern arm of justice." In a late August editorial, the newspaper mocked earlier hopes "that forbearance and leniency might calm excitement, and bring the guilty to reason." This policy only encouraged guerrillas, disheartened Unionists, and produced "serious mischief to the Republic." The editorial heartily endorsed the spirit of Pope's measures. It insisted anything less than the stern arm of justice led to destruction, harassment, lawlessness, and bloodshed. A humane restoration of security and order waited on the other side of swift and decisive retribution.³¹

But the public outcry against Pope's orders prevailed. Governor Henry Gamble and Francis Preston Blair, Jr. soon pressured Pope to rescind the financial penalties imposed on Marion County, which he did on August 30. Although Pope still believed in the wisdom of his policy, he deferred to "the earnest wishes of the executive civil authority of the State." Still, Pope warned the citizens of northeast Missouri that any "abuse of this leniency" would result in retribution unprecedented in its fury.³²

Pope unreservedly embraced a policy of civilian responsibility, enforced by stern yet limited punishments. His measures in northeast Missouri drew critics and admirers alike, people divided over what constituted a just war against guerrillas. This conflict played out against the unsettling reality that as the summer ended Missouri's rebel guerrillas still seemed undaunted.³³ Policies such as Pope's were clearly controversial, but it remained to be seen if they were also effective.

³¹ *Daily Missouri Democrat*, August 26, 1861.

³² *OR*, ser. 2, vol. 1, 220-221.

³³ Sutherland, *A Savage Conflict*, 25.

At the same time Pope faced great opposition in northern Missouri, John C. Frémont also became embroiled in a controversy over legitimate conduct in war. It began on August 30 when Frémont sought to act boldly to end “the total insecurity of life” lately caused by guerrillas in the state. The “severest measures” were necessary, Frémont said, so he declared martial law throughout Missouri. Guerrillas caught in arms behind Union lines would be tried by court martial and executed if found guilty. Frémont warned that Federals would confiscate the property of any person “who shall take up arms against the United States,” including slaves, who would then be “declared freemen.” This final threat directly contradicted the First Confiscation Act, passed by Congress earlier in the month, which authorized the confiscation only of property used directly to aid the Confederate war effort. In threatening to target slavery, Frémont jeopardized President Lincoln’s daunting effort to unite the northern citizenry in a war to save the Union while ensuring the continued loyalty of the Border States.³⁴

Frémont insisted his orders sought only to “suppress disorder” and restore “public peace” by subduing guerrillas. On the same day, he also issued General Orders No. 6, a stern reminder to Federals in Missouri that the declaration of martial law still demanded they uphold “good order and rigorous discipline,” which meant especially avoiding “unauthorized searches, seizures, and destruction.” But Frémont’s critics thought his motivations hardly ended with defeating guerrillas and restoring order. Ethan Allen Hitchcock, retired general and eventual member of the committee that drafted the Lieber code, believed Frémont was “an instrument in the hands of abolitionists ... used by that sect in the effort to force the Government into an abolition war.” Frémont perhaps did act in part to secure acclaim from abolitionists who desired a war committed explicitly to ending slavery. Still, that did not stop New York lawyer and

³⁴ *OR*, ser. 1, vol. 3, 466-7.

prolific diarist George Templeton Strong, for one, from praising the bold action as exactly what the Union military effort needed: “war in earnest, at last.”³⁵

It was war in earnest on terms Lincoln could not tolerate. Lincoln ordered Frémont not to execute any guerrilla without his approval, for he feared if Frémont rashly implemented the threat a vicious cycle of retaliation would erupt: “the Confederates would very certainly shoot our best men in their hands, in retaliation; and so, man for man, indefinitely.” Lincoln also worried Frémont’s strike against slavery would “alarm our Southern Union friends.” He requested that Frémont revise this portion his order to align it the First Confiscation Act. Frémont stubbornly refused Lincoln’s private request so the President “cheerfully” ordered him publicly to do so.³⁶

Lincoln’s action incensed many members of his own party, including Orville Hickman Browning, an Illinois senator and one of Lincoln’s close friends. Lincoln explained to Browning that his decision resulted from the belief that Frémont’s action was “*purely political*, and not within the range of *military* law, or necessity.” While a military general might temporarily have a right to seize private property, the general could not revoke permanently a person’s ownership in that property. As Lincoln explained, commanders like Frémont might find it necessary “to seize the farm of a private owner,” yet that did not empower them “to say the farm shall no longer belong to the owner, or his heirs forever,” especially once it was no longer “needed for military purposes.” The same applied to slaves: “If the General needs them, he can seize them, and use them; but when the need is past, it is not for him to fix their permanent future condition.” Lincoln

³⁵ Ibid., 467-8; Ethan Allen Hitchcock to Henry Hitchcock, November 1, 1861, Hitchcock Family Papers, Box 2, MHM; *The Diary of George Templeton Strong*, ed. Allan Nevins and Milton Halsey Thomas (New York: The MacMillian Company, 1953): 3:177.

³⁶ *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler (New Brunswick: Rutgers University Press, 1953), 4: 506-7, 517-8. Lincoln, as I show in chapter four, continued to show this same unease toward retaliation even as the war reached its final year.

feared Frémont's proclamation would signal "the surrender of the government" – not only because it defied the existing "Constitution and laws" which governed the nation but also because it alienated Border State Unionists.³⁷

The Frémont episode revealed that what to do with slavery was one of the more controversial just war questions that Federals faced. Could Union armies strike a deathblow against slavery to subdue guerrillas? Did an army commander, Congress, or the commander-in-chief have legitimate legal authority to declare enemy slaves free? Could a just war also be a war against slavery? *Must* it be a war against slavery? These questions hardly applied only to the war effort in Missouri. Their moral and political dimensions weighed heavily on the Lincoln administration and Union army commanders in the months ahead.

Union armies had not subdued Missouri guerrillas by the fall of 1861 and they only had begun to resolve the many-sided problem of a justly waged war. While some Unionists dismissed Pope's heavy-handed style, the summer of 1861 seemed to confirm the wisdom of a conviction held tenaciously by Pope: the only way to end the guerrilla war in Missouri was to hold civilians responsible for ensuring peace and security. This was precisely the sort of principle whose devil is in the details. What exactly were the limits to this civilian responsibility or the punishments meted out on persons who failed to fulfill it? Reconciling hard war measures and humane restraints would be a messy, imperfect, experimental business. This task awaited Henry Halleck as he assumed command of the Department of the Missouri in November 1861.

"A War of Barbarism, or of Comparative Humanity": September to December 1861

In the fall and winter of 1861, Unionists in Missouri set about to reconcile in theory and in practice hard yet humane warfare. Most Federals believed the preceding summer proved the

³⁷ Ibid., 4:531-3.

guerrilla problem demanded a vigorous and far-reaching response – swift, severe punishments for guerrillas and their supporters. Union leaders in Missouri abandoned efforts to win over disloyal citizens through a policy of mild conciliation. Policies that extended the spirit of measures such as Pope’s General Orders No. 3 increasingly ruled the day. Yet, at the same time, Federals continued to work to define in explicit detail how to combat Missouri’s intractable wartime problems in a just manner.

By early January 1862, Halleck instituted a well-defined set of rules governing just conduct in war. The rules ranged from the proper seizure of property, to the treatment of civilians, to the assessment of financial penalties against Confederates in St. Louis, to the punishment of guerrillas caught destroying railroads, to the enforcement of martial law and the trial of civilians by military commissions, to the punishment of Union troops guilty of plunder. The following spring and summer would test whether Halleck’s measures were feasible and effective.

Although officers like Halleck codified and implemented rules of conduct, the underlying just war questions engaged the wider civilian population of Missouri. They too generally envisioned a war of quick and decisive fury but one not totally devoid of civility and restraint. In late August 1861, St. Louis’ most prominent minister, William Greenleaf Eliot, took to the pulpit of the Church of the Messiah to proclaim his devotion to the Union and remind his listeners that they had the power to make the present conflict “a war of barbarism, or of comparative humanity and civilization.” Eliot, a Unitarian from Massachusetts, had lived in St. Louis since 1834, where he was instrumental in founding Washington University. “I am a lover of peace,” Eliot confessed that August morning. “War is not a Christian work, and the time will come for its abolition.” But the time had not come yet. The Christian during wartime had to reconcile two duties: to defend

one's country in battle and to foster peace, righteousness, and social progress. The two duties were not necessarily compatible. Missourians must reject a war of barbarism for one of *comparative* humanity and thereby "keep Christian principles alive."³⁸

Eliot was a man of the cloth, not a man of the sword. He did not command men in arms but instead preached the gospel. And so he offered no specific guidance on how Union troops in battle might act to keep Christian principles alive. Union armies had an obligation to wage war by the sternest measures necessary for victory. If they did not, "society would be completely in the hands of the wicked." However, Eliot pleaded with loyal soldiers and civilians to remember their goal remained not a vengeful devastation but a "fair and just settlement," peace and Union restored. "It is one thing to be decided, energetic, resolute, quite another to be vindictive, overbearing, blood-thirsty," Eliot concluded. The former defined a justly waged war; the latter, utter barbarism. Soldiers who heeded advice such as Eliot's, one Missouri volunteer believed, and nobly sacrificed themselves for the Union, died "like a Christian," not a blood-thirsty barbarian.³⁹

For Barton Bates, the prospect of barbarism concerned him far less than ensuring that secessionists "feel themselves conquered." Bates wrote a fiery letter to his father, Attorney General Edward Bates, in early September 1861 about Missouri's truly "miserable state." Bates begrudgingly accepted that Federals ought to treat Confederate soldiers as legitimate combatants and not mere lawless bandits. But for irregular guerrillas or marauders, Bates thought the only legitimate course of action was to "shoot them promptly." Bates loathed the "lenient" treatment shown so far to guerrillas. Forcing them to swear an oath of loyalty they mocked and disregarded

³⁸ William Greenleaf Eliot, "Loyalty and Religion," William Greenleaf Eliot Papers, Box 1, Folder 4, MHM. William Greenleaf was the grandfather of the poet T.S. Eliot. See Earl K. Holt, *William Greenleaf Eliot: Conservative Radical* (Village Publishers, 2011).

³⁹ Eliot, "Loyalty and Religion," William Greenleaf Eliot Papers, Box 1, Folder 4, MHM; Joseph G. Best to Cousin, February 9, 1862, Leslie Anders Collection, USAMHI.

accomplished nothing. “They need a severe lesson,” Bates concluded. “They should be summarily shot by thousands. They have well earned the fate, and the example made of them may be of great value elsewhere in deterring rebels, within the lines of the army, from following their example.”⁴⁰

Bates made clear that only lawless guerrillas deserved this fate, not regular Confederate soldiers or non-combatants. Even though his desired summary executions by the thousands never occurred, Bates expressed in harsh terms the prevailing view that only stern retaliation deterred guerrilla activity. His letter captured the visceral anger Unionists felt toward guerrillas and their sympathizers. Perhaps Federals could master and subdue this anger – prevent it from spiraling into an unchecked vengeance – but the anger rarely disappeared entirely, even from the hearts of those committed to restraining war’s worst excesses.

Unionists in Missouri could sympathize with the frustration – even hatred – underlying Bates’ irate outburst. Yet the editors of the *St. Louis Daily Republican* proved that sober reflection about right conduct in war could prevail. “Some pretty good people talk as if every sort of barbarity and horror, multiplied *ad infinitum*, were a necessary part of this war,” the *St. Louis Daily Republican* concluded, even though it speculated few people who talked that way really meant it. Still, this was “a most *atrocious* view of [war].” An Iowa infantry private likewise found little thrilling in the barbarities of war, even the act of killing: “I did not volunteer to kill many if it could be avoided and I would like very much if this matter or trouble could be settled (if it could be settled right) without having to shoot at or kill a single man.” As the editors of the *St. Louis Daily Republican* put it, to pursue a war without restraint or discretion only guaranteed the war would “leave our people neither liberty nor life worth having.” The newspaper affirmed in an early fall editorial that participants in the war in Missouri ought to

⁴⁰ Barton Bates to Edward Bates, September 8, 1861, Bates Family Papers, Box 9, MHM.

abide by the same laws of war that governed conflicts between belligerent nations. The newspaper emphasized that officers should pay particular care to protect non-combatants “from the violence of the lawless part of their soldiery; for in every command there will be more or fewer lawless men.” The paper called for the clearest possible guidelines for the confiscation of property; only by acting in accordance with such guidelines would soldiers avoid the same “lawless and irregular violence” characteristic of rebel guerrillas.⁴¹ Despite its desire to see lawless guerrillas punished, the *St. Louis Daily Republican* still believed the Union military leadership in Missouri should issue clear guidelines for waging the war with civility and restraint.

Henry Halleck and other officers went about this task in earnest in the late fall and winter of 1861. They did so because of continued guerrilla activity and persistent depredations by some Union troops. Francis Preston Blair, Jr., for one, complained of “the utter want of discipline” among Federals near St. Louis.⁴² Unionists such as Blair recognized that soldiers who illegitimately seized or destroyed property did more than simply undermine efforts to prosecute the war justly. They also risked alienating Missouri civilians from the Union. Not surprisingly, the renewed effort to clarify and uphold rules of just conduct arose from the actions of irregular rebel guerrillas as well as Union soldiers.

John C. Frémont, still commander of the Department of the West, chided soldiers for the persistent reports of their plunder and destruction of civilian property. Frémont found it necessary in late October 1861 to remind soldiers that plundering and marauding were strictly forbidden and punishable by “terrible penalty.” Anything deemed necessary for the survival of Union troops could be seized only after Frémont approved. Even then, the seizure had to occur

⁴¹ George W. Lowe to his wife, October 19, 1861, Papers of George W. Lowe, HL; *St. Louis Daily Republican*, October 3, 1861.

⁴² Francis Preston Blair, Jr. to Judge, September 1, 1861, Reel 2, Blair Family Papers, LC.

under the close watch of officers, who were to give owners receipts for their eventual reimbursement. The goal remained more than simply “to prosecute the war with the utmost vigor against all who are in arms against the Government.” Federals needed also “to inspire confidence in the loyal inhabitants of this State, and to assure others of protection and immunity if they return to their allegiance.” Any breach of legitimate conduct in the treatment of civilian property undermined this all-important goal.⁴³

It is easy to imagine Union soldiers in Missouri as widely prone to plunder and mayhem, forever beyond the control of refined officers who sought to conform troop behavior to enlightened standards of civilized warfare. In reality the situation was never that simple. Soldiers could show remarkable restraint and respect for civilian property and they could also disregard this same restraint and respect. When Chester Harding, brigadier general in the Missouri State Militia, led an expedition to Fulton, Missouri, his men traversed a “thoroughly disloyal” region, yet, he proudly reported, “the most admirable good order and discipline were maintained.” “Although we passed through a country where we found few but enemies,” Harding continued, “there was no interference with private property, and no irregularities of any kind were committed.”⁴⁴

John M. Schofield, in contrast (in a further testament to the particularly troublesome situation in northeast Missouri), denounced the “practice of plundering and robbing peaceable citizens and of wantonly destroying private property [that] has become so prevalent in some portion of this command.” Guilty soldiers would face immediate arrest, Schofield warned.

⁴³ *OR*, ser. 1, vol. 3, 539-40.

⁴⁴ *OR*, ser. 1, vol. 3, 254. Accounts by Federal officers of Missouri civilians’ *expectations* of how soldiers would behave are themselves revealing of the gap that often separated Union soldiers’ imagined and real behavior. Captain H.P. Hawkins arrived in Doniphan, Missouri and found “the inhabitants in great fear of outrages supposed to be committed by the Federal troops.” Hawkins instead treated civilians in “a mild and uniform” manner, confounding their expectations, in Hawkins words, “that we would destroy their town.” *OR*, ser. 1, vol. 8, 365. For a similar example see, *Ibid.*, 257.

Officers who failed to arrest them would be punished as complicit in the crime committed.⁴⁵ Not all Union soldiers succumbed to marauding and plunder, but enough did to compel commanding officers to reissue periodically guidelines for seizing property and warnings of the punishments awaiting those who ignored these rules.

After assuming command of the Department of Missouri, Henry Halleck issued guidelines in late November for property seizure and destruction that mirrored rules issued by Frémont one month earlier. He directed Union troops to seize property only when absolutely necessary. Again, the orders directed officers to document the seizure and provide receipts to property owners. Halleck did issue a threat Frémont had not: troops who committed an unauthorized act of seizure or destruction would be punished with the “extreme penalty imposed by laws of war, which is death.” Because unwarranted depredations by Federal troops intensified the “discredit cast upon our patriotic army,” executing guilty soldiers assisted in retaining the loyalty of Missouri civilians.⁴⁶

The *Saint Louis Daily Republican* applauded Halleck’s efforts. Holding soldiers to well-defined rules would “do a great deal toward pacifying large portions of our State, where many people feel that their liberty and property are unjustly dealt with by men having no responsibility.”⁴⁷ Like Frémont before him, Halleck understood that the just treatment of civilian property was essential in a Border State like Missouri where the objective of crushing guerrilla rebels stood in uneasy balance with the objective of retaining civilian loyalty.

But Halleck had much more than the treatment of civilian property on his mind. As December 1861 unfolded, he orchestrated the most extensive effort to date by a commander in Missouri to ensure that Union troops in the guerrilla-ravaged state prosecuted the war in a hard

⁴⁵ Ibid., 478.

⁴⁶ Ibid., 381.

⁴⁷ *St. Louis Daily Republican*, November 28, 1861.

yet humane manner. Halleck drew upon his expertise in international law to draft General Orders No. 13, issued December 4, 1861, a succinct yet wide-ranging summary of the laws of war and its relevance to the situation in Missouri. The orders firmly established a stark vision of how Union troops should wage war in Missouri – fierce and decisive in their punishment of guerrillas and civilian sympathizers yet constrained by rules of humane conduct.

“Peace and war cannot exist together,” Halleck began. Therefore, Union armies must promptly abandon the “mild and indulgent course heretofore pursued” against irregular guerrillas and their civilian supporters. “They have forfeited their civil rights as citizens by making war against the Government, and upon their own heads must fall the consequences,” which meant they would receive no protections afforded to regular prisoners of war or non-combatants. Only the sternest measures could end the guerrilla problem in Missouri. Halleck sought to demonstrate these stern measures fully abided by the laws of war.

What were the consequences soon to fall on the heads of these guerrillas and non-combatants? Halleck ordered the arrest of all “persons in arms against the lawful authorities of the United States, or who give aid, assistance, or encouragement to the enemy.” The evidence warranting these arrests, however, had to be documented and verified by sworn oath. Civilians who feigned loyalty to the Union to spy on Federals and aid Confederates would be “arrested, tried, condemned, and shot as spies,” men and women alike. Persons not in rebel armies who “commit acts of hostility” would not receive prisoner of war status. And everyone – regular Confederate and Union soldiers, irregular guerrillas, non-combatants – found guilty of “murder, robbery, theft, pillaging, and marauding,” would be “shot or otherwise less severely punished.”

Could Union forces retaliate in kind when rebel guerrillas committed unlawful depredations? Halleck expressly forbade “cruel and barbarous acts” and dismissed an eye-for-an-

eye response to murder or robbery. But he thought certain reprisals did fall “within prescribed limits” according to the laws of war. Halleck believed one recent offense in particular demanded a response:

The rebel forces in the southwestern counties of this State have robbed and plundered the peaceful non-combatant inhabitants, taking from them their clothing and means of subsistence. Men, women, and children have alike been stripped and plundered. Thousands of such persons are finding their way to this city barefooted, half clad, and in a destitute and starving condition. Humanity and justice require that these sufferings should be relieved and that the outrages committed upon them should be retaliated upon the enemy.

Halleck, in St. Louis, found it impractical to track down the guilty parties in southwest Missouri. But within St. Louis resided many wealthy residents who rendered “aid, assistance, and encouragement” to the original offenders. Although “less bold” than guerrillas in southwest Missouri, these secessionists in St. Louis were “not less guilty.” Halleck planned to have refugees fed, clothed, and housed and the expense of “avowed secessionists” who provided “aid, assistance, and encouragement to the enemy.”⁴⁸

Halleck soon elaborated and implemented these ideas. In the process, he learned the difficulty of identifying “avowed secessionists.” Still, his reasons for justifying these measure mirrored an argument made by President Lincoln in his December 1861 Annual Message to Congress: “The Union must be preserved, and hence, all indispensable means must be employed. We should not be in haste to determine that radical and extreme measures, which may reach the loyal as well as the disloyal, are indispensable.” *Harper’s Weekly* applauded Halleck’s efforts to compel wealthy secessionists to provide for the “half naked, benumbed with cold, and hardly able to stand” refugees flooding into St. Louis. Halleck’s planned measures “struck consternation

⁴⁸ Ibid., 405-7.

into the hearts of the secessionists, and at the same time provides an effective remedy,” *Harper’s Weekly* reported.⁴⁹

“These orders may by some be regarded as severe,” Halleck concluded, “but they are certainly justified by the laws of war, and it is believed they are not only right, but necessary,” especially to restore peace and order in Missouri and protect “the lives and property of loyal citizens.” Halleck did not order the prompt execution of regular Confederate soldiers. Nor did he authorize violent reprisal against non-combatants who did not aid irregular guerillas. But the laws of war afforded little mercy to irregular guerrillas and their active supporters, Halleck believed.⁵⁰

What the laws of war proclaimed about guerrillas and non-combatants did not only interest military commanders such as Halleck. From late December to mid-January the *St. Louis Daily Republican* ran a lengthy four-part series on the “Laws of Warfare.” The series offered Missouri civilians a layman’s introduction to the restraints imposed by the laws of war. Why should a newspaper concern its readers with the details of the laws of war? Because the moral health and credibility of the Union was at stake: “The great principles of morals apply to nations as well as to men, and the violation of national duties produces national injury, and may result in national ruin.” If Union armies did not abide by the laws of war, the United States would no longer belong to “the civilized world.” Moral anarchy might soon follow.⁵¹

Only nations could fight legitimate wars, not individuals. Therefore, only duly constituted “combatants entitled to fight, whom the State calls upon and commissions for that purpose,”

⁴⁹ *The Collected Works of Abraham Lincoln*, 5:49; *Harper’s Weekly*, December 28, 1861, 818.

⁵⁰ *OR*, ser. 1, vol. 8, 407.

⁵¹ *St. Louis Daily Republican*, December 18, 1861. Given how little the average reader of the St. Louis newspaper likely knew about the intricacies of the laws of war, these sorts of editorials were likely their chief – if only – introduction to the topic. The four parts of the editorial were published on December 18, 19, 20, 1861 and January 12, 1862.

could take up arms in war. From this premise, the *St. Louis Daily Republican* justified stern, swift punishment of irregular guerrillas. James Overton Broadhead agreed with a Unionist friend that guerrillas deserved none of the rights afforded to regular belligerents, for if Federals extended to them these rights, “there is no telling how long the war will last.”⁵²

The *St. Louis Daily Republican* drew a second conclusion from the idea that legitimate wars involved only states, not individuals: “those not actually enlisted and serving in or with the armies, are by the generally received rules of modern warfare, treated as non-combatants, and allowed to follow their regular civil occupations.” There was a major exception to this rule, an exception particularly relevant to Missouri. Non-combatants could not engage in hostilities or in “furnishing supplies or assistance to their armies.” John N. Pope had angered so many Unionists because he violated this idea. He sought to punish *all* civilians regardless of their loyalties in areas known to harbor guerrillas. The newspaper, like Halleck, argued for treating civilians in accordance with their loyalty to the Union. Officers like Halleck still had to define in precise terms what constituted assistance to Confederate armies, and what sorts of punishments ought to correspond with varying degrees of assistance.⁵³

While the *St. Louis Daily Republican* had no patience for guerrillas, it thought Union troops ought to remember, even when dealing with civilians sympathetic to the Confederacy, “war is a disease which is to be cured as soon as possible.” The restoration of peace, order, and loyalty was always the paramount goal, one achieved by waging war free of unchecked personal passions and hatred. Since the Civil War was “not between individual citizens, but between the State and an organized faction striving to overthrow the Government,” the newspaper hoped it might remain a war “for principle, and not for malice or revenge.” Vengeance and malice in war

⁵² Ibid., December 19, 1861; A. Leonard to James Overton Broadhead, December 2, 1861, James Overton Broadhead Papers, Box 1, MHM.

⁵³ *St. Louis Daily Republican*, December 20, 1861.

led to unwarranted killing and destruction. The closer Union armies adhered to the laws of war, the more they would avoid this regrettable behavior, which would make it easier after Union victory to restore peace and order. Disloyal persons were “enemies only for the time being,” and a justly waged war offered the surest path to a lasting peace.⁵⁴

Soon after issuing his general summary of the laws of war, Halleck found that two issues – the assessment of financial penalties against Confederate-sympathizing St. Louis civilians and the punishment of guerrillas who destroyed railroads – allowed him the opportunity to refine his vision of a war in which irregular guerrillas and civilians faced stern punishments according to the laws of war.

The influx of refugees to St. Louis from guerrilla-ravaged parts of Missouri was a mild humanitarian crisis. Halleck settled immediately on a solution: hold well-to-do secessionists in the city responsible for meeting the material needs of refugees. While the majority of St. Louis residents were Unionists, many sympathized with the Confederacy. The refugees who arrived in the city seemed to have suffered the worst of the guerrilla war. They looked “poor and wretched beyond description,” one resident of St. Louis remembered, “in rags, often hatless and shoeless, sallow, lean, half-starved, unkempt.” Ulysses S. Grant thought they arrived in a truly “deplorable condition and must have starved but for the support the government gave them.”⁵⁵ As the number

⁵⁴ Ibid., December 20, 1861, January 12, 1861.

⁵⁵ Anderson, *The Story of a Border City*, 253; Grant, *Memoirs and Selected Letters*, 170-71. Grant went on: “They had generally made their escape with a team or two, sometimes a yoke of oxen with a mule or a horse in the lead. A little bedding besides their clothing and some food had been thrown into the wagon. All else of their worldly goods were abandoned and appropriated by their former neighbors.” Concerning the loyalties of St. Louis residents, Provost Marshal Leighton assured Halleck that while loyal men controlled St. Louis’ police department, the “council and aldermen are all of undoubted disloyalty.” Moreover, “The executive of the city while he is not to be considered loyal is not one who would give aid or assistance against us,” and therefore was no cause for concern. *OR* ser. 2, vol. 1, 140-1. When Grant arrived in St. Louis in May 1861, he found the “enemies of the government ... bold and defiant,” having established their informal headquarters “in a central and public position – from which the rebel flag was flaunted boldly.” Grant, *Memoirs and Selected Letters*, 156.

of refugees swelled, meeting their needs became a more pressing problem. The generosity of Unionists alone was not sufficient.

Halleck decided to compel charitable support from three types of persons “known to be hostile to the Union”: Confederate soldiers who owned property in St. Louis, those who furnished “pecuniary or other aid” to the rebels, and those who have given encouragement “verbally, in writing, or by publication” to rebel guerrillas or armies. On December 12, Halleck empowered a three-person board of assessors – comprised of Brigadier General Samuel R. Curtis, Provost-Marshal-General Bernard G. Farrar, and the St. Louis county assessor – to determine the contribution required of each secessionist. Required contributions consisted of a mixture of provisions, clothing, housing, and money. Anyone who did not comply faced a \$10,000 levy. Persons wrongly labeled disloyal had one week to appeal to the provost-marshal-general and provide compelling evidence “to vindicate his character.” Anyone who resisted the assessment outright faced immediate arrest, imprisonment, and trial by military commission.⁵⁶

How could Halleck justify holding certain citizens of Missouri responsible for crimes they did not commit by compelling them to provide for displaced Missourians? One Wisconsin artillery officer briefly in St. Louis rejoiced that the city’s secessionists “were taxed so roundly,” a penalty he thought fully justified. But Franc B. Wilkie, a Unionist reporter travelling with an Iowa infantry regiment in Missouri, feared the measure was “a grave infraction of the organic law of our national liberties, thus placing in the hands of our enemies another powerful weapon with which to assail us.” Halleck ultimately believed “there can be no middle course of individual neutrality” in the war. Residents of Missouri were either loyal or disloyal, and policies

⁵⁶ *OR* ser. 1, vol. 8, 431-2. For an overview of Union efforts – Halleck’s and others – in Missouri to levy financial penalties of this kind on Confederate sympathizers, see W. Wayne Smith, “An Experiment in Counterinsurgency: The Assessment of Confederate Sympathizers in Missouri,” *The Journal of Southern History* 35 no. 3 (August 1969): 361-380.

like the one punishing St. Louis secessionists uncovered a person's true loyalty. "We must know who are friends and who are enemies; the line will be distinctly drawn," Halleck wrote. A fellow Unionist in St. Louis also recognized Halleck's efforts as "trumpet-calls to every man to take his stand openly and show his colors," so that Union forces might "ascertain who were the enemies ... [and] justly deal with them." Halleck acted as though neutrality did not exist in the present war in Missouri: "All citizens who are not rebels must loyally support the Government. If they aid rebels, they are traitors; if they refuse aid to the cause of the Union, they are disloyal." Confederate-sympathizers in St. Louis perhaps never took up arms against Unionists, yet by their "disloyalty [they] give countenance to those who are openly enemies." Therefore, Halleck believed he could hold them financially responsible to provide for refugees.⁵⁷

No order "created more excitement," a Unionist from St. Louis later remembered. It first "amazed" secessionists then "vengeful resentment and bitterness took possession." Provost-Marshall-General Bernard Farrar allowed secessionists to pay outright the financial penalty assessed or supply the equivalent amount in clothing, provisions, and housing. Either way, if Federal officials did not receive the assessment within five days, they levied an additional 25 percent penalty. Ultimately, the implementation of these orders stalled throughout December and early January. Halleck assured Francis P. Blair, Jr. that the "growl of secessionists" had not led him to relax the orders. Instead, the official list of secessionist civilians "was not fairly made." Halleck gathered together a new board to revise and complete the list of disloyal persons but they

⁵⁷ William H. Ball to Brother Smith, March 17, 1862, William H. Ball Collection, USAMHI; Franc B. Wilkie, *Missouri in 1861: The Civil War Letters of Franc B. Wilkie, Newspaper Correspondent*, ed. Michael E. Banaski (Iowa City: Camp Pope Bookshop, 2001); OR ser. 1, vol. 8, 439; Anderson, *The Story of a Border City*, 236-7; OR ser. 1, vol. 8, 439.

“did not have the nerve to stand up to it.” They wanted their identities kept secret. Halleck refused: “I want no secret boards. Hence the delay.”⁵⁸

As Halleck struggled to execute his measures against St. Louis secessionists, he also launched a new effort to end the destruction of railroads by guerrillas in North Missouri. Halleck believed the laws of war justified the swiftest punishment possible. On December 22, Halleck declared that rebel guerrillas “under the guise of peaceful citizens” who destroyed railroad and telegraph lines were “guilty of the highest crime known to the code of war and the punishment is death.” Guerrillas caught in the act would be shot immediately. Union officers had generally followed this course of action already. “In cases of outrageous marauding,” Grant wrote Colonel L.F. Ross in early December, “I would fully justify shooting the perpetrators down if caught in the act – I mean our own men as well as the enemy.”⁵⁹

More provocatively, Halleck empowered officers in areas where guerrillas destroyed railroads and telegraph lines to impress into service for repairing damages the slaves of rebel sympathizers. Like Pope Halleck sought to hold local civilians responsible for discouraging guerrilla activity and repairing their destruction. While Halleck did not repeat Pope’s most controversial measure – holding loyal and disloyal citizens equally responsible – he issued a threat, short on details, to that effect: “Hereafter the towns and counties in which such destruction of public property takes place will be made to pay the expenses of all repairs” unless they made a good faith effort to prevent the attack.⁶⁰

“I have no doubt there will be a newspaper howl against me as a blood-thirsty monster,” Halleck wrote to Thomas Ewing of Ohio, yet that did not diminish his conviction “that nothing but the severest punishment can prevent the burning of railroad bridges and the great destruction

⁵⁸ Anderson, *The Story of a Border City*, 243-4; *OR* ser. 1, vol. 8, 452, 490.

⁵⁹ *OR* ser. 1, vol. 8, 464, 404.

⁶⁰ *Ibid.*, 464.

of human life.” Halleck fumed over how a culprit could set ablaze a bridge or building and soon after return to “quietly plowing or working in his field.” Only a “strong hand” could put down these rebels, Halleck resolved. “It must be done; there is no other remedy.”⁶¹

Yet Halleck believed even severe punishments had to proceed in a legitimate and limited manner. He loathed the infamous actions of troops commanded by Jayhawkers James Henry Lane and Charles Jennison. Halleck complained to General George B. McClellan that the Jayhawkers had “done more for the enemy in this State than could have been accomplished by 20,000 of his own army.” Halleck considered this sort of “rascality and robbing” deeply counterproductive to shoring up loyalty to the Union and subduing guerrillas. A severe, uncompromising show of force could end the marauding and destruction, yet Halleck insisted it must proceed in accordance with the laws of war.⁶²

In late December, Halleck declared martial law in St. Louis and “in and about all railroads in this State” in a renewed effort to subdue rebel sympathizers and guerrillas. John C. Frémont had famously declared martial law in St. Louis on August 14, 1861, and later all of Missouri on August 30. Although President Lincoln revoked the emancipation component of Fremont’s August 30 proclamation, he did not question Fremont’s authority to declare martial law or to institute civilian trials by courts-martial. When Halleck succeeded Fremont, he explicitly requested permission to impose martial law instead of simply continuing Fremont’s exercise of it. “No written authority is found here to declare and enforce martial law in this department,” Halleck wrote to George B. McClellan. “Please send me such written authority and telegraph me that it has been sent by mail.” McClellan delayed, and eventually asked Halleck for

⁶¹ Ibid., 475-6. Ewing advised Halleck it might be wise – and might, in the long run, protect more persons and property – to hang immediately the leaders of guerrillas, yet show a certain mercy to others. *OR*, ser. 2, vol. 1, 251.

⁶² *OR* ser. 1, vol. 8, 448-9.

a more thorough justification “as to the necessity of enforcing martial law in your department.” Halleck insisted “there is no civil law or civil authority to reach” the rebels, and therefore only the “prompt and immediate exercise” of martial law could ensure safety and security in Missouri. Lincoln’s support, though, was never in question. On December 2, he officially authorized Halleck to declare martial law and suspend the writ of habeas corpus.⁶³

In the wake of Halleck’s martial law declaration, subsequent trials of civilians by military commission did not result simply in egregious abuses of civil liberties. Mark E. Neely, in the most thorough study of these military commissions in Missouri, uncovered instances of abuse. Yet he also revealed the military commissions were not sham trials destined for guilty verdicts. In fact, they might have restrained Union forces in areas under martial law, for they imposed “systematic record-keeping and an atmosphere of legality on the army’s dealings with a hostile populace.” Neely did not doubt that Civil War Missouri was often a “nightmare” for civil liberties. However, he concluded the “justice meted out by military commissions was of a rough sort, but justice was usually their goal. They did not victimize innocent and guilty alike in kangaroo courts or in show trials of predetermined outcome.” Perhaps most tellingly, of the fifty-four trials recorded in the *Official Records* held prior to June 1862 (not including the thirteen defendant who plead guilty), six persons, almost fifteen percent, were acquitted; sixteen more eventually had their sentences mitigated upon review. The justice dispensed by these military commissions, in Neely’s words, “could be tempered with mercy.”⁶⁴

⁶³ *OR* ser. 1, vol. 1, 155; *OR*, ser. 2, vol. 1, 230-233. For the most comprehensive account of the imposition of martial law in Missouri and subsequent trials of civilians by military commission, see Neely, *The Fate of Liberty*, chapter 2. Neely also offers an essential overview of how clear legal distinctions between suspending the writ of habeas corpus and imposing martial did not crystallize until the Supreme Court’s 1866 *Ex parte Milligan* decision. Neely *Fate of Liberty*, 35-36.

⁶⁴ Neely, *Fate of Liberty*, 41, 50, 43-44. Reports of these trials are found in *OR*, ser. 2, vol. 1, 282-504.

By January 1862, Unionists in Missouri had gone a long way toward reconciling the “strong hand” of war, as Halleck put it, with the restraints imposed by the laws of war and common notion of just and civilized warfare. Conditions in Missouri inspired this effort to reconcile hard and humane war. Halleck and others realized that the success of the Union war effort in the state demanded policies both severe enough to end guerrilla activity yet also plainly legitimate according to the laws of war so as not to alienate loyal citizens.

“Utmost Energy and Vigilance”: January to August 1862

As winter gave way to spring and summer in 1862, the Union army still struggled to subdue guerrillas. Sterner measures had not rid Missouri of guerrilla activity. The quest to combat guerrillas in a just *and* effective manner continued. Throughout the spring and early summer of 1862, Union commanding officers revised and reissued orders concerning the treatment of guerrillas and their supporters. At the same time, Union officers redoubled their commitment to the principle of civilian responsibility in ensuring peace and order. In late July 1862, John M. Schofield, as brigadier general of the Missouri militia, took this principle to an unprecedented, controversial, and ultimately ill-fated extreme. He sought to compel all able-bodied men to serve in a new militia force and help defeat irregular guerrillas.

The war to pacify guerrillas and their civilian supporters did not end in decisive Union victory by the summer of 1862. However, more than bloody and frustrating stalemate resulted from this conflict. It was precisely because guerrilla activity still raged that Federals in Missouri had the opportunity and obligation to refine guidelines for just conduct in war.

William T. Sherman was a depressed, humiliated man when he returned to St. Louis in early December 1861. When Halleck placed Sherman in charge of Benton Barracks later that

month, Sherman had not fully recovered from an earlier emotional breakdown. Yet he still saw clearly, albeit perhaps with an added touch of despair, the challenges facing Union forces in guerrilla-infested Missouri. "It is far worse in Missouri now than last spring," Sherman wrote to his brother John in early January. Guerrillas continued to destroy railroads and telegraph lines and wreak havoc on Unionists. Even among seemingly peaceful civilians, "secession feeling ... shows itself in Such a way that you Know it exists and yet you cannot touch it." Sherman seriously doubted if there was really any feasible solution to the problem. It seemed as if nothing short of "moving bodily the Inhabitants of Iowa, & Wisconsin down on the Farms of Missouri, and removing the present population, for imprisonment," would end the guerrilla activity.⁶⁵

Sherman, at this moment of personal trial, accepted with uncharacteristic resignation that Union armies might never win the guerrilla war. Other Unionists in Missouri felt only renewed anger at the continued violence and destruction. "Their object is plunder and the gratification of evil passions," William Greenleaf Eliot proclaimed of the guerrillas, "and having no property to lose, and no social interest at stake, they rejoice in the continuance of civil strife." In doing so, the rebels plainly showed "their true character, for what they are, plunderers and workers of mischief, and are in a position to be treated as such." The Democratic-leaning *Daily Missouri Republican* denounced the guerrillas as Missouri's worst "enemies to the peace and welfare of our State, and to freedom from molestation and duress on the part of its quiet citizens." *Harper's Weekly* sneered, the "bond which united members of a guerrilla band together is love of plunder, lust, and violence. War, as carried on by civilized armies, has no attractions for them." Provost-Marshal-General Bernard Farrar candidly advised a Union army major near Hannibal, Missouri,

⁶⁵ William T. Sherman, *Sherman's Civil War: Selected Correspondence of William T. Sherman, 1860-1865*, eds., Brooks D. Simpson and Jean V. Berlin (Chapel Hill: University of North Carolina Press, 1999), 177-83. Sherman did not deny that Federal troops were still often partially to blame for inspiring disloyalty: "They commit acts of trespass & violence along the Roads and convert Union men into Enemies," he complained. *Ibid.*, 179.

that the guerrilla problem had become “a question of power not one of law.” The guerrillas ignored the laws of war; they “first discarded the law and have appealed to force.” Union troops could only respond in kind, Farrar believed, by denying guerrillas the rights normally afforded regular soldiers or non-combatants and letting them suffer instead the terrible consequences of their actions.⁶⁶

Halleck agreed whole-heartedly. In mid-March 1862, he reminded those under his command that while martial law had been declared only in St. Louis and in the immediate vicinity of railroads and telegraph lines, areas subject to “the depredations of insurgent and guerrilla bands” could adopt “such measures as may be necessary to restore the authority of the Government and to punish all violations of the laws of war.” In response to rumors that Confederate Major General Sterling Price was attempting to raise a force of guerrillas, Halleck issued a familiar warning: persons who joined a guerrilla band, if captured, would be hanged “as robbers and murderers.” Yet, in renewing their commitment to treating guerrillas as simple marauders and murders, vengeance alone did not guide Union soldiers in their encounters with civilians. Just conduct by Union troops still might shore up Union sentiment. When John Dunlap Stevenson, colonel of the Seventh Missouri Infantry, arrived in Lexington, Missouri, near Kansas City, he wrote to his wife of how the town had “suffered severely from the Rebellion; many houses burned, fences destroyed, and business almost entirely suspended.” While stationed in the ravaged western Missouri town – whose destruction was by no means attributable by rebel

⁶⁶ William Greenleaf Eliot, “A Discourse Delivered before the Members of the Old Guard of St. Louis,” William Greenleaf Eliot Papers, Box 1, Folder 9, MHM; *Daily Missouri Republican*, June 12, 1862; *Harper's Weekly*, August 30, 1862, 555; *OR*, ser. 2, vol. 1, 174.

guerrillas alone – Stevenson thought it his duty “to deal justly with all, and hope to induce all in the future to be loyal to the Government.”⁶⁷

Union forces continued to skirmish with guerrillas in the spring of 1862. These skirmishes posed chaotic, unpredictable challenges to Union officers committed to crushing guerrilla activity in a just manner. Union troops in Johnson County, Missouri set out to arrest several guerrillas hiding out in a nearby home. When they arrived, the woman living in the house assured them she harbored no guerrillas. As she opened the door to let the soldiers in, four rebels sprang out and fired on the troops. One Union soldier was killed, but so too were all of the guerrillas. Afterwards, the Federals burned down the home. Federals near Santa Fe, Missouri, encountered a similar situation when they tried to apprehend a band of guerrillas led by the infamous William Quantrill holed up in a nearby house. The guerrillas fired at the Union troops as they approached the front door. An officer called for the guerrillas to surrender, or at least release the women and children still inside. Once the guerrillas relented and freed the women and children, Union troops set the house on fire. Most of the guerrillas, including Quantrill, fled the house successfully. Others were shot as they tried to flee. A few died in the fire. In both instances, Union troops approached the houses intending to arrest the guerrillas and only after being met with gunfire responded in kind. Their destruction of property known to harbor guerrillas was far from uncommon. For example, Union soldiers in Montevallo, Missouri burned down a hotel and nearby buildings – reportedly “of little or no value” – that guerrillas had used for defenses.⁶⁸

⁶⁷ *OR*, ser. 2, vol. 1, 270; John Dunlap Stevenson to Wife, March 7, 1861, John Dunlap Stevenson Papers, MHM.

⁶⁸ *OR*, ser. 1, vol. 8, 344-5; *Ibid.*, 346-7; *OR*, ser. 1, vol. 13, 53-4. In the first example cited, the report does not explicitly mention what happened to the woman who met Union soldiers at the front door, whether she survived the ensuing gunfight and, if so, if she was then arrested and imprisoned.

Federals waged a hard war of severe measures but that did not necessarily mean waging a war devoid of all discretion and restraint. Federals shot dead the guerrillas and destroyed the civilian property that harbored them but the civilian owners and occupants of the property avoided the guerrillas' grim fate. In fact, in each instance, soldiers acted largely in accordance with the policies for dealing with guerrillas and the civilian abettors that Union commanding officers had handed down over the previous months. Halleck, however, was under no illusions about the behavior of some Union troops, especially in the western part of Missouri. Stories continued to surface, Halleck admitted to Secretary of State Edwin Stanton, of outrages committed by Federals. Some soldiers "behaved very badly, plundering to an enormous extent." Halleck did all within his power "to prevent this and punish the guilty," but the abuses continued.⁶⁹

Commanding officers such as Halleck were usually clear-eyed about the depredations committed by Union troops. Perhaps they found some reassurance in the reports of soldiers dealing with the guerrilla problem in accordance with the laws of war. What they did not do amid these continued abuses, was abandon altogether their effort to refine and implement rules for just conduct.

John M. Schofield, for one, reiterated again in late May to soldiers under his command the now well-established policies for the treatment of guerrillas and civilians. Schofield pledged "magnanimous" treatment for those "who are tired of the rebellion and desire to become loyal citizens and to aid in the restoration of peace and prosperity." However, Union troops would hunt down rebel guerrillas with "utmost energy and vigilance," and, if found in arms, "they will be shot down on the spot." Any citizen who failed to aid Union troops in apprehending guerrillas would face immediate punishment as "abettors of the criminals." Union soldiers had an

⁶⁹ *OR*, ser. 1, vol. 8, 641-2.

obligation “not only to abstain from molestation, but to protect from injury all loyal and peaceable citizens.”⁷⁰ These were the basic principles that had guided the Union war effort against guerrillas at least since mid-summer 1861. One year later, they had a decidedly mixed record in actually quelling guerrilla activity.

By late July 1862, Schofield, like others before him, would embark on one of the most ambitious efforts to date to compel Missouri civilians to take responsibility for the restoration of guerrilla-free peace and order in their state. This principle of civilian responsibility had been at the heart of the Union army’s effort to construct a just policy for ending the guerrilla war. When Union commanding officer tried to translate this principle into concrete measures, they repeatedly discovered that their efforts faced fierce criticisms as illegitimate exertions of military power.

Schofield found himself besieged by these sorts of protests when on July 22 he issued orders requiring all able-bodied men to enlist in the militia “for the purpose of exterminating the guerrillas that infest our State.” Schofield labeled this force the Enrolled Missouri Militia to distinguish it from the preexisting, federally supported Missouri State Militia. The new militia would supply local defense, especially in places like north central and southwest Missouri where guerrilla bands proved particularly intransigent. “Not a day passes without sharp fighting somewhere,” Schofield reported to Secretary Stanton. The Enrolled Missouri Militia would free up other forces to prevent Confederate raids along the Arkansas border. All told, eighty-nine new militia regiments were formed in response to Schofield’s orders.⁷¹

⁷⁰ *OR*, ser. 1, vol. 13, 402-3; On June 6, E.B. Brown issued almost identical orders for the Southwest Division in Missouri. *Ibid.*, 420.

⁷¹ Connelly, *John M. Schofield and the Politics of Generalship*, 51; Barry Sude, “Federal Military Policy and Strategy in Missouri and Arkansas, 1861-1863: A Study in Command Level Conflict,” Ph.D. diss., Temple University, 1986, 71-87; John M. Schofield to Edwin Stanton, July 24, 1862, Container 45, John

On the surface, the orders raised the manpower necessary to combat guerrillas, yet it also drew more starkly than ever before the line between loyalty and disloyalty. Men were either committed to the Union and willing to take up arms to protect it from rebel guerrillas or they refused to enlist and proved their utter disloyalty. Missourians who privately harbored secessionist sentiments but did not actively aid guerrillas could no longer remain “neutral.” Schofield’s orders forced every man to declare himself publicly for or against the Union.⁷² Schofield hoped to compel Missouri’s male citizens to take responsibility for ending guerrilla activity – not by levying indiscriminate financial penalties, like Pope, but by calling upon them to fulfill the old obligation of militia service.

Schofield knew his orders might “create a stampede of secesh,” as he put it to Colonel Lewis Merrill. His reasons for issuing the orders were straightforward enough: he feared larger numbers of soldiers returning home from Sterling Price’s army had organized themselves and intended “to wage a war of destruction and extermination upon the loyal people.” Schofield hoped to raise a militia force ready to subdue any guerrilla uprisings with “prompt and vigorous” action.⁷³

Fearing that “enemies of law and order” misrepresented his orders, five days later Schofield tried to allay citizens’ concerns by promising nothing ulterior in his motives. His goal remained “solely to organize law-abiding people of the State capable of bearing arms in such complete and thorough manner as to enable them at once and forever to put down robbery,

M. Schofield Papers, Manuscript Division, LC; Parrish, *Turbulent Partnership*, 92; Sutherland, *A Savage Conflict*, 64.

⁷² OR, ser. 1, vol. 13, 506. The orders were also, in the words of John Connelly, the most “extensive mobilization of the militia” since the American Revolution. Connelly, *John M. Schofield and the Politics of Generalship*, 51.

⁷³ OR, ser. 1, vol. 13, 508, 513. Schofield’s letters to Edwin Stanton in July 1862 capture his anxieties that a chronic shortage of able Union soldiers would leave him unable to subdue rebel guerrilla bands. For one example, see John M. Schofield to Edwin Stanton, July 22, 1862, Container 45, John M. Schofield Papers, LC.

plunder, and guerrilla warfare.” These assurances did little to lessen the uproar over his orders. Colonel John McNeil reported from Palmyra, Missouri of the “general uprising of the rebels all over this part of the State,” sparked by the militia orders. James Totten, commander of the Central District of Missouri, worried that because of Schofield’s orders Confederate sympathizers were “now thoroughly awake and actively concentrating” for some future “determined and desperate effort for the mastery in Missouri.” Totten also reported to Schofield that the “loyal people have rallied, however, and are waiting for authority and permission to wipe out rebellion.” Many of these Unionists had suffered at the hands of guerrillas, Totten noted. Having been called upon to “exterminate guerrillas,” they “justly demand the privilege of doing it.”⁷⁴

St. Louis’ *Daily Missouri Republican* endorsed Schofield’s militia measure as limited in its intention and necessary to winning the war against the “thieves and assassins” guilty of guerrilla activity. “There is no hidden design in this Order,” the paper assured its readers. “It expresses distinctly what it proposes to accomplish, and that is, to *exterminate the guerrillas in the State*. It means this, and it means no more.” The paper appealed to all men to comply with the order and thereby “strike terror into the hearts of [guerrillas], and drive them from the State.” Schofield sought only to empower local communities to fulfill their responsibility to restore peace and order, the newspaper insisted. It concluded that if the only way for Union forces to end the guerrilla war was to enlist the support of Missouri citizens, perhaps the most prudent and just course of action was Schofield’s effort to call out the new Enrolled Missouri Militia.⁷⁵

Schofield, for reasons beyond his control, almost immediately began to backtrack on the terms of his original order. On July 24, he exempted foreign nationals living in Missouri. Two

⁷⁴ *OR*, ser. 1, vol. 13, 516-17, 522-23.

⁷⁵ *Daily Missouri Republican*, July 27, 1862.

days later, Secretary Stanton intervened to force Schofield to exempt telegraph operators. By July 28, under pressure from Governor Gamble, Schofield agreed to allow men to avoid militia service altogether by paying a penalty of ten dollars and “one-tenth of one percent upon all taxable property.” This exemption did little to pacify critics, and Schofield eventually revoked it. He decided instead to exempt secessionists from service in the Enrolled Missouri Militia. These men still had to enroll at the nearest military post and surrender their arms. But Schofield agreed to tolerate their disloyalty so long as they “continue quietly attending to their ordinary and legitimate business and in no way give aid or comfort to the enemy.”⁷⁶ Confederate-sympathizers succeeded in securing for themselves a place between loyal service to the Union and disloyal complicity in guerrilla activity.

Schofield and John Pope ultimately encountered a similar problem. Both men sought to compel civilians, regardless of their loyalty, to take part in ending guerrilla activity – one through financial penalties, the other through militia service. Both men faced criticisms that their orders unjustly disregarded a person’s loyalty. Pope’s penalties affected Unionists; Schofield’s militia would have included secessionists. Underneath both controversies lay the tricky question of how to involve citizens in the war against guerrillas in a just and effective manner. Any answer surely would offend some people, yet, in the minds of Union leaders, certain answers were more just than others. The question itself was an early and dramatic variation on one of the Union army’s greatest challenges to waging war justly: How thoroughly should Union troops

⁷⁶ *OR*, ser. 1, vol. 13, 509, 518, 434-35. The great underlying question of the formation of the Enrolled Missouri Militia was who would pay for it. The federal government was not quick to pick up the costs of supporting a state militia under Missouri’s control. Schofield, however, eventually gained some federal support: first supplies of seized arm and later rations for militiamen on active service. Still Schofield proceeded with the controversially measure to fine St. Louis secessionists \$500,000 to support the EMM. Connelly, *John M. Schofield and the Politics of Generalship*, 51-53.

expose non-combatants to war's sacrifices and horrors? The guerrilla war in Missouri raised these questions and compelled serious reflection about the nature of a just war.

Unionists had not won the guerrilla war by late summer 1862 but they had begun to refine a style of war uncompromising in its punishment of guerrillas and their abettors yet not without restraints imposed by the laws of war. How well these restraints would hold as the guerrilla depredations persisted remained unknown. *Frank Leslie's Illustrated Newspaper* denounced rebel guerrillas who "openly ignored the code of honorable warfare and resorted to all the odious devilries of the Chinese and other nations ... poisoning, wells, hanging prisoners without distinction to age or sex, or assassinating unwary men." These actions, the periodical promised, would result only in a "terrible ... day of reckoning." Colonel Fitz Henry Warren predicted the situation in Missouri would inevitably devolve into "a war of extermination." "We are to be driven out and annihilated or they are," Warren continued, for nothing else could result from the rampant "inveterate, malignant hatred" Unionists and guerrillas felt for one another.⁷⁷

Henry Halleck monitored the situation in Missouri even after he became general-in-chief of Union armies. In late August 1862, as "inveterate, malignant hatred" threatened to consume Missouri, Halleck turned to Francis Lieber for advice on what to do about the guerrilla problem. Once again, out of chaos, destruction, and bitterness came a redoubled effort to clarify what it meant to wage a just war.

Francis Lieber and *Guerrilla Parties Considered*, August 1862

First Lieutenant Hamilton Lieber, son of Francis Lieber, fought for the Union with the Ninth Illinois Infantry at Fort Donelson in mid-February 1862. A bullet struck the twenty-seven-

⁷⁷ *Frank Leslie's Illustrated Newspaper*, December 6, 1862, 164; *OR*, ser. 1, vol. 13, 201. Warren took time to apologize for the particularly "peevish" tone of his letter, which he blamed on traveling seventy miles without food or sleep.

year-old officer in the left arm, yet he continued to fight until another shattered his left elbow. Doctors later amputated Hamilton's arm. Francis left New York City in a panicked search for his son, unsure of his exact location. After failing to find him in Cincinnati, Francis spent ten days in St. Louis and eventually located Hamilton recovering in a Union hospital. While searching in St. Louis, Francis reacquainted himself with Halleck, then still in command of the Department of the Missouri. The two had dined together on several occasions many years ago. Halleck, in fact, had advised Lieber where he might find his son. Soon after, Lieber and Halleck, united by their expertise in the laws of war, began a lengthy and consequential wartime correspondence.⁷⁸

Lieber's ties to Halleck only strengthened after Halleck became general-in-chief. Although events in Missouri were no longer Halleck's primary concern, he knew the unresolved guerrilla conflict demanded serious expert attention. So, he gladly welcomed Lieber's suggestion that he formally issue to Union officers the 6,000-plus-word essay on the topic Lieber had recently finished, *Guerrilla Parties Considered with References to the Laws and Usages of War*. It marked a culmination of the Union army's early effort to respond to guerrilla activity not by pursuing a war of indiscriminate bloodshed but by codifying and implementing clear guidelines for just conduct in war.

Lieber recognized that all guerrillas were not equal. By carefully distinguishing ten different types of irregular combatants, Lieber offered a more complex understanding of who exactly counted as a regular soldier (deserving of the rights granted by the laws of war) and why. The prevailing wisdom said that a commission from a legitimate belligerent separated regular

⁷⁸ Witt, *Lincoln's Code*, 170-73, 187; Marion Morrison, *A History of the Ninth Regiment, Illinois Volunteer Infantry* (Monmouth, IL: J.S. Clark, 1864). Francis Lieber went on to arrange for his son to recuperate in St. Louis in the home of Henry Hitchcock. Lieber's anxieties about his son's well-being, and his desire to do whatever necessary to ensure a healthy recovery, are evident in Lieber's correspondence with Hitchcock. See especially, Francis Lieber to Henry Hitchcock, March 11, 1861, Hitchcock Family Papers, Box 3, MHM.

soldiers from partisan bands of illegal guerrillas. This understanding of the laws of war proved increasingly unsatisfying from the Union perspective, especially after the Confederate Congress approved the Partisan Ranger Act in April 1862. This act empowered the Confederacy to commission preexisting guerrilla bands and thereby provide them with the status of regular soldiers. Yet the commissions often did little to change the actions of guerrillas who continued to plunder, rob, and murder in defiance of the laws of war.⁷⁹ These guerrillas had commissions like regular soldiers but behaved like law-breaking marauders.

Lieber believed the particular circumstances of the Civil War compelled him to think afresh about what exactly separated regular soldiers from unlawful guerrillas. He completed this task, as John Fabian Witt has argued, by setting aside “the formal question of whether a fighter had been commissioned” in favor of focusing attention instead on “functional considerations.”⁸⁰ That is to say, Lieber shifted attention away from commissions and enlistments to a broader assessment of the typical characteristics and actions that distinguished a guerrilla.

What were these defining characteristics and actions? Guerrillas carried on an “irregular war.” Their irregularity “consists in [their] origins,” for they were self-constituted or organized by the call of a single individual. As an impermanent body, they were “dismissed and called again together at any time.” They remained disconnected from regular armies as to their “pay, provision, and movements.” Lieber thought these “constituent ideas” defined guerrillas more

⁷⁹ Confederate Major General Sterling Price and Henry Halleck exchanged a pointed set of letters on the actions of recently commissioned Confederate partisans. *OR*, ser. 2, vol. 1, 255-56; 258-59. Henry Halleck, in fact, had just earlier confirmed the prevailing legal wisdom that a commission or enlistment separated legitimate soldiers from illegitimate, lawbreaking guerrillas. The laws of war did not protect guerrillas without “commissions or enlistments,” he wrote in *International Law*. However, Halleck continued, “If authorized and employed by the state, they become a portion of its troops, and the state is as much responsible for their acts, as for the acts of any other part of its army. They are no longer partizans and guerrilleros ... but carry on hostilities under the direction and authority of the state.” Halleck, *International Law*, 386. For an introduction to this issue, see Witt, *Lincoln’s Code*, 191-92.

⁸⁰ Witt, *Lincoln’s Code*, 194.

than the absence of a commission. He also acknowledged other infamous yet somewhat secondary characteristics: guerrillas pillaged and destroyed private property, functioned under little or no discipline, typically dressed like non-combatants and rarely took prisoners of war.⁸¹

Still, that working definition of a guerrilla was not entirely adequate, Lieber believed. He proceeded to delineate ten specific forms of irregulars: “The freebooter, the marauder, the brigand, the partisan, the free corps, the spy, the rebel, the conspirator, the robber, and especially the highway robber, the rising en masse, or the ‘arming of peasants.’”⁸² Lieber devoted a lengthy portion of *Guerrilla Parties Considered* to outlining in meticulous detail these different categories and the punishments each deserved. They did not all deserve equal treatment. Lieber insisted Union armies should prudently determine what sort of irregular enemy they faced so that they could then decide the legitimate course of action.

Lieber intentionally offered little guidance on how to apply his understanding of irregular warfare and the laws of war into concrete measures for quelling guerrillas. He admitted that there must remain a certain imprecision and flexibility in the application of these ideas. Put another way, policies could be refined and issued but the burden ultimately rested on officers in the field to use their best judgment in abiding by the laws of war in unique and unpredictable circumstances. “The application of the laws and usages of war to wars of insurrection or rebellion is always undefined,” Lieber wrote, “...suggested by humanity or necessitated by the numbers engaged in the insurrection.” Lieber thought under certain circumstances a “relaxation

⁸¹ *OR*, ser. 3, vol. 2, pt. 1, 302-303; Childress, “Francis Lieber’s Interpretation of the Laws of War,” 53-54.

⁸² *OR*, ser. 3, vol. 2, pt. 1, 303. Matthew Mancini applauded Lieber’s carefully defined list as removing the “confusion and a lack of policy during the early stages of the war [that] forced unwelcome command decisions into the hands of unprepared field commanders.” Mancini overstates the “confusion and lack of policy,” at least concerning the guerrilla war in Missouri, yet he is surely correct that Lieber brought clarity and nuance to a term – irregular warfare – that often lacked it in the minds of Union officers and soldiers. Mancini, “Francis Lieber, Slavery, and the ‘Genesis’ of the Laws of War,” 335.

or mitigation [of punishments imposed by the laws of war] would be likely to produce a beneficial effect upon an enemy.” Sometimes the wisest action might be not to carry out a legitimate punishment. For all his legal expertise, that was not something Lieber could decide.⁸³

Lieber’s *Guerrilla Parties Considered* marked a culmination of Federals’ efforts to respond to the guerrilla problem in Missouri with measures both hard and humane. Lieber certainly sought to reconcile the two. His reworked understanding of the distinctions between guerrillas and regular soldiers empowered Union armies to strike vigorously against a class of commissioned guerrillas that continued to ignore the laws of war. Lieber also insisted on carefully distinguishing among different types of irregular combatants. This ensured Union armies did not discard all discretion and restraint against its enemies.

Civil War Missouri: Hard War Meets Humane War

The situation in Missouri hardly made it easy for Union forces to wage war justly. Guerrillas plundered, marauded, and murdered. Unionists, especially Jayhawkers in western Missouri, responded in kind. Chaos could rule the day. It is often hard to examine the war in Missouri and not conclude like Michael Fellman, “little remained under control, little remained forbidden.”⁸⁴

Yet all the dramatic and tragic stories of death and destruction have obscured Missouri’s real importance to the the Union army’s turn toward a hard war that “deliberately or concomitantly [subjected] the civilian population to the pressures of war.”⁸⁵ The war in Missouri, earlier than in any other state, embodied the paradox that would come to define the Union war effort: as Federals embraced hard war measures as the only path to victory, they also constructed

⁸³ *OR*, ser. 3, vol. 2, pt. 1, 309.

⁸⁴ Fellman, *Inside War*, vi.

⁸⁵ Grimsley, *Hard Hand of War*, 5.

rules of just conduct. Union officers, soldiers, and civilians in Missouri first envisioned how their armies might reconcile the hard hand of war with the restraints imposed by the laws of war and common notions of civilized warfare. They believed a war effort both hard and humane was not a paradox but a necessity, the surest path to lasting peace, order, and victory.

Chapter Two: Occupied Cities

The gallows awaited William Mumford on a warm New Orleans morning in early June 1862. In accordance with a Spanish custom, his hanging would occur at the scene of his crime, in front of the New Orleans mint. The American flag that flew atop the mint's white-columned portico looked down on Mumford as he ascended the scaffold, protested his sentence, and then proclaimed he was prepared to die. Mumford committed his crime several weeks prior on the eve of the Union occupation. He had gathered with other angry New Orleanians in front of the mint as Federals from the *Pensacola* replaced the Confederate flag flying over the building with an American one. Mumford soon climbed the mint's roof, tore down the American flag, and dragged it through the streets before tearing it to pieces. Tall, black-bearded, and proud of his patriotic act, Mumford won the admiration of the city's Confederates.

Now Mumford found himself back again at the mint. As the noose tightened around his neck, Mumford looked out one final time at a crowd of Federal soldiers and native New Orleanians. The city's natives, Confederates and Unionists alike, could not quite believe this was Mumford's final fate. Many still expected a last minute reprieve. None came.¹

Major General Benjamin F. Butler, then in command of Union forces in New Orleans, approved Mumford's death sentence after a military commission convicted him of treason. The balding, potbellied, bag-eyed Butler was a shrewd Democrat from Massachusetts, a former Congressman turned political general. He had an uncanny knack for courting controversy, and he did not want for enemies, but *Frank Leslie's Illustrated Newspaper* still praised Butler soon after

¹ *Harper's Weekly*, July 5, 1862; James Parton, *General Butler in New Orleans. History of the Administration of the Department of the Gulf in the Year 1862* (New York: Mason Brothers, 1864), 346-52; Benjamin F. Butler, *Autobiography and Personal Reminiscences* (A.M. Thayer, 1892), 437-444; Gerald M. Capers, *Occupied City: New Orleans Under the Federals, 1862-1865* (Lexington: University of Kentucky Press, 1965), 69-71; Chester G. Hearn, *When the Devil Came Down to Dixie: Ben Butler in New Orleans* (Baton Rouge: Louisiana State University Press, 1997), 134-40.

the Union occupation of New Orleans began as “an admirable administrator, and one who is not to be trifled with or tricked in any way or by anybody.”²

Butler defied expectations in refusing to spare Mumford’s life. He later claimed he received many anonymous letters – “accompanied by illustrations of pistols and coffins and cross-bones and skulls” – threatening his life if he did not grant Mumford a stay of execution. The threats only hardened Butler’s determination to proceed with the execution, for to him the central issue at stake was “whether law and order or a mob shall govern.” Yankee rule of New Orleans seemingly had begun in merciless earnest, as Mumford’s lifeless body attested. Cries of outrage and disbelief rang out across the Confederacy. Jefferson Davis condemned Butler as an “outlaw and common enemy of mankind” who would face immediate execution if ever captured by Confederates. Sixteen-year-old Clara Solomon captured in her diary New Orleans Confederates’ livid reaction: “Everyone is fired with indignation at the atrocious *wonder* of yesterday, the hanging of Mumford ... It is atrocious & oh! God, helps us to revenge it.”³

By the summer of 1862, Union armies occupied some of the Confederacy’s largest cities, from New Orleans to Memphis to Nashville to Norfolk. Episodes such as Mumford’s hanging make it easy to imagine life in the occupied South as a perilous reign of terror. “Beast” Butler in New Orleans sent men to the gallows at will. Four hundred miles north, William T. Sherman commanded Federal troops in Memphis and surely reveled in the hellish war he inflicted on his enemies. Residents of occupied New Orleans and Memphis suffered shortages of food, the curtailment of freedoms normally enjoyed in peacetime, the sometimes rash seizure and destruction of property, and thinly justified arrests and imprisonments. Because Butler and

² *Frank Leslie’s Illustrated Newspaper*, June 14, 1862.

³ Butler, *Autobiography and Personal Reminiscences*, 440, 442-3; *OR*, ser. 2, vol. 3, 140; Clara Solomon, *The Civil War Diary of Clara Solomon: Growing Up in New Orleans, 1861-1862*, ed. Elliot Ashkenazi (Baton Rouge: Louisiana State University Press, 1955), 399.

Sherman are forever associated with the unrelenting hard hand of war, historians have not neglected to tell of the hardships endured by civilians in Union occupied New Orleans and Memphis.⁴

Why exactly were these occupations important to the wider story of the Union war effort? In large measure, as historian Steven V. Ash has argued, because they confirmed a momentous change in Union military policy: continued resistance by rebel civilians provoked a decided shift from “a conciliatory and conservative policy to a punitive and radical one that brought destruction, disruption, suffering.”⁵ Federals came to believe they could not afford to spare civilians from the horrors of hard war measures as long as unapologetic rebels like William Mumford threatened law and order and refused to abandon the fight for Confederate independence.

⁴ For an introductory overview of the Union occupations of New Orleans and Memphis, see Capers, *Occupied City*; Gerald M. Capers, *Biography of a River Town: Memphis: Its Heroic Age* (Chapel Hill: University of North Carolina Press, 1939); John W. Blassingame, *Black New Orleans, 1860-1880* (Chicago: University of Chicago Press, 1973); Justin A. Nystrom, *New Orleans After the Civil War: Race, Politics, and a New Birth of Freedom* (Baltimore: Johns Hopkins University Press, 2010); Michael D. Pierson, *The Mutiny at Fort Jackson: The Untold Story of the Fall of New Orleans* (Chapel Hill: University of North Carolina Press, 2008). Butler and Sherman’s many biographers have not overlooked their time in New Orleans and Memphis. For Sherman, see John F. Marszalek, *Sherman: A Soldier’s Passion for Order* (New York: Free Press, 1993), 189-201; Michael Fellman, *Citizen Sherman: A Life of William Tecumseh Sherman* (New York: Random House, 1995), 136-151; Lee B. Kennett, *Sherman: A Soldier’s Life* (New York: HarperCollins, 2009), 172-180. For Butler, see Hearn, *When the Devil Came Down to Dixie*; Robert Werlich, “Beast” Butler: *The Incredible Career of Major General Benjamin Franklin Butler* (Washington, D.C.: Quaker Press, 1962), 34-88; Howard P. Nash, *Stormy Petrel: The Life and Times of General Benjamin F. Butler* (Rutherford: Fairleigh Dickinson University Press, 1969).

⁵ Stephen V. Ash, *When the Yankees Came: Conflict and Chaos in the Occupied South, 1861-1865* (Chapel Hill: University of North Carolina Press, 1995), ix-x. Ash concluded that this development signaled the evolution of the war “from a limited war into a revolution.” More recent “occupation” studies have accepted and yet moved beyond Ash’s focus on the evolution of hard war policies and instead paid more attention, for example, in Judkin Browning’s words, to the “shifting loyalties” of southerners living in occupied areas. For two examples, see Judkin Browning, *Shifting Loyalties: The Union Occupation of Eastern North Carolina* (Chapel Hill: University of North Carolina Press, 2011) and Robert Tracy McKenzie, *Lincolnton and Rebels: A Divided Town in Civil War America* (New York: Oxford University Press, 2006).

The experience of occupying hostile areas of the Confederacy did convince many Federals to abandon their support of a conciliatory war policy. Yet this turn toward hard war is not the only effect Federal occupations of major Confederate cities in the West had on the Union war effort.⁶ The Union army's occupation of New Orleans and Memphis is also a story of an army discerning the meaning of just conduct in war. As Federals faced difficult questions about how to treat the Confederate civilians living in conquered and occupied cities, they also refined their thinking about the nature of a justly waged war. Together, the guerilla war in Missouri and the Union occupations of New Orleans and Memphis during the opening eighteen months of the war confirm that the early Union war effort in the Mississippi River Valley was not simply the crucible of hard war policies, but was also, at the same time, the crucible of early Union just war policies.

To say that Federals in occupied New Orleans and Memphis sought to wage a just war is not to offer a moral defense of every action taken by occupying Union officers or soldiers. It is, however, to try to understand the meaning of just conduct in war from the perspective of occupying Federals. Benjamin Butler commanded the occupying forces in New Orleans (May to mid-December 1862) at roughly the same time William Sherman fulfilled the same duty in Memphis (late July to late November 1862). Their tenures together reveal how the early Union

⁶ Judkin Browning has sought to understand the effects of occupation on Federal soldiers themselves, especially in eastern North Carolina. He argued the seeming "police work" of occupation, which typically "fostered a less idealistic view of the nation and its aims," often disillusioned volunteer citizen soldiers. Judkin Browning, "'I Am Not So Patriotic as I Was Once': The Effects of Military Occupation on the Occupying Union Soldiers during the Civil War," *Civil War History* 55, no. 2 (June 2009), 219. Andrew F. Lang has also documented how Federal soldiers often grew disillusioned with the occupation experience because they believed the "garrison ethos" violated the republican-ideology-inspired "citizen soldier tradition" Lang, "The Garrison War: Culture, Race, and the Problem of Military Occupation during the American Civil War Era," (Ph.D. diss. Rice University, 2013). Lang also reveals how Federal soldiers often looked upon garrison duties as "breeding grounds for immoral behavior that was antithetical to republican virtue," an argument that only clarifies why many occupying Federals would consider it vitally important to clearly define the nature of just conduct in war of occupation. Lang, "The Garrison War," 1-8, 98-102, 249-53.

occupations of New Orleans and Memphis prompted Federals to refine a vision of just warfare premised on balancing hard war measures and humane restraints.⁷ This was a style of war that recognized the strategic significance of delivering war's devastation to the doorsteps of rebel civilians. But it also remained conscious of the restraints imposed by the laws of war and common notions of civilized warfare.

The opening weeks of Butler's time in New Orleans offered a near-pristine example of a Union commander pursuing variously hard and humane measures toward rebel civilians. Butler launched an array of efforts meant to alleviate the hardships of the city's poor. Yet his martial law proclamation still reigned, and he did not hesitate to censor or suspend newspapers, curtail pro-Confederate religious expression, dismiss the city government, or seize property meant to aid Confederates. These actions won Butler bitter enemies, especially among foreign consuls in New Orleans. Their protracted conflicts with Butler revealed how controversies over just conduct in war were often also diplomatically perilous.⁸

Sherman's time in Memphis was not as quarrel-ridden as Butler's in New Orleans. Both faced a handful of similar issues concerning just conduct in war – for example, how thoroughly to protect civilian property or how to ensure order and begin fostering renewed loyalty to the Union. Sherman's effort to reconcile hard and humane warfare most often centered on subduing guerrilla warfare and regulating commerce in the greater Memphis area in a manner that would restore economic vitality while not aiding the Confederate war effort.

⁷ Steven V. Ash has also noted the fundamental restraint, despite all the horrors perpetrated during the Civil War, that still marked the Union war effort: "Though they came to hate the Southern people and sought to subjugate and punish them, and were increasingly willing to restrict their freedom and confiscate their possessions and even starve them into submission, they did not often pursue such tactics to their logical extreme." Ash, *When the Yankees Came*, 61.

⁸ In this respect, Butler's conflict with the foreign consuls of New Orleans rehashed many underlying tensions and laws of war controversies surrounding the Union blockade of the South and the *Trent* affair.

Both Sherman and Butler learned firsthand one of the great truths of the war – where Union armies stayed for extended periods of time, slavery collapsed. What to do with the slaves who fled to Union lines was for commanders such as Butler and Sherman always a question about what constituted just conduct in war. Sherman and Butler confronted this question head-on as the opportunity arose to use former slaves as laborers or even soldiers in service of the Union cause.⁹

If by the spring and summer of 1862 many Unionists had grown skeptical of a conciliatory war effort, Federals in occupied New Orleans and Memphis had to work out a suitable replacement that traded conciliation for the hard hand of war but did not ignore humane restraints on the war's devastation. Federals never unanimously agreed about how to prosecute this sort of war; opinions varied on where to draw the line between just and unjust conduct. Still, in the early months of the Union occupation of New Orleans and Memphis, Federals refined policies intended to implement the spirit of hard yet humane warfare against the Confederacy.¹⁰

“He Has Established Safe and Sound Precedents”: Butler’s First Month in New Orleans

Flag Officer David G. Farragut’s fleet made way for Butler’s arrival in New Orleans on May 1, 1862. As Union armies entered the city, “both camp and street was a scene of wild confusion,” remembered one New Orleans woman. Butler immediately declared martial law and publicly set forth the terms of the Union occupation. Federals entered New Orleans as conquerors but Butler assured civilians he “came here not to destroy but to make good, to restore

⁹ For more on the controversial place of slavery and emancipation in American understandings of the laws of war in the years preceding the Civil War, see Witt, *Lincoln’s Code*, chapters 1-4.

¹⁰ Stephen C. Neff’s parsing of the “three possible legal regimes” open to Union occupying forces is essential reading. Union forces could have pursued “straight resumption of the pre-secession situation,” “belligerent occupation,” or “conquest.” Union armies never neatly pursued one single option but instead adopted “a blend of belligerent occupation and martial law.” Neff, *Justice in Blue and Gray*, 103-13.

order out of chaos, and the government of laws in place of the passions of men.” Law and order, peace and harmony: these were the goals of the Union occupation, Butler promised. Citizens ready to turn from disloyalty and lawlessness and submit to the Union occupiers’ yoke would find it gracious and mild. Those who refused faced swift punishment. Butler wasted no time in setting about to reconcile a terrifying show of force with a surprisingly generous and humane treatment of the law-abiders, the destitute, and the newly loyal.¹¹

Butler’s May 1 proclamation captured his vision of a hard yet humane occupation. He urged residents “to pursue their usual avocations” and report Federal troops who committed “any outrage upon any person or property.” Those who swore allegiance to the Union would receive “the safeguard and protection, in their person and property, of the armies of the United States.” But few Federals expected the city to make a quick and widespread return to loyalty to the Union. One officer wrote in early May, “we do not deceive ourselves by thinking that this place can be held for the Union except by military force.”¹²

Because Butler claimed he desired only “to preserve order and maintain the laws,” he threatened harsh penalties for disorderly lawbreakers. In a none-too-subtle allusion to the Mumford episode, Butler guaranteed the “pain of severe punishment” for anyone who failed to treat the American flag “with utmost deference and respect.” Martial law meant New Orleans

¹¹ Julia LeGrand, *The Journal of Julia LeGrand: New Orleans, 1862-1863*, eds., Kate Mason Rowland and Morris L. Croxall (Richmond: Everett Waddey, 1911), 39; *OR*, ser. 1, vol. 6, 720. A useful overview of the social and demographic profile of New Orleans at the onset of the Civil War can be found in Capers, *Occupied City*, chapter 1. Stephen V. Ash described New Orleans on the eve of the Union army’s arrival as a city verging on utter chaos: “Terror sized the populace, businesses and schools closed, military and civil officials left in haste, Mobs broke into the public warehouses, carried off food, and burned or dumped into the river all they could not take. Another mob entered a government munitions factor and seized guns and ammunition.” Ash, *When the Yankees Came*, 17.

¹² *OR*, ser. 1, vol. 6, 720; “Letters of General Thomas Williams, 1862,” *The American Historical Review* 14 no. 2 (January 1909), 317. The “usual avocations” Butler had in mind included visiting local shops, coffee houses, and saloons – however, owners of these establishments were now required to register with the provost marshal and ensure peace and order within their premises.

residents could not expect all the robust constitutional privileges they once enjoyed. Butler swore to censor or shut down newspapers that sought “to influence the public mind against the Government of the United States.” He forbade the free “assemblages of persons in the street” since they “tend to disorder.” Butler promised to wield his power “mildly,” but also “vigorously and firmly” whenever warranted.¹³

Butler tried with strong words to subdue the city’s indignant rebel population. David Dixon Porter, at the time a Navy commander, later said of New Orleans, “there was never a conquered city that more needed a firm hand to govern it.” Butler undoubtedly agreed. “I thought it necessary to make so large a display of force in the City,” he wrote to Secretary of War Edwin Stanton, for there lurked in the city “a violent, strong and unruly mob that can only be kept under by fear.” The *New Orleans Commercial Bulletin*, clearly realizing they now answered to Butler as editor-in-chief, said of the proclamation, “some of its provisions are no doubt exceedingly stringent ... while others are as fair and liberal as could be expected.” The paper encouraged its readers “to quietly and gracefully submit.” In the meantime, Butler embarked on a series of measures “done in the emergencies called for by a new and untried state of things, when promptness and movement were more desirable than deliberation,” he confessed to Stanton.¹⁴

Butler’s first actions in New Orleans were his most humanitarian. He sought to end the city’s disastrous food shortage, suffered disproportionately by the poor. A volunteer in a Connecticut infantry regiment recounted the “astonishing” hunger and poverty endured by “rough and ragged beggars” who pleaded with the men of his regiment to spare some food. “The

¹³ *OR*, ser. 1, vol. 6, 717-20.

¹⁴ David Dixon Porter, *Incidents and Anecdotes of the Civil War* (New York: D. Appleton and Company, 1885), 71; Benjamin F. Butler to Edwin Stanton, May 8, 1862, Benjamin F. Butler Papers, LC; *New Orleans Commercial Bulletin*, May 5, 1862; *Private and Official Correspondence of Gen. Benjamin F. Butler During the Period of the City War* (Norwood, Massachusetts: The Plimpton Press, 1917), 1: 455.

town is fairly and squarely in the point of starvation,” the soldier wrote. “Unless work is soon found for these people, I do not see how famine can be averted.”¹⁵

Butler acted quickly to prevent famine. On May 3 and 4, he issued a series of orders meant to ensure more food made it into the Crescent City. He guaranteed the safe passage of flour from Mobile. He required the directors of the Opelousas railroad to carry provisions (especially cotton and sugar) into the city to sell at market. He worked to make certain that “live stock, flour, and provisions” recently purchased by the city for poor relief were no longer held up at the junction of the Red and Mississippi rivers. And he pledged to Louisiana planters that the occupying Federals would not destroy their cotton and sugar crops if they sent them to market in New Orleans. One “wife of a southern planter” curtly informed Butler her husband withheld their crops not because they mistakenly believed Union armies would burn them but because they “*detest* your government” and would make whatever sacrifices necessary to defeat it.¹⁶

Butler noticed that the city’s lower classes suffered the most from the food shortage. He relished the opportunity to castigate “the wealthy and influential” of New Orleans, whom “this hunger does not pinch.” Butler stridently attacked the city’s well-to-do – “the leaders of the rebellion” who were “unmindful of their suffering fellow-citizens.” *Harper’s Weekly* echoed Butler’s assessment in even more ominous terms. The hungry and ragged citizens who walked New Orleans’ streets ought to appear to wealthy rebels as “dark forebodings of the terrible punishment that surely awaits them in another world.”¹⁷

¹⁵ John William De Forest, *A Volunteer’s Adventures: A Union Captain’s Record of the Civil War* (New Haven: Yale University Press, 1946), 21.

¹⁶ *OR*, ser. 1, vol. 6, 720-722; *Private and Official Correspondence of Gen. Benjamin F. Butler*, 1:448-9. The “wife of a southern planter” further informed Butler that they had burned their remaining supply of cotton to ensure Union armies could not confiscate it.

¹⁷ *OR*, ser. 1, vol. 6, 722-725; *Harper’s Weekly*, June 14, 1862.

For Butler, these verbal attacks had a clear strategic objective. He sought to turn the city's poor against the wealthy and regain their allegiance to the Union. Butler took his appeal directly to the "mechanics and working classes" of the city: "how long, will you uphold these flagrant wrongs, and by inaction suffer yourselves to be made the serfs of these leaders?" Butler pledged to do all in his power "to feed the hungry and relieve the distressed." Butler later ordered his chief commissary to sell army provisions to the poor of New Orleans at heavily reduced prices.¹⁸

Butler acted in accordance with a fundamental, albeit mistaken, political idea that informed Union just war thinking. He assumed the aristocratic slaveholding class had duped or coerced most poor white southerners into supporting the rebellion. Butler hoped not so much to punish these poor whites as to disenthral them from their aristocratic overlords. Generously sharing portions of meat, flour, and sugar might be the best way to do so. The same rationale led Butler to argue for the reopening of the New Orleans port. "If we wish to bind them to us more strongly than can be done by bayonet," Butler wrote to Secretary Stanton, "let them again feel the beneficence of the United States Government as they have seen and are now feeling its power." Reopening the city's port would be more than merely a humane response to conquered Confederates' destitution. It also might effectively regain the loyalty of most white southerners.¹⁹

As the opening weeks of the Union occupation of New Orleans unfolded, Butler did not hesitate to unleash the power of Federal armies to stamp out disloyalty and disorder. Newspapers

¹⁸ *OR*, ser. 1, vol. 6, 722-725; *OR*, ser. 1, vol. 15, 447.

¹⁹ Benjamin F. Butler to Edwin Stanton, May 16, 1862, Butler Papers, LC. In his autobiography, Butler specifically blamed the lack of trade from Mobile and Alexandria in particular as a chief cause of the food shortage in New Orleans. Butler, *Autobiography and Personal Reminiscences*, 387. I am not suggesting that for the poorer classes of New Orleans hunger always outweighed loyalty to the Confederacy. Still, journalist Thomas Butler Gunn recorded in late December 1862 that Butler "was far from unpopular among the poorer classes in New Orleans, whom he had set to work and relieved from the misery brought upon them by secession." "Far from unpopular" is no ringing endorsement, but it might not be an altogether inaccurate one either. See Thomas Butler Gunn Diaries, December 22, 1862, MHM.

and churches quickly roused Butler's ire. Both continued to foster rebel sentiments in the hearts of their readers and parishioners, Butler believed. By mid May he made good on earlier threats and shut down three newspapers – one because its owner and editor was “a rebel now in arms,” the other two because they encouraged “the cotton-burning mob.” Throughout his time in New Orleans, Butler waged a determined war against the Confederate-sympathizing press, always demanding a “self-censorship” and suppressing papers when he deemed it necessary.²⁰

Similarly, Butler sought to curtail explicitly pro-Confederate religious expression in local churches. Some of the staunchest proslavery clergy resided in New Orleans, men who held their own among the vanguard of fire-eating secessionists. Benjamin Morgan Palmer, one of the South's leading Presbyterian ministers, had in a late November 1860 sermon sought to inspire his congregation to take up arms against the United States and do what the Lord required: “*to conserve and to perpetuate the institution of domestic slavery.*” One New York Unionist feared the churches of New Orleans were “a dangerous power in favor of despotism and rebellion.” Among ministers, she continued, “treason lay like a dark pall upon their guilty souls.” Butler agreed. On the same mid-May day he suspended three newspapers, he also forbade churches from observing the upcoming Confederate fast day proclaimed by Jefferson Davis. For the rest of the war, Union forces and New Orleans ministers quarreled over where exactly freedom of religious expression ended and overt acts of treason began.²¹

²⁰ OR, ser. 1, vol. 15, 421-422. The *New Orleans Bee*, one of the newspapers suppressed for supposedly encouraging the destruction of cotton, had by late June “reappeared with an apology and explanation, assuring General Butler that it never intended to recommend the destruction of the crops of the Southern people.” Butler allowed the newspaper to resume publication. *Harper's Weekly*, June 14, 28, 1862.

²¹ Benjamin Morgan Palmer, *Thanksgiving Sermon, Delivered at the Presbyterian Church, New Orleans* (New York: George F. Nesbitt, 1861), 7; Emily Hazen Reed, *Life of A.P. Dostie; or, The Conflict in New Orleans* (New York: Wm. P. Tomlinson, 1868), 55; OR, ser. 1, vol. 15, 426. For an extended discussion of these sorts of wartime conflicts between clergy and Union and Confederate armies, see Rable, *God's Almost Chosen Peoples*, 317-334.

Butler's most infamous threat against the city's civilian population was his "woman's order" of May 15. Federals in New Orleans found most women in the city strident in their loyalty to the Confederacy and hatred of Yankees. Clara Solomon, for one, vowed to continue the fight against Federals after the capture of her city: "Our *cause* is not *dead*," she wrote in her diary, "it is only *sick*." Solomon believed she and other women had an obligation to help revive it.²²

Many New Orleans women made known their distaste of the occupying Federals. David Dixon Porter remembered some ladies "would not associate with the Union officers, drew the dresses close to them when they passed a Northern soldier, and some of the less refined spat upon the ground to show their contempt of their enemies." A Union private wrote to his brother how many ladies refused to walk on the same sidewalk as Federals, though the private promised, "We will humble them before long." When John Burrud briefly travelled into the city with his New York regiment, he received nasty glances from women as he walked down the street, though he sarcastically wrote home that the women thankfully were "kind enough not to spit on me." W.C. Corsan, an Englishman, witnessed similar episodes, though he claimed he "neither saw nor heard of any act of which any gentleman would take cognizance."²³

Butler did take note. He warned if "any female shall by word, gesture, or movement insult or show contempt for any officer or soldier of the United States she shall be regarded and

²² Clara Solomon, *The Civil War Diary of Clara Solomon: Growing Up in New Orleans, 1861-1862*, ed. Elliot Ashkenazi (Baton Rouge: Louisiana State University Press, 1995), 354. For a sensible introduction to the reactions of New Orleans women like Clara Solomon to Butler's General Orders No. 28, see: Jacqueline G. Campbell, "'The Unmeaning Twaddle about Order 28': Benjamin F. Butler and Confederate Women in Occupied New Orleans, 1862," *The Journal of the Civil War Era* 2, no. 1 (March 2012): 11-30. Campbell makes the convincing case that for most women Order 28 was "unmeaning twaddle" compared to the more detestable later General Order No. 76 requiring men and women to swear on oath of allegiance to the United States.

²³ Porter, *Incidents and Anecdotes of the Civil War*, 72-73; Newton Williams Perkins to Brother, May 29, 1862, Box 2, Montgomery Family Papers, LC; John B. Burrud to Ocean Newton Burrud, December 28, 1862, John B. Burrud Papers, HL; W.C. Corsan, *Two Months in the Confederate States: An Englishman's Travels Through the South* (Baton Rouge: Louisiana State University Press, 1996), 16.

held liable to be treated as a woman of the town plying her avocation.” Men and women across the Confederacy – and beyond – denounced Butler for vilifying the respectable women of New Orleans and defaming their ladyhood. Butler equated the patriotic resistance of Confederate women with the sexual promiscuity of prostitutes, and he pledged to treat the two classes of women equally.²⁴

The order ignited a firestorm of controversy. Confederate General P.G.T. Beauregard famously appealed to his countrymen to act: “MEN OF THE SOUTH: Shall our mothers, our wives, our daughters, and our sisters be thus outraged by the ruffanly soldiers of the North to whom is given the right to treat at their pleasure the ladies of the South as common harlots?” News of Butler’s orders made it across the Atlantic Ocean, where from the British House of Commons Lord Palmerston proclaimed no civilized person could read Butler’s orders and not feel “the deepest indignation.” The shameful order, Palmerston continued, only befitted “some barbarous race that was not within the pale of civilization.” Butler immediately defended his actions to Stanton as “an absolute necessity from the outrageous conduct of the Secession women here, who took every means of insulting my soldiers and inflaming the mob.”²⁵

Several weeks later, Butler further justified his orders to a Boston resident as a measure meant to prevent abusive overreaction by Federal troops. The steady stream of “every opprobrious epithet, every insulting question ... made by these bejeweled, criolined, and laced creatures calling themselves ladies” had reached near-intolerable extremes, Butler argued. He asked: “How long do you suppose our flesh and blood could have stood this without retort?”

²⁴ *OR*, ser. 1, vol. 15, 426.

²⁵ *OR*, ser. 1, vol. 10, pt. 2, 531; James Parton, *General Butler in New Orleans. History of the Administration of the Department of the Gulf in the Year 1862* (New York: Mason Brothers, 1864), 341; Benjamin F. Butler to Edwin Stanton, May 16, 1862, Butler Papers, LC.

Butler claimed his orders sought to forestall unwarranted overreactions by offended Union soldiers. The infamous “plying her avocation” phrase had nothing to do with the character of New Orleans women and everything to do with how Union soldiers ought to interact with them: “You pass her by unheeded. She cannot insult you. As a gentleman you can and will take no notice from her. If she speaks, her words are not opprobrious.”²⁶ This characteristically sly defense from Butler transformed the controversy from an issue of offended ladyhood to one of preventing retaliations by insulted Union troops.

Despite all the criticism he garnered, and the failure of his justifications to quiet the criticism, Butler did have his defenders in the northern press. *Frank Leslie's Illustrated Newspaper* denounced the women targeted by Butler's order as ones who “discarded all feminine refinements and properties, and debased themselves in language and conduct to the level of the veriest drabs of their sex.” Lest anyone mistake Butler's intention, the periodical insisted Butler's orders should not offend all Confederate women, only “women indulging in abusive and vulgar language and conduct.” *Harper's Weekly* offered a different argument in defense: the order worked. Two illustrations of the “Ladies of New Orleans” before and after Butler's orders appeared in one edition of *Harper's Weekly*. In the before, the women appeared abhorrently disrespectful, spitting on an officer's face; in the after, the women were courteous and subdued. Sarah Butler, Benjamin's wife, thought her husband's orders made the “cruel and treacherous” people of New Orleans realize “there is a power here to sustain or crush them according as they merit protection from the government or deserve punishment for their traitorous deeds.” Butler and his defenders believed his orders responded in a measured

²⁶ *Private and Official Correspondence of Gen. Benjamin F. Butler*, 2:35-6. Campbell, ““The Unmeaning Twaddle about Order 28,”” 16.

legitimate fashion to the actions of the “bejeweled, criolined, and laced creatures calling themselves ladies.”²⁷

Well before controversy over Butler’s “woman’s order” erupted, tensions sharply escalated between Butler and the existing municipal government of New Orleans, especially Mayor John T. Monroe. The city council and Monroe had little faith in Butler’s stated desire “to leave the municipal authority in the full exercise of its accustomed functions,” namely the collection of taxes and administration of the local police force. Mutual distrust festered over the first two weeks of May. Occasions for open conflict soon appeared. Butler loathed Monroe for failing to implement “active, energetic measures” to clean up the city and ensure public health. Monroe’s rumored overtures to a French fleet, presumably to retake New Orleans from the Union, only exacerbated the distrust and animosity. On May 19, Butler gave up on the ill-fated cooperation with the plainly disloyal city officials. Butler arrested Monroe and the rest of the city council and directed his military commandant and provost marshal to assume most of the functions of the municipal government.²⁸

With Monroe and the city council imprisoned, Butler took an even freer hand in managing the city’s affairs. He turned immediately to cleaning up the city and removing any public health threats. Butler later remembered how much he feared a potential yellow fever outbreak, “the scourge of New Orleans, returning every summer with such virulence.” Piles of filth on city streets on heightened Butler’s fears. Local citizens had their fun inflaming these worries. Julia LeGrand noted in her journal how “people of the town are frightening [Union soldiers] terribly with tales about the yellow fever.” Butler established a strict quarantine around

²⁷ *Frank Leslie’s Illustrated Weekly*, July 12, 1862, 242; *Harper’s Weekly*, July 12, 1862; *Private and Official Correspondence of Gen. Benjamin F. Butler*, 1:486-9.

²⁸ Parton, *General Butler in New Orleans*, 295-96; *OR*, ser. 1, vol. 6, 732-4; *Private and Official Correspondence of Gen. Benjamin F. Butler*, 1:499-501; *OR*, ser. 1, vol. 15, 467.

New Orleans. Then he employed two thousand of “the unemployed and starving poor” to clean up the city, at a pay of 50 cents per day and a full soldier’s ration.²⁹

George Stanton Denison, a Unionist tax collector in New Orleans, noted in a mid-June letter to Treasury Secretary Salmon P. Chase that New Orleans “never was more healthy, and as yet there is no danger of the Yellow Fever.” Denison then confessed he worried Butler’s efforts were perhaps too humane: “I do not think the military rule here or elsewhere is severe enough. It ought to be more dangerous to be a secessionist than to be a loyal citizen ... A real secessionist cannot be conciliated.”³⁰ Denison did not say what exactly constituted a more severe war effort. Still, he voiced an emerging sentiment among those who closely monitored occupied New Orleans. The sentiment, as *Harper’s Weekly* put it, was that Federals’ occupation experience ought to bring about “The End of Gingerbread.”

Harper’s Weekly praised men such as Butler and Andrew Johnson in Tennessee for inaugurating a new phase of the Union war effort that was “no longer gingerly” and did not “expect any thing but sullenness and hatred” from the Union’s enemies. If Confederates howled that Butler’s martial law proclamation was “pure despotism,” they were right. They had no one to blame but themselves: “When the rebels invoked war they invoked despotism. War is the appeal to brute force. War reaches and maintains its ends by violence.” God omnipotent invested legitimate governments with the power of the sword, a power not to bear in vain. Once unsheathed it “was not an instrument to tickle with, but to kill with.” The only effective and fair way to convince Confederates to abandon their quest for independence was “overwhelming

²⁹ Butler, *Autobiography and Personal Reminiscences*, 394; LeGrand, *The Journal of Julia LeGrand*, 46; *OR*, ser. 1, vol. 15, 462. For a more detailed overview of these efforts, see Capers, *Occupied City*, 88-89; Joseph G. Dawson, *Army Generals and Reconstruction: Louisiana, 1862-1877* (Baton Rouge: Louisiana State University Press, 1982), 9-10; John D. Winters, *Louisiana in the Confederacy* (Baton Rouge: Louisiana State University Press, 1963), 127-28.

³⁰ *Diary and Correspondence of Salmon P. Chase* (Washington, DC: American Historical Association, 1903), 310.

superiority of force.” *Harper’s Weekly* praised Butler for attempting to salvage cotton and sugar crops and provide for the destitute of New Orleans. But it praised him even more for the fact that “his iron hand has not been covered with a silken glove.”³¹

By the summer of 1862, rebel citizens of New Orleans certainly realized Union armies increasingly abandoned their “gingerbread” war effort. A string of notable executions and imprisonments hammered home the point. William Mumford’s hanging was the most notorious example. When General Robert E. Lee learned of Mumford’s execution, he wrote a curt letter to General George B. McClellan demanding an explanation. Lee warned Confederates would retaliate in kind against “outrages of such a character.” Because Mumford’s “crime” occurred before the city officially surrendered, Lee considered the death sentence illegitimate, a mere “murder of one of our citizens.” Henry Halleck assured – and subtly threatened – Lee that “this contest will be carried on in strict accordance with the laws and usages of modern warfare, and that all excesses will be duly punished.” Butler believed the hanging was legal and effective in quieting disorderly rebels. The “peace and quiet which pervaded the city,” Butler later wrote, was due in large part to a “belief which pervaded” among Confederates after Mumford’s hanging: “nothing could be done there that I could not find out.”³²

³¹ *Harper’s Weekly*, May 31, 1862, June 14, 1862.

³² *OR*, ser. 2, vol. 4, 134-135. 650, 350; Butler, *Autobiography and Personal Reminiscences*, 449. In one of the strangest twists in Civil War history, the paths of Butler and William Mumford’s widow crossed again after the war ended. Butler had supposedly promised to help Mary Mumford if ever needed; surprisingly, in 1869, while living in Wytheville, Virginia, she sought Butler out and pleaded for help retiring some outstanding debt. Butler went on to help her secure a place to live in Washington D.C. and he used his influence also to secure a job for her at the Department of Internal Revenue. When Mary lost that job for political reasons, Butler found her another one with the postal service. Remarkably, Butler even saw Mumford’s sons on occasion. There are a substantial number of letters between Butler and Mary Mumford in Benjamin F. Butler Papers, LC, from mid August 1866 to mid April 1881. The story of their postwar relationship is also covered in Parton, *General Butler in New Orleans*, 443-446; Hearn, *When the Devil Came Down to Dixie*, 141.

But Mumford was not the only New Orleans resident sentenced to death or imprisoned in the summer of 1862. For example, two men were executed and another jailed for impersonating Union soldiers and plundering civilians. The crimes eliciting Butler's wrath were on occasion far less violent in nature. One man was sentenced to two years hard labor for exhibiting a human skeleton in a public window, draping the label "Chickahominy" over it, and claiming they were the bones of a fallen Union soldier. Another man received the same sentence for fashioning a cross supposedly out of the bones of a Yankee soldier. Freedom of religious expression did not excuse outright treason, Butler believed, so he imprisoned three Episcopal clergymen for refusing to swear an oath of allegiance and continuing their "violent secessionist" preaching. Eugenia Phillips was imprisoned for purportedly "laughing and mocking" at a passing funeral procession of a Union lieutenant. Butler considered Phillips "a bad and dangerous woman, stirring up strife and inciting to riot," so he sent her to the Ship Island prison, where he allowed her to retain one female servant and guaranteed her a soldier's ration each day. Phillips fiercely denied the charges and fumed that in her native city, "Young girls were not safe for any indecent remark that reached Butler caused their arrest ... So we lived, and the future seemed dark for us all."³³

"War is tragical business," *Harper's Weekly* concluded in early July after reporting on several hangings ordered by Butler. "War is essentially brutal; it is the appeal to superior physical force. The amenities of war are the interpolations of humanity, because men can not be altogether brutes." War was tragic, perhaps irredeemable at its core, but *Harper's Weekly* held out hope that the destructive power of war did not altogether destroy a soldier's humanity. Sometimes "interpolations of humanity" broke through the killing and destruction and saved an

³³ *OR*, ser. 2, vol. 4, 19-20, 105-106; *Private and Official Correspondence of Gen. Benjamin F. Butler*, 2:24-25; *OR*, ser. 2, vol. 4, 105; Eugenia Phillips, "Mrs. Phillips: A Southern Woman's Story of Her Imprisonments: In 1861 and 1862," Box 1, Phillip Phillips Family Papers, LC.

army from utter barbarity. Federals could acknowledge the unavoidable brutality of war without embracing it whole-heartedly.³⁴

Even as Butler turned away from a gingerbread war, he endeavored to maintain rigid discipline among Union soldiers and prevent them from acts of plunder and abuse. On his first day in New Orleans, Butler reminded soldiers under his command “amid the temptations and inducements of a large city, all plundering of public or private property ... is hereby forbidden, under the severest penalties.” But instances – and rumors – of this sort of plunder persisted. A Connecticut infantry captain stationed just outside New Orleans wrote home to complain (with a touch of jealousy) of another Connecticut infantry regiment stationed inside the city that supposedly “seized on splendid houses, with costly furniture, and wine-cellars ... and enjoying for once a luxury that they had never even looked at previously.”³⁵

In late May, Butler proclaimed that no officer or soldier acting on his own volition could seize private property. Prior approval was needed from the provost marshal, military commandant, or Butler himself. Without this approval, he would punish the seizure as mere plunder. Several weeks later, Butler enforced this threat, hanging two soldiers and sentencing a third to hard labor.³⁶

When it came to dealing sternly with offenders, Butler favored no target more than the wealthy citizens of New Orleans. Butler acquired the names of well-off residents who prior to

³⁴ *Harper's Weekly*, July 5, 1862. Steven V. Ash has also noted the fundamental restraint, despite all the horrors perpetrated during the Civil War, that still marked the Union war effort: “Though they came to hate the Southern people and sought to subjugate and punish them, and were increasingly willing to restrict their freedom and confiscate their possessions and even starve them into submission, they did not often pursue such tactics to their logical extreme.” Ash, *When the Yankees Came*, 61.

³⁵ *OR*, ser. 1, vol. 6, 717; John W. DeForest to Lillie Umsted, October 12, 1862, Lillie Devereux Blake Papers, MHM. “In the meantime,” DeForest continued, “our regiment on its country outpost has been under a discipline which court martialed a private for stealing two watermelons.”

³⁶ *OR*, ser. 1, vol. 15, 445, 478. “The heinousness of their offense,” Butler declared at the time, “is heightened by the contempt and disgrace brought upon the uniform, authority, and flag of the United States.”

the Union occupation donated a combined \$1,250,000 to the Committee of Public Safety, a pro-Confederate organization aimed at bolstering the city's defenses. Butler believed the "need of relief to the destitute poor" exposed the "stupidity and wastefulness" of these donations. In early August he levied fines against contributors roughly one-quarter the amount of their donation. Some paid as little as twelve dollars, others paid several thousand. Butler promised to divert the revenue raised from this tax on the wealthy to poor relief efforts: "Those who have brought upon the city this stagnation of business, this desolation of the hearth-stone, this starvation of the poor and helpless, should, as far as they may be able, relieve these distresses." Butler insisted this money would not line the pockets of greedy Union soldiers but would help feed the city's destitute, a problem of "alarming importance and gravity."³⁷ Butler could not imagine a more just and humane act by an occupying force.

Harper's Weekly, as always, came to Butler's defense with particularly over-the-top adulation in a mid August editorial. After reviewing all the problems Butler faced in New Orleans – from a bitter civilian population to unsanitary conditions to a shortage of food supplies to a hostile municipal government – it concluded: "The historian will decide that General Butler's success in grappling with these unparalleled difficulties was so marked and so brilliant as to entitle him to the highest rank among statesmen." The magazine strayed even further from the truth when it proclaimed Butler had not "inflicted a single injustice upon the most rancorous of his enemies." David Dixon Porter was surely more correct in concluding, "[Butler's] system was doubtless lacking in tact, and he would have saved himself a deal of trouble by not seeing too much."³⁸

³⁷ *OR*, ser. 1, vol. 15, 538-41; *Private and Official Correspondence of Gen. Benjamin F. Butler* 2:366. In early December, Butler imposed another set of fines against the same residents. *OR*, ser. 1, vol. 15, 607.

³⁸ *Harper's Weekly*, August 16, 1862; Porter, *Incidents and Anecdotes of the Civil War*, 73.

Injustices and depredations inevitably occurred under Butler's command. Yet *Harper's Weekly* faintly grasped an essential significance of Butler's tenure in New Orleans: "He has established safe and sound precedents," most specifically for how to govern an occupied territory, but also to guide the spirit of the entire war effort.³⁹ The precedents Butler forged helped refine the nature of a hard yet humane war.

"The War Must Now Be Fought Out": Sherman in Occupied Memphis

Butler alone did not establish these "safe and sound precedents." Several hundred miles up the Mississippi River from New Orleans, William T. Sherman commanded the Union occupying forces in Memphis from late July to late November 1862. Sherman faced a variety of complicated problems in Memphis: the treatment of civilian property, the regulation of cotton trade, the employment of slaves in Union armies, relations with the existing municipal government, and subduing irregular guerrillas. In addressing these problems, Sherman also gradually worked out how Federals might reconcile hard war policies with humane restraint.⁴⁰

When Sherman first arrived in Memphis, he later remembered finding "the place dead; no business doing, the stores closed, churches, schools, and everything shut up." Before the outbreak of the war around twenty-three thousand people lived in Memphis, which had grown into a vital commercial city. Sherman set out to restore Memphis to an "active, busy, prosperous place" but he never doubted the vast majority of residents remained loyal to the Confederacy. A

³⁹ *Harper's Weekly*, August 16, 1862.

⁴⁰ Historians have tended to treat Sherman's time in Memphis as indicative of nothing more than the Union army's wider shift away from conciliatory war policies to hard war measures. Sherman's tenure in Memphis, John Marszalek suggested, was an "important metamorphosis" in his thinking about war: "Now he came face to face with the fact that war was more than soldiers, more than set conflict. The idea that war included the entire populace – its determination to fight and its material goods – became evident to him." Marszalek, *Sherman*, 189. See also, Fellman, *Citizen Sherman*, 136-39; Capers, *Biography of a River Town*, 157-58.

Union soldier stationed near the city agreed: “Memphis is quite a city,” he wrote home, and “strongly secesh.”⁴¹

Like Butler before him, Sherman asserted his authority in the city and established in detail the terms of the occupation. His initial actions ranged widely – from requiring military age men to swear a loyalty oath or leave Memphis, to establishing strict regulations for travel in and out of Memphis, to compelling businesses to reopen and thereby restore something of the spirit of the once “active, busy, prosperous” city. Some actions impinged more directly than others on questions of just conduct in war. When Sherman first arrived in Memphis and began rebuilding the fortifications at Fort Pickering, he forced families living inside the boundaries of the new fort to vacate their homes immediately. However, Sherman also assembled a three-person committee to assess the value of these homes, and then directed the chief quartermaster in Memphis to find displaced families a vacated home in the city of roughly equal value.⁴² Military necessity demanded the confiscation of the homes within the fort, not the displacement to destitution of their occupants.

Sherman recognized the importance of cooperating with the Memphis municipal government. They might maintain some administrative responsibility in the city and thereby reduce the demands on Sherman’s force. Butler also acknowledged as much, but his cooperative relationship with New Orleans city officials proved dysfunctional and short-lived. Sherman assured the mayor of Memphis that he had “the most unbounded respect for the civil law, Courts & authorities,” and would do all he could “to restore them to their proper use.” Still, Sherman quite succinctly summarized the underlying philosophy of his attitude toward municipal

⁴¹ William T. Sherman, *Memoirs of General William T. Sherman* (New York: Library of America, 1990), 285; Letter from J. Watts Judson, June 19, 1862, Judson-Fairbanks Papers, HL.

⁴² *OR*, ser. 1, vol. 17, pt. 2, 117-8, 112-13; Marszalek, *Sherman*, 190. For a follow-up report six weeks later from Major John A. Rawlins on the progress of the Fort that alludes to the displacement of families and destruction of some homes, see *OR*, ser. 1, vol. 17, pt. 2, 201-2.

government: “the Military for the time being must be superior to the Civil Authority but does not therefore destroy it.” Sherman insisted Memphis’ existing police force remained responsible for the everyday arrests of citizens “for disorder or common crimes.” In subsequent months, Sherman clarified the responsibilities assumed by the city government. He did not strip municipal authorities of their power, for doing so failed to prepare for the future: “state of war is but temporary, and the time must come when the civil will resume its full power in the administration of justice in all parts of the country.”⁴³

One of Sherman’s greatest challenges in Memphis, in the words of historian John Marszalek, was “keeping Memphis economically viable without simultaneously aiding the enemy.”⁴⁴ This challenge soon appeared in the trade of cotton for specie, namely gold. Sherman did not want to destroy the livelihood of all southern civilians or devastate Memphis’ economy. But he also worried about inadvertently aiding the enemy. Sherman soon found himself at odds with the Union high command over the trade of cotton for specie. Though ultimately not allowed to pursue his preferred policy, the controversy provided Sherman an occasion to refine his thinking about what a just war of hard yet humane measures looked like in practice.

As soon as Sherman arrived in Memphis, he sought to end the trade of cotton for specie. Although Sherman did not ban all trade for specie or all trade of cotton regardless of payment, he believed the trade of cotton for gold and silver aided the Confederate war effort. He hoped that by banning it he might deal a vital blow to the rebels but one that did not halt the economic life of the Memphis area. Secessionists selling cotton “had become so open in refusing anything but gold,” which, Sherman believed, “has but one use—the purchase of arms and ammunition.” So long as specie made its way into the Confederacy “it will not take long for Bragg and Van Dorn

⁴³ *Sherman’s Civil War*, 258-9; *OR*, ser. 1, vol. 17, pt. 2, 294-6.

⁴⁴ Marszalek, *Sherman*, 193.

to supply their armies with all they need.”⁴⁵ Henry Halleck noted disapprovingly that Sherman’s policy contradicted Benjamin Butler’s, who had done all he could to coax cotton planters to sell their crops and did not discourage payment in specie. After consulting with Edwin Stanton, Halleck asked Ulysses S. Grant to order Sherman to reverse his prohibition.

Sherman was not prone to insubordination, yet he still pleaded his case. To Secretary of Treasury Salmon P. Chase, Sherman insisted that any reluctance to forbid payment of gold for cotton arose from a mistaken notion of the nature of the Union’s war against the Confederacy – that is, a failure to recognize “all in the South are Enemies of all in the North.” Southerners might “want Peace, and fear War,” Sherman admitted, but they still “prefer a Southern Independent Government, and are fighting or working for it.” One way they worked for it was selling cotton for specie. Sherman put the matter bluntly to Grant: “If we provide our enemy with money we Enable them to buy all they stand in need of. Money is as much contraband of war as powder.” In a moment of frustration, Sherman complained to his brother John, senator from Ohio, that opponents of his prohibition threatened to prolong the war and imperil the lives of Union soldiers: “all the military men here saw at once that the Gold spent for Cotton went to the purchases of arms & munitions of war—but what are the lives of our soldiers to the profits of the merchant?”⁴⁶

Sherman would never defy his superiors’ orders, but Halleck still took time to justify their decision to Sherman – a decision, he admitted, motivated partially by a desire to maintain consistency with pre-existing policies pursued by Butler and other Union commanders throughout the lower Mississippi River Valley. Halleck reminded Sherman he could always seize

⁴⁵ *OR*, ser. 1, vol. 17, pt. 2, 140-41. Trade in cotton, Lee Kennett suggested, was the “most important and also the most troublesome aspect of city’s commercial life.” Lee Kennett, *Sherman: A Soldiers Life* (New York: HarperCollins, 2009), 175.

⁴⁶ *Sherman’s Civil War*, 269-72.

specie he had “good reason to believe [was] intended for the use of the rebel Government.” Moreover, Halleck questioned Sherman’s assumption that specie was somehow more valuable to the Confederate war effort than cotton itself, for “they can purchase military munitions with the latter as well as the former.”⁴⁷ Sherman politely wrote back to Halleck letting him know he would “religiously carry out” Halleck’s orders. Yet Sherman still believed that once the Union abandoned its conciliatory war effort the former critics of his ban on the trade of cotton for specie would recognize it as a model for waging a just war that crippled Confederates by vigorous yet restrained measures.

Whether or not Federals should prevent the trade of cotton for specie raised an even larger question: how should Union armies treat rebel civilians living in the occupied city? Should Federals grant conquered Confederates something approaching the same rights and liberties normally afforded Americans in peacetime? Like Butler, Sherman believed just conduct in an occupied city ought to unleash harsh punishment on the “disorderly secessionists” and those who still actively aided the Confederacy. But he also sought to deal humanely with the majority of civilians and put into place measures preventing unwarranted abuse.

“I will do nothing hastily,” Sherman wrote in late July as he pondered what exactly to do with the obviously disloyal citizens still in his midst. An extreme response like expelling everyone hostile to the Union obviously was unreasonable; for one thing, it would mean “but few will be left” in the city. A successful and just occupation demanded nothing if not prudence to know when to show mercy and when not. On one point Sherman did not waver: “if any persons manifest any active hostility I will deal with them summarily.” In this, Sherman aligned with Halleck’s own vision of the war effort along the Mississippi. Halleck directed Grant in early

⁴⁷ *OR*, ser. 3, vol. 2, 382; *OR*, ser. 1, vol. 17, pt. 2, 186.

August to handle “active sympathizers ... without gloves.” It was time, Halleck concluded, “that they should begin to feel the presence of war.”⁴⁸

Sherman found little thrilling or glorious in subjecting Memphis civilians to the “presence of war.” In a strikingly candid letter to his daughter Minnie, Sherman reflected on his complicity in the war’s hardships and suffering. “The People here look on us as invaders,” Sherman wrote, but “we don't want their houses, their farms, their niggers, anything they have, but they don't believe us.” This disbelief bred bitterness and hostility, which Sherman predicted would only intensify measures against civilians. He alluded to his recent orders displacing some civilians from their homes as indicative of where the war headed. “Think of this and how cruel men become in war, when even your papa has to do such acts.” Sherman encouraged Minnie to pray every night for a speedy end to the war so that “our whole People may not become Robbers & murderers.” Sherman believed war had a terrible logic all its own. It compelled actions from its participants they might find abhorrent in any other circumstances. It was hell and could not be refined. But that did not mean combatants should revel in it or not find ways to make it a bit more just and humane. Sherman expressed regret to his daughter about what war demanded of those who waged it but he never doubted that the decisions he made were vital to victory and justified.⁴⁹

As in New Orleans, interactions between occupying forces and rebels often centered on Federals’ treatment of civilian property. Particularly relevant to the situation in Memphis was the proper confiscation and use of vacated property. Grant directed Sherman to take possession of all vacant stores and houses in Memphis and rent them out at reasonable rates. However, owners could regain control of their property on proof of their loyalty. When an assistant quartermaster

⁴⁸ *OR*, ser. 1, vol. 17, pt. 2, 122, 150. The women of Memphis, Sherman wrote, all “are secesh. Of course they keep their tongues, but they look the Devil to every one of our cloth.” *Sherman’s Civil War*, 281.

⁴⁹ *Sherman’s Civil War*, 262.

wrote for guidance on implementing this directive, Sherman reiterated that every action ought to remain fully justified according to “the rules and laws of war.” A few days later, a man wrote Sherman to claim possession of a vacated post office and theatre in Memphis. Sherman said he would gladly return the building if the man swore an oath of loyalty to the Union. Sherman did not expect the man to do so: “I infer your desire is to secure your rents without this formality. This to me is simply ridiculous and unworthy a thought.”⁵⁰ Sherman believed the laws of war justified requiring the loyalty oath, and not enforcing the policy only undermined the war effort.

These policies were always a work in progress. In mid September, Sherman issued another more thorough set of guidelines for the seizure of civilian property. Sherman attempted to prevent Federal soldiers under his command from committing gross abuses or depredations. Soon after his tenure in Memphis began, Sherman complained to his daughter that it “now requires all my energy to prevent our soldiers from robbing & plundering the houses & property of supposed Enemies.”⁵¹ By the first week of August, Sherman set forth explicit rules governing Federal soldiers’ behavior, rules accompanied by stern punishments.

Sherman insisted in these rules on “the quiet and good order of soldiers on the streets,” and so he forbade noise, drunkenness, and fighting as a “military nuisance.” Assistant provost marshals would now patrol places soldiers frequented and keep watch for any punishable behavior. Sherman also placed new restrictions on the travel of troops. Soldiers wandering the city without formal passes would be arrested and sentenced to hard labor on the Fort Pickering fortifications for one week. The rules also prohibited plunder. When nearly two thousand dollars

⁵⁰ *OR*, ser. 1, vol. 17, pt. 2, 156-57; *Sherman’s Civil War*, 286. Sherman, following Grant, affirmed that vacated proprietors might eventual return, reassert their loyalty to the Union, and reclaim the rents lately collected from tenants by the Federals.

⁵¹ *OR*, ser. 1, vol. 17, pt. 2, 219-20; *Sherman’s Civil War*, 262. Sherman did not fail to add, however, that “our enemies are even worse than we, for they Shoot our men if they go outside our Lines, & fire on steamboats as they pass up & down the River.”

worth of property was stolen from an elderly woman, presumably by Federal troops, Sherman threatened swift arrests and even executions if the thieves did not promptly return the money, which they did anonymously soon thereafter. In a letter to the *Memphis Bulletin*, Sherman promised that Federals guilty of senseless pillaging or “wanton waste” would receive the stiffest punishment afforded by law, execution. Sherman promised to investigate claims of abuse but he warned he would take seriously only detailed complaints, since “the Great mass of our soldiers would scorn to steal or commit Crime.” Still, Sherman reminded readers of the *Memphis Bulletin* that these promises to monitor soldiers’ behavior did not change the basic fact that “we are really *at war*.” Many actions taken by Federals that seemed like wanton destruction might be essential to the Union war effort.⁵²

Subduing guerrillas in the Memphis area inevitably raised these sorts of questions about what distinguished wanton destruction from actions essential to the war effort. Sherman issued fewer detailed guidelines concerning guerrillas and their abettors than did his counterparts in Missouri. Still, he came to embrace a key underlying rationale advanced by Federals in Missouri for waging a just and effective counterinsurgency – the principle of civilian responsibility, the idea that a civilian population could be held responsible for nearby guerrilla activity.⁵³

When Grant asked for a general report on the state of things in Memphis less than a month into Sherman’s tenure, Sherman complained of the rampant guerrilla activity: “All the people are now Guerrillas,” he reported with obvious exaggeration, and they had grown skilled at targeting small bodies of Union troops outside the city. As in Missouri, the guerrillas Sherman

⁵² *OR*, ser. 1, vol. 17, pt. 2, 173; John Hallum, *The Diary of an Old Lawyer, or Scenes Behind the Curtain* (Nashville: Southwestern Publishing House, 1895), 187-8; *Sherman’s Civil War*, 298-300.

⁵³ Historians have suggested that Sherman’s encounter with guerrillas in Memphis was a chief reason for his embrace of the hard war measures he made infamous. Less attention had been made to the ideas about just restraints on warfare that emerged alongside these hard war policies amid anti-guerrilla efforts. See Marszalek, 194-96; Fellman, *Citizen Sherman*, 140.

encountered deftly retreated into the surrounding civilian population, complicating the task of identifying and punishing them; like those before him in Missouri, Sherman warned of swift punishments for local communities known to aid and harbor guerrillas. In an open letter to Memphis newspapers, Sherman promised retribution against local farmers or neighborhoods who “encourage or even permit in their midst a set of Guerrillas.” Sherman reiterated it was “not our wish or policy to destroy the farmers or their farms.” But even if civilians claimed ignorance of particular guerrilla acts, it would not necessarily override the fact that they had “become accessories by their presence and inactivity to prevent murders and distruction [sic] of property.” Sherman left vague the punishments civilians might face, but he made clear his belief that “principle of war and common sense” justified retribution against civilians.⁵⁴

Guerrilla activity continued throughout the late summer and early fall of 1862. In late September, Sherman directed a particularly vigorous anti-guerrilla response against the small village of Randolph, Tennessee. Randolph was located north of Memphis along the Mississippi, and from it guerrillas recently fired upon a small vessel. Sherman presumed the real culprits came “from the interior and depart as soon as the mischief is done,” but that did not change the fact that Union forces had to punish Randolph residents “to prevent a repetition.” Sherman ordered his men to destroy the village, “leaving one house to mark the place.” He also wanted them to let the people of Randolph know that while “we deeply deplore the necessity of such destruction” it ensured the protection of travelers on the Mississippi. Sherman gave the colonel in command of the expedition the authority to spare more than one house “if any extraordinary

⁵⁴ *Sherman's Civil War*, 279, 283-4, 307-8.

case presents itself,” but he rejected anything else that might lessen the retribution for the guerrillas’ “acts of cowardly firing.”⁵⁵

Sherman eventually grew so frustrated with the guerrilla activity that he complained to Confederate Major General Thomas C. Hindman that the “guerrillas and partisan rangers” loosely connected to regular Confederate armies committed “acts which you would not sanction.” Guerrilla attacks on steamboats carrying provisions for civilians most infuriated Sherman. These attackers did not deserve the “name or consideration of an honorable soldier,” Sherman declared. More ominously, he warned he would soon strike against the civilian population harboring these guerrillas. A short time later, when Sherman learned of guerrillas firing on two unarmed steamboats, he concluded they “must know and feel that not only will we meet them in arms, but that their people shall experience their full measure of the necessary consequences of such barbarity.” Sherman warned Hindman that if he failed to tighten his control over these guerrillas “this war [will] become a reproach to the names of liberty and civilization.” Sherman taunted Hindman to do away with the guerrilla tactics and face Sherman in conventional fashion, for he was “willing to meet you anywhere and everywhere in manly fight.” Sherman boasted he and his superiors “know what civilized warfare is and has been for hundreds of years.” The rebel guerrillas, and Hindman in tolerating them, deviated dramatically from it, Sherman concluded. He believed if the guerrilla activity continued, normal “restraints of discipline” among regular soldiers would crumble.⁵⁶

⁵⁵ *OR*, ser. 1, vol. 17, pt. 2, 235-6, 244, 273. For one example of the guerrilla destruction of several bridges that allowed for trade from the heart of Memphis to the nearby Raleigh neighborhood, see *OR*, ser. 1, vol. 17, pt. 2, 187-8.

⁵⁶ *Sherman's Civil War*, 316-7; *OR*, ser. 1, vol. 17, pt. 2, 287. On another occasion, when weighing an appropriate response to the attacks from the banks of the Mississippi, Sherman became all the more convinced “adherents of their cause must suffer for these cowardly acts,” and even briefly considered expelling “ten secession families for every boat fired on.” *OR*, ser. 1, vol. 17, pt. 2, 280.

While in Memphis, Sherman reflected at length on the proper nature of the Union military effort. By late summer 1862, he decided conciliatory policies intended to woo southerners back to the Union were naïve and fated to fail. “We have finished the first page of this war in vainly seeking a union sentiment in the South,” Sherman wrote in mid August, “and our Politicians have substantially committed suicide by mistaking the Extent and power of the Southern People & its Government.” Sherman worried that while “the whole South is in deep intense earnest we of the north still try reconciliation.” Victory and peace would only come once the northern people mustered the “patriotism” necessary to “the task of subjugating the whole South.” The very “self existence” of the Union demanded it.⁵⁷

Even though Sherman believed “nothing more is left us but force” to defeat the Confederacy, he also affirmed, as he wrote to a group of “New York Gentlemen,” that Federals must unleash that force with “a wise and united purpose.” Sherman implied that the Constitution and orders from “our constituted authorities” placed limits on how Union armies waged war. The fact remained that the war proved more demanding and all-encompassing than many had assumed in the early spring of 1861: “Thousands will perish by the bullet or sickness; but war must go on – it can't be stopped. The North must rule or submit to degradation and insult forevermore. The war must now be fought out.”⁵⁸ In the months ahead, Union forces had to reconcile hard war policies that vigorously “fought out” the war with earnest efforts to impose restraints on the fighting’s death and destruction. As Butler and Sherman implemented their hard yet humane occupation measures, two issues emerged that posed particularly controversial and

⁵⁷ *Sherman’s Civil War*, 263, 266, 263-4. Michael Fellman described Sherman’s evolution at this moment in this way: “Although Sherman did not simply turn a mental page from conciliation to brutal war against civilians, although he remained conciliatory and ambivalent and aggressive by turns, he was moving toward a fundamental revision of his attitudes.” Fellman, *Citizen Sherman*, 142.

⁵⁸ *Sherman’s Civil War*, 263-4, 297; *The Sherman Letters: Correspondence between General and Senator Sherman from 1837 to 1891*, ed, Rachel Sherman Thorndike (New York: Charles Scribner's Sons, 1894), 169.

problematical challenges to waging a just war: the treatment of foreign non-combatants and the use of recently freed or escaped slaves in the Union war effort.

“Law-Defying and Treacherous Alien Enemies”: Butler and the Consuls of New Orleans

New Orleans was a cosmopolitan city home to numerous foreign consuls, some who had lived in the city for a decade or more prior to the war. Butler’s relationship with foreign consuls in New Orleans was controversial and diplomatically perilous. He suspected, often rightly, that many of these foreigners actively supported the Confederacy. Sometimes he sought to punish them for their “disloyalty” as he would an American-born civilian for a similar offense. Butler saw little reason to exempt foreign consuls from his hard yet humane war effort. If they chose to support the Confederacy, he tended to treat them like an American-born Confederate guilty of the same offense. The consuls and their home countries appealed to international law to object to Butler’s actions. Their long-running conflict with Butler dramatized the momentous diplomatic implications of deftly handling laws of war problems.⁵⁹

Butler’s conflicts with foreign consuls began almost as soon as he arrived in New Orleans. At first, the squabbles seemed benign. French and Spanish consuls complained to Butler about the presence of Union troops surrounding their consulates. The consuls cast a suspicious eye on this action: “it cannot be for the safety of these Consulates,” they wrote to Butler, “guarded sufficiently by the flags of the Empire of France and the Kingdom of Spain.” Butler certainly returned the mistrust, as George Coppel, acting British consul, and members of the “British Guard” soon learned. The “British Guard” was a company of British subjects living in New Orleans who Butler suspected sent their arms and uniforms to Confederate General P.G.T.

⁵⁹ In this respect, Butler’s conflict with the foreign consuls of New Orleans rehashed many of the underlying tensions and laws of war controversies surrounding the *Trent* affair. See Neff, *Justice in Blue and Gray*, chapter 7.

Beauregard. Butler denounced the action as a blatant revocation of neutrality and a “flagrant breach of the laws of Nations.” He gave members of the Guard twenty-four hours to produce their arms and uniforms; if they did not, they had to leave New Orleans or face imprisonment. Coppel did not deny that some members of the British Guard sent their arms and uniforms to Beauregard – and he even admitted it “may be construed” as a breach of neutrality – yet he insisted only a minority approved the decision and they did not mean it as an act of belligerence against the Union. These arguments did not convince Butler. “I am content for the present to suffer open enemies to remain in the city of their nativity,” he wrote to Coppel, “but law-defying and treacherous alien enemies shall not.”⁶⁰ As a laws of war question, Butler thought the situation was simple: the British subjects violated their neutrality and ought to be treated as belligerents loyal to the Union’s enemy.

Butler’s first major controversy concerned his treatment of Amedee Conturie, consul of the Netherlands. In early May, acting on a tip, Federal troops entered Conturie’s store, which doubled as the consulate of the Netherlands. Despite his fierce objections, they searched the store for a rumored stash of silver and found \$800,000 worth in Mexican coins – along with a set of bank-plates and dies, some used for Confederate treasury notes – originally from the Citizen’s Bank of New Orleans. Butler suspected Conturie held the material for Confederates to keep it out of reach of the Union army. The Federals imprisoned Conturie for several hours, stashed the silver in the city mint, and sent the plates and dies to Washington. Conturie complained that the search and seizure illegitimately infringed on the sovereignty of his store as a consulate, but he

⁶⁰*Private and Official Correspondence of Gen. Benjamin F. Butler*, 1:463-4; Benjamin F. Butler to George C. Coppel, May 11, 1862, Butler Papers, LC; *Private and Official Correspondence of Gen. Benjamin F. Butler* 1:450-52, 474-76.

did not persuade Butler. “Having prostituted your Flag to a base purpose,” Butler wrote Conturie, “you could not hope to have it respected while so debased.”⁶¹

Conturie launched a protracted and bitter effort to regain possession of the \$800,000 in silver coins. He insisted, with good evidence, the Hope & Company of Amsterdam entrusted the specie to his care and had made arrangements, prior to the Union occupation, to ship the silver to Europe. Butler replied this did not explain the presence of the dies and bank-plates, items that “could not by law be his property.”⁶² Other consuls in the city furiously protested the forced entrance and search of the Dutch consulate. Conturie rallied their support and appealed to help from Netherlands officials. By late August, the Lincoln administration intervened to resolve the diplomatic crisis.

Secretary of State William Seward said Lincoln sympathized with Butler’s actions given “the military necessity which manifestly existed for the most vigorous and energetic proceedings in restoring law, order, and peace.” However, Lincoln and Seward agreed this did not justify what actually occurred. In fact, Seward confessed the search violated “the law of nations and of comity due from this country to a friendly sovereign State.” After a thorough review of the case, Federals restored the \$800,000 in silver to Conturie and Hope & Company.⁶³

On June 10, well before the controversy with Conturie was resolved, Butler tried to compel anyone, foreigners included, who claimed “any privileges of American citizens or protection or favor for the Government of the United States” to swear an oath of allegiance to the Union. Butler cared little about the legal niceties of requiring a foreigner to swear loyalty to another country. He endeavored to root out and punish foreigners guilty of aiding the

⁶¹ Benjamin F. Butler to Edwin Stanton, May 16, 1862, Butler Papers, LC; *Private and Official Correspondence of Gen. Benjamin F. Butler*, 469. For the official protest by the rest of the city’s consuls, see *Private and Official Correspondence of Gen. Benjamin F. Butler*, 473.

⁶² *OR*, ser. 3, vol. 2, 117-19, 122.

⁶³ *Ibid.*, 132-35, 503-05

Confederacy by “furnishing arms and munitions of war, running the blockade, giving information, [and] concealing property.”⁶⁴

A group of consuls protested the action as “contrary both to that justice which they have a right to expect at the hands of the Government of the United States and to the laws of nation.” The consuls thought it absurd that Butler would force them to swear allegiance to the United States and renounce “that true faith and allegiance which they owe to their own country only.” The consuls denounced Butler as a hypocrite who demanded neutrality from foreigners on some occasions (with the British Guard, for example) but explicit pledges of loyalty on others. New Orleans’ conquered and occupied status might alter relations between the city’s native rebels and the United States government, but “neutral foreigners have a right to be treated as they have always been,” the consuls insisted. Butler dismissed the protest as “a labored argument in which the imagination has been drawn on for the facts to support it.”⁶⁵

The Lincoln administration soon ordered Butler not to require the oath “from those who do not owe a permanent allegiance to the Government.” Seward disapproved of Butler’s actions because they unnecessarily complicated diplomatic affairs. “It is preferable for the maintenance of harmonious relations with foreign powers,” Seward wrote, “that misconduct on the part of their citizens or subjects within our jurisdiction should not be anticipated, but that its actual development should be awaited.” Seward advised Butler to wait for the foreign consuls to act overtly in support of the Confederacy. Then he could punish them accordingly and “their governments cannot reasonably complain.”⁶⁶

⁶⁴ *OR*, ser. 1, vol. 15, 483-4.

⁶⁵ *OR*, ser. 3, vol. 2, 154-59. Butler denied that anything in the original order somehow naturalized as American citizens foreigners who complied with it. He also rejected the consuls’ additional argument that somehow the order would prevent passage out of the country by foreigners who refused to swear the oath.

⁶⁶ *OR*, ser. 1, vol. 15, 497-8.

The Lincoln administration mostly trusted Butler to deal with the non-combatants of New Orleans as he saw fit, but questions concerning the treatment of foreign consuls impinged too directly upon consequential diplomatic affairs. Even before the controversy over Butler's attempt to require an oath of allegiance from foreigners, Lincoln dispatched Reverdy Johnson, former U.S. Senator and Attorney General from Maryland, to New Orleans to investigate and remedy the consuls' complaints. Butler later described Johnson as "that secession spy and agent." However, Johnson did not shirk his responsibilities or readily capitulate to the strong-willed Butler. It was Johnson, after all, who investigated Amedee Couturie's case and recommended restoring the \$800,000 of silver to Couturie and Hope & Company.⁶⁷

Butler soon reached an alternative solution to his stymied plan to force foreigners to swear allegiance to the Union. In mid September, he ordered all "neutral" foreign residents to register with the nearest provost marshal and provide an assortment of information, including their home country, length of time in America, present residence and occupation, and names of immediate family members in the country. These orders, Butler said, made it easier to "distinguish the disloyal from the loyal citizens and honest neutral foreigners." The new approach still attempted to identify persons actively aiding the Confederacy. But the registration orders sought to circumvent the international law objections that doomed the loyalty oath effort. The French consul, for one, thought Butler's loyalty oath requirement was a "legal impossibility," yet he granted "the public safety and the present circumstances" authorized the registration order.⁶⁸

⁶⁷ Ibid., 471; Butler, *Autobiography and Personal Reminiscences*, 525; *OR*, ser. 3, vol. 2, 226-30. For a similar cases of Johnson modifying or overturning Butler's original actions toward foreigners, see Ibid., 249, 257-63.

⁶⁸ *OR*, ser. 1, vol. 15, 571; *Private and Official Correspondence of Gen. Benjamin F. Butler*, 298-99. The French consuls' only complaint concerned the short amount of time Butler allotted for all foreign residents to register.

The foreign-born of New Orleans continued to protest Butler's actions. Members of Lincoln's cabinet, especially Seward, increasingly worked to pacify the consuls and their governments. In early September 1862, the Spanish ambassador wrote Seward to object to the "arbitrariness" of Butler's quarantine of New Orleans. The ambassador complained that Butler imposed a disproportionately extreme quarantine on Spanish vessels. Two Spanish navy ships arrived in New Orleans from Havana to procure tobacco purchased by the Spanish government. Butler imposed a thirty-day quarantine on the ships before they could arrive in the city. Other ships, even ones with the same point of origin, entered the city without any detention; some were held for only two or three days. The ambassador contacted Butler directly about the puzzling quarantine but received no reply.⁶⁹

On October 1, Butler finally responded to a nearly month-old request from Seward for more information on the quarantine of the two Spanish ships. Butler explained that the ships' stop in Havana amid a minor yellow fever outbreak raised concerns that they might have carried the disease to New Orleans. In keeping with his increasingly defensive and defiant tone, Butler launched a "vindication of my acts and administration," namely his treatment of foreign-born residents.⁷⁰

Butler loathed responding to the Spanish ambassador's complaints, particularly given his unheralded "triumph of science, integrity, firmness, and skill" in preventing a yellow fever outbreak. Ambassadors and consuls could question his supposedly arbitrary or unjust quarantine, but Butler emphasized that his actions saved untold thousands of lives – an accomplishment that deserved the same praise as a great battlefield victory. The minor inconvenience to the Spanish government in detaining two of its ships paled in importance to ensuring the city's continued

⁶⁹ *OR* ser. 3, vol. 2, 528-29. For a sample of Seward's increasingly active role, see *Ibid.*, 497-505.

⁷⁰ Benjamin F. Butler to Edwin Stanton, October 1, 1862, Butler Papers, LC.

health. Butler believed the consuls' unending complaints about his supposed violations of international law mattered little in comparison to the all-important goal of restoring order and subduing disloyalty in New Orleans.⁷¹

Butler suspected many foreign-born residents claimed neutrality in the war but secretly aided the Confederates. He stirred up a great deal of antagonism in attempting to expose and punish this false neutrality. To Butler, his treatment of foreign-born residents simply reflected his wider effort to occupy the city in accordance with his hard yet humane war effort. Butler did not dismiss the laws of war as a frivolous restraint so much as he chafed each time foreign consuls mistook hard war measures for violations of the laws of war.

“A More Vigorous War Against Slavery”: Emancipation as a Just War Quandary

Butler and Sherman alike confronted one of the most vexing and controversial just war questions of the first eighteen months of the war: what should Union armies do with the slaves who made daring flights to Federal lines? Put more broadly, should the Union officially commit itself to destroying slavery, and if so, *how* should that destruction proceed?

As Butler and Sherman commanded occupying forces, northern society engaged in bitter debates about emancipation's place in the Union war effort. The loyal citizenry did not all agree that a justly waged war could destroy slavery.⁷² Amid debates over the Second Confiscation Act – and then Lincoln's Emancipation Proclamation – Butler and Sherman contemplated how best to prosecute a hard war against slavery in a just manner. They typically did so with one particular question in mind: to what extent and in what capacity could they put runaway slaves to work in service of the Union war effort?

⁷¹ Ibid., Butler Papers, LC.

⁷² For an introduction to American thinking through the Civil War about the illegitimacy of wartime emancipation according to the laws of war, see Witt, *Lincoln's Code*.

Butler faced similar questions earlier in Maryland and Virginia. Because Maryland remained loyal to the Union, Butler vowed to uphold the Constitution and protect slavery; Virginia turned its back on the Union and the Constitution, so Butler granted sanctuary to some runaway slaves as “contraband” and gladly employed them. Louisiana posed trickier problems. It seceded like Virginia but some slaveholders swore loyalty to the Union after the Union army’s arrival. Butler wondered if he ought to extend the same protection to their slave property as he did for Maryland slaveholders.⁷³

Butler soon found himself embroiled in bitter disagreement and open conflict over these issues with one of his subordinates in the Department of the Gulf, General John W. Phelps, an abolitionist from Vermont. In early December 1861, when Phelps arrived at Ship Island, Mississippi, a strategic location between New Orleans and Mobile, he publicly declared slavery irreconcilable with the democratic Republic guaranteed by the Constitution: “[F]ree labor is the granite basis on which free institutions must rest.” Five months later, Phelps was stationed at Camp Parapet, four miles north of New Orleans. He resolved to offer safe harbor and freedom to runaway slaves who made it to his lines.⁷⁴

This resolve did not always sit well with Butler. In early May, Butler learned that Phelps harbored a young enslaved boy whose former master tried to retrieve him. Butler’s blunt advice

⁷³ According to Ira Berlin and his fellow editors, Butler was “pulled in two directions at once” and attempted to apply both the precedents of Maryland and Virginia: “employing fugitive slaves as military necessity required, and turning unemployable fugitives out of army lines, preferably into the custody of loyal masters.” Ira Berlin et al., eds., *Freedom: A Documentary History of Emancipation, 1861-1867*, ser. I, vol. I: *The Destruction of Slavery* (Cambridge: Cambridge University Press, 1985), 192.

⁷⁴ Berlin et al., eds., *Freedom*, ser. I, vol. I, 201. One Connecticut officer remembered Phelps as a man who burned with the conviction “that we owe it to justice and humanity to proclaim the immediate abolition of slavery.” John William DeForest, *A Volunteer’s Adventures: A Union Captain’s Record of the Civil War* (New Haven: Yale University Press, 1946), 22-3. For more on Phelps and his conflict with Butler, see Berlin et al., eds., *Freedom*, ser. I, vol. I, 187; Burrus M. Carnahan, *Act of Justice: Lincoln’s Emancipation Proclamation and the Laws of War* (Lexington: University Press of Kentucky, 2007), 118-20; James Oakes, *Freedom National: The Destruction of Slavery in the United States, 1861-1865* (New York: W.W. Norton, 2013), 219-223.

about what to do with the runaway offended Phelps' abolitionist sentiments: "If you have any use for him, use him," Butler wrote, "if not, is he not like any other vagrant about the Camp." Later that month, when a Louisiana slaveholder traveled to Phelps' camp to retake three slaves, Phelps refused to let the slaveholder search the camp. The runaway slaves continued to arrive. One June morning, soldiers at Phelps' Camp Parapet awoke to find 150 or more fugitives waiting outside the camp – slaves, in the words of one officer, "of all ages and physical conditions – a number of infants in arms, many young children, robust men and women, and a large number of lame, old, and infirm." Despite their differences, the officer noted they all shared one thing: "They are all quite destitute ... having eaten nothing for days." When Phelps learned of the 150 fugitive slaves outside his lines on that mid June morning, he complained to Butler of the continued "course of undecided action" against slavery, "determined by no policy but the vague will of a war-distracted people."⁷⁵

Phelps hoped to strike a decisive blow against slavery. He believed wartime emancipation was morally justified and constitutionally legitimate. The Constitution required the United States to secure a republican form of government, and slavery and republicanism were antithetical, he reasoned: "the slave system of labor is giving shape to the government of the society where it exists, and that that government is not republican ... the leading conspirators have sought to fasten upon the people an aristocracy, or a despotism." Phelps had little faith in "the mere quiet operation of Congressional law" (namely the Confiscation acts) as an effective means of destroy slavery because "the spirit of law is right reason, and there is no reason in Slavery." Like Lincoln, Phelps reasoned that the president's power as commander-in-chief,

⁷⁵ Berlin et al., eds., *Freedom*, ser. I, vol. I, 202-3, 209-10.

coupled with the demands of military necessity, offered the sturdiest justification for wartime emancipation, for “amidst the clash of arms the laws of peace are silent.”⁷⁶

Phelps staunchly refused to take almost any action that might return refugees in his camp to their masters. When word came that a levee just north of Camp Parapet desperately needed to be repaired, Butler directed Phelps to send some runaways who had escaped from that general area to help with repairs. Phelps refused. Butler immediately responded by directing Phelps to exclude from his camp “all unemployed persons, black and white,” in short, runaways whose labor Phelps did not need. Phelps again ignored the order.⁷⁷

Butler then asked Stanton to clarify official Union policy for the legitimate confiscation, harbor, and employment of runaways. Butler summarized the issues at stake in a typically blunt and forceful manner. He said he had few qualms about confiscating the slave property of “those actively in arms” against the Union. But he wondered if this was entirely justified when “no military necessity” existed. Moreover, he asked what to do with the large number of slaves owned by planters and farmers who “have been passive rather than active in the rebellion.” Was their slave property – like the Maryland slaveholder’s – unquestionably protected by the “inviolability of the rights of property” under the Constitution? If not, Butler asked Stanton why it was not “manifestly unjust to make a virtual confiscation of this particular species of property” when other types of property held by rebel or pacify citizens went untouched by Union armies. Put another way, what exactly made slavery, as a “particular species of property,” uniquely yet legitimately susceptible to widespread confiscation?⁷⁸

⁷⁶ *Ibid.*, 211-3.

⁷⁷ *OR*, ser. 1, vol. 15, 443-44. Reverdy Johnson blamed Phelps’ actions in regards to slavery as the “principle cause” of the continued lack of “much Union feeling” in the greater New Orleans area. Reverdy Johnson to William Seward, July 9, 1862, Reel 70, The William Henry Seward Papers.

⁷⁸ *OR*, ser. 1, vol. 15, 439-440.

Butler knew that “military necessity” was one answer. Federals could put to vital work confiscated or runaway slaves. Yet “military necessity” did not resolve what to do with fugitives who made it to Union lines whose labor Federals did not need, nor did it solve Butler’s problem of how to feed and provide for all the runaways. Butler affirmed again his “full belief that slavery is a curse to a nation,” but these more immediate wartime questions still lingered. Butler repeatedly pressed Stanton for a decisive endorsement or repudiation of Phelps’ actions. Stanton remained evasive in his answer; he devolved discretion back to Butler, deeming it not “necessary or wise to fetter your judgment by any specific instructions.” Stanton only asked Butler to exercise “accustomed skill and discretion” and thereby “avoid any serious embarrassment to the Government or any difficulty with General Phelps.”⁷⁹

It did not take Reverdy Johnson long after arriving in New Orleans to recognize that Butler thought Phelps was “deranged” and that he would not “get on with [Phelps] at all, unless he alters his conduct.”⁸⁰ The prediction proved prescient. Phelps did not alter his conduct and his conflict with Butler intensified.

Their conflict reached its climax over the raising and arming of a regiment of freed slaves. After Congress passed the Second Confiscation Act and the Militia Act – which authorized the President to enlist “persons of African descent” in service of the Union war effort – Phelps sought to raise three regiments of former slaves. He appealed to Butler to supply the necessary arms and equipment. Phelps insisted allowing the former slaves to fight for the Union would in fact prevent them “from becoming instrumental in a general state of anarchy.” Butler instead instructed Phelps to employ the freed slaves behind the lines cutting down trees. Butler promised to send all the axes and tents needed. A furious Phelps refused “to become a mere slave

⁷⁹ Ibid., 440, 485-6, 516.

⁸⁰ Reverdy Johnson to William Seward, July 9, 1862, Reel 70, The William Henry Seward Papers.

driver” and resigned in defiance. Butler privately concluded to his wife, “Phelps has gone crazy ... He is mad as a March Hare on the ‘nigger question.’”⁸¹

Phelps gambled that he and not Butler had a better read on northern public opinion and Lincoln’s ultimate intentions. He hoped Lincoln would eventually back him if he made a loud and defiant stand against Butler. In fact, the opposite occurred. Lincoln did not intervene and Butler soon accepted Phelps’ resignation.⁸² Their protracted conflict over confiscating, harboring, and arming of former slaves revealed disagreements about not only the nature and aims of the Union war effort but also contrasting visions of just and legitimate conduct in a war that threatened the future of slavery.

In Memphis, Sherman did not face similar quarrels with a subordinate officer bent on abolition and the arming of freed slaves. As late as mid June, Sherman gladly complied with the “well-settled policy of the whole army ... to have nothing to do with the negro.” Yet in the wake of the Second Confiscation Act Sherman issued rules for the legitimate employment of escaped slaves.⁸³

Hundreds of fugitive slaves had already arrived in Memphis. When needed, Federals put them to work, most often in constructing fortifications around the city. Sherman promised to pay former slaves in these jobs one pound of chewing tobacco per month and provide them shoes and

⁸¹ *OR*, ser. 1, vol. 15, 534-5; *Private and Official Correspondence of Gen. Benjamin F. Butler*, 2:126-27. For an introduction to the Confiscation Acts, see Silvana R. Siddali, *From Property to Person: Slavery and the Confiscation Acts, 1861-1862* (Baton Rouge: Louisiana State University Press, 2005).

⁸² *OR*, ser. 1, vol. 15, 536. By late August, however, Butler had decided to incorporate into his armies the existing “Native Guard” regiments of free African Americans. “I must have more troops,” he wrote his wife, “and I see no way of getting them save by arming the black brigade.” *Private and Official Correspondence of Gen. Benjamin F. Butler*, 2:186. For the official order, see *OR* ser. 3, vol. 2, 436.

⁸³ *OR*, ser. 1, vol 17, pt. 2, 15. Sherman fully abided by the Second Confiscation Act. As he wrote to his brother John, he thought it was a much-needed step toward the hard war policies necessary to defeat the Confederacy. It was in this moment that Sherman infamously predicted it would be “the task of half a century” to subdue the rebels, a possibility he thought demanded more vigorous action against the civilian population and its slave property. *Sherman’s Civil War*, 272.

clothing. But Sherman also suspected escaped slaves might have to return to their former masters by the end of the war. He kept precise records of the enslaved persons employed and the name of their masters so that “a fair and equitable settlement may be made at the end of the war.”⁸⁴

By the end of July, Sherman employed as many as eight hundred runaway slaves to work on the fortifications at Fort Pickering. While Sherman pledged to employ “all able-bodied negroes” who would work at the fort, he also proclaimed it was “neither his duty nor pleasure to disturb the relation of master and slave.” Patently disloyal masters would forever lose their slaves, for the protection of property “only exists by force of that very Constitution they seek to destroy.” However, Sherman expected loyal slaveholders might soon be able to appeal to tribunals to recover runaway slaves employed by Union armies. Military necessity – in this case the need to rebuild fortifications – temporarily overruled any desire to leave undisturbed loyal slaveholders’ control over their slaves. But Sherman did not support immediate and total emancipation. He feared what many interpreters of the laws of war warned, “when Negroes are liberated either they or masters must perish.”⁸⁵

As Sherman employed escaped slaves in service of the Union cause, he also ruminated on the fate of slavery, the nature of the Union war effort, and the role of Union armies as agents of emancipation. Even by late August Sherman did not eagerly support emancipation. But he still believed that Confederates, by making war against the Union, could no longer appeal to the Constitution as a protector of their slave property. “The Constitution of the United States is your only legal title to slavery,” Sherman wrote to a slaveholder. Nothing about the Constitution or its

⁸⁴ *OR*, ser. 1, vol. 17, pt. 2, 113. Sherman wrote later in his memoirs that since when he arrived in Memphis “neither Congress nor the President had made any clear, well-defined rules touching the negro slave ... we received all fugitives, put them to work on the fortifications, supplied them with food and clothing, and reserved the question of payment of wages for future decision.” Sherman, *Memoirs of General William T. Sherman*, 285. For a description of these early fugitive slaves in Memphis and the type of work they did, see Alvin P. Hovey’s letter in Berlin et al., eds., *Freedom*, ser. I, vol. I, 281.

⁸⁵ *OR*, ser. 1, vol 17, pt. 2, 158-59; *Sherman’s Civil War*, 260.

protection of slavery had changed after Lincoln's election, so Confederates spouted nonsense when they talked about favoring the Constitution "as it was." All that mattered now, Sherman continued, was that Confederates "have made *another* [Constitution] and have another in force," thereby abandoning the protections afforded in the old Constitution. "You know I don't want your slaves," Sherman told the slaveholder, "but to bring you to reason I think as a Military Man I have a Right and it is good policy to make *you all* feel that you are but men." Sherman, still not wholly reconciled to emancipation, decided that "by the simple laws of War," and in light of Confederates' rejection of the old Constitution, Union armies could justly seize slaves and use their labor until the war's end. However, "I don't say free them," Sherman added.⁸⁶

Still, Sherman had not resolved in his own mind how to proceed justly in a war against slavery. The "two great sources of trouble" to his command in Memphis, Sherman said in early September, were "the nigger questions daily arising and the confiscation act." In the time between the Second Confiscation Act and the Emancipation Proclamation, Sherman expressed a lingering confusion about the Union army's official policy toward slavery: "Are we to free all the negroes, men women & children? Whether there be work for them or not?" Sherman thought it would be a disastrous "incumbrance" if his or any army had to "take care of the wants of the host of niggers, women & children that would hang about if freed." Although Sherman did not doubt that Union armies could legitimately target and seize southerners' slaves, he worried about the logistical problems of providing for hundreds or thousands of fugitives.⁸⁷

⁸⁶ *Sherman's Civil War*, 285. This letter certainly confirms Brooks D. Simpson and Jean V. Berlin's contention that "Even as he questioned the wisdom of emancipation, Sherman offered little sympathy for Southern slaveholders." *Ibid.*, 289. For a brief overview of Sherman's drift toward supporting wartime emancipation, see Oakes, *Freedom National*, 325-27.

⁸⁷ William T. Sherman to John Sherman, September 3, 1862 and September 22, 1862, The Papers of William T. Sherman, Reel Six, LC.

Sherman responded tepidly to Lincoln's preliminary Emancipation Proclamation. "The President's proclamation can do no good & but little harm," he wrote his brother. It could do no good because Lincoln made "no machinery by which such freedom is assured," except the advance of Union armies. The act did little harm because Confederates already felt such bitter hatred for Federals that this act against slavery could hardly make matters worse. If the proclamation did anything, it simply ensured an even more protracted and costly war: "I don't see the end or beginning of the end ... war is on us and we must fight it out."⁸⁸

Union forces along the Mississippi River witnessed first-hand slavery's halting demise. At the same moment occupying Federals in New Orleans and Memphis embraced a style of warfare that sought to blend hard war measures and humane restraint, they also lurched toward a more vigorous war against slavery. How to wage war against slavery posed one of the more complicated questions concerning just conduct in war. For abolitionists like Phelps, a war for emancipation was the pinnacle of a hard and humane war – for it deprived southern slaveholders of their wicked institution, and compassionately endeavored to ensure liberty for the captive. Butler and Sherman did not embrace this vision of a hard yet humane war against slavery. Chief among the reasons for their hesitancy were doubts about how Union armies would prosecute a war to destroy slavery in a just and legitimate manner.

Federal Occupations along the Mississippi River: Crucible of Just Warfare

The Union occupations of New Orleans and Memphis convinced many Federals of the foolishness of a conciliatory war effort and the necessity of embracing hard war measures. Yet these early occupations – like Union army encounters with guerrilla warfare in Missouri – also

⁸⁸ William T. Sherman to John Sherman, October 1, 1862, The Papers of William T. Sherman, Reel Six, LC. Simpson and Berlin conclude, "Sherman's experiences in Tennessee reinforced his earlier skepticism about the workability of a policy of conciliation toward southern whites." *Sherman's Civil War*, 230.

prompted Federals to consider the nature of a justly waged war. Federals did not always agree about how to wage a just war, and Union soldiers did not always act in accordance with official policies governing just conduct. Still, the Federal experience of occupying New Orleans and Memphis proved influential in shaping the wider development of the Union military effort. By the end of 1862, Federal forces commanded by Butler and Sherman began to pursue a vision of just warfare that sought to reconcile a hard hand with humane restraints on destruction and devastation.

This style of warfare came to define the Union military effort against the Confederacy in the final stages of the conflict. It first took root during the opening months of war in the Mississippi River Valley, from guerrilla-ravaged Missouri to occupied Memphis and New Orleans. The task of refining this manner of waging just war into rules for all Union armies soon passed to Francis Lieber.

Chapter Three: Francis Lieber and His Moral Vision of Just Warfare

Francis Lieber believed the Union did not have to choose between the hard hand of war and humane restraint in its conflict with the Confederacy. A just war possessed both in equal measure. How could Federal armies reconcile two seemingly antithetical approaches to warfare – one determined to devastate and destroy an enemy into submission, the other committed to curtailing carnage? Lieber’s code offered an alluring and arrestingly simple answer: “The more vigorously wars are pursued, the better it is for humanity.” Hard wars *are* humane wars.¹

If the Union waged war vigorously it could conquer the Confederacy quickly. Vigorous wars presumably restored peace as rapidly as possible, thereby limiting the total suffering and destruction. Hard war measures offered the surest path to a humane end to the fighting. This fundamental idea about the morality of vigorous wars constituted the heart of Lieber’s moral vision of warfare – that is, his most basic beliefs and assumptions about war’s moral dimensions. Lieber’s moral vision pervaded his code. His certainty that vigorous wars were humane and just is nearly ever-present in the code’s articles.

Lieber’s greatest brilliance rested in his masterful ability to convert ideas into policies. His code did more than reconcile hard and humane war in theory. It also translated his moral vision of warfare into detailed military rules and guidelines. Lieber assumed most Union soldiers shared his conviction about the necessity and humanity of a vigorously waged war. They needed practical and intelligible instructions for how to wage a just war, a war vigorous in its prosecution but still mindful of certain inviolable restraints imposed by the laws of war. This is what the code sought to provide soldiers.

¹ “Instructions for the Government of Armies of the United States in the Field,” article 29.

On April 24, 1863, President Lincoln promulgated Lieber's code as General Orders No. 100, known also as "Instructions for the Government of Armies of the United States in the Field." Lieber formally began work on the code in late December 1862, amid a long winter of discontent, despondency, and division in the Union war effort. In the Eastern Theater, the charismatic General George B. McClellan had forged the Army of the Potomac into an imposing force but proved less adept at wielding it for decisive victory along the James and York and Potomac rivers. McClellan failed to capture Richmond in late July and thereby speedily end the war. Then came the ghastly carnage at Antietam in September. Exasperation with McClellan mounted and in the wake of the 1862 midterm elections President Lincoln finally replaced him with the decidedly uneager Ambrose Burnside. Lincoln and the northern public craved strong offensive action so off again toward Richmond went the Army of the Potomac. But Burnside led his army to another demoralizing defeat at Fredericksburg, Virginia in mid December, where Union casualties numbered near 13,000, a staggering toll equivalent to the losses at Antietam.²

Two days after Fredericksburg, General-in-Chief Henry W. Halleck and Secretary of War Edwin M. Stanton finally relented to Lieber's pleas and formed a special committee to draft his envisioned code. Given the disheartening setbacks of the previous months, this was not a particularly auspicious moment to produce a set of rules meant to constrain Federal soldiers and guarantee the humane treatment of their enemies. But the sobering news from Fredericksburg did not demoralize Lieber as much as it invigorated him to finish his code and ensure that the Union's hard war did not descend into utter barbarity and indiscriminate destruction.³

² James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 569-70; George Rable, *Fredericksburg! Fredericksburg!* (Chapel Hill: The University of North Carolina Press, 2002), 289.

³ *OR*, ser. 3, vol. 2, 951. I draw attention to the immediate wartime context of Lieber's code as a correction to a good deal of the existing scholarship on the code, mostly by legal historians or scholars of political thought, who tend to situate the code only in the context of the wider history of the laws of war

Lieber's inspiration to draft the code came from fears that the opening months of the war revealed widespread ignorance and misunderstanding of the laws of war. Events on the battlefield had posed many perplexing problems that Union officers appeared ill equipped to resolve. Although Federal soldiers embraced the spirit of hard yet humane warfare they still needed practical guidance for how to act in particular situations when facing difficult and controversial dilemmas. The issues that worried Lieber most might not seem particularly important – guerrilla warfare, prisoner exchanges, and the parole – but they inspired Lieber to draft his code and profoundly shaped its character. Without an accurate understanding of the code's inspiration, it is impossible to comprehend correctly the code's content.⁴

The spirit of hard yet humane warfare embodied in Lieber's code first appeared in earnest among Union armies in the greater Mississippi River Valley, especially Missouri, Memphis, and New Orleans. Lieber, more than any other Federal, endeavored to refine this spirit of warfare and inculcate it among Union forces everywhere. He constructed uniform and coherent rules for all Federal soldiers, relevant to the military situation in every theater of the war. The code's promulgation made the spring of 1863 a moment of clarity, not confusion, in the Union military effort, not least on the all important question of how should Federal armies prosecute its war

and international law more generally. This legal history angle is an important one from which to view Lieber's code – it allows for an understanding of the code's long-term, global significance – and yet, it also sometimes unintentionally uproots the code from its unique and consequential historical context. Lieber's code is a remarkable document in the history of the laws of war not simply because it was something of the first of its kind – a succinct usable guide to the laws of war – but also because it appeared precisely *when it did*, amid a demoralized Union war effort tenuously sustained by a populace confronting the horrible death and destruction their Civil War had unleashed. For a stellar example of the alternative framing of the Code, one that surely demonstrates its potentially rewarding insights, see James Childress, "Francis Lieber's Interpretation of the Laws of War: General Orders No. 100 in the Context of His Life and Thought," *American Journal of Jurisprudence* 21 (1976): 34-70.

⁴ Though I discuss these issues at greater length later in this chapter, it is worth mentioning now that my reading of the inspiration or "genesis" of the Code stands contrary to most recent scholarship on Lieber, which emphasizes slavery-related issues and emancipation as Lieber's primary motivation for drafting the Code. See, for example, Witt, *Lincoln's Code*, 197-229, 240-249; Matthew J. Mancini, "Francis Lieber, Slavery, and the 'Genesis' of the Laws of War," *Journal of Southern History* 77 (2011): 325-348. A more thorough counterargument to this perspective is found later in this chapter.

against the Confederacy. The Union had abandoned an earlier spirit of conciliation. Lieber's code crystallized an alternative: a moral vision of hard yet humane warfare that would define Union military strategy and policy for the rest of the war.⁵

Union soldiers shared Lieber's moral vision. They drew from it guidance on how to wage a just war and assurance of the morality of their military effort. Although this vision did not originate with Francis Lieber alone, he remained its most ardent and eloquent advocate. The code he drafted offered detailed guidelines for how to wage hard yet humane warfare. In doing so, Lieber sought to vindicate vigorously waged wars as the most moral wars.

“The Furnace of this Great Calamity”: The Wartime Context of Lieber's Code

A distinctly different vision of the war's prosecution died on the Virginia peninsula in the early summer of 1862. According to the policy of conciliation advocated by General George B. McClellan, the quickest path to victory would be to tread lightly upon civilians their property while marching in massive numbers against Richmond and other Deep South cities. The conciliatory policy assumed most southerners did not enthusiastically support the rebellion and Federals could sway them to abandon their tenuous loyalty to the Confederacy. If Union armies treated civilians mildly and shielded them from the worst of the war's devastation then they might also lure them back to the Union. Lieber had always opposed this approach to the war. He believed it amounted to nothing more than to “let the enemy class off with impunity!” In late

⁵ In Mark Grimsley's influential study of the evolution of Union military policy from “conciliation” to “hard war,” he labels the period of the code's appearance (from July 1862 through 1863) as a transitional era of “pragmatism” between conciliation and hard war. In contrast, I seek to show that this middle period of war was not a somewhat muddled moment of transition but instead a moment of clarity in which the soon-dominant hard yet humane war policy received its clearest, most forceful, and most influential articulation in the Lieber code. And though Grimsley acknowledges the “deep sense of moral justice” that remained even after the Union army's embrace of hard war, his framework can obscure the all-important point that the drift toward hard warfare occurred *at the same time* as Union officials devoted rigorous attention to guaranteeing humane, just conduct in war. See Grimsley, *Hard Hand of War*, 2-4.

March 1862, Lieber confessed to his son Norman, then serving in the Army of the Potomac, that he thought McClellan's "head had been turned," for what else could explain the general's decision to pursue such a misguided strategy. Lieber predicted the country would soon realize the folly of conciliation as well and promptly "[lose] all confidence in McClellan."⁶

McClellan's failure to capture Richmond in the spring and early summer of 1862 proved Lieber correct. The Seven Days Battles prompted a widespread turn in northern public opinion against conciliation. Union hopes of an imminent victory faded to the disheartening realization that the end of the war was nowhere in sight. The ensuing summer marked a "fearful crisis in the history of America," one newspaper proclaimed. George Templeton Strong noted how after the Army of the Potomac's retreat, the country slipped into "a depressed, dismal, asthenic state of anxiety and irritability." McClellan drew the harsh ire of *Frank Leslie's Illustrated Newspaper*, which blamed the Union general for his "indecision, intellectual capacity, [and] moral cowardice," and for doing nothing but leaving "the Rebellion joyous, the Nation sorrowful, and the war indefinitely prolonged." But McClellan's setback did more than demoralize the loyal citizenry. It also elicited calls for the Union army to embrace a hard war policy that subjected the whole of southern society, white civilians and slaves included, to the war's hardship and destruction. "They have fought the rebels with the Olive branch," Frederick Douglass proclaimed of the Lincoln administration. "The people must teach them to fight them with the sword. They have sought to conciliate obedience. The people must teach them to compel obedience." Many

⁶ Francis Lieber to Guido Norman Lieber, March 25, 1862, The Papers of Francis Lieber, HL. My brief retelling of the story of conciliation's demise draws heavily from Grimsley, *Hard Hand of War*, 67-95. "McClellan's failure on the Peninsula triggered the collapse of conciliation," Grimsley concluded, "because it dramatically increased the other pressures already at work: the Radicals who wanted to expand the war's goals, the troops who had never embraced the policy, and, most importantly, the average northern civilian, who now saw a seemingly imminent triumph disappear into a stalemate whose duration no one could predict."

northerners soon assumed, like Douglass and Lieber, that this turn toward hard war above all required the Union to strike vigorously against slavery.⁷

Congress acted first. Since December 1861 it had debated Illinois Republican Senator Lyman Trumbull's new confiscation act, which proposed the confiscation of all property, including slaves, held by persons in Confederate armies or actively aiding the Confederate war effort. Some northerners denounced the bill as unconstitutional and indiscriminate its attack on southerners; others complained that it did not do enough to hasten emancipation. Regardless, the passage of the act in mid July 1862 signaled a hardening war against slavery. On the same day Congress also passed a militia act that authorized President Lincoln to enroll "persons of African descent" for "any war service for which they may be found competent." In theory, this included service as soldiers in combat.⁸

Lieber simultaneously worked on a memorandum commissioned by Secretary Stanton on "the military use, free or slave, that come to our armies for support or protection." The memorandum defended what the militia act authorized. Lieber acknowledged "the great service which the coloured people might render to our cause," and that Federals would be foolish not to accept. Most "able-bodied negroes" should serve the Union war effort as members of "Armed

⁷ *New York Herald*, July 4, 1862; *The Diary of George Templeton Strong*, 3:239; Frank Leslie's *Illustrated Weekly*, July 19, 1862; Philip S. Foner, ed., *The Life and Writings of Frederick Douglass* (New York: International Publishers, 1952), 3: 252. Hattaway and Jones, *How the North Won*, 171-176, 194-201; Gary Gallagher, ed., *The Richmond Campaign of 1862: The Peninsula and the Seven Days* (Chapel Hill: The University of North Carolina Press, 2000). For an extended study of the effect of the Peninsula Campaign on Union policy toward slavery and the use of African American troops, see Glenn David Brasher, *The Peninsula Campaign and the Necessity of Emancipation* (Chapel Hill: The University of North Carolina Press, 2012).

⁸ Siddali, *From Property to Person*, 120-144; Oakes, *Freedom National*, 226-240; Grimsley, *Hard Hand of War*, 68-75; McPherson, 500. William Blair has argued that the act was "the last gasp of moderation concerning the treatment of Rebel property," in large measure because conservatives succeeded in including the requirement that confiscation of property follow prosecution for treason, a charge difficult to prosecute. This addition, Blair suggests, was intentional on the part of conservatives intending to complicate the implementation of the confiscation act. William Blair, "Friend or Foe: Treason and the Second Confiscation Act," in Joan Waugh and Gary Gallagher, eds., *Wars Within a War: Controversies and Conflict over the American Civil War* (Chapel Hill: University of North Carolina Press, 2009), 27-51.

Working Companies,” Lieber wrote, which should mostly fulfill non-combat duties. But Lieber did not advise restricting all black soldiers from combat. He argued Federals eventually ought to use the ablest companies for “higher military purposes in the field.” Lieber also adamantly insisted that the laws of war plainly guaranteed the freedom of any slave employed in the Union war effort. If Federal officials openly promised freedom the Union ranks would swell with runaways, Lieber predicted, and “we should derive essential benefit from them.”⁹

President Lincoln certainly agreed with Lieber’s arguments. McClellan’s failure to take Richmond convinced Lincoln to act decisively against slavery. In late July he informed his cabinet of his intentions to issue a proclamation of emancipation. Following Secretary William Seward’s advice, Lincoln delayed issuing the proclamation until Union military fortunes improved. Another two months passed before the single bloodiest day of the war empowered Lincoln to press forward in the war’s most revolutionary consequence. After his victory at Second Manassas in late August, Robert E. Lee advanced into Maryland, assuming that the sustained presence of the Army of Northern Virginia in the loyal state might result in significant strategic gains: access to bountiful resources to feed and fuel his army, the chance to further shatter northern morale, and perhaps even the opportunity finally to win foreign recognition. Emboldened by news of Thomas J. “Stonewall” Jackson’s anticipated capture of Harpers Ferry, Lee gathered his heavily outnumbered army near Sharpsburg. Lee’s army met McClellan’s on September 17 in a battle that resulted in more than 23,000 casualties. After the sobering shock of the toll at Antietam, McClellan did not pursue Lee’s badly wounded army as it escaped back into Virginia.¹⁰

⁹ Francis Lieber to Henry Halleck, August 9, 1862, The Papers of Francis Lieber, HL.

¹⁰ James McPherson, *Crossroads of Freedom: Antietam* (New York: Oxford University Press, 2002); Gary Gallagher, ed., *The Antietam Campaign* (Chapel Hill: The University of North Carolina Press, 1999); McPherson, *Battle Cry of Freedom*, 538-545; Allen C. Guelzo, *Lincoln’s Emancipation*

McClellan failed to decisively defeat Lee's army as Lincoln hoped, but the Army of Northern Virginia retreated across the Potomac River and Lincoln did not waste the opportunity. Military necessity demanded the Emancipation Proclamation, Lincoln argued, which would take effect on January 1, 1863. In the short term, the action exacerbated disagreements over what exactly Federals fought for. "I am well enough suited with soldiering if it was in and for another purpose," said a bitter New York cavalryman bitter over the Emancipation Proclamation, "but to be made a fool of by this d—n administration does not go down so easily." Lieber heartily approved of Lincoln's decision, which he welcomed as the undeniable end to a conciliatory military policy. Only an unwavering hard war effort that targeted slavery could defeat the rebellion. To Lieber the conflict boiled down to one question: "Shall the North conquer the South or the South conquer the North?"¹¹

Six months passed between McClellan's arrival on the Virginia Peninsula and Lincoln's issuance of the preliminary Emancipation Proclamation. Six months of feverish hopes, demoralizing disappointment, and bitter disagreement. Six months of realizing that the war's end was nowhere near in sight. Six months of arguing over the purpose of the Union war effort. Six months that sealed the Union army's turn toward hard war. Francis Lieber welcomed this turn. But he sought also to guarantee that Federals redoubled their commitment to humane conduct in war. The same fiery wartime crucible elicited hard war measures and humane restraints. Lieber endeavored to ensure that the two remained forever intertwined.

Lieber was not alone in contemplating the morality of the Union war effort in this phase of the conflict. Nor did he alone seek to explain how and why the Union army ought to wage a

Proclamation: The End of Slavery in America (New York: Simon & Schuster, 2004); Burrus Carnahan, *Act of Justice: Lincoln's Emancipation Proclamation and the Laws of War* (Lexington: University Press of Kentucky, 2007); Oakes, *Freedom National*, 301-39.

¹¹ Ransom Allen Perkins to "Dear Friends," January 21, 1863, The Civil War Letters of Ransom Allen Perkins, HL; Francis Lieber to Henry Halleck, March 9, 1863, Box 27, The Papers of Francis Lieber, HL.

just war. Northern ministers took up the same topic, especially on the fast day observed near Thanksgiving 1862. While they did not possess Lieber's technical knowledge of the laws of war, and so came at the question of just conduct in war from a different perspective, many northern ministers also defended hard yet humane warfare as the most just means of waging war.

These northern ministers affirmed God's providential control over the unfolding war and echoed Lieber in not denouncing war as utterly bereft of beneficial moral consequences. The most common metaphor ministers used to describe war was a purifying fire. A Connecticut minister insisted the war would end once God "sufficiently purified us in the furnace of this great calamity," once God finished "cleansing us with his own baptism of fire." Another thought the war was good for "bleeding us of our moral and political malady." A New York Dutch Reformed minister likewise labeled the war a "fatherly chastisement ... by which we shall be sanctified." This bloody furnace of purification and sanctification would instill in the loyal citizenry "great lessons of public spirit, of self-sacrifice, of loyalty to principle and to the powers ordained of God." A New York minister rejoiced "in the ascendancy the war has given to moral and spiritual ideas over material interests." Another minister praised life in the army for instilling in soldiers, "prompt attention to duty, of self-denial and sacrifice ... the aroused sense of dependence on an unseen Power."¹² Self-sacrifice, honor, discipline, a concern with ultimate spiritual matters over base material interests: these were the moral attitudes war fostered in its combatants.

¹² Leonard Bacon, *Conciliation: A Discourse at a Sunday Evening Service, New Haven, July 20, 1862* (New Haven: Peck, White, & Peck, 1862), 18; Henry W. Bellows, *The War to End Only When the Rebellion Ceases* (New York: Anson D.F. Randolph, 1863), 15; S.M. Campbell, *The Light in the Clouds. A Thanksgiving Discourse, Delivered before the United Congregations of the Reformed Dutch, First Presbyterian and Westminster Churches, of Utica, N.Y. November 27, 1862, in the Reformed Dutch Church* (Utica: Curtiss & White, 1862), 13; Bacon, *Conciliation*, 18; Joseph P. Thompson, *The Psalter and the Sword, A Sermon Preached in the Broadway Tabernacle Church, On Thanksgiving Day, November 27, 1862* (New York: W.L.S. Harrison, 1863), 12; M.M. Post, *A Thanksgiving Sermon, Delivered at Logansport, Ind., November 27, 1862* (Logansport: Dague & Rayhouser, 1862), 12.

Ministers also insisted that the Union's present war could purify Americans of their iniquities because it fundamentally differed from the wars of the past. Albert Barnes, one of the nation's leading theologians, criticized European wars of recent and distant past as waged by means "that, as a Christian and civilized people, we could not but regard as barbarous and cruel." The Union, he continued, had thus far resisted "waging a fearful, a bloody, and a horrid war." Unlike history's innumerable wars "of conquest and ambition," proclaimed a Baptist minister, the Union waged war for loftier reasons and by loftier means. It did not revel in "pride and subjugation of the weak." The minister appealed to his listeners to "compare this war in these respects with any other war of history" – wars waged by Alexander, Xerxes, Alaric, Tamerlane, Napoleon – for, if they did so, they would discover the Union's war uniquely righteous in its purpose and prosecution, a war waged in "true Washingtonian spirit," the Baptist minister concluded. A New York Presbyterian agreed that the Union's war was "righteous" because it rejected "lust of conquest" and "self-aggrandizement." Another minister insisted that Federals ought not wage war "in any spirit of malignant vindictiveness ... nor for vengeance, nor for any needless destruction."¹³ This vindictive, unwarranted destruction defined barbaric wars of the past, ministers proclaimed; the Union's present war, in contrast, had been thus far (and should remain) a war truly Christian and civilized in its aims and means.

Although northern ministers did not explicitly discuss the laws of war – or even the intricacies of the Christian just war tradition – they still advocated a Lieber-style hard yet humane war effort. "We have put up, for seventeen long months," Henry Ward Beecher complained, "with the dilatoriness of conservatism" in the Union's prosecution of its war. But, he

¹³ Albert Barnes, *The Conditions of Peace. A Thanksgiving Discourse Delivered in the First Presbyterian Church, Philadelphia, November 27, 1862* (Philadelphia: William B. Evans, 1863), 12-13; Thomas Armitage, *The Past, Present, and Future of the United States* (New York: Holman, 1862), 13; William G.T. Shedd, *The Union and the War. A Sermon, Preached November 27, 1862* (New York: Charles Scribner, 1863), 15; Bacon, *Conciliation*, 6.

continued, “people have found out that there is no wisdom in conservatism, and that radicalism is what we want,” a radicalism that did not spare Confederate civilians, especially their slave property. Another minister agreed, and called for “manly courage, unflinching resolve,” in this new hard war. Yes, one pastor admitted, this type of war at times might be “dreadful in its nature,” yet he insisted it was necessary to preserve a lasting peace and to forestall future suffering and destruction. Continued conciliation, a Philadelphia minister feared, would result only in “the annihilation of all hope of peace till the nation has bled to death.” This newly “terrible war” ought to replace earlier policies of “mistaken tenderness,” a New York Presbyterian concluded, because “enduring peace would be simply impossible,” if the Confederacy won its independence.¹⁴ Not to wage a hard and vigorous war was to invite greater violence and devastation in the present war and in future wars.

Although “severity is beginning to mingle itself with the war,” a Baptist minister noted, an element of clemency remained: “it is a war of patience which resents injury—a war of calmness which avenges affronts—a war of forbearance which demands a submission, not to curse but to bless.” Wars were “too sad, and too exhausting,” another minister argued, for armies to abandon this humanitarian impulse. A New York minister suggested that Union armies fought to advance the Lord’s will, since it was “His honor that we are commissioned to vindicate, not

¹⁴ Henry Ward Beecher, *Freedom and War: Discourses on Topics Suggested by the Times* (Boston: Ticknor and Fields, 1863), 389-90; Thompson, *The Psalter and the Sword*, 3; Bacon, *Conciliation*, 5-6; William P. Breed, *Faith and Patience ... preached in the West Spruce Street Presbyterian Church, Philadelphia, Thanksgiving morning, November 27, 1862* (Philadelphia: John Alexander, 1862), 21; W.S. Leavitt, *God the Protector and Hope of the Nation. A Sermon, Preached on Thanksgiving Day, November 27, 1862, By Rev. W.S. Leavitt, Pastor of the First Presbyterian Church, Hudson, N.Y.* (Hudson: Bryan & Webb, 1862), 6, 13.

our own.” Federal soldiers, he concluded, must put away “vengeance” and endeavor instead, while prosecuting the war, to “keep it just.”¹⁵

Many northern ministers also agreed with Lieber that war was not sheer amorality but might well result in positive moral effects. One Presbyterian minister looked to the history of war on the American continent to support this idea. British colonists waged three wars in America – against Native Americans, then the French, and then their British homeland. Out of each victory, the minister insisted, “God has sent a great blessing upon the land” – Christianity over paganism, Protestantism over Catholicism, liberty over tyranny.¹⁶ War, he believed, whatever its horrors, might also preserve and advance American civilization’s highest ideals.

Not long after northern pulpits rang out with fast day sermons that pondered the morality of the Union war effort, Burnside and his subordinates bungled the battle on the Rappahannock at Fredericksburg. Delays in crossing the river set Federals at an ominous disadvantage against Lee’s hastily secured elevated position. Federals succeeded in crossing the river and wreaking havoc in Fredericksburg but mismanaged assaults against Lee’s army ended in defeat and the particularly ghastly slaughter of Federals at the base of Marye’s Heights. Burnside withdrew his army on December 15.

First came the anxious waiting. After learning that a beloved son or brother or husband was among the wounded, some northerners, like Walt Whitman, rushed frantically to search hospitals near the field of battle. Soon after came a fuller realization of the scale of the carnage. The initial casualty toll, a sanitized list of names in black and white on a newspaper page, eventually gave way to harrowing descriptions of mangled corpses piled in front of the stone wall at the bottom of Marye’s Heights and strewn across Fredericksburg’s streets. Then, for

¹⁵ Armitage, *The Past, Present, and Future of the United States*, 15; Shedd, *The Union and the War*, 39; Thompson, *The Psalter and the Sword*, 21.

¹⁶ Campbell, *The Light in the Clouds*, 14.

many, the initial numbness of disbelief faded into white-hot frustration and fury toward the Union high command. “The Nation will stand aghast at the terrible price which has been paid,” the *New York Times* predicted. *Harper’s Weekly* agreed that the northern home front would not tolerate another “massacre” like Fredericksburg, for it had lost all patience with “imbecility, treachery, failure, privation,” and was left only with “sickness, disgust, and despair.” No one felt the sorrowed pangs of despair and helplessness as acutely as President Lincoln. “If there is a worse place than Hell,” he confessed, “I am in it.”¹⁷

Throughout the Christmas season and into the New Year a gloom hung over Lincoln and the Union he sought to save. Federal failures at Fredericksburg brought to a close the tumultuous wartime context in which Lieber set out to draft his code. Earlier that spring, the loyal citizenry hoped soon to celebrate Richmond’s capture and the collapse of the Confederacy. Instead, they now marched toward another year of war – battered, demoralized, and fearful of the uncertain horrors that might lie ahead. “Times are sad—too sad,” Lieber wrote his wife after Fredericksburg while at work on the code in Washington. “I am one of the very few among those I see who say: Do not give up.”¹⁸ With the future of the Union military effort uncertain, a hopeful Lieber endeavored to reconcile the hard hand of war with humane restraint – to set forth in clear and compelling detail rules to guide a vigorously waged war against the Confederacy.

“I Am No Villifier of War”: The Life of Francis Lieber from Childhood to Civil War

War captivated young Francis Lieber. It shaped the formative experiences of his early childhood and in due time it engrossed his intellectual interests as an ambitious scholar. For a young boy born in Berlin who came of age during Napoleon’s great conquests, he could easily

¹⁷ *New York Times*, December 17, 1862; *Harper’s Weekly*, December 27, 1862; Rable, *Fredericksburg! Fredericksburg!*, 325.

¹⁸ Francis Lieber to Matilda Lieber, December 17, 1862, The Paper of Francis Lieber, HL.

have grown to feel utter revulsion toward war; after all, he tasted firsthand its disappointment and devastation. He wept in bitter dismay as Napoleon's armies marched through Berlin after Prussian defeats at Jena and Auerstad. He wept so loudly, in fact, that his father dragged him away to avoid drawing the attention of enemy soldiers.

The dismay of defeat did not disillusion Lieber. Nor did it stamp out his fascination with the art and grandeur of war. Instead, his dismay morphed into a spark of nationalist zeal that erupted in deep-seething hatred of the French. At age fifteen he pledged to assassinate Napoleon. Nothing came of this grandiose plan, but then one day in March 1815 Lieber learned of Napoleon's return from exile. "My heart beat high," he later remembered, "it was glorious news for a boy of sixteen." The chance finally came to avenge the embarrassment of that October day in Berlin nearly nine years prior. Lieber and his brothers yearned for the front lines, so they enlisted in the acclaimed Colberg regiment. Three months later their hopes came true. In mid-June 1815, they fought in the Prussian defeat at Ligny, in present-day Belgium. On the following day, the Colberg regiment remained in reserve at Ligny as the combined Prussian and British forces conquered Napoleon's army at nearby Waterloo.¹⁹

Days later, as his regiment pursued the retreating Napoleon outside the village Namur, Lieber "suddenly experienced a sensation as if my whole body were compressed in my head, and this, like a ball, were quivering in the air." He was shot through the neck. As he lay helpless on the battlefield, he was shot again in the chest. He begged a fellow soldier to end his life as an act of mercy but the soldier refused. It seemed that Lieber's final moments would end like countless other soldiers, in unimaginable pain and powerless to prevent local peasants from plundering the few possessions he carried. Death loomed but relented before it took Lieber. He survived to tell

¹⁹ Francis Lieber, "A Reminiscence," *Southern Literary Messenger* vol. 2 issue 10 (August 1836): 553-558; Lieber, *The Miscellaneous Writings of Francis Lieber* (Philadelphia: J.B. Lippincott, 1880), 1:151.

of the exhilarating horrors of the field of battle. If the horrors were immense – which Lieber never denied – so too were their terrible glory, he believed. Lieber had experienced it for himself, and he sought it again five years later when he fought on behalf of the Greeks for their independence from the Ottoman Empire.²⁰

Lieber hoped to witness in Greece the heroics of a modern-day Menelaus or Paris or Achilles, but he was sorely disappointed. Soon after, Lieber traded the life of a soldier for that of a scholar. Though his political opinions left him distrusted by reactionary Prussian officials, temporarily imprisoned, and prevented from pursuing an advanced degree in his native land. Lieber instead went to the university in Jena to receive a doctorate in mathematics. England seemed a more promising home for the budding scholar, so he relocated to London in 1826. As he did throughout his adult life, Lieber managed to acquaint himself with some of his adopted country's most prominent men of letters, including John Stuart Mill and Jeremy Bentham. Though he met his future wife in England, Lieber never secured the teaching post he coveted. Within a year, he made plans to uproot again to Boston and hopefully find success in the bustling promise of the young American republic.

Lieber travelled to Boston not to teach mathematics but to run a gymnasium funded by a group of well-to-do residents. In his early adult life, Lieber briefly observed Friedrich Ludwig Jahn's pioneering gymnasium efforts, and Lieber was chosen to replicate Jahn's model in Boston. The goal was to revivify mind and soul through vigorous exercise of the body. The gymnasium venture failed, but the personal connections Lieber made in Boston helped start his professional intellectual career. Joseph Story, jurist and later Supreme Court justice, once said of Lieber he would likely die "for want of a rapid, voluminous, and never-ending correspondence," and it was in this moment that Lieber cultivated acquaintances and friendships with many of

²⁰ Lieber, *Miscellaneous Writings of Francis Lieber*, 1:149-71.

New England's leading men, from Story to John Quincy Adams to Henry Wadsworth Longfellow to Charles Sumner.²¹

Lieber soon joined with the publisher Mathew Carey to produce the multi-volume, eight-thousand-page *Encyclopaedia Americana*, a runaway publishing success. The *Encyclopaedia* was modestly priced, and it appeared in the early 1830s as enterprising Americans of all sorts sought self-improvement. Copies made it all the way from Andrew Jackson's White House to the law office of the enterprising Illinois lawyer named Abraham Lincoln, a man as keen on self-education as any American of his day.²²

Though the *Encyclopaedia* was an impressive accomplishment, it did not win Lieber his desired appointment teaching history at Harvard. With no promising opportunities for secure employment, the responsibility to provide for a wife and two sons weighed heavy on Lieber. It led him to an unlikely place – the Midlands of South Carolina, as near-pristine an antithesis of Boston as Lieber could likely find. In the long wake of the nullification crisis, the anti-slavery-inclined Lieber arrived at South Carolina College in Columbia to teach history and political economy. Lieber hoped he would eventually assume the presidency of the college, a long-shot goal and one he never achieved. Lieber expressed some slight misgivings on the eve of his move, yet he remained in Columbia for the next twenty years. His chief accomplishment as a scholar while in South Carolina was the publication in 1838 and 1839 of his two-volume *Manual of Political Ethics*, a work Lieber grandly hoped might resuscitate the serious study of political philosophy.²³

²¹ Quoted in Friedel, *Francis Lieber*, 141.

²² Freidel, *Francis Lieber*, 80-1; Witt, *Lincoln's Code*, 176.

²³ Michael O'Brien has offered this insightful reflection on the effects of Lieber's time in South Carolina on his intellectual outlook: "On the whole, experiencing slavery seems to have strengthened the streak of antimillennial, empirical skepticism in Lieber—the same effect slavery had on many southerners. Lieber departed his life as a southern slaveholder in 1857 with a somewhat darker view of humanity, perhaps even of himself, than when he arrived in Columbia in 1835." Michael O'Brien, "The Stranger in the

Although Lieber's intellectual interests ranged widely he loved nothing more than devoting his mind to untangling the moral implications and significance of war. He remained forever enamored by how from this grim reality of human existence came both moral vigor and amoral desolation. War revived noble and virtuous characteristics in soldiers just as easily as it unleashed the baser passions of their nature. To say peace was always moral and war always immoral was to Lieber an evasion of the real issues. As he put it, though war was "not of an ethical nature, so far as the physical force goes, it is not immoral on that account." From these convictions Lieber drew inspiration for much of his life's work: to instruct humanity in how it might master morality in warfare and thereby channel war's power toward true and upright moral ends – the promotion of virtue, the protection of civilization, the pursuit of justice. It was in this sense, Lieber believed, that war contained "the spark of moral electricity." Against those "who have an inadequate idea of what war actually is," Lieber sought to set forth the reasons why a people might justly enter a state of war, and, having entered it, how they might justly prosecute the war to victory.²⁴

Though a devoted student of war, Lieber was no warmonger. He opposed the Mexican-American War as "bad, thoroughly so ... an unrighteous war." Yet, on the eve of that conflict, he scorned the strident pacifism of men like future Massachusetts Senator Charles Sumner. It was their fundamental disagreement on war that temporarily ended their two-decades-long friendship and correspondence. In a July 4, 1845 speech in Boston, Sumner, anticipating the Mexican-American War, proclaimed: "IN OUR AGE THERE CAN BE NO PEACE THAT IS NOT

South," in *Francis Lieber and the Culture of the Mind*, ed. Charles R. Mack and Henry H. Lesesne (Columbia: University of South Carolina, 2005), 34.

²⁴ Francis Lieber, "Law and Usages of War," October 29, 1861, The Papers of Francis Lieber, Box 2, Folder 16, JHU; Francis Lieber, *Manual of Political Ethics* (Boston: Charles Little and James Brown, 1839), 2: 632-633. Frank Freidel's offers a still insightful analysis of Lieber's *Manual of Political Ethics* in Freidel, *Francis Lieber*, chapter eight.

HONORABLE; THERE CAN BE NO WAR THAT IS NOT DISHONORABLE.” War was in its essence an immoral and un-Christian act, Sumner said. Anyone whose “life is passed in acts of force ... renounces the great law of Christian brotherhood.” Lieber happened to hear Sumner’s harangue in person, which he later dismissed as “one of the worst reasoned speeches I have ever heard.” He did not hide his true feelings from Sumner, and after a period of deteriorating friendship they ended altogether their longstanding correspondence.²⁵

Lieber vehemently criticized Sumner’s pacifism because he thought it rested on a wrong-headed assumption that war was always pure and unadulterated amorality. As he explained at the time to Sumner’s law partner George Hillard, “though an economist, who knows that war can never increase wealth; though a publicist who knows that peace is the normal state of man; though a Christian that knows the message of the energizing love of the gospel, I am no vilifier of war under all circumstances.” A just war still possessed the spark of moral electricity. Lieber sought to harness that spark, for he thought a great war, when set ablaze, could preserve and perfect true civilization. Marathon, Tours, Lepzig – each battle, Lieber believed, testified to a central truth about warfare: “Blood is occasionally the rich dew of history.”²⁶

In the aftermath of the Mexican-American War, as the sectional crisis intensified throughout the 1850s, Lieber’s position in South Carolina proved increasingly tenuous. It looked for a brief moment as if Lieber might assume the presidency of South Carolina College in 1855. But, by then, Lieber had courted too much suspicion as a man not in lockstep with state rights and slavery orthodoxy. A faction of well-connected and well-respected South Carolinians, led in

²⁵ Francis Lieber to Samuel B. Ruggles, April 23, 1847, The Papers of Francis Lieber, Box 39, HL; Charles Sumner, *The True Grandeur of Nations: An Oration Delivered before the Authorities of the City of Boston* (Boston: William D. Ticknor, 1845), 4-5; Thomas Sergeant Perry, ed., *The Life and Letters of Francis Lieber* (Boston: James R. Osgood, 1882), 198.

²⁶ Francis Lieber to George Hillard, April 18, 1854, The Papers of Francis Lieber, Box 31, HL; Francis Lieber to Charles Sumner and George Hillard, March 16, 1844, The Papers of Francis Lieber, Box 41, HL.

part by prominent proslavery Presbyterian clergyman James Henley Thornwell, thwarted Lieber's candidacy. Wounded beyond healing, the Liebers moved to New York City in January 1857. For a time, Francis was again without a job, but by late spring, the expanding Columbia College offered him a position as professor of history and political economy.

At the same moment Lieber achieved security again in his professional life, the chaotic threat of secession and war unsettled his adopted country. Abraham Lincoln had warned of the impermanence of a house divided, and, after his election as president, southerners frantically feared that the newly empowered Republicans would seek the swift abolition of slavery. South Carolina led the way in leaving the Union to preserve slavery. By April 1861, ten more southern states did the same.

A fierce nationalist ardor for the Union swelled in Lieber as war came, the same sort of ardor he felt as a young Prussian soldier helping to defeat Napoleon's armies. Lieber voted for Lincoln in 1860. Throughout the secession winter he marshaled all his legal acumen to discredit the right of secession. He held out little hope for a peaceful resolution to the irrepressible conflict and turned quickly to the task of stirring the loyal citizenry to embrace their duty to defend the Union. "God has given us this great country for great purposes," Lieber wrote to Edward Bates, and it therefore "must be maintained at any price under any circumstances." Love of country was an intoxicating muse for Lieber. He took up patriotic poetry as war loomed: "Our Flag! The Red shall mean the blood / We gladly pledge; and let the White / Mean purity and solemn truth, / Unsullied justice, sacred right." Lieber sought to rouse the young men of Columbia College to take up arms against the Confederacy. For those who did so, he offered this reminder: "We do

not hate our enemy— / May God deal gently with us all. / We love our Land; we fight her foe; / We hate his cause, and that must fall.”²⁷

As war erupted, Lieber contemplated how he might best contribute to the Union cause and win for himself honored immortality. He began by doing what he often did best – instigating substantive correspondences with key political and military figures. Winfield Scott, Benjamin Butler, Nathaniel P. Banks, and John C. Frémont all soon heard from Lieber; so too did Attorney General Edward Bates, William Seward, and Edwin Stanton. Lieber even repaired his relationship with Charles Sumner, who had turned away from his pacifism after Fort Sumter. Lieber’s most consequential wartime correspondence, though, was with Henry Halleck, which began in early 1862.²⁸

Lieber argued repeatedly early in the conflict that the Union ought to prosecute the war with uncompromising vigor and strike “Blow upon Blow” against Confederate forces. Having once secured an audience with Lincoln, Lieber sardonically asked: “Mr. President wont you give us at least a little fight?”²⁹ The spirit of moderation and conciliation that marked much of the early Union war effort always struck Lieber as woefully misguided.

Lieber’s calls for a vigorously prosecuted war came tinged with personal turmoil. As America plunged headlong into war, Lieber’s own family stood at the precipice of irreparable division, torn apart by the same maelstrom that consumed the entire country. “Behold in me the

²⁷ Francis Lieber to Edward Bates, July 23, 1861, The Papers of Francis Lieber, Box 23, HL; Francis Lieber, “A Song on Our Country and Her Flag,” Francis Lieber Papers, Container 1, LC; Freidel, *Francis Lieber*, 299-319.

²⁸ The two early on expressed deep admiration for the other’s scholarship on the laws of war. In an early letter, Halleck closed with these words: “With the highest admiration for your writings, which have read with great pleasure and profit, I am...” See in particular Francis Lieber to Henry Halleck, January 30, The Papers of Francis Lieber, Box 27, HL and Lieber to Halleck February 3, 1862, The Papers of Francis Lieber, Box 27 and 9, HL.

²⁹ Francis Lieber to Alexander Dallas Bache, May 6, 1862, The Papers of Francis Lieber, Box 2, HL; Francis Lieber to Matilta Lieber, July 5, 1861, The Papers of Francis Lieber, Box 36, HL.

symbol of civil war,” Lieber wrote as the conflict raged. He did so for good reason. Francis’ oldest son, Oscar, had spent nearly his entire life in South Carolina and remained there when the Liebers moved to New York. Tensions between father and son mounted alongside those between North and South. Francis’ decision to vote for Lincoln in 1860 effectively ended what was left of their relationship. “I feel your grief most bitterly,” Francis wrote while explaining his vote to Oscar; he compared their alienation to the “heart-burning there must have been in many a family in the time of the Reformation.”³⁰ Caught up in the secession fever sweeping South Carolina, Oscar joined Hampton’s Legion, led by Wade Hampton, and chose country over family.

Hamilton Lieber, the middle son, enlisted instead with an Illinois regiment. The fighting at Fort Donelson left him without a left arm; doctors amputated it three inches below the shoulder days after the battle. Less than a month after his maiming, Hamilton made it known to his father that he hoped to return to his regiment. The prospect distressed an already anxious Francis. “This is a grave and grievous period in our lives,” he wrote to Norman Lieber, his youngest son, after letting him know of Hamilton’s desires. Norman had also joined the Union army. Soon after Hamilton’s injury Norman took part in McClellan’s Peninsula Campaign. “Everyone here feels very anxious about you there on the Peninsula,” Francis wrote Norman in mid April. But death had its eye instead on another Lieber boy on the Virginian peninsula. Oscar died from particularly grisly wounds suffered at the Battle of Williamsburg in May 1862. Oscar’s death left Francis anguished but no less devoted to the Union cause. Reflecting to

³⁰ Francis Lieber to George Hillard, May 11, 1861, The Papers of Francis Lieber, Box 31, HL; Francis Lieber to Oscar Lieber, November 2, 1860, The Papers of Francis Lieber, Box 37, HL.

Halleck on the loss endured by his family in the opening months of 1862, he could only conclude: “Civil War has thus knocked very loudly at our door.”³¹

Lieber’s three sons marched off to war. One returned maimed, another never returned. If nothing else, Lieber’s connection to the conflict as a father made his effort to constrain the death and destruction of the war much more than a stimulating intellectual exercise. As Lieber’s finest biographer put it, “The stress and strain of following his three sons in battle endowed Lieber with a realistic approach to the international law of war; even more, it developed in him a strongly humanitarian feeling.”³² Lieber had many reasons for translating the laws of war into a useable code to govern the conduct of Civil War armies. But the dull grief and anxiety of one reason burned deep and steady unlike any other: the war had come to Lieber’s doorstep and taken from him his three sons.

“The Genesis of this Little Tablet with My Name”: The Wartime Inspiration of Lieber’s Code

A lifetime of study prepared Lieber to draft his code, but the immediate inspiration came from problems arising from the battlefield in the opening eighteen months of the war. Lieber conceived and drafted the code amid war. The military situation early in the conflict raised particular laws of war problems that stirred Lieber to action and shaped the spirit and letter of his subsequent code. Lieber feared these problems revealed the Union’s dire need of a guide to waging just war, which his code sought to provide in reconciling hard yet humane warfare and defending the morality of vigorous wars.

³¹ Francis Lieber to S. Austin Allibone, March 17, 1862, The Papers of Francis Lieber, Box 22, HL; Francis Lieber to Guido Norman Lieber, March 4, 1862, The Papers of Francis Lieber, Box 32, HL; Francis Lieber to Henry Halleck, August 9, 1862, The Papers of Francis Lieber, Box 27, HL.

³² Freidel, *Francis Lieber*, 325.

What exactly motivated Lieber to take up his pen and draft the *Instructions for the Government of Armies of the United States in the Field*? What in the unfolding military events convinced Lieber Union forces needed a useable guide to the laws of war? Lieber answered these questions soon after Lincoln issued General Orders No. 100. In a letter to Charles Sumner in late May 1863, Lieber sketched the “genesis” of the code:

The genesis of this little tablet with my name is this: When the war broke out, our government hesitated to exchange prisoners of war fearing that it would amount to an acknowledgement of the rebels. I wrote an article in the Times, to show that this was not the case. At the same time I concluded the lecture on the law of war in the law school. Then came the abuse of flags of truce, the arrogant pretensions of the enemy to lay down absurd rules of the law of war, and then the ‘guerrilla’ business and confusion of ideas. Gen Halleck called upon me, after my correspondence with him, to write a pamphlet on guerrillas, which I did. The fearful abuse of paroling, becoming a premium on cowardice, went on. The Harpers Ferry affair happened. At last I wrote to Halleck that he ought to issue a Code on the Law of Nations so far as it relates to the armies in the field. I was approached, and here is the thing.³³

In this brief paragraph, Lieber candidly explained what compelled him to produce something like the code for Union armies.³⁴ Lieber’s writings and correspondence from April

³³ Francis Lieber to Charles Sumner, May 19, 1863, The Papers of Francis Lieber, Box 43, HL.

³⁴ Matthew Mancini has drawn attention to a once-forgotten letter by Lieber to Benjamin Lossing dated January 1866. In this letter, solicited by Lossing, who was then at work on his massive *Pictorial History of the Civil War in the United States of America*, Lieber offers a starkly different account of the genesis of the code. In this letter Lieber does not mention the issues he raised in 1863 with Charles Sumner, but instead credits the Union’s contentious, halting march toward emancipation as war policy in the first eighteen months of the war as the chief inspiration for the code. The letter leads Mancini to conclude, “Certainly other military and humanitarian considerations went into the drafting of the code, but slavery was, I argue, the principal, yet unacknowledged one.” Mancini, though, offers an unconvincing argument for why the postwar letter ought to be trusted as more accurate than the wartime one written weeks after the code’s issuance. Lieber played down slavery in his letter to Sumner, Mancini suggests, because he feared raising a volatile issue with Sumner and thereby ruining again their just recently restored relationship. The flaw in this argument, though, is that nothing Lieber might have said in May 1863 concerning slavery or the laws of war would have differed drastically from Sumner’s own opinions; Lieber believed the laws of war did not protect slavery, and wrote as much into his code, which only put him in agreement with Sumner. Surely if emancipation was the inspiring cause of the code, Lieber would have confessed as much to Boston’s staunch abolitionist Senator. It seems more likely that Lieber emphasized slavery retrospectively as a “genesis” of the code because, by 1866, it would have been well apparent that the momentous and internationally lauded consequence of the American Civil War was the abolition of slavery. The always-ambitious Lieber naturally would have sought to secure for his signal work a central place in the historic story of American emancipation. Lieber had no reason not to recount

1861 through the winter of 1862-3 confirm that three major concerns mentioned in his letter to Sumner primarily prompted him to lobby for the creation of a useable guide to the laws of war: prisoner exchanges, guerrilla warfare, and paroling.

Lieber also mentioned another issue that drew his attention at this time: a series of lectures he delivered at the Columbia law school. As the war began Lieber organized and refined his thinking about the laws of war by preparing a series of public lectures at Columbia on the “Laws and Usages of War.” Lieber delivered these lectures from late October 1861 to early February 1862. He estimated around one hundred people attended the lectures, which the *New York Times* and other newspapers partially reprinted. Lieber drew upon these lectures several months later when he began to draft the code. They provide insight into Lieber’s general thinking about the laws of war and morality in warfare as he confronted the three particular problems that inspired the code.³⁵

Lieber covered a wide range of topics – practical and theoretical – concerning the laws and usages of war. As usual, he peppered his arguments with extensive historical allusions. Taken as a whole, the lectures affirmed two ideas central to Lieber’s understanding of war and how armies ought to wage it. First, war was not exactly utter amorality. Lieber put the matter plainly: “although war is not of an ethical nature, so far as the physical force goes, it is not immoral on that account.” Lieber did not deny that the brute force and violence inherent in war

in honest detail the true genesis of the code to Sumner; there are plausible reasons why he would not have been equally honest to Lossing, and misleadingly emphasized slavery instead. See Mancini, “Francis Lieber, Slavery, and the ‘Genesis’ of the Laws of War.” Although John Fabian Witt emphasizes the centrality of slavery and emancipation to the code’s history, even he casts a somewhat skeptical eye toward Mancini’s argument, concluding, after addressing the Lossing Letter, “there was no shortage of questions that needed addressing,” not just those arising from slavery and emancipation alone. Witt, *Lincoln’s Code*, 229-31.

³⁵ Richard Shelly Hartigan, *Lieber’s Code and the Law of War* (Chicago: Precedent, 1983), 13; Witt, *Lincoln’s Code*, 181; For an introduction to Lieber’s Columbia lectures, see Baxter, “The First Modern Codification of the Law of War, 178-80; Witt, *Lincoln’s Code*, 181-84; Freidel, *Francis Lieber*, 324.

was often immoral and illegitimate. But when he reflected on the *outcomes* of war, he rejected the idea that war was sheer immorality. Here Lieber turned to history. Meditating on battles like Marathon and Tours, he concluded that from them “essential benefits have flowed.” A war waged for righteous reasons by just means possessed “a moral character – I mean in its effects,” Lieber argued. These effects included the “tendency to invigorate public spirit and to unite selfish individuals.”³⁶ If warfare remained always utter amorality, Lieber asked, why did wars sometimes produce morally beneficial outcomes?

Second, and more important, Lieber argued that vigorously prosecuted wars were typically the most humane, an argument at the core of his moral vision of warfare. “War being an exceptional state of things,” Lieber reasoned, “the shorter it is the better; and the intenser it is carried on, the shorter it will be.” Vigorous wars usually ended quickly and therefore reduced the total suffering and destruction occasioned by war. Lieber again thought the history of warfare supported his moral argument: “The gigantic wars of modern times are less destructive than were the protracted former ones, or the unceasing feudal turbulence,” he insisted, precisely because the violence of the distant past was *protracted* and *unceasing*. If an army wanted to wage war humanely it ought to wage war vigorously. Lieber rooted this vigorous war argument in a fundamental assumption about human nature: “Peace is the normal state of civilized society. War is the exception.” An army at war ought to do what it can, within certain restraints, to end war as quickly as possible and return to peace, civilized society’s “normal state.”³⁷

Lieber devoted large portions of the later lectures to particular issues addressed by the laws of war – from retaliation, to flags of truce, to spies, to the use of poisons, to prisoners of

³⁶ Francis Lieber, “Law and Usages of War,” October 29, 1861, The Papers of Francis Lieber, Box 2, Folder 16, JHU.

³⁷ Francis Lieber, “Twenty-Seven Definitions and Elementary Positions Concerning the Law and Usages of War,” The Papers of Francis Lieber, Box 2, Folder 15, JHU.

war, and so forth. Throughout, Lieber typically judged the permissibility of a particular action by whether the destruction or punishment it inflicted was “greater than necessary,” whether the action ultimately impeded a lasting restoration of peace. As he would at greater length in the code itself, Lieber at times sounded reminiscent of Carl von Clausewitz. “The object of all war,” Lieber argued, “and of each battle, must lie beyond the war and beyond the battle.”

For some, this conviction meant that one must judge a belligerent’s means only in light of its ends. Lieber at times seemed to accept this reasoning but he usually tempered it by insisting on certain inviolable constraints imposed by the laws of war. Not only should “peace of some sort ... be the end of all war,” Lieber argued, but armies must also remember that even in war “man can never divest himself of his ethical character.” Certain actions remained unjustified according to the laws of war, whatever their intended ends. Lieber sometimes set forth principles that potentially justified unrestrained warfare: “All means to injure the enemy so far as to deprive him of power to injure us or to force him to submit to the conditions desired by us are allowed.” Yet he also affirmed “religion and civilization” ought to limit what armies could do in war. “All means” did not exactly mean *all*.³⁸

Lieber’s Columbia lectures revealed his core convictions about the nature of warfare: wars can have positive moral effects, vigorously waged wars are usually the most humane wars, soldiers should not abandon their moral obligations when taking up arms, peace is humanity’s natural state and its restoration ought to be the goal of any war. These convictions guided not

³⁸ Francis Lieber, “Law and Usages of War,” December 17, 1861, The Papers of Francis Lieber, Box 2, Folder 16, JHU. Francis Lieber, “Twenty-Seven Definitions and Elementary Positions Concerning the Law and Usages of War,” The Papers of Francis Lieber, Box 2, Folder 15, JHU. For more on Lieber’s thoughts on retaliation and poisoning, flags of truce and spies, and prisoners of war, see Lieber, “Law and Usages of War,” December 17, 1861, Box 2, Folder 16, January 14 and February 3, 1862, Box 2, Folder 17, The Papers of Francis Lieber, JHU.

only his thinking on the particular issues that inspired his code but also, ultimately, shaped the content of the code itself

Leading off Lieber's explanation of the "genesis" of his code was an issue that appeared as soon as the war commenced and became an urgent problem after the First Battle of Bull Run: what should Federals do with captured Confederate soldiers? Should the Union exchange prisoners with the Confederacy? The questions raised fundamental concerns about the legal status of the Confederacy and the relevancy of the laws of war to the Union's struggle against the seceding states.³⁹

Were Confederates engaged in a *criminal* act of rebellion or a legitimate act of *war*? Were they criminals or enemies? Lincoln insisted secession was unconstitutional; therefore, the so-called Confederacy was not a legitimate nation. He hoped this argument might in part dissuade foreign powers from intervention on behalf of the Confederacy. However, this seemingly arcane debate about the legal status of the Confederacy affected far more than wartime diplomacy. It also impinged on how the Union would conduct its war against the Confederacy.

If the Confederacy was not a legitimate belligerent, then perhaps Federals did not need to abide by the laws of war in resolving the conflict. Existing criminal law would suffice to subdue the lawbreakers, not the laws of war, which only governed conflict between equally legitimate belligerents. But would Federals really attempt a person-by-person trial, conviction, and punishment of all the law-breakers in seceding states who had engaged in the illegal act? Surely prudence required Federals to subdue the rebellion in the same way it would deal with any other war, by abiding by the laws of war as it conquered enemy armies and territories.

³⁹ The paragraphs that follow rely heavily upon Stephen C. Neff's discussion of this issue in Neff, *Justice in Blue and Gray*, 15-29.

But if the United States adhered to the laws of war might that amount to tacit recognition of the Confederacy, something the Lincoln administration sought to avoid? The choice before Federals seemed undesirable either way: insist on the illegitimacy of the Confederacy and thereby raise the specter of a conflict waged in disregard of the laws of war, or abide by the restraints imposed by the laws of war and thereby implicitly acknowledge the Confederacy as a legitimate belligerent.⁴⁰

This legal dilemma moved quickly from the abstract to the concrete soon after the shooting began when the Union captured Confederate soldiers. If it extended to them any rights and protections normally afforded prisoners of war, or even exchanged them, did that mean the Union had recognized the Confederacy as a legitimate belligerent?

Lieber tackled these questions in a public editorial published in New York newspapers in August 1861. He sought to reassure Union leaders they could have it both ways. They could abide by the humanitarian restraints of the laws of war without extending *de facto* recognition to the Confederacy as a legitimate nation. “The exchange of prisoners involves no question of acknowledgement of right, but is a simply recognition of fact and reality,” Lieber argued. Historical precedent and humanitarian obligations confirmed that when an illegitimate belligerent raises an army, the enlisted soldiers, though not in service of a legitimate belligerent, ought to receive the basic rights normally extended to enemy soldiers. A simple recognition of the “fact and reality” that these men acted like legitimate soldiers had no bearing on the legal

⁴⁰ The blockade of Confederate ports raised the same sorts of legal and diplomatic concerns in opening months of the war. As the Union attempted to enforce its blockade of Confederate ports, an act typically associate as one between two legitimate belligerents during war, it continued to insist on the illegitimacy of the Confederate nation. Lieber’s solution to this seeming contradiction mirrored closely his solution to the prisoners of war variation on the same questions. As he put it to Edward Bates, “We do not acknowledge the Carolinians as an independent nation, by blockading Charleston any more than we declare the ‘Confederacy’ a sovereign government by treating their captured soldier as prisoners of war.” Francis Lieber to Edward Bates, November 9, 1862, The Papers of Francis Lieber, Box 23, HL.

status of the Confederacy.⁴¹ Important reasons might exist for not exchanging prisoners but Union leaders need not worry that exchanges amounted to recognition of the legitimacy of the Confederacy.

Writing this editorial on prisoner exchanges whetted Lieber's interest in a larger, more comprehensive work on the laws of war. When he passed along to Charles Sumner a copy of his public letter, he confessed his "desire to write a little book on the Law and Usages of War, affecting the combatants," a task, Lieber expected, that would require great effort because "nothing of the sort [had] ever been written, so far as I know."⁴²

When the "guerrilla business" confronted Federals early in the war, so too did a "confusion of ideas." Lieber sought in the summer of 1862 to bring clarity of thought out of this confusion. Everywhere Federals confronted guerrillas the underlying question remained the same: what exactly distinguished the regular soldier from the unlawful guerrilla? Irregular warfare appeared in many states throughout the war, blurring the line between lawful and unlawful combatants. As George Hillard said to Lieber: "It is difficult to say where the regular army ends and the guerrilla band begins."⁴³

Amid this confusion, Lieber sought to explain why exactly a combatant qualified as a regular soldier and what distinguished an unlawful guerrilla deserving swift punishment as a marauder and murder. Conventional wisdom held that a commission or enlistment from a legitimate belligerent distinguished the two groups. But during the Civil War, especially

⁴¹ Freidel, *Francis Lieber*, 320; Hartigan, *Lieber's Code and the Law of War*, 9; "The Disposal of Prisoners: Would the Exchange of Prisoners Amount to a Partial Acknowledgement of the Insurgents as Belligerents, According to International Law?" *New York Times*, August 19, 1861.

⁴² Francis Lieber to Charles Sumner, August 19, 1861, The Papers of Francis Lieber, Box 42, HL. For an older yet still useful brief introduction to Lieber and his Code that emphasizes the novelty of General Orders No. 100 in the existing laws of war tradition, see R.R. Baxter, "The First Modern Codification of the Law of War: Francis Lieber and General Order No. 100," *International Review of the Red Cross* 25 (April 1963): 171-189.

⁴³ George Hillard to Francis Lieber, September 15, 1862, The Papers of Francis Lieber, Box 14, HL

following the Confederate Partisan Ranger Act of April 1862, preexisting guerrilla bands newly commissioned by the Confederacy seemed to continue to act as they always had. Their commissions did not change their behavior, so should Federals still treat these enemy bands as unlawful guerrillas?⁴⁴

In late July 1862, several months after their re-acquaintance following Hamilton's injury, Lieber let Henry Halleck know that he had begun to study "the very important question" of guerrillas and the laws of war. The news pleased Halleck. He agreed it had "now become a very important question in this country," and insisted no one could answer it as well as Lieber. Eager as always to achieve maximum public influence through his works, Lieber detected an opportunity. "My notes concerning guerrilleros are nearly complete, and my thoughts on the topic are pretty clear and defined. It is now the question how to shape them, in what form to give them to the public," Lieber wrote to Halleck. He did not want to repeat the public letter format he had used to clarify the prison exchange issue. So, Lieber gently suggested an alternative: "Can there be such a thing as being called upon by high authority, by you for instance, or Secretary Stanton, to give my views?"⁴⁵

Halleck liked Lieber's suggestion and within two weeks Lieber finished *Guerrilla Parties Considered with References to the Laws and Usages of War*. "I highly approve it," Halleck wrote to Lieber after reviewing the 6,000-plus-word essay. He distributed 5,000 copies to Union officers. Lieber soon received praise for his work. George Hillard complemented Lieber for dealing with the guerrilla problem "as well as it is possible to deal with a subject so essentially vague as that is." Another admirer thought Lieber did "a good work to unmuddle a difficult

⁴⁴ Witt, *Lincoln's Code*, 191-2.

⁴⁵ Francis Lieber to Henry Halleck, July 23, 1862, The Papers of Francis Lieber, Box 27, HL; Henry Halleck to Francis Lieber, July 30, 1862, The Papers of Francis Lieber, Box 9, HL; Francis Lieber to Henry Halleck, August 1, 1862, The Papers of Francis Lieber, Box 27, HL.

subject,” which meant Union officer “can now – after a perusal of your tract – talk intelligently on the matter.”⁴⁶

Lieber sought to instruct Union officers in a clear and direct manner. His essay explained what distinguished someone like John S. Mosby from William C. Quantrill, and how Federals ought to combat both categories of enemies. Mosby commanded a Confederate cavalry battalion infamous for its elusive and effective partisan guerrilla-like strikes on Union forces. Quantrill led a self-organized, loosely affiliated band of guerilla fighters separate from regular Confederate armies, most notoriously know for leading a raid of Lawrence, Kansas in August 1863. In Lieber’s parlance, Mosby was a *partisan*, the commander of a regularly constituted force that acted “separate from that of his own main army,” most often to attack in “rapid and varying movements and surprises” an enemy’s “lines of connection and communication.” Still, a partisan like Mosby remained “part and parcel of the army,” and deserved the privileges of the laws of war. Quantrill and his force were *guerrillas* proper, “self-constituted sets of armed men ... who form no integrant part of the organized army.” Lieber detailed their defining features: among other things, they were not on the army pay roll, they “take up arms and lay them down at intervals,” and generally give no quarter to prisoners. Lieber insisted self-constituted bands of guerrillas deserved none of the privileges afforded to soldiers by the laws of war. But he left officers considerable latitude to decide the proper and effective means for actually subduing guerrillas.⁴⁷

A less obvious inspiration for the code came from the “fearful abuse of paroling.” A parole occurred when an army released a captured enemy soldier after he swore never again to

⁴⁶ Henry Halleck to Francis Lieber, August 20, 1862, The Papers of Francis Lieber, Box 9, HL; George Hillard to Francis Lieber, September 15, 1862, The Papers of Francis Lieber, Box 14, HL; Evert Augustus Duyckinck to Francis Lieber, September 22, 1862, The Papers of Francis Lieber, Box 6, HL.

⁴⁷ *OR*, ser. 3, vol. 2, 304, 307-8. Hartigan, *Lieber’s Code and the Law of War*, 11.

take up arms in the present conflict. In the opening year and a half of the war, the Confederacy often paroled large numbers of Union soldiers in the aftermath of battle. Confederates hoped paroling might neutralize Federals' vast manpower advantage and relieve them of the responsibility to imprison and provide for an immense prisoner of war population.

Lieber feared paroling posed disastrous consequences for the Union. He advised Charles Sumner in late August 1861 that the government ought "to proclaim that no man, in arms for his country against rebellion, and having taken a solemn oath to that effect, has a right to invalidate that oath by his own parole." Paroled Union soldiers, Lieber said, abandoned their solemn oath to defend the Union, an oath they had no right to invalidate after their capture. Lieber did not object to the *exchange* of prisoners, but he vehemently opposed paroling.⁴⁸

Yet Confederates continued to parole captured Federals soldiers. A particularly prominent example occurred in September 1862. On the eve of the battle of Antietam, a Confederate force led by Thomas J. "Stonewall" Jackson captured the arsenal and garrison at Harpers Ferry. More Federal soldiers surrendered after the Union defeat than at any other time in the war, another chilling blow to northern morale following setbacks on the Virginia peninsula. After his victory, Jackson had far more important things to attend to in Lee's unfolding Maryland campaign, so he entrusted Major General A.P. Hill to finalize the terms of the surrender. Hill promptly paroled more than eleven thousand Federal soldiers.⁴⁹

The problem that irked Lieber in August 1861, then, still persisted by the following summer. As late as November 1862, Lieber complained to Halleck of the continued practice of paroling: "Never was a thing in a more deplorable confusion and that the same time in a more disastrous state of expansion." Lieber took a keen interest in ending paroling not simply to

⁴⁸ Francis Lieber to Charles Sumner, August 20, 1861, The Papers of Francis Lieber, Box 42, HL.

⁴⁹ McPherson, *Battle Cry of Freedom*, 536-8; Chester G. Hearn, *Six Years of Hell: Harpers Ferry During the Civil War* (Baton Rouge: LSU Press, 1996), 150-90.

forestall any advantage Confederates might gain from it but because he thought the act violated a soldier's solemn obligations. Lieber believed no soldier had a right to accept a parole and prematurely end his responsibilities to his nation. As he told Charles Sumner, paroling "put a fearful premium on cowardice." Lieber worried some soldiers, knowing the possibility of parole existed, might eagerly surrender, offer themselves up for capture, and soon return home paroled. Lieber suspected the practice continued because of a misunderstanding of the laws of war. All the more reason, he thought, to prepare his envisioned code.⁵⁰

Beyond the issues Lieber mentioned explicitly in his letter to Sumner, an even more fundamental reason for drafting the code existed: the nature of the Union army, commanded mostly by volunteer officers with no knowledge of the laws of war. Even most professional soldiers prior to the war acquired only limited knowledge of the topic. Officers needed a clear and practical summary of a complex body of laws. Without it, their war might spiral into a fierce struggle devoid of all restraint.⁵¹

"The More Vigorously Wars are Pursued, the Better it is For Humanity": Lieber's Moral Vision of War and General Orders No. 100

By late fall 1862, all these considerations convinced Lieber Union armies needed useable guide to the laws of war. Nearly as soon as the war began, Lieber had begun to envision crafting something like his future code. By mid August 1861, he confessed to a longtime correspondent,

⁵⁰ Francis Lieber to Henry Halleck, November 25, 1862, The Papers of Francis Lieber, Box 27, HL; Freidel, *Francis Lieber*, 321; Mancini, "Francis Lieber, Slavery, and the 'Genesis' of the Laws of War," 339-40.

⁵¹ Root, "Francis Lieber; Opening Address," 1-2. Burrus Carnahan, "Lincoln, Lieber and the Laws of War: The Origins and Limits of Military Necessity," *American Journal of International Law* 92 (1998): 213; Childress, "Francis Lieber's Interpretation of the Laws of War," 37. Nathaniel P. Banks thought something like the code was "greatly needed," because most officers were terribly ignorant of the laws of war: "Many points are greatly abused and in some respects our people entertain erroneous views." Nathaniel Banks to Francis Lieber, December 23, 1862, The Papers of Francis Lieber, Box 1, HL.

“I should much like to write a book of some 200 pages ... on the Laws and Usage of War affecting the combatants, and I think I could write an acceptable book for every intelligent soldier.”⁵² Lieber here had a much longer work in mind than the eventual General Orders No. 100 but he had decided upon its essential quality: capable soldiers, otherwise amateurs in the laws of war, must be able to understand and use it.

This plan simmered in Lieber’s mind throughout the opening months of the war as he directed his attention to a range of laws of war concerns. By November 1862 he refused to put off work on the code any longer. In a letter to Henry Halleck, Lieber proposed the idea for the first time to a prominent Union official. “Ever since the beginning of our present war,” Lieber wrote, “it has appeared clearer and clearer to me, that the President ought to issue a set of rules and definitions providing for the most urgent issues, occurring under the law and usages of war.” Lieber suggested Lincoln might form a three-person committee (ideally chaired, he said, by the more-than-qualified Halleck) to draw up these rules, “in which certain acts and offences (under the laws of war) ought to be defined and, where necessary, the punishment be stated.” Lieber alluded to the parole and prisoners of war as two issues that made this set of rules necessary. As he did for the rest of his life, Lieber insisted on the originality of a document of this kind: “I do not know that any such thing as I design exists in any other country, but in all other countries the Law of War is much more reduced to naked Force or Might, than we are willing to do it, especially now, perhaps, in this Civil War.”⁵³ Federals stood at a crossroads in their war: acquiesce in limitless violence or abide by the laws of war.

Halleck replied promptly: “I have no time at present to consider the subject.” Lieber would not let Halleck brush aside his suggestion that easily. In less than a week, Lieber again

⁵² Francis Lieber to S. Austin Allibone, August 19, 1861, The Papers of Francis Lieber, Box 22, HL.

⁵³ Francis Lieber to Henry Halleck, November 13, 1862, The Papers of Francis Lieber, Box 27, HL.

wrote to Halleck to reiterate how “the more I reflect on the matter, the more important it appears to me.” Halleck briefly rebuffed Lieber again – “every officer of rank,” Halleck said, was tied up with too important business – but, within a matter of days, Lieber’s pestering prevailed. By mid December, in the immediate wake of the Battle of Fredericksburg, the committee was officially formed, and Lieber was one of its members.⁵⁴

Lieber assumed responsibility for preparing a first draft of the proposed rules, yet his four fellow committee members made for competent company. Major General Ethan Allen Hitchcock served as Commissioner of Prisoner of War Exchange, where he recently drew up new rules to govern the treatment of captured Confederate soldiers. Months earlier, in the brief interlude when Federals went without a general-in-chief between McClellan’s and Halleck’s tenures, Hitchcock chaired the committee that directed the Union war effort. He also was the grandson of Ethan Allen. William Greenleaf Eliot, St. Louis minister, pleaded with Hitchcock in February 1862 to take a more active role in the Union war effort. “What is chiefly wanted now in our armies, is not youthful enterprise and 'dash' – but wisdom, sober thought, and sound judgment,” Eliot wrote with Hitchcock in mind. “Not men who are mere soldiers, but well-read and well-informed men, who can look at all the bearings of this war, social, political and national.”⁵⁵

George L. Hartsuff, also a major general, had suffered a recent hip wound at Antietam and during his recuperation served on the code’s committee. Major General George Cadwalader fought under Winfield Scott in Mexico. More recently, while serving as military commander in Maryland, Cadwalader ordered the arrest of John Merryman and ignored Chief Justice Roger Taney’s writ of habeas corpus for Merryman. Brigadier General John H. Martindale, a veteran of

⁵⁴ Henry Halleck to Francis Lieber, November 15, 1862; Lieber to Halleck, November 20, 1862; Halleck to Lieber, November 23, 1862, The Papers of Francis Lieber, Box 9 and 27, HL.

⁵⁵ William Greenleaf Eliot to Ethan Allen Hitchcock, February 1862, Ethan Allen Hitchcock Papers, Box 2, LC.

the Peninsula Campaign, presently served as military governor of Washington, D.C. Hitchcock, Hartsuff, Cadwalader, Martindale were all accomplished soldiers dedicated to the Union. Lieber was the only civilian on the committee but his knowledge of the laws of war exceeded his fellow committee members.⁵⁶

By early December, Lieber traveled to Washington to begin work on the first draft of the code. He completed the work in Washington and New York with intense urgency. A gloomy chill lingered over the Union war effort in these winter months, as Lieber plainly recognized: “How one thirsts for a little drop of victory!” Union armies had not quenched Lieber’s thirst for victory by late February 1863 when he finished a first draft and submitted copies to the code’s committee, key Union political and military leaders, and a handful of prominent loyal citizens for their scrutiny and suggestions. “I have earnestly endeavoured to treat of these grave topics, conscientiously and comprehensively,” Lieber wrote to Halleck. Besides Halleck, Stanton, and the code’s committee, Lieber sought out the opinions of Charles Sumner and former New York governor and U.S. senator Hamilton Fish, among other Union leaders. Fish, for one, thought the Code “will be much commended for its concise and clear communication and arrangement of these principles.”⁵⁷

The committee did not hesitate to edit Lieber’s code on style, organization, and the particular phrasing of certain articles. Halleck also offered substantive suggestions, namely to include sections on the nature of rebellion and civil war and the impermissibility of perfidy. By

⁵⁶ Witt, *Lincoln’s Code*, 230.

⁵⁷ Francis Lieber to S. Austin Allibone, April 28, 1863, The Papers of Francis Lieber, Box 22, HL; Francis Lieber to Henry Halleck, February 20, 1863, The Papers of Francis Lieber, Box 37, HL; Hamilton Fish to Francis Lieber, March 10, 1862, The Papers of Francis Lieber, Box 7, HL. For a sample of Lieber’s communication with other potential outsider editors, see Francis Lieber to Charles Sumner, February 21, 1863, Box 43, The Papers of Francis Lieber, HL; Francis Lieber to Guglielmo Gajani, March 3, 1863, The Papers of Francis Lieber, Box 26, HL; Francis Lieber to Samuel B. Ruggles, April 6, 1863, The Papers of Francis Lieber, Container 2, LC.

and large, though, the code survived as Lieber's first envisioned, barring one exception. Lieber wanted to include lengthy notes with the code explaining each article in detail. These notes would have made the code much longer, and perhaps also made specific articles clearer in their practical application, but, ultimately, the notes were not included in the final draft disseminated to Union armies.⁵⁸

On April 24, 1863, Lincoln officially promulgated the code as General Orders No. 100. Secretary Stanton made plans to distribute 3,000 copies to Union armies. The goal always remained to inform Union soldiers and civilians of the essence of the laws of war, a subject complicated, mystifying, and not usually mastered with haste. "Our people as well as our army are very ignorant of the laws of war, and required to be educated on the subject," Halleck wrote Lieber soon after the code's promulgation. "I think this is the time and mode for beginning the education."⁵⁹

Lieber delivered on his promise. He crafted an innovative summary of the laws of war – its restraints, obligations, and underlying rationale – in prose succinct and comprehensible. The code offered hard-pressed officers as fine an introduction to the laws of war as they could possibly hope to acquire. General Orders No. 100, however, offered far more than pithy and practical rules for just conduct in war. The code also encapsulated Lieber's moral vision of war. Some men, like Charles Sumner of the 1840s, beheld war's manifold evils – the suffering, destroying, hating, and killing it unleashed – and concluded war was wholly immoral. Lieber

⁵⁸ Childress, "Francis Lieber's Interpretation of the Laws of War," 38-40. Childress rightly notes that the omission of Lieber's explanation might well have only increased the Code's longevity and far-reaching influence: "Paradoxically, General Orders No. 100 might have been a less significant monument if Lieber had been able to include his reasons. Many of his writings are avoided because of their prolixity, extraneous materials, and confusions. Although General Orders No. 100 is not wholly free of these defects, the requirements of a legal code forced Lieber to be more concise and direct." Childress, "Francis Lieber's Interpretation of the Laws of War," 69.

⁵⁹ Henry Halleck to Francis Lieber, May 25, 1863, The Papers of Francis Lieber, Box 9, HL.

sought to vindicate just wars from this charge. He tried to show morality could exist even in wars vigorous and uncompromising in their prosecution. Lieber's moral vision of war rested on a truly provocative claim: wars waged in terrible earnest are often the *most* humane and moral wars.

General Orders No. 100 consisted of 157 articles, many as brief as a sentence or two, that addressed a remarkable array of topics – from martial law to retaliation to prisoners of war to private property to spies to flags of truce to irregular warfare to armistice and capitulation, among many others. Lieber and his committee arranged these articles into ten distinct sections. Lieber wrote the articles in a declarative, normative style. He meant to establish rules for soldiers to follow, not to abide by or disregard at their own choosing. Yet General Orders No. 100 is not inflexible, inviolable law. It more closely resembles a plea for moral warfare and recommended guidelines for how to uphold morality in war. In offering this, Lieber later told Edward Bates that he took as his guide, “History, Reason, and Love of Justice and Humanity and conscience.”⁶⁰

The code's articles contain a set of fundamental principles that defined Lieber's moral vision of war. The lodestar of this vision was the idea that vigorously prosecuted wars are the most humane: “The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.”⁶¹ The surest way to reduce suffering caused by war was to end war as quickly as possible. The surest way to end a war as quickly as possible was to wage it with sharp, vigorous fury.

Lieber scoffed at overly sentimental restraint in war because he believed mild conciliatory wars only prolonged suffering and destruction. But what if an army succeeded in

⁶⁰ Francis Lieber to Edward Bates, February 25, 1863, The Papers of Francis Lieber, Box 23, HL; Freidel, *Francis Lieber*, 335. The full text General Orders No. 100, “Instructions for the Government of Armies of the United States in the Field,” appears in *OR*, ser. 3, vol. 3, 148-164. The citations from the code that follow are drawn from the *Official Records* and will for clarity's sake reference only the article from which a quote is taken.

⁶¹ “Instructions for the Government of Armies of the United States in the Field,” article 29.

waging a sharp war and still failed to make it short, only magnifying suffering and destruction? The closest Lieber came to addressing this dangerous possibility was to affirm that even sharp wars have their limits. Soldiers waging vigorous war must uphold certain moral obligations. As Lieber put it, “Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.”⁶² Soldiers might soon discover that waging vigorous war best fulfilled their moral obligations in war.

When Lieber outlined what a war in earnest looked like in its prosecution, he developed a second major principle at the heart of his moral vision of war: military necessity. Lieber defined military necessity as “the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.” The two clauses of his definition fit precariously together, so much so that military necessity in Lieber’s formulation can appear tension-ridden, even incoherent.⁶³ Does necessity ever override certain means forbidden by the laws of war? If so, why does it override some but not others? Still, to understand Lieber’s military necessity principle only according to this tension is to misunderstand it. More important to Lieber was how the idea of military necessity offered a

⁶² “Instructions for the Government of Armies of the United States in the Field,” article 14. It is for this reason, in part, that Mark Grimsley concluded, “Lieber’s Code, then, was ambiguous ... The line between wanton destruction and vigorous prosecution was hazy at best.” Grimsley, *Hard Hand of War*, 151. Andrew F. Lang affirmed this same conclusion of the Code’s ultimately “ambiguous” and “at times contradictory” nature. Lang, “The Garrison War: Culture, Race, and the Problem of Military Occupation during the American Civil War Era,” (Ph.D. diss. Rice University, 2013), 345-9.

⁶³ Lieber scholars have all noted the centrality of military necessity to the Code, and they have tended to claim for it the premiere place in Lieber’s thinking about war – more important than his moral conviction about short, sharp wars being the most humane. To say, as John Fabian Witt has, that military necessity is “The master principle that animated the code,” is to situate it improperly in relation to Lieber’s wider thought. Lieber’s thinking on military necessity was not the “master principle” of his Code or his ideas about war; it was instead an outgrowth of his more fundamental vision of a moral war. Military necessity as Lieber formulated it was meant to unleash the means necessary to prosecute a sharp, short, moral war. Witt, *Lincoln’s Code*, 234. Freidel labeled Lieber’s military necessity clause as a “means of negating [the Code’s] humanitarian principles.” Freidel, *Francis Lieber*, 336. For an alternative perspective, see Burrus Carnahan, “Lincoln, Lieber, and the Laws of War,” 213-217.

framework for waging a war that was sharp and short, yet still constrained by the laws of war's basic respect for humanity.

Lieber did not hesitate to describe what military necessity might entail. Armies could destroy all "life or limb of *armed* enemies, and of other persons whose destruction is incidentally *unavoidable*." They could demolish public and private property, essential lines of travel and communication. They could withhold "sustenance or means of life." They could appropriate from enemy countryside whatever they might need for their "subsistence and safety." Military necessity compelled armies to act in ways that intensified civilian suffering in war. While lamentable, Lieber insisted this was justified. Individual civilians were an inextricable part of a wider whole. The fate of nations and their civilians remained tied together: they "bear, enjoy, and suffer, advance and retrograde together, in peace and in war." Enemy civilians could not expect total protection from war's hardship and devastation, especially when enemy armies resorted to military necessity.⁶⁴

Yet, "the necessity of those measures which are indispensable for securing the ends of the war" did not justify *all* measures. Lieber established concrete limits to military necessity to protect against gross violations of the laws of war. He did so in two different ways. First, he emphasized principles incumbent upon soldiers that counterbalanced military necessity's potential descent into unrestrained force. Lieber insisted war did not negate soldiers' responsibilities as "moral beings, responsible to one another and to God." He also emphasized the importance of not losing sight of war's all-important goal: the restoration of peace. "Peace is their normal condition; war is the exception," Lieber wrote. "The ultimate object of all modern

⁶⁴ "Instructions for the Government of Armies of the United States in the Field," articles 15, 20. For an informative argument that Abraham Lincoln had independently arrived at a similar understanding of military necessity by the time of the Code's issuance, see Carnahan, "Lincoln, Lieber, and the Laws of War," 215-223.

war is a renewed state of peace.” Peace restored might be the “ultimate object” of war but it was not exactly the only object; Lieber had no desire for a peace with the Union dissolved, and he also wrote in the code “To save the country is paramount to all other considerations.”⁶⁵ This left quite a task for soldiers, expected to act in such a way that made both the restoration of peace and the salvation of their country the ultimate objective. Still, Lieber tempered the logic of military necessity with a reminder that armies ought to resist particularly drastic measures that would only undermine the ultimate goal of restoring peace. Some heinous acts undermined peace, such as assassination, which is why Lieber forbade them.

Second, Lieber also identified specific measures never justified, even under the direst circumstances of military necessity. Military necessity did not allow armies to inflict suffering “for the sake of suffering or for revenge.” It did not allow the use of torture to extort confessions. It did not allow the use of poison “in any way.” It forbade the “wanton devastation” of an area and disclaimed all acts of perfidy. Lieber believed he had to provide soldiers with more than mere talk about moral obligations to God and the importance of restoring peace. They needed specific examples of what military necessity did not justify. Lieber assumed most Union soldiers, but not all, would willingly adhere to the laws of war. For this reason, Elihu Root lauded Lieber for “dealing with human nature as it was, with all its weakness and folly and error, all its nobility and power.” Edward Bates likewise feared, he told Lieber, that Federal soldiers, flush with success in battle, might become convinced “they could do a vast deal of good for their country, and especially for themselves, if they were only left free to act out their own good intentions,” free, that is, from the restraints of the laws of war.⁶⁶ To forestall this thinking among soldiers,

⁶⁵ “Instructions for the Government of Armies of the United States in the Field,” articles 29, 5.

⁶⁶ *Ibid.*, article 16; Elihu Root, “Francis Lieber; Opening Address by Elihu Root as President of the American Society of International Law at the Seventh Annual Meeting in Washington April 24, 1913,” 24; Edward Bates to Francis Lieber, October 8, 1863, The Papers of Francis Lieber, Box 2, HL.

Lieber insisted that even military necessity had its limits. Transgressing those limits undermined victory in a vigorously prosecuted moral war.

The final fundamental element of Lieber's moral vision of war concerned his understanding of the proper relationship of means and ends. One of Lieber's friends praised the code for showing "how it is possible, with a profound and scientific culture to introduce ideas, from the old European world, into a virgin state such as the Union."⁶⁷ This was particularly true for what Lieber wrote about the relationship of means and ends in war.

The acknowledged authorities on the laws of war had much to say on this topic. Chief among them towered Emer de Vattel, the eighteenth-century Swiss jurist Lieber mocked as "Father Namby Pamby." Lieber thought Vattel erred in failing to weigh what an army did in light of what it aimed to achieve. Vattel and other like-minded thinkers divorced means and ends by insisting that the laws of war constituted rigid rules that applied equally to opposing belligerents regardless of their desired ends. Lieber instead increasingly preferred to judge the permissibility of means in relation to ends. Throughout the code, his writing is much more reminiscent of Carl von Clausewitz. Unlike most of his fellow Americans, Lieber read Clausewitz and relied upon him in refining his ideas about war's means and ends. He embraced Clausewitz's well-known dictum that war was the continuation of politics by other means. "Modern wars are not internecine wars, in which killing of the enemy is the object," Lieber wrote. "The destruction of the enemy in modern war, and, indeed, modern war itself, are means to obtain that object of the belligerent which lies beyond the war." Lieber, following Clausewitz,

⁶⁷ Augustus Wilhelm Heffter to Francis Lieber, August 26, 1863, The Papers of Francis Lieber, Box 10, HL.

considered this the great sea change of modern warfare – wars as means to end, not an end in itself. He thought this change could make wars less destructive and inhumane.⁶⁸

While Lieber believed “to save the country is paramount to all other considerations,” he still reiterated the enduring importance of the restraints imposed by the laws of war. In the modern world, Lieber said, “war has come to be acknowledged not to be its own end, but the means to obtain great ends of state ... and no conventional restriction of the modes adopted to injure the enemy is any longer admitted.” Lieber could not consent to this rejection of restrictions. The laws of war, he said, still imposed “many limitations and restrictions on principles of justice, faith, and honor.”⁶⁹ Even when a nation turned to war to achieve desired ends, it could not abandon certain constraints from the laws of war.

Beyond these fundamental principles concerning the nature of moral wars, the limits of military necessity, and the proper relationship of ends and means, the code offered detailed rules to guide army conduct amid specific problems and circumstances. Taken together, these articles codified Lieber’s moral vision of a hard yet humane war. One useful way to begin to survey the content of the code’s 157 articles is to recall Lieber’s letter to Charles Sumner explaining the

⁶⁸ “Instructions for the Government of Armies of the United States in the Field,” article 68. See Witt, *Lincoln’s Code*, 182-186 for a useful introduction to Lieber’s thinking in relation to Vattel and Clausewitz. Both John Fabian Witt and James Turner Johnson agree that, in Witt’s words, an “essential Clausewitzian perspective ... underlay [Lieber’s] views of war.” Witt, *Lincoln’s Code*, 236; Johnson, “Lieber and the Theory of War,” 66. Clausewitz’s effort to, among other things, redefine the proper relationship of ends and means arose in part out of witnessing first hand the changes to modern warfare wrought by the French Revolution and the Napoleonic wars. He served in the Prussian army during its defeat in 1806, a defeat that sent a young Francis Lieber into uncontrollable sobs as a young boy in Berlin. Like Lieber, Clausewitz also served as a staff officer at the Battle of Ligny, the temporary Prussian setback before Napoleon’s defeat at Waterloo and Lieber’s serious wounding. For more on Clausewitz’s career and thought see, Peter Paret, “Clausewitz,” in *Makers of Modern Strategy*, ed, Peter Paret (Princeton: Princeton University Press, 1986), 186-213; Paret, “The Genesis of *On War*,” in Carl von Clausewitz, *On War*, eds., Michael Howard and Peter Paret (Princeton: Princeton University Press, 1976), 3-26.

⁶⁹ “Instructions for the Government of Armies of the United States in the Field,” article 30. In James Turner Johnson words, Lieber added to Clausewitz “a renewed emphasis on the limits defined in the customary usages of war.” Johnson, “Lieber and the Theory of War,” 66

code's genesis. The issues Lieber raised in his letter – prisoner exchange, paroling, guerrillas, and flags of truce – also, not surprisingly, figured prominently in his code.

Lieber devoted five articles to the exchange of prisoners, which he labeled an “act of convenience,” not something required of a nation at war. “No belligerent is obliged to exchange prisoners of war,” he wrote, but, if they did, Lieber set forth a few key rules to govern the exchanges. Lieber began with a general rule: exchanges should occur “number for number—rank for rank—wounded for wounded.” Then he proceeded to outline exceptions to this rule, instances in which, for example, a sizeable amount of prisoners of lesser rank might be exchanged for a handful of prisoners of greater rank.⁷⁰

When the prisoner exchange conundrum confronted the Union early in the war, it did so in the context of questions about the precise legal nature of the Confederacy. Lieber revisited this question, at Halleck's prompting, in nine articles at the code's conclusion. He carefully defined insurrections, civil wars, and rebellions, concluding that the Confederacy constituted a rebellion. As he did earlier in the war, Lieber insisted that treating rebels according to the laws of war in no way acknowledged the legitimacy of their plainly illegitimate act of rebellion: “When humanity induces the adoption of the rules of regular war toward rebels, whether the adoption is partial or entire, it does in no way whatever imply a partial or complete acknowledgement of their government, if they have set up one, or of them, as an independent and sovereign power.” The United States could continue to treat the Confederacy as it would a normal legitimate belligerent without fearing that doing so somehow “establishes an acknowledgement of the rebellious people.”⁷¹

⁷⁰ “Instructions for the Government of Armies of the United States in the Field,” articles 105-10.

⁷¹ Ibid., article 152; Hartigan, *Lieber's Code and the Law of War*, 18-19.

As for paroling, Lieber insisted that it was “the exception,” and release of prisoners by exchange was “the general rule.” As with exchanges, a belligerent had no obligation to parole captured enemy soldiers. Those disclaimers aside, when Lieber outlined rules to govern paroling, the events at Harpers Ferry in September 1862 still clearly lingered in his mind. Two of Lieber’s strictest rules prohibited paroling on the battlefield and paroling “entire bodies of troops after a battle.” Lieber frequently said he opposed paroles because they put a premium on cowardice. He feared the possibility of a parole would tempt soldiers to surrender too quickly and tried to prevent this possibility by declaring, “No non-commissioner officer or private can give his parole except through an officer.” Commissioned officers themselves could swear parole only after receiving a superior’s permission. If Lieber could not have his way completely on the parole issue, he at least sought to ensure as best as possible, through this system of oversight, that the parole did not become a quick crutch of cowardice.⁷²

Lieber distilled his *Guerrilla Parties Considered* into five succinct articles on irregular warfare, namely, the plunder and marauding of men “without commission, without being part and portion of the organized hostile army, and without sharing continuously in the war.” These articles did not depart in any substantive way from the ideas Lieber developed in his earlier essay to Halleck. They sternly warned that because irregular guerrillas were not soldiers, Federals would treat them “summarily as highway robbers or pirates.”⁷³

⁷² “Instructions for the Government of Armies of the United States in the Field,” article 128. Lieber’s section on paroles also contained a lengthy discussion of what exactly constituted breaking a parole, an offense punishable by death. More precisely, he sought to identify a certain set of acts of “internal service” to a war effort that did not constitute breaking a parole. These acts included: “recruiting or drilling the recruits, fortifying places not besieged, quelling civil commotions, fighting against belligerents unconnected with the paroling belligerents, or to civil or diplomatic service.” Ibid, article 130. Lieber’s sixteen-article section on the parole was issued to Union armies nearly two months in advance of the full Code as General Order No. 49 on February 28, 1863. The earlier orders repeat almost verbatim the section that appeared in the Code. See *OR*, ser. 2, vol. 5, 306-7.

⁷³ “Instructions for the Government of Armies of the United States in the Field,” article 82.

The “sacred character” of flags of truce made their misuse or abuse a grave violation of the laws of war, the code said. The worst abuse occurred when a bearer of a flag of truce used it “for surreptitiously obtaining military knowledge,” the work of a spy punishable by death. Even though this abuse remained “an especially heinous offense,” Lieber insisted on “great caution” in convicting abusers of a flag of truce as spies. Lieber also attempted to lay down realistic expectations concerning the protections afforded to bearers of flags of truce *during* a battle. A belligerent need not immediately cease a battle if an enemy sent forth a bearer of a flag of truce. If the bearer was killed or wounded it furnished “no ground of complaint whatever.”⁷⁴

Beyond the issues Lieber singled out to Charles Sumner as essential to explaining the genesis of the code, three other topics addressed in the code deserve attention: slavery, the treatment of prisoners of war, and the treatment of an enemy civilian population. Lieber matter-of-factly declared that the laws of war did not protect slavery. He had said as much since the beginning of the war. If Union armies intentionally or incidentally destroyed slavery, Confederates had no recourse in the laws of war. Escaped slaves “coming into our lines must be and are by that fact free men,” he told Sumner. Several months later, in late summer 1862, Secretary Stanton asked Lieber to prepare a memorandum on “the military use of coloured persons, free or slave.” Lieber strongly argued for putting escaped slaves to work in Union armies, some perhaps, eventually, even in combat duties. The laws of war, Lieber said, fully upheld the “justice of employing the slaves of the enemy, and thereby of course making freedmen of them.”⁷⁵

⁷⁴ Ibid., article 111-114.

⁷⁵ Francis Lieber to Charles Sumner, December 19, 1861, The Papers of Francis Lieber, Box 42, HL; Francis Lieber, “A Memoir on the Military Use of Coloured Persons, free or slave, that come to our armies for support or protection,” in Francis Lieber to Henry Halleck, August 9, 1862, The Papers of Francis Lieber, Box 27, HL.

The many interpreters of the laws of war hardly spoke with one anti-slavery voice as Lieber implied. But the code boldly declared otherwise: “The law of nature and nations has never acknowledged [slavery],” which existed only according to “municipal law or local law.” Therefore, Lieber concluded, slaves who “come as a fugitive under the protection” of Union forces are thereby “immediately entitled to the rights and privileges of a freeman.”⁷⁶ To Lieber, this was a settled question in the laws of war needing no elaborate explanation or justification.

General Orders No. 100 dealt at greater length with the treatment of prisoners of war and enemy civilians. Its articles on these topics embodied Lieber’s moral vision that just wars were vigorous and uncompromising against soldiers and civilians alike but still constrained by the laws of war. The guidelines Lieber set forth for the treatment of prisoners of war and enemy civilians sought to reconcile a spirit of hard war and humane war and refine it into military policy.

Who deserved the privileges and protections afforded to prisoners of war? Lieber crafted a capacious answer. He did so out of a humanitarian impulse to ensure that no one arguably deserving the laws of war’s privileges and protections would fail to receive them. A prisoner of

⁷⁶ “Instructions for the Government of Armies of the United States in the Field,” articles 42-43. Much recent scholarship on the code has drawn inordinate attention to its articles on slavery, path-breaking though they were. John Fabian Witt has suggested that Lieber pressed for his code because he hoped it would “[remake] the American law of war tradition for the age of Emancipation.” Witt, *Lincoln’s Code*, 240. It is true that Lieber’s explicitly anti-slavery declarations in the code broke sharply with the vast majority of earlier laws of war interpreters who denounced wartime emancipation as a barbaric and unjust act. Yet to suggest that Lieber’s chief motivation for drafting the code was to rearticulate the laws of war to fit with the Union army’s new war against slavery is to obscure Lieber’s real motivations – motivations he spelled out in clear terms in his letter to Charles Sumner on the topic. Only two articles deal explicitly with slavery and emancipation in the code, however revolutionary in their implications for the laws of war they might have been. Emancipation, in short, ought to be understood as one concern – and, at that, a somewhat secondary concern – among many to Lieber as he drafted his code. More bafflingly is Witt’s suggestion that a dominant concern of the code is slavery and emancipation: “No fewer than a dozen articles of the code, and arguably more, dealt with some aspect of the question of Emancipation or with the arming of blacks: more than the number dealing with torture, civilian targets, wounded soldiers, war hospitals, and spies combined.” Witt, *Lincoln’s Code*, 240. For a similar reading of the Code see Mancini, “Francis Lieber, Slavery, and the ‘Genesis’ of the Laws of War.”

war, the code said, was “a public enemy armed or attached to the hostile army.” This included all soldiers and many sorts of citizens usually accompanying armies, especially “sutlers, editors, or reporters of journals, or contractors,” as well as the leaders of an enemy government, its diplomatic agents, and anyone else “of particular and singular use and benefit to the hostile army or its government.”⁷⁷

Civilized nations must treat prisoners of war humanely, Lieber believed. He prohibited certain actions against captured prisoners as always unjustified. In keeping with his style, Lieber also provided a general guiding principle for the treatment of prisoners: a captor must never inflict “any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death or any other barbarity.” Confinement and imprisonment, in short, should never degenerate to “intentional suffering or indignity.” In practice this meant that a captor must provide prisoners “plain and wholesome food,” and could never use violence to extort sensitive information from a prisoner or even plunder a prisoner and steal cherished personal belongings. A particularly heinous violation of the laws of war in this respect was “to resolve, in hatred and revenge, to give no quarter.” No body of troops had a right to declare they would give no quarter to their enemy; if they gave no quarter, the Code warned, they would receive none.⁷⁸ Lieber did not provide a comprehensive list of unjustified actions toward prisoners of war. Instead, he trusted Union army officials to take the general principle he set forth – to avoid the intentional infliction of suffering or indignity – and apply it in particular circumstances.

Recent controversies surrounding African American troops in Union armies shaped many of the articles on prisoners of war. The passages on no quarter are one example, for Lieber

⁷⁷ “Instructions for the Government of Armies of the United States in the Field,” articles 49-50.

⁷⁸ Ibid., articles 56, 75, 76, 80, 72, 60-63. Lieber did include one possible exception to the prohibition on no quarter, if it saved the lives of one’s own soldiers: “... a commander is permitted to direct his troops to give no quarter, in great straits, when his own salvation makes it *impossible* to cumber himself with prisoners.”

sought to make clear to Confederates they had no right to deny quarter to any class of enemy soldiers, especially free blacks or former slaves. Lieber attempted to use two articles in the code to guarantee that African Americans fighting for the Union would receive the privileges normally afforded to prisoners of war. Confederate officials had promised precisely the opposite: to treat captured black soldiers as insurrectionary slaves and their white officers as instigators of slave rebellion.

The code insisted that belligerents could not deny certain categories of soldiers the privileges and protections they justly deserve if captured: “No belligerent has a right to declare that enemies of a certain class, color, or condition, when properly organized as soldiers, will not be treated by him as public enemies.” In his earlier memorandum to Stanton on the use of black soldiers in Federal armies, Lieber likewise argued that the Union ought to demand that Confederates acknowledge African Americans as legitimate soldiers, and, if captured, treat them as regular prisoners of war. Lieber’s declaration that belligerents had no right to treat some men in arms as less than regular soldiers because of “class, color, or condition,” was well meaning but also potentially ineffectual. Confederates felt no obligation to abide by this Union-drafted code. So, in the article that followed, Lieber tried to compel Confederate compliance. If Confederates treated captured black Union soldiers as slaves and not as normal prisoners of war, “it would be a case for the severest retaliation” against captured Confederate soldiers, in this case, death.⁷⁹

Retaliation was “the sternest feature of war,” the code said, but it remained an essential part of the laws of war. “Reckless enemies” often leave an opponent no other way of “securing himself against the repetition of barbarous outrages.” Retaliation must occur not for “mere

⁷⁹ Ibid., articles 57; Francis Lieber, “A Memoir on the Military Use of Coloured Persons, free or slave, that come to our armies for support or protection,” in Francis Lieber to Henry Halleck, August 9, 1862, The Papers of Francis Lieber, Box 27, HL; “Instructions for the Government of Armies of the United States in the Field,” article 58.

revenge” but “protective retribution.” Even when justified, Lieber found nothing pleasant in retaliation; a nation ought to resort to it “cautiously,” only after all other efforts to remedy the offense failed. Lieber remained wary of retaliation because it made a speedy and lasting return to peace more difficult. Any belligerent who embraced retaliation should remember that it “removes the belligerents far and farther from the mitigating rules of a regular war, and by rapid steps leads them nearer to the internecine wars of savages.” Retaliation was sometimes necessary, but all things permissible by the laws of war were not always advisable, certainly not as a first recourse. This call for prudence aside, even though Lieber sought to ensure the humane treatment of prisoners of war he still maintained captors, if necessary, could subject prisoners to the harsh “infliction of retaliatory measures.”⁸⁰

This same hard yet humane war spirit also defined the code’s articles on the treatment of enemy civilians. Early in the code, Lieber justified sparing civilians from war’s hardships as much as possible. In Lieber’s retelling, modern warfare did not mark the end of longstanding distinctions between soldiers and civilians. In fact, the opposite occurred. Modern war witnessed the widespread recognition of “the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms.” Lieber welcomed this development. Everyone should rejoice that armies no longer “murdered, enslaved, or carried off” enemy civilians. The code insisted “the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit.”⁸¹

Federal soldiers simply could not commit certain actions against civilians: “wanton violence ... all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or

⁸⁰ “Instructions for the Government of Armies of the United States in the Field,” articles 27-28, 59; Childress, “Francis Lieber’s Interpretation of the Laws of War,” 66-8.

⁸¹ “Instructions for the Government of Armies of the United States in the Field,” articles 22-25.

killing of such inhabitants.” For these and similar crimes, the code authorized severe punishment, in many instances, death. Lieber also affirmed that armies did not have to show the same humane restraint toward all categories of non-combatants. This discretion or directed severity, the code argued, ought to govern army interactions with civilians. Officers should distinguish loyal from disloyal civilians in enemy country; moreover, officers should classify disloyal civilians by those who actively “give positive aid and comfort” to enemy armies and those who do not. Armies should spare loyal citizens as much as possible from “the common misfortune” of war, and should instead “throw the burden of war” on disloyal citizens.⁸²

Lieber’s attempt to shield at least some civilians always came with an important disclaimer: “as much as the exigencies of war will admit.” The real challenge remained to balance the humanitarian demand to protect civilians with the relentless demands of military necessity. While soldiers should never resort to certain actions against civilians – wanton violence, pillage, rape, or maiming – Lieber insisted military necessity sometimes compelled armies to subject civilians to hardship and suffering. This was the consequence of “the overruling demands of a vigorous war.” For example, while the Union ought to “acknowledge and protect” private property, its armies could seize it “by way of military necessity, for the support or other benefit of the army.”⁸³

⁸² Ibid., articles 43-44. Henry Halleck had in early March 1863 advised Major General William S. Rosencrans, and by extension all Union commanders in the West, to show precisely this same sort of discretion in treating civilians differently according to their loyalties. “The people of the country in which you are likely to operate may be divided into three classes,” Halleck advised: the truly loyal, the quietly disloyal who take no active part in aiding Confederate armies, and the disloyal who remain “openly and obviously hostile to the occupying army.” Well aware of the rules soon to be issued in the impending Code, Halleck, like Lieber, advised a harsher treatment for the aggressively disloyalty. *OR*, ser. 1, vol. 23, pt. 2, 107-109. Mark Grimsley charted this same spirit of “directed severity” throughout the entire Union war effort, and yet, he ultimately reached grim conclusions about the code’s articles on the treatment of enemy civilians. “It erected few strong barriers against severe treatment,” he suggested, and in fact served to guarantee “that protection to enemy civilians was the exception, not rule.” Grimsley, *Hard Hand of War*, 150

⁸³ “Instructions for the Government of Armies of the United States in the Field,” articles 23, 37.

Lieber's justification of subjecting civilians to war's hardships rested upon his larger vision of a moral war. The harsh treatment of civilians sometimes proved necessary in a vigorously prosecuted war intended to end war as quickly as possible, the most moral and humane thing a belligerent could do. To induce civilian suffering in war was never desirable, Lieber believed, but it might be a harrowing path to the most moral of wars: stern and short.

Lieber's friends and acquaintances sent him many letters of approval and admiration soon after the code's official release. Theodore Dwight Woolsey, president of Yale College, praised the code as "excellently well drawn up." Alexander Dallas Bache, West Point graduate and army engineer turned science professor, appreciated its "plain, terse, and lucid" style. A Union officer who left his legal practice at the war's outbreak considered himself "much instructed and charmed" after reading Lieber's work. Northern newspapers soon reported on the code, though they tended simply only to summarize the essential details of the code's articles, and did not engage in lengthy editorial reflections.⁸⁴

George Hillard, Lieber's longtime Boston correspondent, effusively praised the code for its "exhausting fullness" and "ample learning." Hillard also commended its "benignant spirit of humanity and Christianity by which the rigor of war is now tempered and mitigated."⁸⁵ The accumulated rules and restraints of the laws of war as codified by Lieber, Hillard suggested, were partially indebted to the precepts of Christianity, namely its basic respect for human life and its abhorrence of violence and its worst consequences.

⁸⁴ Theodore Dwight Woolsey to Francis Lieber, May 21, 1863, The Papers of Francis Lieber, Box 66, HL; Alexander Dallas Bache to Francis Lieber, February 25, 1863, The Papers of Francis Lieber, Box 1, HL; William Wirt Howe to Francis Lieber, [September 1863?], The Papers of Francis Lieber, Box 11, HL. For a sample of northern newspapers reports about the Code, see *Daily Cleveland Herald*, May 18, 1863; *Boston Daily Advertiser*, May 18, 1863; *Milwaukee Daily Sentinel*, May 19, 1863; *Baltimore Sun*, May 21, 1863; *New York Times*, May 24, 1863; *Daily National Intelligencer*, June 5, 1863.

⁸⁵ George Hillard to Francis Lieber, June 12, 1863, The Papers of Francis Lieber, Box 14, HL.

Confederates saw nothing Christian-like in the code – no spirit of benign humanity, no attempt to temper war’s devastation. They charged the code did precisely the opposite, offering a self-serving, immoral justification of a war waged with little restraint. “The enemies of our cause have naturally assailed me furiously,” Lieber rightly wrote in June 1863.⁸⁶ James A. Seddon, Confederate secretary of war, delivered the closest thing to an official Confederate response to the code in a public letter to Robert Ould, who was chiefly responsible for administering prisoner exchanges. At the heart of Seddon’s wide-ranging, vitriolic response was an insistence that the code’s ambiguous “military necessity” provision effectively undercut its effort to impose any constraints on Union armies. The lure and logic of military necessity, Seddon argued, inevitably overwhelmed humane restraint.

Seddon lambasted the code as a “confused, unassorted and indiscriminating compilation from the opinion of the publicists of the last two centuries, some of which are obsolete, others repudiated.” Moreover, he thought that while the code’s articles supposedly fostered “principles of justice, faith, and honor” in the conduct of war, in reality, given the military necessity articles, it just as easily authorized “conduct correspondent with the warfare of the barbarous hordes who overran the Roman Empire, or who, in the Middle Ages, devastated the continent of Asia and menaced the civilization of Europe.” Federals claimed to set forth the rules of civilized warfare, but in reality they had only unleashed the horrors of barbaric warfare. While some southern newspapers reported the code’s issuance, Seddon offered without question the harshest, most detailed Confederate criticism.⁸⁷

⁸⁶ Francis Lieber to Karl Josef Mittermaier, June 24, 1863, The Papers of Francis Lieber, Box 38, HL.

⁸⁷ *OR*, ser. 2, vol. 6, 41. For an example of two Confederate newspapers reporting on the code and briefly summarizing its content without also offering critical editorial commentary, see “Instructions of the Yankee War Department on the Government of Armies in the Field,” *The Charleston Mercury*, May 30, 1863 and “The New Code of Instruction for the United States Army,” *The Daily Picayune*, June 5, 1863,

Although General Orders No. 100 arose out of the particular circumstances of the American Civil War, Lieber always hoped it might attain lasting international influence. “It is a contribution to the state of common civilization,” he said soon after the code’s issuance. He insisted time and again that the document was without parallel in international law and would likely serve as a model for other nations. Lieber called the code “one of the prominent products of our war.” No country had anything of the kind, he said, and in the future it “will be the basis of many.” This, Lieber confessed, was “one of my objects in drawing up this code.” Ethan Allen Hitchcock, for one, affirmed Lieber’s grandest hopes. “The Code must gradually become the law of the civilized world in war – if this is not a contradiction,” he wrote to Lieber, with a certain ambivalence about how “civilized” war could ever truly be.⁸⁸

Lieber’s code influenced much of the subsequent history of the laws of war and international law. As Lieber hoped, other countries turned to the code to govern the actions of its own armies – starting as early as 1870 with the Prussian army’s adoption of it in the Franco-Prussian War, and continuing in similar fashion over military manuals revised by France, Great Britain, Italy, and Spain. Reliance upon Lieber’s path breaking work appeared again in major moments of international law throughout the next half-century, from the Brussels Conference of 1874 to the Hague Conventions of 1899 and 1907, and even, if more distantly, to the Geneva Convention of 1949. One scholar has rightly called Lieber’s code the “Ur-text of the modern laws of war.”⁸⁹

2. These two reports, in fact, are verbatim copies of a May 24, 1863 story published by the *New York Times*.

⁸⁸ Francis Lieber to Henry Halleck, May 20, 1863, The Papers of Francis Lieber, Box 27, HL; Francis Lieber to Charles Sumner, May 19, 1863, The Papers of Francis Lieber, Box 43, HL; Francis Lieber to S. Austin Allibone, November 9, 1863, The Papers of Francis Lieber, Box 22, HL; Ethan Allen Hitchcock to Francis Lieber, October 22, 1863, The Papers of Francis Lieber, Box 11, HL.

⁸⁹ Quoted in Mancini, “Francis Lieber,” 328; Hartigan, *Lieber’s Code and the Law of War*, 22-3; Carnahan, “Lincoln, Lieber and the Laws of War,” 215; Root, “Francis Lieber; Opening Address,” 8;

Whatever international influence the code eventually achieved, Lieber's work still had a more proximate object: instruct Union armies in how to wage a just war.⁹⁰ The code appeared in a moment not particularly auspicious for achieving this goal. It came amid a long season of bitter disappointment and demoralization that forced northerners to confront the horrifying toll that war exacted. Defeats at places such as Fredericksburg left them little choice. It was by no means inevitable that Federals in this moment would commit to waging a hard *and* humane war. After all, defeat, setbacks, and heartache might just as easily have turned Federals toward a war utterly devoid of restraint in which their intractable and hated enemy suffered the full horror of the hard hand of war. What emerged instead was an effort to set forth in clear detail how Union armies might wage war justly in accordance with the laws of war. Lieber marshaled all his intellect and energy to distill the laws of war into a set of rules that earnest and intelligent officers could understand and apply.

When Union officials distributed General Orders No. 100 in late April 1863, another two years of war awaited – two years of death on a scale once unimaginable, two years full of moments when victory seemed a faint hope. Uncertainties abounded as Federals embarked on the final stage of the war, not least in *how* Union armies would wage war. Would they abide by the spirit and letter of Lieber's code? Could they reconcile hard and humane warfare?

Charles R. Mack and Henry H. Lesesne, eds. *Francis Lieber and the Culture of the Mind* (Columbia: University of South Carolina Press, 2005), 59, 70.

⁹⁰ If historians have been quick to chart the profound effect of the Lieber Code on international law, they also usually have been equally quick to discredit its actual influence in directing the actions of Union armies. Matthew J. Mancini suggests, "No. 100 made little impact at the time on Union officers." Mancini, "Francis Lieber," 328. James Childress, in slight contrast, argues that while "most subsequent Union policies and actions were consistent with the code, they were rarely based directly on it." Childress, "Francis Lieber's Interpretation of the Laws of War," 68. L. Lynn Hogue offers a useful reply to these arguments: "There is also a problem of asymmetrical inference—it is easier to discover when a policy like the Code fails to work because it does not prevent a violation than it is to know how many times the existence of a norm fostered compliance with the Code." Mack and Lesesne, eds., *Francis Lieber and the Culture of the Mind*, 58.

Chapter Four: Retaliation—The Sternest Feature of War

Francis Lieber's code labeled retaliation "the sternest feature of war." The laws of war sanctioned retaliation as "protective retribution," punishment meant to prevent an enemy from repeatedly committing atrocities. But Lieber insisted Federals should not resort to retaliatory measures in vengeance or haste.¹ Although the laws of war sanctioned retaliation it did not justify every retaliatory act, so in practice retaliation wavered precariously between just and unjust conduct. When and how to retaliate was one of the more vexing, controversial, and emotionally charged questions Union officials faced throughout the war. How they handled these controversies as they stared down Confederate enemies and traded chilling threats revealed a great deal about their most basic assumptions about the nature of a justly waged war.

Union political and military leaders were not alone in pondering the justness of retaliation. It attracted wide attention from the northern citizenry as well, especially the infamous but inconclusive debate over retaliation after the massacre of African American troops at Fort Pillow in April 1864. Like many northern newspapers in the weeks after the massacre, William Lloyd Garrison's *The Liberator* condemned the Confederate atrocity and mused at length over how Federal officials should respond. Some northerners called for retaliation *in kind*, the execution of an equal number of Confederate prisoners of war, but *The Liberator* did not. "Every fair-minded man must concede that retaliation for such barbarities would be an act of justice," Garrison's newspaper granted, "but there are many grave objections in the way of it." These grave objections were compelling enough for *The Liberator* to reject retaliation in kind for the Fort Pillow atrocity.

¹ "Instructions for the Government of Armies of the United States in the Field," articles 27 and 28.

What exactly were these grave objections, these reasons for restraint? Retaliation in kind stood contrary to “our civilization, our self-respect,” the newspaper argued. Although technically justified by the laws of war, it no longer stood “in consonance with an enlightened age and country.” Retaliation in kind betrayed civilized values at the heart of the present “enlightened age.” America would mar its international reputation if it pursued formal retaliation, which remained “terrible in the eyes of the world.” Federals should remember “the perpetrators stand low in the scale of civilization” and retaliation in kind merely imitated their unjustified “barbarism.” To these moral considerations, *The Liberator* added the practical one that retaliation would not end Confederate atrocities but only spur “counter retaliation” and more “cold blooded slaughter.” While the Union had a sacred obligation to protect African American soldiers, *The Liberator* concluded retaliation in kind did not fulfill that obligation in a moral, effective manner.²

Key figures within the Lincoln administration and the Union army also shared Francis Lieber’s view of retaliation as war’s sternest feature. Like him, they believed the laws of war justified retaliation as sometimes necessary. However, they remained wary of too quickly resorting to retaliation in kind. In arguing against hasty retaliatory measures, Federals appealed not just to the laws of war but also to the moral demands of Christianity, “enlightened” values that distinguished civilized societies, and retaliation’s mixed record in actually altering Confederate behavior. These varied reasons complemented far more than contradicted each other, so Federals easily fit them together in their own minds to oppose certain retaliatory measures.³

² *The Liberator*, May 13, 1864.

³ Most scholarship on retaliation focuses primarily on atrocities against African American troops and reactions by Federal authorities – often with the goal of demonstrating how racial attitudes inhibited efforts to compel Confederates to recognize African Americans as legitimate soldiers. The distinctly

However, Federals still retaliated against Confederates and often in ways contrary to Lieber's account of what the laws of war demanded. At the same time, the loyal citizenry fiercely debated the justness of retaliation and some frequently called for its use. But most Federal military and political leaders internalized Lieber's vision of retaliation as the war's sternest feature and therefore rejected systematic retaliation in kind as official policy. Federals refused to do away entirely with retaliation. They also largely resisted resorting to it in an utterly reckless, indiscriminate, and extreme manner. Ultimately, Union attitudes toward retaliation embodied the same Lieberian blend of hard war spirit and humane restraint that Federals assumed made for a justly waged war.⁴

racial dimension of retaliation's history in the Civil War must not be ignored but it is not the only valuable perspective from which to examine Federal retaliation. Equally important are what acts of retaliation reveal about Federal thinking on the nature of just conduct in war. A far less satisfying strand of the literature on retaliation simply catalogues in ominous tones – with little analytical rigor – occasions when Federals or Confederates resorted to retaliation. These works envision Civil War Americans as particularly ruthless and destructive; not surprisingly, they obscure Federals' rationales for pursuing retaliation as well as the restraint often demonstrated in actually carrying out retaliatory acts. Historians have paid almost no attention to northerners who opposed retaliation, especially retaliation in kind. For scholarship on retaliation and atrocities against black soldiers, see Gregory J.W. Urwin, ed., *Black Flag over Dixie: Racial Atrocities and Reprisals in the Civil War* (Carbondale: Southern Illinois University Press, 2004); Urwin, "We cannot treat negroes ... as prisoners of war': Racial Atrocities and Reprisals in Civil War Arkansas," *Civil War History* 42 no. 3 (September 1996): 193-210; George S. Burkhardt, *Confederate Rage, Yankee Wrath: No Quarter in the Civil War* (Carbondale: Southern Illinois University Press, 2007). Bruce Tap, *Over Lincoln's Shoulder: The Committee on the Conduct of the War* (Lawrence: University Press of Kansas, 1998), 193-207. The lack of attention to northerners who opposed retaliation in kind is particularly evident in Lonnie R. Speer, *War of Vengeance: Acts of Retaliation against Civil War POWs* (Mechanicsburg, Pa.: Stackpole Books, 2002); Roger Pickenpaugh, *Captives in Gray: The Civil War Prisons of the Union* (Tuscaloosa, Alabama: University of Alabama Press, 2009), 188-201. Noteworthy introductory titles within the large literature on Civil War prisons include, William Best Hesselstine, *Civil War Prisons: A Study in War Psychology* (Columbus: The Ohio State University Press, 1930); Charles W. Sanders, *While in the Hands of the Enemy: Military Prisons of the Civil War* (Baton Rouge: Louisiana State University Press, 2005); Roger Pickenpaugh, *Camp Chase and the Evolution of Union Prison Policy* (Tuscaloosa, Alabama: University of Alabama Press, 2007); James M. Gillispie, *Andersonvilles of the North: The Myths and Realities of Northern Treatment of Civil War Confederate Prisoners* (Denton: University of North Texas Press, 2008).

⁴ Why Federals might have been wary to resort to retaliation in kind is a question inadequately addressed by historians. For one notable but limited exception, see Neely, *Civil War and the Limits of Destruction*, 170-197. Neely's discussion of northern attitudes toward retaliation, though correct in its emphasis on persistent resistance to adopt retaliation in kind as official policy, was limited mostly to one Senate debate in early 1865. I have focused on a wider array of retaliation debates and controversies to provide a fuller

To see this vision of just war in action requires examining in close detail not only instances of retaliation carried out as threatened. Important also are moments when Federals debated and decided against retaliatory measures as well as occasions when they partially implemented threatened acts of retaliation. In the final two years of the war an immense number of retaliatory episodes occurred that fell roughly into one of these three categories. What follows is not a comprehensive account of these episodes but a detailed study of the more important and revealing retaliation controversies. These particular episodes drew close attention from leading Union military and political figures as well as the northern public. They lasted for fairly prolonged periods of times, often several months or more, and therefore were not easily resolved. Perhaps most importantly, they spurred explicit and widespread reflections on retaliation's place in a justly waged war.

In the past, historians have pointed to some of these episodes as proof of the Union's ominous formal embrace of a vicious policy of retaliation. In fact, careful attention to how these episodes unfolded and ended suggests the opposite. While Federals hardly rejected retaliation outright they also imposed restraints on its implementation in an effort to wage a hard yet humane war.

“Shocking to Every Christian Sentiment and Cultured People”: Arguments against Retaliation in Kind

Federals hesitant to support retaliation in kind marshaled a wide array of arguments, just as William Lloyd Garrison did after the Fort Pillow massacre. These arguments appeared often

account not only of how Federals acted with restraint in this manner, but also what role they thought retaliation had in a justly waged war. For an early version of Neely's thoughts on retaliation, see his Fortinbaugh lecture, Neely, *Retaliation: The Problem of Atrocity in the American Civil War* (Gettysburg: Gettysburg College, 2002). For a more technical introduction to reprisals and the laws of war in the Civil War, see Neff, *Justice in Blue and Gray*, 63-65.

throughout the major retaliation controversies – even though the Confederate actions prompting potential retaliation, and the details of the proposed retaliation itself, varied significantly. The most common argument denounced retaliation in kind as a mode of warfare both un-Christian and uncivilized, and therefore antithetical to the values that defined America. “Retaliation in kind belongs to savages,” one New Yorker wrote, and was “shocking to every Christian sentiment and ... cultured people.” Garrison’s *The Liberator* agreed that if Americans (“who call ourselves Christians”) resorted to retaliation in kind they would in effect “return to that Jewish law which Christ denounced and superseded eighteen hundred years ago, and begin a course of infliction of burning for burning, wound for wound, stripe for stripe.” Even worse was pursuing retaliation only to satisfy base desires for vengeance. Charles Sumner believed that if retaliation “proceeded from vengeance alone” it would “degrade the national character and the national name.” Abraham Lincoln affirmed the same point to Edwin Stanton, explaining his decision not to retaliate in kind after Fort Pillow because “blood cannot restore blood, and government should not act for revenge.” Retaliation for revenge’s sake stoked what the *New York Herald* labeled “all the worst passions and ... brutal propensities” in a people at war. It also stood at odds with retaliation’s legitimate purpose as a way to compel just conduct from an enemy.⁵

A related argument insisted that even though Confederates committed atrocities northerners should not do so in return. Nothing good could come from imitating barbaric Confederate behavior. *Harper’s Weekly* argued as much in a revealing comparison in early January 1865: “If we were at war with cannibals who ate alive the prisoners whom they took from our armies, we could not retaliate in kind. If we were fighting Indians who burned their

⁵ Edwards Pierrepont to Charles Sumner, February 26, 1865, The Papers of Charles Sumner, Houghton Library, Harvard University, microfilm edition, series 1, reel 32; *The Liberator*, May 13, 1864; *Congressional Globe*, 38th Cong., 2nd sess., pt. 1:381; *The Collected Works of Abraham Lincoln*, ed. Basler, 7:345; *New York Herald*, December 11, 1864.

captives at the stake, we could not retaliate in kind. We are at war with men whom the long habit of enslaving other men has imbruted and barbarized,” therefore Federals must not resort to brutish and barbarous Confederate tactics. The *Army and Navy Journal* put the matter even more bluntly. Union officers in charge of prisoner of war camps who imitated Confederates’ gross mistreatment of prisoners “would be scorned as unfit to associate with gentlemen.”⁶

Retaliation in kind might betray the best of what the Union embodied as an enlightened Christian civilization in the moral vanguard of human history. For that reason, many northerners also feared certain acts of retaliation would tarnish America’s international standing. When John B. Henderson, U.S. Senator from Missouri, argued against retaliatory measures in early 1865 that would have subjected Confederate prisoners to near-starvation, he asked his Senate colleagues: “Do we, by it, do anything else than disgrace ourselves in the eyes of the civilized world?” A Boston newspaper agreed midway through the war that “measures of retaliation are justly looked upon with so much suspicion by the world at large ... [for] the result is so shocking to our humane feelings.”⁷

Northerners also opposed retaliation because of practical concerns about its effectiveness. Some like the *New York Times* assumed barbaric Confederates would never abandon unjust atrocities: “Are we to wait for these people to change their disposition? Absurd. They cannot change.” In fact, the argument continued, retaliation usually spurred counter-retaliation and greater bloodshed. This concern weighed heavily on Lincoln’s mind as he resisted calls to retaliate in kind for Fort Pillow. Retaliation was a “terrible remedy ... very difficult to apply,” Frederick Douglass later recalled Lincoln saying, and there was “no telling where it would end.”⁸

⁶ *Harper’s Weekly*, January 7, 1865; *Army and Navy Journal*, July 30, 1864.

⁷ *Congressional Globe*, 38th Cong., 2nd sess., pt. 1:404; *Boston Daily Advertiser*, August 4, 1863.

⁸ *New York Times*, December 27, 1864; Frederick Douglass, *The Life and Times of Frederick Douglass* (Hartford: Park, 1882), 423.

Put simply, if retaliation did not achieve its purported ends – compelling one’s enemy to alter an unjust behavior – then a civilized belligerent had no legitimate reason to resort to it.

Northerners also argued retaliation unfairly punished Confederates not guilty of the original atrocity (or, some said, even guilty of causing the war itself). As Indiana’s Democratic Senator Thomas A. Hendricks argued in opposition to a proposed retaliation measure against Confederate prisoners, “Reach the men that are in fault, strike them if we can; but where is the propriety, where is the Christianity of starving a man to death against whom we can lay no fault except that perhaps he has been compelled to obey the demands of the rebel government?” Hendricks assumed the South’s slaveholding elite had duped or coerced most Confederate soldiers into taking up arms; therefore, the soldiers should not endure extreme Federal retaliation. But captured Confederates would still suffer for crimes they did not commit. An Ohioan opposed to the same retaliatory measure similarly asked Charles Sumner: “[W]hy inflict upon those we have in our power who are not responsible for the cruel treatment of our soldiers the very wrongs of which our friends in Southern prisons complain?” Relatedly, some Federals worried too much retaliation undermined the Union’s ultimate goal of a just and lasting peace. Senator Hendricks reminded his colleagues that Federals ought to adhere strictly to the laws of war “so that when the war is over there may be mutual respect and confidence, that the ancient relations of commerce and trade may return unimpaired . . . make us once more one Government and one people with one destiny.”⁹

Despite these arguments, most Federals believed retaliation sometimes remained a just and effective response to Confederate atrocities. Henry Halleck believed “there are occasions where summary retaliation must be resorted to” if Confederates continued to act in “deliberate

⁹ *Congressional Globe*, 38th Cong., 2nd sess., pt. 1:364; L. Abbott to Charles Sumner, January 25, 1865, Papers of Charles Sumner, series 1, reel 32; *Congressional Globe*, 38th Cong., 2nd sess., pt. 1:391.

and systematic violation of the usages of civilized warfare.” As *Harper’s Weekly* put it, “reprisals and retaliation are a legitimate method of war,” although not a method always wise or just in its application. Francis Lieber explained at great length throughout the war why an attitude that accepted retaliation as sometimes justified but worried of its overuse ought to define official Federal policy. A staunch partisan of the Union cause, he eagerly denounced Confederates for the “callous cruelty and fiendish ferocity” with which they waged war and suggested to a Connecticut senator that Confederates had descended into a “moral madness” and relished rejecting all conventional rules of warfare.¹⁰ Yet even in a war against an enemy driven to “moral madness,” retaliation remained the sternest feature of war, one the Union must not resort to in careless haste or vengeance.

Lieber’s code justified retaliation only as a method of protecting against “the repetition of barbarous outrage.” When a belligerent fought a “reckless enemy,” sometimes retaliation alone prevented atrocities. This meant retaliation could not proceed for “mere revenge,” but only “protective retribution.” Even then, Federals should resort to retaliatory measures “cautiously and unavoidably,” after a careful inquiry into the “character of the misdeeds that may demand retribution” and only after all other options to forestall the repeated misdeeds failed. Lieber vehemently disagreed with northerners who deemed retaliation unjust because it punished an innocent person for someone else’s offense. He rejected the premise of the complaint: “Retaliation is no punishment for a crime committed by the victim,” he explained to Halleck, who hardly needed the lesson on the laws of war. Instead, retaliation was “a measure of defense and repression in which the opposite party is treated as a unit, as in all international affairs.” A just retaliation did not seek punishment for a particular crime; instead, it remained an act of

¹⁰ *OR*, ser. 2, vol. 6, 73; *Harper’s Weekly*, July 11, 1863; Francis Lieber to Lafayette Sabine Foster, February 2, 1865, The Papers of Francis Lieber, Box 26, HL.

“protective retribution” against an enemy belligerent, a means of preventing further atrocities. This grim fact still disheartened Lieber: “It is this very thing which makes retaliation so awful.” Lieber did not detail in the code exactly what form retaliation could take, but he believed it “must have its limits in simple death.”¹¹ Northerners who called for retaliation in kind in the form of near-starvation or exposure failed to abide by the laws of war.

Lieber acknowledged that retaliation, once begun, could quickly unleash a vicious cycle of counter-retaliation. “If one belligerent hangs ten men for one,” he wrote to Halleck, “the other will hang ten times ten for the ten, and what a dread geometrical progression of skulls and cross bones we would have!”¹² Or, as Lieber said in his code, even justified retaliation leads “nearer to the internecine wars of savages.” This made permanent peace with a former enemy all the more difficult. Lieber believed the only way to avoid the bloody arithmetic of savage warfare was to adhere closely to the rules he set forth in General Orders No. 100: retaliate only to prevent “the repetition of barbarous outrage,” and, even then, pursue it cautiously as a last resort.

If Confederates subjected Union soldiers to “barbarous outrages,” the challenge for Federals was deciding when and how to retaliate. The war’s final year often confronted Federals with this question. Each time, the central problem remained the same: could Federals reconcile wariness over retaliation in kind with a zealous commitment to protecting Union troops?

“The difficulty is not in stating the principle, but in practically applying it”: Retaliation for Atrocities against Black Union Troops

Confederate atrocities against black troops certainly confronted Federal officials with this dilemma. Rebels refused to grant African Americans, particularly former slaves, the full rights

¹¹ “Instructions for the Government of Armies of the United States in the Field,” articles 27 and 28; Francis Lieber to Henry Halleck, April 19, 1864, The Papers of Francis Lieber, Box 9, HL.

¹² Francis Lieber to Henry Halleck, June 2, 1863, The Papers of Francis Lieber, Box 9, HL.

and protections of legitimate soldiers. On many notorious occasions, Confederates committed heinous atrocities against black troops. Historians have castigated the Lincoln administration for its seemingly lackluster response to these atrocities. As one concluded, “Lincoln and his generals took no concrete action to stop the slaughter of their black soldiers,” even though Union officials often quickly retaliated in response to atrocities against white soldiers. Whether inspired by sinister racism or cold-hearted political calculations, the line of argument continues, Federal officials responded to atrocities against black troops with tepid threats but no substantive action.¹³

This is true in part. The most infamous atrocity against black troops, at Fort Pillow, did not ultimately elicit a retaliatory response from the Lincoln administration. Yet Lincoln and other Federal officials responded to these atrocities not out of racist indifference but according to their generally cautious attitude toward retaliation. Even as Union officials insisted on equal treatment and protections for African Americans in uniform, their deeply ingrained wariness over retaliation tempered their reprisals to atrocities against black soldiers.

Soon after the war began, Federals faced the question of how exactly, if at all, they would employ African Americans in Union armies. As Union armies penetrated into the South and crippled the institution of slavery, escaped former slaves increasingly contributed to the work of Federal forces. In Memphis, for example, William T. Sherman put some to work in non-combat roles like rebuilding the city’s fortifications; outside New Orleans, John W. Phelps, without

¹³ Geroe S. Burkhardt, *Confederate Rage, Yankee Wrath: No Quarter in the Civil War* (Carbondale: Southern Illinois University Press, 2007), 2. Gregory J.W. Urwin likewise argued, “Although the Lincoln administration threatened to reply in kind if Confederates failed to treat African American soldiers as honorable combatants, it did not make good on that pledge. Many high-ranking Union commanders did not like blacks or approve of their recruitment. Such officers rarely took note of Confederate excesses against black soldiers or civilians, let alone protest such incidents.” Urwin, “Warfare, Race, and the Civil War in American Memory,” in Urwin, ed., *Black Flag over Dixie: Racial Atrocities and Reprisals in the Civil War*. Carbondale: Southern Illinois University Press, 2004, 10.

authorization, unsuccessfully tried to organize fugitive slaves into new army companies. Soon after President Lincoln issued the Emancipation Proclamation, Federals moved determinedly toward enlisting black soldiers in Union armies. By May 1863, the War Department established the Bureau of Colored Troops to organize these new black regiments. All told, nearly 180,000 African American soldiers served in Union forces by the war's end.¹⁴

Confederates looked upon these tens of thousands of African American men in uniform as proof of the radicalism and barbarity of the Union war effort. Confederate Secretary of War James A. Seddon deemed the enlistment of former slaves “an abandonment of the rules of civilized warfare,” for it amounted to inciting “servile insurrection” amid the war. Confederate officials made it clear they would not recognize black Union troops as legitimate enemy soldiers. In May 1863 the Confederate Congress passed a resolution promising to try and execute captured white officers commanding black troops.¹⁵

President Lincoln insisted the “law of nations and the usages and customs of war as carried on by civilized powers, permit no distinction as to color in the treatment of prisoners of war as public enemies.” If Confederates treated black Union troops as anything less than legitimate soldiers they would simply “relapse into barbarism.” Lincoln’s June 1863 “Order of Retaliation” threatened that for every Union soldier, regardless of color, “killed in violation of the laws of war,” Federals would in kind execute a Confederate soldier. For every Union soldier

¹⁴ Joseph Glatthaar, *Forged in Battle: The Civil War Alliance of Black Soldiers and White Officers* (New York: Free Press, 1990); Ira Berlin, Joseph P. Reidy, Leslie S. Rowland, *Freedom’s Soldiers: The Black Military Experience in the Civil War* (Cambridge: Cambridge University Press, 1998); Stephen V. Ash *Firebrand of Liberty: The Story of Two Black Regiments That Changed the Course of the Civil War* (New York: Norton, 2008)

¹⁵ Quoted in Neff, *Justice in Blue and Gray*, 72; James G. Hollandsworth has meticulously investigated the extent to which Confederates actually carried out this threat. He concluded only eleven white officers were likely executed in accordance with this threat, leading him to conclude: “...the Confederate government did not officially carry out its threat to execute white officers who volunteered to command black troops in the Union army.” Hollandsworth, “The Execution of White Officers from Black Units by Confederate Forces During the Civil War,” in Urwin, ed., *Black Flag over Dixie*, 52-64.

“enslaved by the enemy or sold into slavery,” Federals would place a Confederate soldier “at hard labor on the public works” until the Union soldier was released.¹⁶

The coming months tested Lincoln’s resolve in fulfilling these threats, but he was not alone in professing his commitment to protecting black Union soldiers from Confederate atrocities. Francis Lieber likewise thought Federal officials had a solemn obligation to guarantee African Americans received the same rights and privileges afforded white soldiers. “If we lead [black troops] into battle and even place them in its path, and then permit them to be butchered when captured and held as prisoners, the world will fully denounce our conduct as both criminal and cowardly,” Lieber wrote to Joseph Holt not long after Lincoln issued his retaliation order. Federals ought to respond to the murder of captured or surrendered black soldiers with “instantaneous and unsparing” retaliation. *Harper’s Weekly* also called upon Union officials to compel from “the rebel ringleaders an explicit guarantee of the same treatment that all our soldiers in their hands receive,” otherwise African Americans would soon realize the foolishness in fighting “for a flag which does not protect [them].” The Union should respond with “swift, sure, and deadly” retaliation for atrocities against black troops, *Harper’s Weekly* declared. If Federal officials failed to protect black soldiers in this manner, it ultimately meant nothing less than that the Union was “simply unworthy of success.”¹⁷

Not long after the enlistment of black soldiers in Union armies came grim occasions for Federal leaders to prove their worthiness of success. The summer of 1863 and onward witnessed a string of recurring atrocities committed by Confederates against African American soldiers, at places such as Milliken’s Bend, Olustee, and Poison Spring. These events followed a terribly

¹⁶ *The Collected Works of Abraham Lincoln*, ed. Basler, 6:357. For more on the dilemma confronting Union officials seeking to compel Confederates to acknowledge the legitimacy of black troops, see Neff, *Justice in Blue and Gray*, 72-75.

¹⁷ Francis Lieber to Joseph Holt, July 15, 1863, The Papers of Francis Lieber, Box 11, HL; *Harper’s Weekly*, August 15, 1863.

familiar script. After relatively small-scale engagement, Confederate troops gave no quarter to black soldiers, killing many as they surrendered or soon after. Confusion sometimes shrouded these instances of no quarter. Therefore, Federals often responded as Ulysses S. Grant did after reports of the murder of black soldiers at Milliken's Bend. He warned Confederate Major General Richard Taylor that because "colored troops are regularly mustered into the service of the United States" Confederates had to offer "the same protection to these troops that they do to any other troops." Still, no formal retaliation followed. By the spring of 1864, despite warnings from Federals, the atrocities continued. They not only called into question the power of Union leaders to protect their troops, but also seemingly confirmed, in Lieber's words, that Confederates had abandoned "the track of common justice, fairness and honor."¹⁸

The most infamous atrocity occurred on April 12, 1864, when Confederates commanded by Nathan Bedford Forrest captured Fort Pillow. The fort sat on a bluff in Tennessee along the Mississippi River roughly forty miles north of Memphis. In the aftermath of the fort's fall, Forrest's men massacred part of the Federal garrison, comprised in substantial part of African American soldiers. Confederates killed well over 200 Federal soldiers, white and black, after they surrendered. President Lincoln had promised one year prior to deliver swift retaliation in response to every Federal soldier, regardless of color, "killed in violation of the laws of war." Now came time to see if he would make good on his threat.¹⁹

¹⁸ *OR*, ser. 1, vol. 24, pt. 3, 426; Francis Lieber to Henry Halleck, January 7, 1863, The Papers of Francis Lieber, Box 27, HL. For an overview of these and similar atrocities, see, Burkhardt, *Confederate Rage, Yankee Wrath*; Urwin, ed., *Black Flag over Dixie*; Gregory J.W. Urwin, "'We cannot treat negroes ... as prisoners of war': Racial Atrocities and Reprisals in Civil War Arkansas," *Civil War History* 42 no. 3 (September 1996): 193-210.

¹⁹ For a particularly meticulous and judicious coverage of all the relevant evidence concerning the capture of Fort Pillow and the subsequent atrocities, see, Albert Castel, "The Fort Pillow Massacre: An Examination of the Evidence," in Urwin, ed., *Black Flag over Dixie*, 89-103. See also, John Cimprich, *Fort Pillow, a Civil War Massacre, and Public Memory* (Baton Rouge: Louisiana State University Press, 2005).

Lincoln first publicly addressed the massacre less than one week later in an address at a Sanitary Fair in Baltimore. He reaffirmed his commitment to protecting black troops from Confederate atrocities. The Union resolved “to use the negro as a soldier,” Lincoln declared, so it must ensure he received “all the protection given to any other soldier.” This obligation weighed heavily on Lincoln: “I am responsible for it to the American people, to the Christian world, to history, and on my final account to God,” he proclaimed. Yet the responsibility to guarantee equal protection for black soldiers was easily acknowledged but not easily fulfilled. “The difficulty is not in stating the principle, but in practically applying it,” Lincoln said. For the time being, Lincoln resisted an immediate reaction. “We do not to-day *know* that a colored soldier, or white officer commanding colored soldiers, has been massacred by the rebels when made a prisoner. We fear it, believe it, I may say, but we do not *know* it,” Lincoln reminded his audience. He confessed he believed the rumors but still needed to thoroughly investigate them before responding. “To take the life of one of their prisoners, on the assumption that they murder ours, when it is short of certainty that they do murder ours, might be too serious, too cruel a mistake,” Lincoln said. Once Federals “conclusively proved” the massacre, it would remain “a matter of grave consideration in what exact course to apply the retribution.” Still, Lincoln promised retaliation “must come.”²⁰

Northern newspapers denounced Confederates for the savagery at Fort Pillow. Many also insisted on equal protection for black soldiers and did not hesitate to opine on the “grave consideration” of how to respond to the atrocity. *Frank Leslie’s Illustrated Newspaper* condemned the massacre as “savage in conception, savage in execution, and savage in its bold endorsement by the rebels.” The *Christian Advocate and Journal*, a leading Methodist publication, denounced the atrocity as “the work of absolute demons,” while the *New York Times*

²⁰ *The Collected Works of Abraham Lincoln*, ed., Basler, 7:302-3.

labeled it “Devilish Atrocities of the Insatiate Fiends.” The *Chicago Tribune* predicted news of the atrocity would shock “the whole civilized world.” Other newspapers likewise assumed Confederates had resorted to the warfare tactics of savage people. The *New York Herald* called the incident “one more step in [the Confederacy’s] degeneration towards mere barbarity ... The Chinese and the Sepoys have become the chosen models of Southern men.” *Harper’s Weekly* concluded the “annals of savage warfare nowhere record a more inhuman, fiendish butchery.”²¹

These same northern newspapers also advised the Lincoln administration how it ought to respond, even though their proposals lacked specificity and did not really grapple with the problem in all its complexity. *Harper’s Weekly* admitted the question before the Lincoln administration was a difficult one. While the Union utterly refused “to allow its soldiers to be butchered in cold blood,” the *Harper’s Weekly* granted that “in what way we can retaliate it is not easy to say.” The periodical avoided offering a specific solution other than to declare, “The massacre at Fort Pillow is a direct challenge to our Government to prove whether it is in earnest or not in emancipating slaves and employing colored troops. There should be no possibility of mistake in the reply. Let the action of the Government be as prompt and terrible as it will be final.” The *Chicago Tribune* insisted that unless Confederate officials immediately disavowed the massacre, the Union ought to resort to “retaliation *in the same circumstances and of the same kind*.” This meant, simply, “what the rebels do to black men wearing our uniform, we will do to white ones wearing theirs.” But not all newspapers called for immediate retaliation in kind. After all, it was in this moment that Garrison’s *Liberator* set forth its “many grave objections” to it. Similarly, while the *New York Times* warned that if Federals did not do all within their power to prevent future atrocities against black soldiers, “Heaven and history will hold us responsible,” it

²¹ *Frank Leslie’s Illustrated Newspaper*, May 7, 1864; *Christian Advocate and Journal*, June 1864; *New York Times*, April 16, 1864; *Chicago Tribune*, April 16, 1864; *New York Herald*, April 16, 1864; *Harper’s Weekly*, April 30, 1864, 283.

remained wary of retaliatory responses like the one the *Chicago Tribune* advocated. “It would certainly be very hard for us either to counsel or to witness the execution in cold blood of this number of Confederate prisoners who have had no share in this bloody deed.” While these prisoners were “technically answerable” before the laws of war for the massacre at Fort Pillow, the *New York Times* deemed their retaliatory execution “something which no Christian man at the North likes to face, if it can possibly be avoided.” The execution of “Forrest’s butchers,” however, would bring “intense satisfaction,” the newspaper confessed.²²

The most vigorous initial response to the Fort Pillow massacre came not from northern newspapers but from the congressional Joint Committee on the Conduct of the War. Nearly as soon as word reached Washington of what happened at Fort Pillow, Radical Republicans set in motion plans for a formal investigation, which Congress eventually authorized. Senator Benjamin F. Wade of Ohio and Representative Daniel Gooch of Massachusetts conducted the investigation, interviewing several dozen witnesses and survivors. Wade, Gooch, and other likeminded Republicans in Congress saw in the investigation an opportunity to demonstrate again that the slaveholding South desperately needed a radical reconstruction after Union victory. Without it, horrors unimaginable – far worse even than Fort Pillow – would inevitably follow.²³

The committee’s eventual report, one historian suggested, mirrored Harriet Beecher Stowe’s *Uncle Tom’s Cabin* in its explicit attempt to general “emotional outrage” at the barbarities of slaveholding society. The report contained infamous and incendiary stories of the

²² *Harper’s Weekly*, April 30, 1864; *Chicago Tribune*, April 30, 1864; *New York Times*, May 2, 1864.

²³ For more on the Committee’s investigation and report beyond what is covered in this paragraph, see Tap, *Over Lincoln’s Shoulder*, 193-203; Bruce Tap, “‘These devils are not fit to live on God’s earth’: War Crimes and the Committee on the Conduct of the War, 1864-1865.” *Civil War History* 42 no. 2 (June 1996): 116-132; Derek W. Frisby, “Remember Fort Pillow!: Politics, Atrocity Propaganda, and the Evolution of Hard War,” in Urwin, ed., *Black Flag over Dixie*, 104-31.

atrocities committed by Forrest's men. Some within the Union high command looked with skepticism upon the report, certain it contained misleading exaggerations. The committee insisted its investigation definitively proved that what occurred at Fort Pillow was "cruelty and murder without a parallel in civilized warfare, which needed but the tomahawk and scalping-knife to exceed the worst atrocities ever committed by savages." Confederates perpetrated nothing less than "indiscriminate slaughter."²⁴

While a congressional committee's investigation might prove that indiscriminate slaughter occurred, the responsibility of deciding how to respond rested with President Lincoln alone. In early May, he reached out to his cabinet for their advice. "It is now quite certain that a large number of our colored soldiers, with their white officers, were, by the rebel force, massacred after they had surrendered," he wrote them. "I will thank you to prepare, and give me in writing your opinion as to what course, the government should take in the case." The final decision rested with the commander-in-chief, yet so difficult and controversial a question compelled Lincoln to confer with his cabinet.²⁵

Lincoln received detailed replies from senior members of his cabinet – Edward Bates, William Seward, Edwin Stanton, Gideon Welles, Salmon Chase, and Montgomery Blair. These men did not agree about how to respond to the massacre; for example, Bates and Blair questioned the wisdom of retaliating at all against innocent Confederate prisoners. But no one explicitly advocated retaliation *in kind* – that is, the immediate execution of an equal number of

²⁴ U.S. Congress, *Fort Pillow Massacre*, 38th Cong., 1st sess., 1864, H. Rept. 65, 2; Frisby, "Remember Fort Pillow," 118; Gideon Welles, for one, remained deeply skeptical of the committee's report. He wrote in his diary: "The subject is one of great responsibility and great embarrassment, especially before we are in possession of the facts and evidence of the committee. There must be something in these terrible reports, but I distrust Congressional committees. They exaggerate." Welles, *Diary of Gideon Welles* (Boston: Houghton Mifflin, 1911): 2:23.

²⁵ May 3, 1864, Reel 73, Abraham Lincoln Papers, LC.

Confederate prisoners of war. Their reasoning followed Lieber's own cautious warnings against retaliation even in justifiable circumstances.

Two assumptions ran through the responses from Lincoln's cabinet. First, the Union had an inviolable obligation to protect its troops, white and black alike; and second, retaliation in kind tended to unleash a terrible, unpredictable cycle of horrors in war, even in wars between supposedly civilized belligerents. Edward Bates and Salmon Chase disagreed vehemently on many things, but they both agreed, as Bates put it, that it was no longer a "debatable question" as to whether the Union must "protect and (if need be) avenge" African American soldiers: "It is a simple duty, the failure to perform which would be a crime and a national dishonor." Gideon Welles similarly reminded Lincoln it was the government's duty "to protect its soldiers from butchery when captured, no matter what may be their color." Despite this obligation, Lincoln's cabinet remained wary of what might result from a resort to retaliation in kind. Bates feared it would draw the Union "into the vortex" of the ominous warfare of "cruel severities" currently favored by Confederates, a warfare in which Confederates were "more swayed by their passions and prejudices, than by reason and judgment." Welles was even more pessimistic: "Such a vindictive warfare towards a whole race, will unavoidably provoke retaliation by the race proscribed," he predicted. "The persecuted will become equally unrelenting toward their persecutors and if not checked a war of extermination will be the consequence." For this reason, William Seward believed, Lincoln ought to respond "with prudence and frankness as well as with firmness."²⁶ Only a deft mixture of all three would prevent future atrocities and forestall retaliation's worst effects, namely a "war of extermination."

²⁶ Edward Bates to Lincoln, May 4, 1864, Gideon Welles to Lincoln, May 5, 1864, Edward Bates to Lincoln, May 4, 1864, Gideon Welles to Lincoln, May 5, 1864, William Seward to Lincoln, May 4, 1864, Reel 73, Abraham Lincoln Papers, LC. Salmon Chase affirmed all soldiers must receive equal treatment "without regard to complexion." Chase to Lincoln, May 6, 1864, Reel 73, Abraham Lincoln Papers, LC.

How then should the Union respond? Seward offered the most evasive reply. He thought the time to settle on a definitive response had not arrived. Lincoln should offer Confederate officials the chance “to deny the charge and counteract the testimony” or disown the massacre completely. Only then could Lincoln rightly decide how to respond, Seward said. In the meantime, to demonstrate to Confederate officials “the firmness of this Government,” Lincoln could set aside Confederate prisoners equal in number to Federal soldiers massacred at Fort Pillow and warn Richmond that the Union would retaliate against these prisoners if necessary.²⁷

Edwin Stanton agreed that Federals should immediately place in special confinement a group of prisoners of war equal to the massacred Union soldiers. But he had a different goal in mind. Lincoln should tell Confederate officials that these prisoners would not face “retributory punishment ... justified by the laws of civilized warfare” so long as Confederates handed over Generals Forrest, James Ronald Chalmers, and the soldiers under their command at Fort Pillow. Stanton preferred punishing the guilty offenders instead of retaliating against captured Confederates. However, he rightly assumed Confederate officials would never give up Forrest, Chalmers, or their men. After they refused to do so, Stanton said, Lincoln ought to follow through with his threatened retaliation against Confederate prisoners. Gideon Welles advised more or less the same course of action. Although Stanton and Welles did not say how exactly to

Even as Bates insisted on this protection for black troops, he did not miss the chance to remind Lincoln that it was precisely because of what unfolded at Fort Pillow that he originally adamantly opposed the enlistment of black troops – not because it was “legally or morally wrong,” but simply because it did not seem “prudent or wise” given the likely Confederate reactions.

²⁷ William Seward to Lincoln, May 4, 1864, Reel 73, Abraham Lincoln Papers, LC. Gideon Welles likely spoke for the rest of the cabinet when he recorded in his diary the difficulty of meeting Lincoln’s request, yet he also clearly saw the utter difficulty of settling upon an effective response. “I have written a letter to the President in relation to the Fort Pillow massacre, but it is not satisfactory to me, nor can I make it so without the evidence of what was done, nor am I certain that even then I could come to a conclusion on so grave and important a question ... The leading officers should be held accountable and punished, but how? The policy of killing negro soldiers after they have surrendered must not be permitted, and the Rebel leaders should be called upon to avow or disavow it. But how is this to be done?” Welles, *Diary of Gideon Welles*, 2:24.

retaliate, they agreed, as Stanton said, that Lincoln should only chose measures “essential for the protection of union soldiers from such savage barbarities.” They both agreed the point of this retaliation must remain nothing more than “to compel the rebels to observe the laws of civilized warfare,” as Stanton said – laws that Welles labeled “humane and civilized principles” of waging war.²⁸

Stanton did not end there. He thought the massacre called for an additional “retaliatory punishment” against *all* captured Confederate officers, since “the rebels have selected white officer of colored regiments and excluded them from the benefit of the laws of war.” Stanton advised that these captured officers receive “precisely the same rations and treatment” as captured Federal officers, which Stanton assumed were far worse than what they presently received. Stanton believed the “whole weight of retaliatory punishment” should “fall upon the officers of the rebel army,” because many Rebel privates were “held in arms by terror and rigorous punishment” inflicted by the aristocratic slaveholding elite.²⁹

Edward Bates agreed with Stanton and Welles that retaliation was “avowedly Revenge” unless pursued for “the sole purposes of punishing past crime and of giving a salutary and blood-saving warning against its repetition.” Bates, though, did not seem to agree exactly with the response advocated by Stanton and Welles. Like them, he thought Federals should give Confederates the chance to disavow the massacre while also demanding the surrender of Forrest and Chalmers. He believed “instant execution” should await anyone who took part in the massacre if ever captured by Federals, Bates expressed unease over retaliating against randomly chosen Confederate prisoners. True retaliation in kind – the execution of an equal number of captured Confederates – would be to engage in a “cartel of blood and murder” governed only by

²⁸ Edwin Stanton to Lincoln, May 5, 1864, Gideon Welles to Lincoln, May 5, 1864, Reel 73, Abraham Lincoln Papers, LC.

²⁹ Edwin Stanton to Lincoln, May 5, 1864, Reel 73, Abraham Lincoln Papers, LC.

one principle: “if you murder one of my men, I will murder one of yours!” For this reason, Bates opposed retaliation in kind. Montgomery Blair offered a similar yet even more adamant opposition. He thought the execution of Confederate prisoners “would not be just in itself or expedient.” What made it unjust? According to Blair, “the mass of the people at the South and of the Army have but little share in the guilt and should not be held responsible for its horrors.” As such, Federals should focus instead on “the capture and the most summary punishment” of the “actual offenders.”³⁰

Importantly, Bates (unlike Blair) believed the controversy presented “not a question of law, but questions of prudence.” He thought the laws of war technically justified retaliation in this case, but he feared the “consequences” of retaliation in kind might be “so important and diversified in themselves, and, possibly, so terrible, in their results.” No one could say for certain where retaliation in kind headed, so Lincoln had to act with “utmost care and deliberation.”³¹

No one called for immediate retaliation in kind and two cabinet members opposed it explicitly. But everyone assumed some sort of retaliatory punishment would likely occur – either against the Confederates guilty of the atrocities at Fort Pillow or against randomly chosen captured rebel soldiers. Above all, the replies from Lincoln’s cabinet revealed their most basic assumptions about “the sternest feature of war”: while often justified and necessary, retaliation was not always effective, rarely desirable, and ought to be used “cautiously and unavoidably,” as Lieber said. Still, Lincoln’s cabinet left largely unanswered the most difficult particular question: in what manner exactly should the Union retaliate against captured Confederates for the massacre at Fort Pillow? Should they opt for immediate execution, a true retaliation in kind, or with something less severe?

³⁰ Edward Bates to Lincoln, May 4, 1864, Montgomery Blair to Lincoln, May 6, 1864, Reel 73, Abraham Lincoln Papers, LC.

³¹ Edward Bates to Lincoln, May 4, 1864, Reel 73, Abraham Lincoln Papers, LC.

On May 17, having digested his cabinet's advice, Lincoln directed Secretary Stanton to inform Confederate officials that they had until July 1 to offer an ironclad assurance that "there shall be no similar massacre, nor any officer or soldier of the United States, whether white or colored, not held, or hereafter captured by the insurgents, shall be treated other than according to the laws of war." Only this guarantee would prevent a retaliation response to Fort Pillow. If Confederates agreed to treat black troops and their white officers as legitimate soldiers, Federals would not retaliate for Fort Pillow.³²

July 1 came and went. Confederate officials offered no promises as demanded and Lincoln did not carry out the threatened retaliation. Lincoln and most of his cabinet understood this decision of whether or not to retaliate as a choice between two evils: should they retaliate, and thereby potentially unleash a vicious cycle of counter-retaliations? Or should they not retaliate and thereby fail to protect Union soldiers by avenging Confederate atrocities? Lincoln believed African American troops deserved the same rights and protections that white soldiers received. Yet he also assumed, like Lieber, that retaliation was not always prudent or wise, even when justified. Lincoln assumed that retaliation in this instance would not accomplish what legitimate retaliations had to likely accomplish: to compel a belligerent to abide by accepted rules of warfare it had disregarded. Having assumed that Confederates would never accept black men as legitimate enemy soldiers, and that no amount of retaliation likely would convince them otherwise, Lincoln saw the dilemma before him as one largely of effectiveness: if retaliation for Fort Pillow would not alter Confederates' behavior, and in fact might only spur them to commit greater atrocities against black soldiers, why should the Union retaliate?

³² *The Collected Works of Abraham Lincoln*, ed., Basler, 7:345-6. For additional consideration of Lincoln's ultimate decision, see Derek W. Frisby, "Remember Fort Pillow," in Urwin, ed., *Black Flag over Dixie*, 120-1; Burkhardt, *Confederate Rage, Yankee Wrath*, 118-23; Tap, *Over Lincoln's Shoulder*, 206

“Mummied Dwindled Corpses”: The May 1864 Retaliatory Ration Reductions

If atrocities against African American soldiers spurred talk of retaliation, so too did Confederate treatment of white Union prisoners of war. As news of the Fort Pillow massacre spread across the North, for nearly seven months prior tensions had risen over the conditions of prisoner of war camps in Virginia, especially in and near Richmond. The diseased and decimated bodies of Union prisoners in these Confederate camps infuriated northerners and appeared to many to prove that soldiers endured malicious maltreatment at the hands of rebels.

In late May 1864, Federal authorities reduced the rations provided to Confederate prisoners of war. Some historians have pointed to the action as a cold-hearted retaliatory response to perceived mistreatment of Union prisoners.³³ In fact, this reduction in rations was not as extreme as some historians have argued. Neither did it mark an ominous turn toward a war defined by vicious and vengeful retaliation. Given the seven-months-long conflict with Confederate officials over the treatment of Federal prisoners near Richmond, not to mention the bitter passions aroused by reports of the suffering endured by captured Union soldiers, the ration reduction of May 1864 was surprisingly limited. In light of all that northerners thought about what happened to their captured troops, Federal officials might easily have resorted to a far more drastic response.

In late October 1863, almost two hundred sick and wounded Union prisoners arrived from City Point, Virginia, to Camp Parole in Annapolis, Maryland. William Hoffman, the

³³ Michael Sanders argued that the May 1864 ration reduction, “signaled nothing less than the advent of a new and far more determined effort to develop and implement a policy of successive rounds of retaliation, deliberately designed to lower conditions in the camps and increase immeasurably the suffering of prisoners.” Sanders, *While in the Hands of the Enemy* (Baton Rouge: Louisiana State University Press, 2005), 237. Roger Pickenpaugh likewise suggested that with the reduction, “Retaliation was not the policy of the Union.” Pickenpaugh, *Captives in Gray: The Civil War Prisons of the Union* (Tuscaloosa: The University of Alabama Press, 2009), 191.

Union's Commissary General of Prisoners, soon received word from an officer at Camp Parole that the Federal soldiers arrived "in a pitiable condition of mind and body, having experienced extreme suffering from a want (apparently) of proper food," which left them reduced to "invalids." When Ethan Allen Hitchcock, then still the Union's Commissioner for the Exchange of Prisoners, learned of the condition of these former prisoners of war, he demanded an explanation from Robert Ould, his Confederate counterpart. Hitchcock inquired specifically about the precise rations provided to Union prisoners and subtly threatened that the content of Ould's reply would guide Federal authorities "when the question of retaliation shall be forced" upon them. Yet Hitchcock initially advised Edwin Stanton not to retaliate in kind immediately against Confederate prisoners, if for no other reason than that "it would result in an uprising of the prisoners against their guards ... Humane nature would not endure such treatment."³⁴

In the meantime, Union officials collected more information about the health of prisoners who arrived at Camp Parole and the conditions of Confederate prisons in Richmond. The Federal agent of exchange originally in charge of transporting the prisoners from City Point to Camp Parole later reported of their "wretched condition and appearance ... most feeble and delicate." A delegate from the U.S. Christian Commission, after visiting Confederate prison camps in Richmond, told Hitchcock that Federal soldiers lived in conditions "in the highest degree uncomfortable and threatening to their health." He feared thousands would soon die of disease, and pleaded with Hitchcock and the Union government to "do something for humanity's sake." A Connecticut chaplain who temporarily visited the same prisons likewise informed William Hoffman of the meager rations prisoners received, as well as the general lack of adequate shelter and fuel for cooking. One Confederate officer confessed that the Belle Isle prison was "a perfect

³⁴ *OR*, ser. 2, vol. 6, 446, 486.

slaughter pen,” the chaplain wrote. He concluded the prison reduced soldiers “to such weakness and exhaustion as would unfit them for military service.”³⁵

As the northern public learned more about the condition of the Richmond camps, many newspapers vociferously denounced Confederate treatment of prisoners as unchristian and uncivilized. The *New York Times* lamented the terrible fates of “woe-begone, miserable, starving men” in Richmond prisons. “They were starved to the verge of the grave,” the newspaper insisted, “and what was left of them was nearly devoured by vermin.” The paper concluded that Confederate “diabolism will never abate as long as it is in their power to exercise it,” for slaveholders were “reared to cruelty.” The *Christian Advocate and Journal* castigated Confederates for working “deliberately to kill or ruin the constitution of every prisoner ... Our brave soldiers who fell into the hands of these barbarians were killed by inches, starved to death.” Jefferson Davis “ostentatiously parades his worship to the God of mercy and justice, and makes frequent appeals for divine aid,” a sacrilege given the heinous treatment of Union prisoners that would hasten Davis’ downfall. Rebel treatment of prisoners, *Harper’s Weekly* argued, belonged to an earlier uncivilized age of warfare, for Confederates “drag [prisoners] away to starve in loathsome dungeons.”³⁶

The same newspapers that printed fierce condemnations of Confederate prisons also called for a restrained response to the apparent mistreatment of Union prisoners. While the *Chicago Tribune* thought Confederate treatment of prisoners “shall stand and shine in hellish lustre at the inverted pinnacle of man’s inhumanities,” it also rejoiced that the Lincoln administration had not resorted to “swift and instant retaliation in kind.” Doing so would only “increase the odium these acts of [Confederates] must bring them in all coming time.” *Harper’s*

³⁵ Ibid., 512, 513-4, 530.

³⁶ *New York Times*, April 17, 1864, April 22, 1864; *Christian Advocate and Journal*, May 1864; *Harper’s Weekly*, January 9, 1864.

Weekly agreed that the Confederate actions demanded a just response but not crude retaliation in kind. However Federal authorities chose to respond, the *New York Herald* hoped the Union's prosecution of the war would "remain Christian in spite of every provocation," every new story of Confederate mistreatment of prisoners. "Our Government has too long suffered the rebels to practice such dreadful inhumanities," the *New York Times* concluded, "We would not have our authorities pattern after them, nor treat their prisoners as our prisoners have been treated by them—though this would be in strict accord with the laws of war." "No Christian man or woman would wish for retaliation," a correspondent for the *New York Times* wrote after viewing the sick prisoners who arrived at Camp Parole, "... leaving the punishment of such cruelties to that higher power, who has declared, 'Vengeance is mine and I will repay, saith the Lord.'"³⁷

Union officials faced the difficult task of reducing the suffering of Federal prisoners without imitating what they deemed unjustifiably cruel actions by Confederates. Ethan Allen Hitchcock and his subordinates did not hastily resort to retaliation in kind against Confederate prisoners. Instead, they initially tried to provide prisoners in Richmond with additional provisions donated by northerners and to secure their exchange.

Some northern citizens, especially those working with the United States Christian Commission, had sent food and other provisions to Federal prisoners in Richmond. In mid November, Hitchcock directed Sullivan Meredith, a commissioner for prisoner exchanges, to ensure that the provisions actually made it to imprisoned Union soldiers. The Federal government's decision to follow up on the status of these provisions, Hitchcock informed Robert Ould, "is dictated purely by humanity, and is only an effort to relieve our prisoners from suffering inflicted upon them contrary to the claims of both humanity and the laws of war."

³⁷ *Chicago Tribune*, November 19, 1863; *Harper's Weekly*, January 9, 1864; *New York Herald*, November 11, 1863; *New York Times*, October 31, 1863, November 6, 1863.

Hitchcock also warned Ould that this generosity from northerners “must not be understood as relieving the authorities at Richmond from responsibility to the Christian world,” that is, their obligation to provide adequately for prisoners.³⁸

Although Ould did not yet stymie northerners’ efforts to provide additional provisions to Federal soldiers, his reply to Hitchcock sternly contested the “infamously false” rumors circulating throughout the North about the condition of Richmond prisons. “We recognize in the fullest form our obligation to treat your prisoners with humanity and to serve them with the same food in quantity and quality as is given to our own soldiers,” Ould wrote. “If the supply is scanty, you have only to blame the system of warfare you have waged against us.” In the meantime, Hitchcock and other northerners could continue to send provisions “without stint or limitation” to captured Federals. Hitchcock remained unconvinced by Ould’s claim that captured Federals received provisions equal to what Federals offered captured Confederates. Ould’s promises, Hitchcock wrote to Meredith, were “contradicted by all the evidence that has reached me,” not least the emaciated bodies arriving at Camp Parole.³⁹

As this correspondence with Ould continued, Hitchcock explained to the northern public the actions thus far taken by Union authorities to protect captured prisoners in Richmond. In a public letter to the *New York Times* and other northern newspapers, published with Stanton’s approval in early December, Hitchcock addressed a pressing question on the minds of many northerners: Federal prisoners in Richmond endured “extreme sufferings ... contrary to the usages of war and the dictates of humanity,” so why were they not exchanged?

The first and most important reason, Hitchcock argued, was that Confederates stubbornly refused to extend to African American troops “that humanity which is due to all other troops in

³⁸ *OR*, ser. 2, vol. 6, 515.

³⁹ *Ibid.*, 537-8, 552. Days later, Ould followed up to Meredith with a detailed account of conditions in camps in Richmond meant to corroborate his claims. For the text of this account, see *Ibid.*, 544-7.

like circumstances according to the laws of civilized warfare.” The Union government had “the most solemn obligation” to defend African American soldiers and ensure they received all the rights and protections normally afforded soldiers. To engage in large-scale prisoner exchanges with Confederates who denied the legitimacy of black troops “would manifest the most stupid blindness on our part” because it undermined efforts to compel Confederates to treat white and black Federal soldiers equally. Hitchcock did not shy away from telling northerners that the Union had an obligation to protect African American troops, even if it came temporarily at the cost of unjust suffering by captured white Federals. A New York cavalryman latter told Hitchcock that he agreed with this rationale. “The hope of the Richmond Government has been that the misery inflicted on our prisoners in the South would compel our Government to yield vital points of controversy,” the cavalry officer wrote, “and thereby it would be enabled still in the future to impose its unreasonable and barbarous conditions.” The Union government wisely insisted on equal treatment for African American troops and demanded from Confederates “an unyielding adherence to a line of conduct that will compel an observance of the rules of honorable warfare is an absolute necessity.”⁴⁰

Moreover, Hitchcock continued in his public letter, the Union currently held near 40,000 prisoners, while the Confederacy held around 13,000. This imbalance itself complicated any attempts at negotiating an exchange. Robert Ould had suggested that the two sides formally exchange the same number of prisoners and also *parole* the remaining captured Confederates. Hitchcock scoffed at this proposition; he assumed these paroled Confederates would soon rejoin rebel armies. In late November Meredith attempted to convince Ould to exchange 12,000 prisoners but Ould demanded the parole of the remaining rebel prisoners. So, Federals remained imprisoned in Richmond because the Union government could not risk allowing tens of

⁴⁰ *New York Times*, December 2, 1863; *OR*, ser. 2, vol. 6, 630.

thousands of paroled rebels to rejoin Confederate armies. Union leaders could not risk resupplying Confederate forces because doing so ignored a fundamental fact about the war: “this rebellion is to be put down by organized armies in the field.”⁴¹

Hitchcock worked to alleviate captured Federal soldiers’ suffering by providing additional provisions or securing their exchange because he remained hesitant to rush headlong toward retaliation in kind. He and likeminded Union leaders believed that because retaliation was the sternest feature of war not even the infuriating sight of deathly ill prisoners arriving at Camp Parole should provoke them to begin a vicious cycle of retaliation. But by mid December even the effort to supply Federal prisoners with additional provisions turned futile. Ould forbade prisoners in Richmond from receiving food and clothing from the North on account of the “misconstruction and misrepresentation ... much vilification and abuse,” concerning Confederate treatment of prisoners. Ould’s action made a promise Stanton offered to Lincoln several days earlier seem close at hand: “If it should become necessary for the protection of our men, strict retaliation will be resorted to.”⁴²

After a winter of failed attempts to negotiate an exchange of prisoners, another round of nearly four hundred infirm and recently paroled prisoners arrived to Camp Parole from Belle Isle in May 1864. The long-simmering controversy exploded again. As Walt Whitman looked upon these soldiers he wondered, “Can these be *men* ... these little, livid brown, ash-streaked, monkey-looking dwarfs? Are they really not mummied dwindled corpses?” On orders from Stanton, William Hoffman travelled to Maryland to report on the soldiers’ condition, which he described as “a very sad plight, mentally and physically.” The soldiers had received “an

⁴¹ *New York Times*, December 2, 1863. Hitchcock’s letter is also reprinted in full in *OR*, ser. 2, vol. 6, 594-600. For a report from Meredith on his effort to exchange 12,000 prisoners, see *OR*, ser. 2, vol. 6, 555-6.

⁴² *OR*, ser. 2, vol. 6, 686, 648.

allowance of food scarcely sufficient to prevent starvation,” Hoffman reported. Now they appeared “wasted to mere skeletons ... and dispirited by their many privations to be able to realize the happy prospect of relief from their sufferings which was before them.” All that remained among these once hardy men was “a painful sense of prostration of mind and body.” Hoffman recommended “retaliatory measures be at once instituted” by subjecting captured Confederate officers to “a similar treatment.”⁴³

Stanton passed along Hoffman’s report to Ohio Senator Benjamin F. Wade, chairman of the Joint Committee on the Conduct of the War. “The enormity of the crime committed by the rebels toward our prisoners ... cannot but fill with horror the civilized world,” Stanton wrote to Wade. “There appears to have been a deliberate system of savage and barbarous treatment and starvation.”⁴⁴ Reports of the prisoners’ pitiful health again sparked outrage at the conditions of the Confederate prisons in Richmond. This time Wade and his committee led the outcry.

As the committee completed its report on the Fort Pillow atrocity, it also launched an investigation into the treatment of captured Federal soldiers by Confederates. Eventually, the committee published the two reports together as evidence of Confederate barbarity and the wisdom of Radical Republican plans to remake the South. The report on the treatment of prisoners of war contained lengthy interviews with former prisoners, all pointing to “a determination on the part of the rebel authorities, deliberately and persistently practiced for a

⁴³ Quoted in Tap, *Over Lincoln’s Shoulder*, 201; *OR*, ser. 2, vol. 7, 110-11. Benjamin Butler, in fact, had been appointed a special agent of exchange, meant to secure the release of Federal prisoners in the Richmond area. Naturally, after Butler’s string of infamous and offensive actions throughout the war, Ould refused to negotiate, in his words, with someone “so obnoxious” as Butler. By late December, Butler had become convinced that only “the sternest retaliation” could compel Confederates to adequately provide for Federal prisoners: “I would further suggest that every rebel prisoner and officer be put upon precisely the same and measured allowance as to food, under precisely the same and no different treatment as to clothing and fire, as our suffering prisoners,” Butler wrote to Stanton. *OR*, ser. 2, vol. 6, 770. For more on Butler’s attempted negotiations with Ould, see *OR*, ser. 2, vol. 6, 711-2; 754; 768; 836; 867; 917-9; 996, 1007-13; 1034-5.

⁴⁴ *OR*, ser. 2, vol. 7, 110-11.

long time past, to subject those of our soldiers who have been so unfortunate as to fall in their hands to a system of treatment ... which no language we can use can adequately describe.” Imprisoned Federals stayed in “old discarded army tents, so injured by rents and holes as to present but little barrier to the wind and storms.” The men received a food ration “totally insufficient in quantity to preserve the health of a child, even had it been of proper quality, which it was not.” Not surprisingly, disease decimated soldiers not already crippled by near-starvation and exposure. The committee concluded that these horrors resulted from “a determination on the part of the rebel authorities to reduce our soldiers in their power ... that those who may survive shall never recover so as to be able to render any effective service in the field.”⁴⁵

The published report contained some of the most infamous images of the war, recently released prisoners who looked like Whitman’s “mummied dwindled corpses.” *Harper’s Weekly* reprinted these same images and proclaimed they testified to “the work of desperate and infuriated men whose human instincts have become imbruted by the constant habit of outraging humanity.” Why did Confederates resort to this treatment of Federal prisoners? Like the Committee on the Conduct of the War, *Harper’s Weekly* blamed the inherent nature of slaveholding society itself, for “nowhere are humane life and human nature so cheap as among those who treat human beings like cattle.”⁴⁶

When in late May officials decided to reduce the rations provided to Confederate prisoners, they did so not as a rash response to a congressional report and the public outrage it inspired. The reduction instead marked the culmination of a nearly seven-months-long conflict

⁴⁵ Joint Committee on the Conduct of the War, *Fort Pillow Report*, 1-3; Tap, *Over Lincoln’s Shoulder*, 203. Historians have hotly debated the veracity of the reports issued by the Committee on the Conduct of the War, given their often-intense partisan aims. For a historiographical introduction to this important issue, see Brian Holden Reid, “Historians and the Joint Committee on the Conduct of the War,” *Civil War History* 38 (1992): 319–41; Hans L. Trefousse, “The Joint Committee on the Conduct of the War: A Reappraisal,” *Civil War History* 10 (1964): 5–19.

⁴⁶ *Harper’s Weekly*, June 18, 1864, p. 387.

with Confederates over the treatment of captured Federals in Richmond. It was a final attempt to compel better treatment for captured Union soldiers.⁴⁷ A close look at the extent of this reduction in prisoner rations reveals a surprisingly modest change given all that Federals believed about the supposedly barbaric treatment of prisoners.

William Hoffman, as Commissary-General of Prisoners, took the lead in establishing official prisoner rations. In late April 1864, those rations were:

Hard bread, 14 ounces per one ration, or 18 ounces soft bread, one ration; corn-meal, 18 ounces per one ration; beef 14 ounces per one ration; bacon or pork, 10 ounces per one ration; beans, 6 quarts per 100 men; hominy or rice, 8 pounds per 100 men; sugar, 14 pounds per 100 men; R. coffee, 5 pounds ground, or 7 pounds raw, per 100 men, or tea, 18 ounces per 100 men.

On May 19, 1864, Hoffman recommended reducing the rations issued to prisoners. He believed the reduction would not deprive prisoners “of the food necessary to keep them in health.”

Hoffman suggested reducing rations in three of nine categories of provisions: corn meal, sugar, and tea. The corn meal ration would decrease from 18 to 16 ounces, the sugar ration from 14 to 12 pounds per 100 men, and the tea ration from 18 to 16 ounces per 100 men. Hoffman also suggested an increase in the rations of “soft bread” from 14 to 16 ounces (the recommended “hard bread” ration remained at 14 ounces). Henry Halleck argued for the elimination of the tea, coffee, and sugar rations entirely but the surgeon general insisted that they should remain available to sick and wounded prisoners, a compromise Union officials accepted.⁴⁸ By late May,

⁴⁷ William Hesseltine, for one, famously argued that northern newspapers bore a good deal of responsibility in enflaming the “war psychosis” that drove Federals toward terrible treatment of captured Confederates. As Hesseltine put it, northern newspapers, in reporting in dramatic detail the conditions of Confederate camps like those near Richmond, were “the fomenters and agents for the dissemination of this psychosis.” William Best Hesseltine, *Civil War Prisons: A Study in War Psychology* (Columbus: The Ohio State University Press, 1930), 173. Charles Sanders has similarly implied that the decision to reduce rations in May 1864 was largely a rash response to the Committee on the Conduct of the War’s report. Sanders, *While in the Hands of the Enemy*, 240.

⁴⁸ *OR*, ser. 2, vol. 7, 73, 150-151. For an additional overview of Hoffman’s ration reductions, see Pickenpaugh, *Captives in Gray*, 190-95; James Gillispie, *Andersonvilles of the North: The Myths and*

Stanton approved this reduction in rations. The average healthy Confederate prisoner would in theory no longer receive tea, coffee, and sugar and would also have to survive on two fewer ounces of corn meal.

Although Union leaders reduced the rations provided to Confederate prisoners, the May 1864 reduction did not institute a vengeful retaliatory policy of deliberate near-starvation. For seven months in late 1863 and early 1864, Federal officials and citizens heard bone-chilling stories of what Union soldiers endured in prisons near Richmond. Although the stories that circulated throughout the North often seemed to many too incredible to believe, the skeletal Federals at Camp Parole convinced northerners who saw them that Confederates intentionally starved and inhumanely treated Union soldiers. Federals believed their captured soldiers in Richmond suffered barbaric and unjustifiable cruelty at the hands of Confederates. Some of the more condemnatory rhetoric that flooded northern newspapers distorted true conditions in Confederate prison camps and captured Confederates also often suffered a great deal in Union prison camps, not least because of shortage of food. Despite these facts, the May 1864 ration reduction was less an official sanction of extreme retaliation and more a reflection of the notion that retaliation ought to be pursued cautiously and only with key objectives in mind. In this case, the objective remained to improve conditions in Confederate prisoner of war camps. *Harper's Weekly* recognized in early 1864 that only this objective justified a retaliatory ration reduction: "Terrible as it is to retaliate, when the safety of our own men can be secured in no other way, it is one of the most imperative necessities of a state of war."⁴⁹ What rescued retaliation, threatened

Realities of Northern Treatment of Civil War Prisoners (Denton: University of North Texas Press, 2008), 96-99.

⁴⁹ *Harper's Weekly*, January 9, 1864, p. 18. James Gillispie has similarly argued that the ration reduction does not "constitute proof that the Federals became rather cold-blooded towards Confederate prisoners in the latter half of 1864." Gillispie, *Andersonvilles of the North*, 98.

and implemented, from utter barbarity was if a belligerent turned to it only as a last resort and only to achieve vital objectives, not to satisfy mere vengeance.

“For each officer so executed one of your officers in our hands will be immediately put to death”: The Sawyer, Flinn, and Lee Episode

Federals sometimes threatened retaliation to compel an action from Confederates despite having little intention or desire to follow through with the threat. In one such instance, Federals held captive the son of Confederate General Robert E. Lee and threatened to execute him as retaliation if Confederates did not release two Union soldiers slated for execution. The fact that none of these executions occurred suggests that Federals might quickly resort to the stern rhetoric of retaliatory executions but often proved less eager to carry out the threatened retaliation.⁵⁰

This particular incident of unfulfilled retaliation threats began with two executions. In April 1863, two Confederate cavalrymen, William Corbin and T. Jefferson McGraw, recruited fellow Kentuckians to join the Confederate army. Corbin and McGraw’s actions directly violated Union General Ambrose E. Burnside’s warning that anyone found within Union lines who committed “acts for the benefit of the enemies of our country will be tried as spies or traitors and if convicted will suffer death.” Union troops captured Corbin and McGraw as they returned to Confederate lines. A military commission in Cincinnati found the two men guilty for recruiting in Union-held areas and sentenced them to death. McGraw and Corbin were executed in mid May 1864 at Johnson’s Island, a Union prison camp in Ohio.⁵¹

⁵⁰ For a starkly different account of the Sawyer/Flinn/Lee retaliation crisis, one that instead highlights the episode as emblematic of the “war of vengeance” Federals waged, see Speer, *War of Vengeance*, 81-94.

⁵¹ *OR*, ser. 2, vol. 5, 4800, 556-57.

The execution of McGraw and Corbin infuriated Robert Ould. In an angry letter to William Ludlow, Ould denounced McGraw and Corbin's death as a "cruel barbarity." The two cavalymen were "duly authorized" to recruit in Kentucky, Ould protested, and so their unjustified execution deserved a fitting retaliation. Ould warned that in the near future Confederates would select two captured Federal captains for execution. This retaliatory measure might send events further into an "awful vortex," Ould predicted, but God would judge Federals as responsible for "the initiation of this chapter of horrors."⁵²

Ould's threats did not intimidate Ludlow. Nor did Ludlow doubt that Federals had acted justly in executing McGraw and Corbin. In fact, Ludlow returned Ould's threat with one of his own: "for each officer so executed one of your officers in our hands will be immediately put to death." Confederates would violate basic rules of warfare, Ludlow continued, if they "barbarously put [Federal captains] to death in retaliation for the just punishment of spies." Ethan Allen Hitchcock agreed Ould's proposed retaliation was "not simply an offense against the laws of war but an outrage upon civilization and humanity." Ould showed no immediate signs of backing down in the face of Ludlow's counter-threats, for, as he explained to Ludlow, "The Confederate Government is too well satisfied of the justice of its proceeding in this matter to be in any manner deterred."⁵³

By mid July, Federal officials learned Confederates had chosen for execution H.W. Sawyer of the First New Jersey Cavalry and John M. Flinn of the Fifty-First Indiana Volunteer Regiment. Ludlow soon set in motion plans to select two captured rebel officers to execute as retaliation if Confederates executed Flinn and Sawyer. The unfolding controversy lasted nearly eight more months. The northern press kept the home front updated on the fates of Flinn and

⁵² Ibid., 691.

⁵³ Ibid., 703-4, 716.

Sawyer. *Harper's Weekly* repeatedly lauded the two as heroes of the Union cause. The *New York Times* did the same, and sought to evoke anger and dismay among the northern citizenry when it ran a letter Sawyer wrote to his wife soon after learning of his fate. "My situation is hard to be borne," Sawyer said, "and I cannot think of dying without seeing you and the children ... I have no trial, not jury, nor am I charged with any crime, but it fell to my lot."⁵⁴

Sawyer's wife and a family friend from Philadelphia eventually secured an audience with Lincoln and Stanton. Lincoln and his cabinet took the matter seriously. After hearing from Sawyer's wife they spent the better part of the afternoon and evening of July 14 searching for a solution. By the following morning, they decided on a response that would either defuse or exacerbate immeasurably the standoff.⁵⁵

Several weeks prior, Federals captured Confederate Brigadier General William Henry Fitzhugh "Rooney" Lee, second son of Robert E. Lee. At the moment of his capture, Rooney Lee was recuperating at a Hanover County, Virginia farm estate from injuries suffered at the Battle of Brandy Station. Lincoln and his cabinet decided the surest way to save Sawyer and Flinn's lives was to threaten to retaliate in kind against Rooney Lee and another Confederate captain – even though some in the cabinet worried about the wisdom of actually following through with the threat. As Ethan Allen Hitchcock later explained, Federal officials believed these sorts of threats against high profile prisoners were the only way "to secure such treatment to our troops as may fall into rebel hands as the laws of war entitle them to." On July 15, Lincoln ordered Halleck and

⁵⁴ *OR*, ser. 2, vol. 6, 108-9, 114; *New York Times*, July 26, 1863. For examples of the northern press reporting on Sawyer and Flinn, see *Harper's Weekly*, September 5, 1863, October 3, 1863; and especially the image published October 17, 1863.

⁵⁵ The story of this meeting is ably retold in George E. Lippincott, "Lee-Sawyer Exchange," *Civil War Times Illustrated* 1, no. 3 (June 1962).

Ludlow to place Lee under close confinement and to inform Confederates if they executed Sawyer and Flinn, Federals would retaliate against Lee.⁵⁶

Weeks then months passed without the execution of Sawyer and Flinn. The retaliatory crisis reached an impasse. The four officers slated for execution remained in a precarious position but death no longer seemed imminent. By early October all four had been removed from isolated confinement and returned to the general prisoner of war population. By early 1864, Federal and Confederate officials began negotiations to end the standoff. While the Dix-Hill cartel, which governed prisoner exchanges earlier in the war, had collapsed, an exception was made in this case. Federals and Confederates worked out plan to trade Sawyer and Flinn for Lee and the other Confederate officers identified for possible execution. Negotiations began in early February 1864, and proceeded with no real difficulties. On March 14, 1864, the prisoners were exchanged at City Point, Virginia.⁵⁷ Federal and Confederate officials stepped back from the brink of a vicious cycle of retaliation. Despite all the portentous talk from Federals about retaliation as retribution for Confederates' uncivilized warfare, a prudent reluctance to resort to the war's sternest feature won the day. Federals ultimately acted under the assumption that the *threat* of retaliation – perhaps even more than an act of retaliation itself – could prove remarkably effective in peaceably compelling certain actions from Confederates.

⁵⁶ *OR*, ser. 2, vol. 6, 69, 118, 350-1. Ludlow informed Ould: "Upon information being received of the execution, by order of your authorities, of these officers or any other officers or men in the service of the United States not guilty of crimes punishable with death by the laws of war, the Confederate officers above named will be immediately hung in retaliation, without giving you other or further notice. I am directed further to inform you that the United States Government will proceed to retaliate for every similar barbarous violation of the laws of civilized war." *OR*, ser. 2, vol. 6, 1127. Lippincott, "Lee-Sawyer Exchange"; Harry E. Neal, "Rebels, Ropes, and Reprieves," *Civil War Times Illustrated* 14, no. 10 (February 1976).

⁵⁷ *OR*, ser. 2, vol. 6, 927, 975-6, 990-1. *New York Times*, March 13, 1864; *Harper's Weekly*, March 19, 1864. In a strange subplot to this story, Federals originally claimed that the second Confederate officer they intended to execute along Lee if needed was captain William Sidney Winder, son of the Confederate commissary general of prisoners. Yet, in a case of ultimately inconsequential bureaucratic oversight, the selected prisoner was not Winder, but a Robert H. Tyler. For the essential correspondences throughout this episode, see *OR*, ser. 2, vol. 6, 358, 362, 488.

“Under the Enemy’s Fire”: A Retaliation in Kind Showdown in Charleston Harbor

Three months later, another retaliation crisis embroiled Federal officials – one that also was long on stern threats and indignant accusations of barbaric warfare but short on reckless bloodshed. Although both Federals and Confederates in this instance embraced retaliation in kind, they also worked to curtail its worst effects. The standoff developed in Charleston harbor, where Federals were more than a year into a renewed bombardment of the city from nearby Morris Island. On June 1, 1864, Confederate Major General Samuel Jones, whose command in South Carolina included Charleston, requested his superiors send to him fifty Federal prisoners of war, including one general, to confine in parts of Charleston “under the enemy’s fire.” Jones hoped this action would lessen the Federal bombardment of the city, which lately was “endangering the lives of women and children.” Eventually, President Jefferson Davis approved Jones’ request. By the second week of June, the fifty Union officers arrived to Charleston.⁵⁸

When Major General John G. Foster, then Federal commander of the Department of the South, learned of the strategic placement of the Union prisoners of war in Charleston, he lashed out against Jones for the “indefensible act of cruelty.” Foster scoffed at Jones’ suggestion that he took the action to protect defenseless women and children in the city. Federals gave ample fair warning to the city’s residents that the bombardment would soon commence, leaving them plenty of time to escape from harm. Jones cloaked his real reasons in this humanitarian hypocrisy, Foster charged. “That city is a depot for military supplies,” the location of many “foundries and factories for the manufacture of munitions of war.” Federals had a right to destroy these targets, Foster wrote, but Jones and Confederates tried to stop them “not by means known to honorable

⁵⁸ *OR*, ser. 2, vol. 7, 185, 216-7. For a different account of the retaliation showdown in Charleston Harbor, one that argues that the controversy inaugurated a policy of “using entire groups of prisoners as pawns,” see, Speer, *War of Vengeance*, 95-113.

warfare, but by placing unarmed and helpless prisoners under our fire.” In short, Foster decried Jones’ decision to place fifty Union prisoners in places exposed to Federal fire as an unjust and illegitimate action beneath the rules of civilized warfare.⁵⁹

Jones vehemently denied these charges. Federal bombardment of Charleston rained down indiscriminately on the city, “destroying private property and killing some persons ... in a spirit of mere malice and cruelty.” This barbarity greatly exceeded Confederates’ decision to move Federal prisoners into the city. Jones promised the Federal officers received “all the consideration due to prisoners of war.” Their “commodious and comfortable quarters” remained among “the houses occupied by our wives and children,” far from *military* targets. Jones insisted that as long as Federals directed their fire against legitimate targets and not non-combatants then the Union prisoners of war would remain “in no danger whatever from the effects of your shot.” If Federals continued to shell the city unlike an “honorable foe,” they would now harm their own captured officers.⁶⁰

Foster still believed that the “cruel determination” to expose captured soldiers to Federal fire reflected nothing more than “vindictive weakness” by Confederates. The *New York Times* agreed in its reports on the developing situation, labeling Jones’ actions another example of “rebel barbarity.” Foster advocated to Henry Halleck for retaliation in kind against “this wicked work and cruel act.” Foster requested an equal number of captured Confederate officers to place “under the enemy’s fire as long as our officers are exposed in Charleston.” In the meantime, Foster promised, the bombardment of the city would continue.⁶¹

⁵⁹ *OR*, ser. 1, vol. 35, pt. 2, 134.

⁶⁰ *Ibid.*, 105-7.

⁶¹ *New York Times*, June 23, 1864. *OR*, ser. 2, vol. 7, 371; *OR*, ser. 1, vol. 35, pt. 2, 141. The *Times* was not alone in reporting on the story. *Harper’s Weekly*, among many others, did as well. See *Harper’s Weekly*, July 16, 1864, for example, for its reprinting of the names of all the officers held in Charleston.

Halleck agreed with Foster's recommendation. After consulting with Stanton, Halleck directed Hoffman to send fifty officers to Charleston harbor. Halleck ordered Foster to treat the Confederate prisoners "in precisely the same manner as the enemy treat ours." Foster followed Halleck's orders by asking Jones for more information about where exactly the Federal prisoners were held and "the degree of exposure to which they are subjected." Foster also requested that Jones allow one general officer and one field officer to provide a detailed written summary of the food they received and "the comforts afforded to them in the way of beds, bedding, [and] blankets." There was no ulterior motive to these requests, Foster assured Jones, for he sought only to ascertain "the exact manner in which these officers are treated, that I may treat in the same manner a like number of your officers."⁶²

Even as Foster sent this request to Jones, despite all the threats and condemnations they previously traded, plans quickly unfolded to exchange the prisoners. On June 24, Jones raised with Confederate General Samuel Cooper the possibility of negotiating a prisoner exchange with Foster. Jones defended his recent actions to Cooper as both legitimate and expedient, but inquired if the Confederate War Department would authorize him to negotiate with Foster to exchange the fifty officers each side held. One week later Jones proposed the exchange to Foster. He did so by passing along a letter from five Federal brigadier generals imprisoned in Charleston pleading with Union authorities to secure their exchange. "I fully concur in opinion with the officers who have signed the letter that there should be an exchange of prisoners of war," Jones wrote to Foster, even though, he admitted, he was not yet technically authorized to enter into such negotiations. Jones pledged to secure this authorization from Confederate authorities if

⁶² *OR*, ser. 1, vol. 35, pt. 2, 143, 150, 164. The fifty officers that Hoffman sent to Foster included two major generals, three brigadier generals, fifteen colonels, thirteen lieutenant colonels, and seventeen majors. The complete list of prisoners sent – including rank, regiment, and date and location of capture, can be found in *Ibid.*, 147-8.

Foster desired to negotiate “just and honorable plans” for exchanging the officers. Jones confessed he “should be glad to aid in so humane a work.”⁶³

Foster accepted Jones’ offer. He requested from Halleck the authority to conduct the proposed exchange. Halleck authorized Foster’s request on July 12, and the negotiations began in earnest. After a minor squabble over Jones’ refusal to inform Foster of the exact location of the Federal prisoners, the negotiations proceeded with no real difficulty or dispute. By August 1, the imprisoned officers were exchanged, little more than one month after Jones first raised the possibility with Foster. Northern newspapers closely followed the situation in Charleston and approvingly reported on its resolution. The *Brooklyn Daily Eagle* rejoiced that the exchange occurred and hoped that more like it would occur in the future, “until the rebel prisons are entirely relieved of our suffering Union soldiers.” Other newspaper argued the entire ordeal confirmed that a stern policy of retaliation produced its desired effect. “The wisdom of a prompt and effective system of retaliation on our part,” the *Chicago Tribune* opined, “... is shown in the recent exchange of prisoners at Charleston ... Nothing but prompt and exemplary retaliation will humanize a war with slaveholders educated to barbarism from their infancy.” As *Harper’s Weekly* put it succinctly, “The retaliatory measure adopted by the Government was perfectly successful.”⁶⁴

Though Foster and the other Federal authorities did not waver in resorting to retaliation in kind, they ultimately welcomed the opportunity to avoid it. The threatened retaliation was meant only to protect endangered Federal officers. When Jones presented an opportunity to secure their safety through exchange, Foster quickly abandoned the original retaliatory plans.

⁶³ Ibid., 161-2.

⁶⁴ Ibid., 170, 174-5, 212-3; *Brooklyn Daily Eagle*, August 18, 1864; *Chicago Tribune*, August 11, 1864; *Harper’s Weekly*, August 20, 1864. For an additional brief yet supportive front-page report on the end to the conflict, see *New York Times*, August 6, 1864.

As soon as this first crisis ended another began – born mostly of misunderstanding. In late July, against Jones' wishes, Confederate officials arranged to send six hundred additional Federal prisoners of war to Charleston. Foster and other Federal authorities did not learn of this new influx of prisoners to Charleston until after negotiating the release of the original fifty officers each side held. The decision to send the new prisoners to Charleston infuriated Jones. "The presence of so many prisoners in Charleston will complicate negotiations for exchange of those now here," he complained to Cooper. Jones rightly feared Foster would decry the action as dishonorable and deceptive and promptly abandon the tenuous exchange agreement.⁶⁵

While the original exchange proceeded as planned, Federals learned of the imminent arrival of six hundred new prisoners to Charleston and quickly planned to retaliate in kind. Halleck and Stanton agreed to send six hundred new Confederate prisoners to Foster "to be confined, exposed to fire, and treated" like the six hundred Federals in Charleston. Foster then confronted Jones about the rumored arrival of the new Union prisoners. He responded precisely as Jones feared. "I am surprised at this repeated violation of the usages of humane and civilized warfare," Foster wrote, "as I had hoped that the exchange of our prisoners formerly exposed would have ended the cruel treatment on your part." Foster then informed Jones of his plan to retaliate in kind, "unless the prisoners are removed from Charleston."⁶⁶

Jones tried to clear up the misunderstanding but remained defiant in his response to Foster that Confederates did nothing inhumane or illegitimate in sending more prisoners to Charleston. "You are mistaken if you suppose those prisoners have been sent here for the purpose of being placed in positions where they may be reached by your shot," Jones told Foster.

⁶⁵ *OR*, ser. 2, vol. 7, 502.

⁶⁶ *Ibid.*, 568, 598. Ever meticulous about ensuring the retaliation proceeded strictly *in kind*, Foster also asked Jones for information on the precise "number and rank" of the prisoners in Charleston. Foster also later confirmed to Halleck on August 26 that the six hundred Confederate prisoners had arrived at his Department of the South headquarters. *Ibid.*, 683.

Confederate authorities simply sent the prisoners to Charleston temporarily because “it is found more convenient at present to confine them here than elsewhere.” Moreover, Confederates did nothing “cruel and inconsistent with the usage of civilized warfare” in sending the prisoners to Charleston. The truly cruel and uncivilized action, Jones concluded, was the way Federals’ treated rebel prisoners.⁶⁷

Even as he talked tough to Foster, Jones worked to have the six hundred prisoners removed from Charleston. He desired to avoid another retaliation standoff and sought to convince Cooper and Confederate Secretary of War Seddon to move the prisoners. In early September, Jones stressed how “very inconvenient and unsafe” it was to keep the prisoners in Charleston to which Cooper bluntly replied that prisoners “cannot be removed.” Jones then appealed to Seddon twice directly, this time with the argument that he lacked sufficient manpower to guard the new influx of prisoners. This failed to sway Seddon. By late September, Jones even tried to convince Cooper that the Yellow Fever scare in Charleston made removing the prisoners an urgent necessity. More and more prisoners (mostly from Andersonville and Macon) arrived in the city throughout September, as many as 7,000 total, Jones estimated. This number vastly exceeded the number of Confederate prisoners arriving to Federals on Morris Island in the Charleston Harbor. Despite Jones’ best efforts to remove the prisoners, he did not waver from matching Federals’ retaliation measures. Foster placed Confederate prisoners in the line of Confederate fire on Morris Island and Jones pledged to Cooper that he would do the same with Federal prisoners.⁶⁸ Cooper and Foster seemed poised to plunge across the retaliatory precipice they had narrowly avoided weeks prior.

⁶⁷ Ibid., 625. Jones also refused to provide Foster with the number and rank of prisoners of war in Charleston, a request he felt was not “incumbent upon me.”

⁶⁸ Ibid., 768, 773, 789, 894, 900, 817, 783.

When the Confederate prisoners arrived at Morris Island, Jones inquired about the conditions of their imprisonment. Foster replied at length about the types of tents the prisoners stayed in and the rations they received. "I deeply regret being compelled to resort to retaliatory measures," Foster informed Jones. "I shall continue them only so long and to such an extent as your treatment of our officers and soldiers in your hands demands." Until then, Foster pledged it would be his "pleasant duty as an act of humanity" to show the Confederates in his custody any "leniency" Jones presently extended to the Federal prisoners in Charleston. When the *New York Herald* reported on the prisoner conditions on Morris Island, it, like Foster, emphasized Confederate prisoners received exactly the same treatment and rations that Federal prisoners received in Charleston. Conditions on the island conformed "to precisely the same standard adopted by the rebel authorities in their treatment of our officers," the newspaper concluded, which was a key reason the Federal retaliation remained just.⁶⁹

Foster's report about the prisoners' conditions on Morris Island did not depart from the report he sent to Halleck two days earlier, except in one major respect. Foster did not tell Jones, as he did Halleck, that the Confederate prisoners were not in any serious danger from the Confederate fire directed at Morris Island. The rebel prisoners, Foster wrote to Halleck, "have little fear of their own shells, which they watch with interest." Many of the soldiers imprisoned on Morris Island later confirmed Foster's claim. As one prisoner put it, "Shells from the Confederate batteries were thrown with great precision ... passing immediately over our pen." Another imprisoned Virginian agreed: "The first evening and night the shelling was very heavy but none of us were killed. It seemed our guns got the range and fired over us."⁷⁰ If Foster's

⁶⁹ Ibid., 826-7; *New York Herald*, September 17, 1864.

⁷⁰ *OR*, ser. 2, vol. 7, 819; Abram Fulkerson, "The Prison Experience of Confederate Soldier Who Was under Fire, on Morris Island, from Confederate Batteries," *Southern Historical Society Papers* 22

retaliation was supposed to seriously threaten the lives of rebel prisoners, it failed miserably; this, in fact, was precisely what Foster intended.

Foster's intention is all the more remarkable given his opinions about the treatment of prisoners of war in Charleston and across the Confederacy. One of the more revealing letters of this crisis came from Foster to Halleck in late September, in which he described at length his perception of the treatment that Federal prisoners routinely faced – “deplorable in the extreme,” he called it. Prisoners in Charleston endured a “miserable plight,” Foster said, and most other captured Federals were “ill fed, destitute of clothing, and rapidly sickening and dying.” Foster reiterated to Halleck his hopes for a general exchange of prisoners, for he believed only it could alleviate their suffering.⁷¹

Foster's vivid description of prisoner of war conditions offers an important reminder that outrage over Confederate treatment of prisoners did not automatically lead to rash vengeful retaliation. A loathing of Confederates for their presumed mistreatment of prisoners could coexist with a reluctance to resort hastily to extreme retaliation. Although Foster denounced Confederates for their deplorable and inhumane treatment of captured Federals, even when he resorted to retaliation he did so in such a way that minimized the likelihood of serious injury or death among Confederate prisoners.

This second retaliation standoff in Charleston harbor ended peacefully by late October. With little fanfare, Lieutenant General William J. Hardee, who had recently replaced Jones, informed Foster on October 13 that the Federal prisoners formerly in Charleston had been moved elsewhere. “It is hoped the communication of this fact,” Hardee wrote to Foster, “will cause the removal of the Confederate prisoners of war from Morris Island to a place of greater security.”

(January-December 1894): 139; Francis C. Barnes, “Imprisoned under Fire,” *Southern Historical Society Papers* 25 (January-December 1897): 367.

⁷¹ *OR*, ser. 2, vol. 7, 874-5.

And, “in the interest of humanity,” Hardee proposed an exchange of all the prisoners presently held on Morris Island. Foster promptly worked to remove all Confederate prisoners on the island “to a corresponding place of safety,” he told Hardee, yet he rejected the proposed exchange, insisting he had no authority to do so. But he did remind Hardee that any “measure you may in future exercise toward the Union prisoners in your power, whether of severity or leniency, will be reciprocated by me ... to the Confederate prisoners in my power.” By the end of October, all the Confederate prisoners from Morris Island had arrived to Fort Pulaski, Georgia.⁷²

What happened to the six hundred Confederate prisoners chosen to endure the Union’s retaliation? Forty-two never made it to Morris Island: thirty-nine remained instead at Hilton Head, two escaped en route to the island, and one died during the voyage. Of the remaining 558, three died while on Morris Island, all from either disease or as a result of malnourishment. Two more suffered injuries by Union guards. Not a single prisoner died or sustained serious injuries from Confederate shells fired at the island.⁷³

Foster and the other Federal officials involved in the retaliation crisis in Charleston harbor spoke in stern and uncompromising terms about the barbarity and inhumanity of Confederate treatment of prisoners. They threatened to retaliate in kind, and did not fail to implement these threats. Yet these same Federal leaders also ultimately worked to temper the worst effects of retaliatory measures and end them as quickly as possible. Retaliation remained a means, not an end. Northern newspapers recognized the wisdom and efficacy of this approach.

⁷² Ibid., 981-2, 1007, 1058, 1073.

⁷³ Despite this fact, the memory of the imprisonment of the six hundred Confederates on Morris Island aroused great anger among some former rebels well after the war’s end. For example, see, J. Ogden Murray, *The Immortal Six Hundred: A Story of Cruelty to Confederate Prisoners of War* (Roanoke: The Stone Printing and Manufacturing Co., 1911). Lonnie Speer, *Portals to Hell: Military Prisons of the Civil War* (Mechanicsburg: Stackpole Books. 1997), 252.

After the resolution of the first prisoner of war crisis in Charleston, the *New York Times* denounced retaliation in uncompromising terms:

It constitutes, we take it, a practical announcement that the business of retaliation is the meanest, as it is the most barbarous, expedient of war; that it is at variance with the principles which regulate modern warfare; that its employment in a conflict such as this, increases existing animosities, ministers to a general spirit of vengeance, brutalizes the feelings of those who have partaken in the conflict, proclaims the irreconcilable nature of the struggle, and bars even the most distant approach of the evangel of peace.”

But the newspaper praised Federals for how they handled the situation in Charleston Harbor, which it deemed an example of prudent military leaders avoiding the worst terrors of retaliation.

The *Boston Daily Advertiser* agreed “nothing succeeds so well with the rebels as a resolute course of just retaliation, when they undertake their characteristic barbarities.” The newspaper believed this “resolute course” rarely ought to result in extreme retribution: “It is never necessary actually to go very far in the retaliation,” the paper concluded, “for [Confederates] always give way when they see that on our part there is a determined will.”⁷⁴

"To bring our fair fame and good name as a civilized and Christian people down": The U.S. Senate's 1865 Retaliation Debate

Not all northerners, however, agreed with the *Boston Daily Advertiser*. Union politicians continued to debate well into the war's final months how thoroughly they ought to turn to retaliation in response to Confederate atrocities. The United States Senate took up this debate in earnest in early 1865 when it considered a resolution calling for retaliation in kind against Confederate prisoners of war. The Senate's prolonged debate over the resolution mirrored divisions in northern society itself, especially concerning when – if at all – retaliation could be part of “Christian” and “civilized” warfare.

⁷⁴ *New York Times*, August 8, 1864; *Boston Daily Advertiser*, October 25, 1864.

Despite all the furious complaints of rebel savagery, the opponents of the retaliation in kind measure prevailed and passed a significantly watered-down resolution. Once again, Federal authorities, this time in the Senate, opted not to embrace an official policy of near-starvation and extreme depredation justified as retaliation in kind. Interestingly, distinctly religious arguments suffused both sides of debate. Senators of all persuasions appealed frequently to Christianity; so too did constituents who wrote to senators to express their views. In the mid-nineteenth century the nation's religious culture thoroughly permeated the political realm. Even so, the rhetoric of the early 1865 Senate debate over retaliation was profoundly, pervasively religious. The ever-present religious dimension of this debate reveals how distinctly Christian ideas informed what many northerners thought about just conduct in war, especially the justness of retaliation.⁷⁵

The debate began in late December 1864 when Minnesota Republican Morton S. Wilkinson introduced a resolution denouncing Confederates' "cruel and barbarous" treatment of Federal prisoners and calling for retaliation in kind – a reduction in "rations, clothing, and supplies" provided to captured Confederates equal to that provided to captured Federals. The retaliation had two objectives: to "induce the rebel authorities to pursue a more humane policy" and ensure that captured Federals would retain the physical health and vigor needed to return to battle if freed. Still, while Wilkinson believed the laws of war justified this sort of retaliation, he

⁷⁵ The paragraphs that follow are indebted to Mark Neely's brief yet illuminating discussion of the Senate's early 1865 retaliation debate in Neely, *The Civil War and the Limits of Destruction*, 170-197. Neely convincingly concludes of the debate, "When all was said and done, the president and the society he directed to victory came down on the side not of retaliating for atrocities but of avoiding atrocity." Ibid., 197. I have attempted here to provide a more thorough explication of the debate and reactions to it in an effort to better explain both the distinctly religious terms in which most northerners considered the question of retaliation in kind as well as to explain why exactly northerners did as Neely noted, come down on the side of not retaliating in kind. Neely is more attuned to the "political uses of hatred," as he puts it (that is, interested in explaining the partisan reasons *why* Radicals in Congress tried to stir up passions over the prisoner of war issue). Though he is convincing also on this account, my concern here is to better understand what northern political leaders and civilians thought about retaliation as a legitimate component of just conduct in war.

admitted, “perhaps the higher law of Christian civilization would not justify it.” Ultimately, a more pressing concern demanded this retaliation: it would prevent Confederates “from gaining an advantage over us in the field.” The Committee on Military Affairs and the Militia took up Wilkinson’s resolution for further consideration.⁷⁶

Although Wilkinson’s resolution stalled in committee, Indiana Republican Henry Lane revived the retaliation debate when the Senate resumed business in mid January 1865. The Mexican-American War veteran and Whig-turned-Republican politician presented to the Senate a petition from Fort Wayne, Indiana citizens calling on Congress to act decisively to compel Confederates to treat Federal prisoners “with that degree of humanity that the rules of war require.” Lane’s constituents in Fort Wayne thought Congress could achieve this in two ways: place Confederate prisoners of war under the control of Federal officers formerly held by Confederates and extend to captured Confederates the “same rations and treatment” given to captured Federals. The petition from Fort Wayne citizens, in short, called for retaliation in kind. Ohio’s Benjamin Wade, leader among radical Republicans, introduced a resolution calling for precisely this action – to align Federal treatment of rebel prisoners with supposed conditions in Confederate prisoner of war camps. Wade did not originally include a provision to put formerly captured Federals in charge of prisons, as called for in the Fort Wayne petition, but he assured fellow senators he would gladly do so.⁷⁷

Henry Lane supported Wade’s resolution and retaliation more generally as a legitimate recourse in war. “Every system of warfare is but a system of mutual retaliation, and can be carried on under no other possible principle,” Lane argued. Mercy was a “noble attribute,” he confessed, yet mercy in abundance naively misunderstood the nature of warfare – most

⁷⁶ *Congressional Globe*, 38th Cong., 2nd sess., pt. 1:73.

⁷⁷ *Ibid.*, 267.

pertinently for Lane the fact that “if this is to be a war of extermination, let not the extermination be all upon one side.” What justified talk of retaliation and extermination? Confederates mistreated Federal prisoners in barbaric violation of conventional rules of warfare: “They now indulge in a system of warfare the most barbarous and atrocious known to the history of modern civilization,” Lane proclaimed, and “with impunity trample upon all their obligations to God as Christians and all their obligations to the world to abide by the laws of civilized warfare.” The proposed retaliation measures, Lane believed, would compel Confederates to no longer trample on their solemn obligation. Jacob M. Howard, Republican from Michigan, reminded Lane and his Senate colleagues that while the “rule of retaliation is one well recognized in the laws of war” it was also true that “in modern times it is seldom resorted to, and is always to be avoided so far as is practicable or possible.” But Howard too believed the time had come for the Union to embrace retaliation as proposed by Wade and thereby end “the cruelties committed by them upon us.”⁷⁸

Within a week, Howard reported the Committee on Military Affairs and the Militia had crafted a new resolution, denominated S.R. 97, adapted from Wilkinson and Wade’s original proposals. After denouncing Confederates for behavior “unexampled for cruelty in the history of civilized war, and finding its parallels only in the conduct of savage tribes,” S.R. 97 called for the two measures Wilkinson advocated. However, the resolution’s authority remained limited; the real power lay forever in the hands of President Lincoln. The most senators could do, as S.R. 97 admitted, was to “advise” the President on how to act on the matter, not to “limit or restrict” his authority to do as he saw fit.⁷⁹

⁷⁸ Ibid., 267-9.

⁷⁹ Ibid., 363-4.

The advisory nature of the resolution did not curb passions throughout the six days of debate in the Senate in late January. The debate illuminated what key senators thought about retaliation and just conduct in war.⁸⁰ Perhaps some senators stoked the always-simmering issue of the treatment of Federal prisoners of war for strategic motives left unmentioned – like turning public opinion against rumored peace negotiations with Confederates. But this does not change the fact that the speeches as a whole remained a substantive, religiously-informed consideration of the justness of retaliation.

Wade rose first in support of S.R. 97 when debate began on January 23. He defended the retaliation called for by the resolution as the only means “to insure the observance by the insurgents of the law of civilized war.” Adherents to this law of civilized war, Wade continued, long recognized retaliation as a legitimate means of “bringing inhuman and savage foes to a sense of their duty.” Wade shrewdly sought to answer a likely counter-argument from the opposition: retaliation in kind starkly deviated from the moral obligations central to the Christian religion. Thomas A. Hendricks, Democrat from Indiana, had asked Wade and the resolution’s supporters, “Where is the Christianity of starving a man to death against whom we can lay no fault except that perhaps he has been compelled to obey the demands of the rebel government?” Wade replied by insisting that while Christianity and the “law of civilized war” might see eye-to-eye on certain points, the two were not the same. With characteristic bluntness, Wade continued, “I do not understand that there is very much Christianity in war. If you go to war you have departed from the great principles laid down by Christ and His followers, as I understand them;

⁸⁰ It is admittedly somewhat difficult to assess the true motivations and senators who participated in the debate. Mark Neely’s take on this issue – his explanation of the somewhat strange re-emergence of the retaliation and prisoner of war issue in this moment – rightly suggests that Radicals in Congress sought above all to revive the issue as a way of sinking rumored peace negotiations with Confederates – another example, Neely suggests, of the “political brinksmanship” of nineteenth-century America. Neely, *The Civil War and the Limits of Destruction*, 188-90.

and if you go to war you must not only depart from those principles, but you must follow out that departure, for it leads to other necessities that do not square precisely with the doctrines of Christianity.” Wade agreed with the basic assumption of staunch Christian pacifists that anyone engaged in war departed from the teachings of Christ. Yet Wade drew from this assumption not the impulse to avoid war – much less retaliation – but the realization that a different set of ethical and legal guidelines existed to govern war’s prosecution. To reject retaliation on strictly Christian grounds, Wade believed, was to misunderstand the nature of war and the rules that defined “civilized war.”⁸¹

As the debate progressed, these disagreements over what Christianity had to say about retaliation only intensified. Opponents of the resolution denounced Wade’s arguments as leading toward imitation of the unchristian and uncivilized warfare of Confederates. Charles Sumner, Radical Republican from Massachusetts, perhaps the most influential and unlikely opponent of S.R. 97, rejected the proposed retaliation in kind as “impracticable, useless, immoral, and degrading.” He explained: “We cannot be cruel, or barbarous, or savage because the rebels whom we are now meeting in warfare are cruel, barbarous, and savage. We cannot imitate that detested example.” Democrat Reverdy Johnson, Maryland’s recently elected senator, argued that if Federals implemented the proposed retaliation measures, the Union would “no longer have the support of the God of justice.” The Union ought to dissolve, Johnson suggested, if saved “only by a resort to savage methods.” Thomas A. Hendricks agreed that the retaliation proposal abdicated America’s responsibility as a Christian civilization to wage war humanely. “We have a war,” he insisted, “and as civilized men it is our duty to mitigate the cruelties and suffering ...

⁸¹ James Harlan, Iowan Republican and one of the resolution’s strongest defenders, also agreed on the first day of debate that the resolution was “in accordance with the usage of all civilized nations” and “resorted to in order to compel the enemy to treat with humanity those whom they may capture in battle.” *Congressional Globe*, 38th Cong., 2nd sess., pt. 1:363-5.

not to add to them, nor to bring our fair fame and good name as a civilized and Christian people down.” Hendricks concluded that by avoiding the “inhumanity, barbarism, and cruelty” of retaliation in kind, Federals ensured a just and lasting peace with Confederates after Union victory.⁸²

The opposing side of the debate similarly turned to Christianity to justify their positions. Jacob M. Howard believed it was America’s duty “as a Christian nation ... to punish these barbarities and to make it necessary for the rebels, if they intend further to protract this war, to submit to the code governing civilized nations.” B. Gratz Brown, elected Senator from Missouri on the state’s Unconditional Union party ticket, agreed with Wade that Senators Sumner and Hendricks ought to abandon all talk of Christianity while considering the merits and necessity of retaliation. “I do not see the application in this instance of the moralities which the Senators have invoked,” he said of the resolution’s opposition. Christianity’s “moral law,” Brown continued, governed “the individual relations of men in civil society”; to try to apply it to “all the exigencies of a general state of war” was to misapply it by extending it beyond its original purpose.⁸³ Even those who denied Christianity’s relevance to the retaliation question still debated on the religious terms set by their opponents; strong religious arguments against retaliation demanded equally strong arguments for the irrelevancy of Christianity to the retaliation debate.

Religious concerns likewise influenced the thinking of those caught between the two extremes in the debate. Senator Edgar Cowan agreed in principle that Federals should retaliate but remained wary of the retaliation outlined in the resolution. Though somewhat hesitant to support retaliation of any kind, a religious conviction ultimately swayed Cowan to do so. The

⁸² *Congressional Globe*, 38th Cong., 2nd sess., pt. 1:381-2, 453, 389-91. Jacob M. Howard challenged Hendricks by asking why waging war as a “civilized and Christian people” might not in this moment compel Federals to turn to retaliation to force Confederates “to carry on the war upon their part as a Christian and civilized people.” *Ibid.*, 390.

⁸³ *Ibid.*, 386-8, 410.

principle of eye-for-an-eye, enshrined in retaliation, once prevailed in history, Cowan argued, yet a “higher authority” had replaced that principle with others: love your enemies and do unto others as you would have them do unto you. Still, Cowan saw in humanity a permanent stain of sinfulness, a persistent inability to do what Christ commanded. This made retaliation a sometimes necessary evil: “if we were as perfect as He who abrogated that law [an eye-for-an-eye], we should perhaps find another rule; but we are not, and we are still obliged, in order to enforce the laws of nations, to resort to some mode of retaliation.”⁸⁴

Though S.R. 97 had its staunch defenders, it ultimately elicited too wide a range of opposition from senators inclined to oppose retaliation in nearly all circumstances and those open to retaliation but not as set forth in the resolution. On the second day of debate, Charles Sumner attempted to amend in the resolution to cripple its original stern demand for retaliation in kind, a move that Wade vigorously opposed. The next day, John B. Henderson, an Unconditional Unionist from Missouri, offered a similar amendment. Henderson believed there was no principle “better recognized throughout the law of nations” than retaliation, yet he thought the proposed method of retaliation, especially the reduction in rations, would achieve nothing but to “[disgrace] us in the eyes of the civilized world.” He therefore sought to remove all the specific forms of retaliation suggested by S.R. 97 in favor of a more general call upon President Lincoln to retaliate promptly in whatever manner he deemed most effective.⁸⁵

Wade discerned the mood of the Senate and capitulated to his opponents’ demands. He offered amendments that revised S.R. 97 more to their liking. Wade removed all the specifics about how exactly Federals should retaliate in kind, as well as the stipulation that former imprisoned officers should be placed in charge of Federal prisoner of war camps. He replaced

⁸⁴ Ibid., 383.

⁸⁵ Ibid., 381, 404-7.

these parts with an appeal to Lincoln “to retaliate upon the prisoners of the enemy in such a manner and kind as shall be effective in deterring him from the perpetration in the future of cruel and barbarous treatment of our soldiers.” Wade made it clear to his colleagues that in proposing these amendments he had not changed his original opinions. Speaking of the amended resolution, he said, “I would have it much stronger ... I have no such scruples as induce gentlemen to shrink from retaliation in kind—an eye for an eye, and a tooth for a tooth, in time of war. That is my doctrine.” Doing good to one’s enemies, turning the other cheek: these, Wade unapologetically argued, were no way “to rescue our men from [Confederate] barbarities!”⁸⁶

Even the introduction of this revised compromise resolution did not immediately end the Senate debate. If anything, it only hardened the original divisions. Iowa Republican James Harlan, staunch defender of the original S.R. 97, still proclaimed that retaliation in this instance had to be “hard” and “terrible” for its object was “to terrify the belligerent party who has himself departed from the rules of civilized warfare.” Charles Sumner remained unconvinced by these arguments. Quoting from a public editorial in the *New York Times* by Francis Lieber that opposed the resolution, Sumner suggested instead that only the original opponents of S.R. 97 stood firmly on “the position of manly calmness and moral dignity.” There was nothing moral or necessary or effective about the retaliation in kind proposed by S.R. 97, and Sumner, again quoting Lieber, pleaded with his colleagues to not imitate Confederate actions: “It is too sickening, too vile.”⁸⁷

⁸⁶ Ibid., 410, 433. Jacob M. Howard offered an equally vigorous defense of his original support of S.R. 97: “If you are dealing with an enemy who is not restrained by the ordinary punishments inflicted by civilized nations engage in war with one another ... you are authorized to use that amount of severity which will insure the end at which you aim, which will compel him to abandon his evil courses, and to observe the laws of Christianized, civilized war.” Ibid., 430.

⁸⁷ Ibid., 468, 474. Lieber’s editorial, discussed at further length below, was published December 26, 1864.

The modified S.R. 97 passed the Senate on January 31. The effort to institute retaliation in kind, including the near-starvation of prisoners, as official Union policy failed. Federals again avoided a thoroughgoing embrace of the sternest feature of war.⁸⁸

Northern newspapers reported often on the Senate's debate and did not shy from editorial commentary on the proposed retaliation measures. Most newspapers offered neither unabashed support of the original S.R. 97 nor uncompromising opposition to retaliation in kind in all circumstances. Instead, the northern press tended to insist retaliation was sometimes justified even as it voiced concerns about the precise form of retaliation proposed in the original S.R. 97. The Unitarian *Monthly Religious Magazine* lamented that a "mawkish and bastard charity" toward Confederates had cost Federals "thousands of precious lives," but it still opposed retaliation in kind in response to captured Federals "being starved or frozen in Southern pens." The *Boston Daily Advertiser* also derisively labeled the proposed retaliation resolution as "far beyond the proper scope of the rules which should govern a civilized belligerent." *The Chicago Tribune* insisted that retaliation was likely "the only course of action to be taken which will have the slightest effect in relieving the condition of our prisoners." It even later criticized Sumner's opposition as "chicken-heartedness." And yet, even the *Tribune* remained wary of extreme forms of retaliation in kind, even forms potentially authorized by S.R. 97: Federals, the newspaper said, should not "carry their punishment to the extent of inflicting upon [captured Confederates]

⁸⁸ The amended resolution received almost unanimous support among Senate Democrats, as well as opposition from a core group of Radical Republicans. Ultimately, some of the strongest supporters of the original resolution – Benjamin Wade, Morton Wilkinson, and Jacob Howard – voted against the final version. Ibid., 521. Bruce Tap has rightly concluded of the S.R. 97 debate, "Ultimately, the entire debate was academic. Lincoln would take no retaliatory measures." Tap, *Over Lincoln's Shoulder*, 207.

starvation, scurvy, small pox, rats, lice, fleas, or filth. We will not freeze them to death by penning them up in unsheltered fields.”⁸⁹

This hesitancy to resort to extreme forms of retaliation scarcely tempered denunciations of Confederates as prone to barbaric warfare. “We are at war with a people that have been half barbarized by slavery,” *The New York Times* declared, before going on to chillingly describe Confederates as savagery incarnate, people who enjoyed “converting arm-bones into pipes, and skulls into drinking cups.” *Harper’s Weekly* likewise thought the Union’s enemies had been “imbruted and barbarized” by slavery. This Confederate barbarity, the *New York Times* thought, put Federals at a decided disadvantage. As the “civilized power” in the contest, the Union faced “the most difficult dilemma”: “whether to submit to the worst outrage or also to act the savage.” Ultimately, the *New York Times* concluded that to “act the savage,” by which it meant retaliation in kind in the extreme, was not a suitable response. For starters, “there is too much Christian civilization here in the North to tolerate it,” namely the systematic starvation of Confederate prisoners. *Harper’s Weekly* also remained uneager for the Union to pursue extreme forms of retaliation in kind, especially “the slow agony of starvation and exposure.” It would be far better, *Harper’s Weekly* suggested, if retaliation proved necessary, to simply shoot captured Confederates than subject them to this suffering.⁹⁰

Northern newspapers suggested that the retaliation debate raised a familiar question: should Federals imitate Confederate “savagery” to end such savagery, or must it maintain a moral high ground through “civilized” prosecution of the war? In the end, while most papers accepted the legitimacy of retaliation in certain circumstances, they remained decidedly wary of retaliation in kind, especially the potential starvation of prisoners seemingly authorized by S.R.

⁸⁹ *Monthly Religious Magazine*, March 1865; *Boston Daily Advertiser*, January 27, 1865; *Chicago Tribune*, December 22, 1864, February 1, 1865.

⁹⁰ *New York Times*, December 27, 1864; *Harper’s Weekly*, January 7, 1865.

97. As the *Boston Daily Advertiser* put it, the best response to Confederate actions “should reconcile the stern rules of war with Christian duty” and thereby shame Confederates in their savagery.⁹¹

An even more revealing source of popular reactions to the Senate’s debate came from the letters northern citizens wrote to senators regarding retaliation. Charles Sumner in particular received a significant number of letters from soldiers and civilians alike. Northerners who wrote to Sumner widely agreed on two essential points. First, they considered reported conditions in Confederate prisons to be evidence of savage, even subhuman, rebel behavior. Second, they thought Federals should not respond to what they considered Confederate savagery with retaliation in kind. Like the senators who represented them, these citizens also thought about the issue of retaliation in distinctly Christian terms. These religious commitments, in fact, led many to oppose retaliation in kind as originally proposed by S.R. 97.⁹²

Northerners who wrote to Sumner agreed with one Ohioan’s characterization of Confederates as “our inhuman enemies.” D.W. Alvord, a Boston resident, thought the proposed retaliation resolution would have been an “indelible blot” on the Union cause, for the Union should feel only shame “if in a war with savages, we should imitate the savage.” John Maxwell, from Ann Arbor, Michigan, drew an elaborate parallel between Confederates and Satan, by way of a biblical allusion to Satan’s appearance as a serpent in the Garden of Eden while tempting Adam and Eve. With this highly charged biblical allusion in mind, Maxwell wrote that he hoped Federals would not “retaliate upon the reptile by getting down into the dust and measuring our teeth with him and give bite for bite and poison for poison.” The images northerners used to

⁹¹ *Boston Daily Advertiser*, January 27, 1865.

⁹² Mark Neely also suggested these letters might demonstrate how religious sentiments in the Civil War era worked in ways to restrain excessive violence and bloodshed, not just to sanctify it. Neely, *The Civil War and the Limits of Destruction*, 182-5. For a decidedly different perspective on the religious dimension of the Civil War’s violence in this respect, see Harry Stout, *Upon the Altar of the Nation*.

describe Confederates – savages, satanic reptiles – reveal just how detestable they deemed Confederates’ rumored treatment of Federal prisoners. William Dix, for one, confessed to Sumner that the “suffering of our brave men in Southern prisons have moved me so that I can hardly read the accounts of such barbarities.” This rebel barbarism deserved rightful punishment, Dix thought, but not at the hands of Federals: “God will vindicate – in his own way and in his own time the outraged rights of his children.”⁹³

Dix’s letter suggests these northerners, however angry at Confederate treatment of Union prisoners, generally opposed retaliation in kind as unchristian and uncivilized. The same Ohioan who called Confederates “inhuman enemies” thought S.R. 97 abandoned the “Christianized or civilized position” thus far held by the Union. James Butler, a Baltimore resident, praised Sumner’s initial denunciation of S.R. 97 on the Senate floor as a “noble, Christian speech.” It was, in the words of another citizen, a speech worthy of a true “Christian and a patriot.” A Boston resident likewise praised Sumner for the “manly tone and lofty Christian sentiment” he displayed in opposing the resolution. A New Yorker assured Sumner that his opposition to retaliation in kind made him a “championship of civilization.” Edwards Pierrepont reported he was “proud to see that you boldly denounce barbarism and defend humanity and the higher civilization.” Orville N. Wilder, a Federal artilleryman stationed in Washington thought that if the Union embraced retaliation in kind it would have to “lay aside the Golden Rule” and therefore “be very far from setting that example which is but the exemplification of the Christian Religion which we as a nation have professed to honor and cherish.” If retaliation in kind was

⁹³ L. Abbott to Charles Sumner, January 25, 1865, D.W. Alvord to Charles Sumner, January 29, 1865, John Maxwell to Charles Sumner, January 27, 1865, William Dix to Charles Sumner, February 28, 1865, *The Papers of Charles Sumner*, ser. 1, reel 32. John Maxwell carried his biblical allusion to completion – in a further reference to Genesis 3:15 understood as a prophecy of Jesus Christ’s defeat of Satan (again envisioned as the serpent in the Garden of Eden) – Maxwell concluded, “No let us rather put our heel upon his head and crush this detestable thing.”

unchristian and uncivilized according to these northerners, it also made a mockery of the Union cause. “I hope you will save our cause from this threatened disgrace,” one citizen wrote to Sumner. An Ohioan called the proposed resolution “degrading” to all the Union supposedly claimed to defend. Another northerner pleaded with Sumner to continue to fight in the Senate to “let our nation never resort to any policy unbecoming the grandeur of the position she is assuming.”⁹⁴

Not all northerners agreed, and some let their senators know. Charles F. Adams, Jr., grandson and great-grandson of presidents, then lieutenant colonel of the 5th Massachusetts Cavalry, informed Sumner of his support for S.R. 97. “Retaliation for revenge I hold to be unchristian,” Adams wrote, “but retaliation as the only weapon of protection is both Christian and in the end merciful.” Adams agreed with many Senators that the Union had no moral obligation higher than to protect its soldiers, which retaliation would do. He also vehemently disagreed with the argument that to retaliate in kind was to debase the Union cause by imitating Confederate barbarity. Adams believed this was not true, given that the retaliation set forth in S.R. 97 “is not an end, but only a means to an end— it is not dictated by revenge, but by a spirit of protection to our own – it is not calculated to bring us down to the level of our enemy, but to force them up to our level. Their elevation being the end ... retaliation in kind being our best means to that end.” One Massachusetts officer wrote to Benjamin Wade to let him know, “I go in for retaliation,” swayed to that opinion, he said, by the grim news from Andersonville. Jane Rutledge of Cincinnati agreed with Adams’ argument that retaliation was the only means of

⁹⁴ L. Abbott to Charles Sumner, January 25, 1865; James Butler to Charles Sumner, January 27, 1865, Robert Anderson to Charles Sumner, March 4, 1865, John Kettell to Charles Sumner, January 25, 1865, Frank Ballard to Charles Sumner, January 25, 1865, Edwards Pierrepont to Charles Sumner, February 26, 1865, Orville Wilder to Charles Sumner, February 27, 1865, Cephas Bainerd to Charles Sumner, January 26, 1865, Zaddock Street to Charles Sumner, January 26, 1865, L. Abbott to Charles Sumner, January 25, 1865, The Papers of Charles Sumner, ser. 1, reel 32.

protection Federal soldiers, so she was thankful “someone in authority has spoken in their behalf ... to relieve their suffering.”⁹⁵

The most thorough and thoughtful letter Charles Sumner received throughout the retaliation debate came from Francis Lieber, who adamantly opposed the original S.R. 97. His opposition had nothing to do with the fact that the retaliation would punish “those who are not or may not be guilty of the outrage we wish to put an end to.” That was an inevitable and just component of warfare. Instead, Lieber feared that the retaliation would lead Federals to “sink thereby to the level of the enemy’s shame and dishonor,” a turn that might well prove disastrous to “the great destiny of our people.” While the laws of war did authorize retaliation in certain restricted circumstances – restricted as to means employed and for the ends sought – Lieber believed S.R. 97 deviated from this limited authorization. It did so because its supporters seemed motivated by little more than a base desire to “indulge in revenge,” which, Lieber argued, was a passion that “ought never to enter the sphere [of war].” In a public editorial to the *New York Times* shortly thereafter, Lieber reiterated his belief that Federals had to approach the retaliation issue above all with “moral calmness.” An army had to turn to the sternest feature of war only with a sober, prudent head, not to satisfy vengeful desires. If the Union did so now, Lieber wrote, it would realize that “a repetition of the heartless infamy inflicted on our soldiers” was utterly unjustified: “No civilized, feeling man could commit such callous cruelty.”⁹⁶

Lieber did not doubt that Federal prisoners suffered immensely at the hands of their Confederate captors. But this evil consequence of war – like every other evil consequence wars inevitably inspired – could be best ended in only one way: to win the war conventionally as

⁹⁵ Charles F. Adams, Jr. to Charles Sumner, February 1 and 7, 1865, The Papers of Charles Sumner, ser. 1, reel 32; Lucius B. March to Benjmain F. Wade, January 25, 1865, Jane Rutledge to Benjmain F. Wade, January 23, 1865, B.F. Wade Papers, LC, Reel 5.

⁹⁶ Francis Lieber to Charles Sumner, January 22, 1865, The Papers of Charles Sumner, ser. 1, reel 32; *New York Times*, December 26, 1864.

quickly as possible. “The only remedy for this bitter evil as for all other that beset us now is: Let us send men and men and men to our Shermans and Thomasses that they may strike and strike and strike again.” Lieber’s moral vision of a war in earnest defined his thinking about how best to handle the retaliation issue. A vigorously prosecuted war, not retaliation in kind, was the surest means to ending suffering.⁹⁷

Controversies over the use of retaliation cut to the heart of Federal ideas about the nature of a justly waged war. Debates over retaliation revealed basic assumptions about how a supposedly Christian, civilized people waged moral war. The northern citizenry reached no consensus in these debates. Yet most Federal political and military leaders who possessed the power to decide when and in what manner to retaliate agreed with Lieber that the war’s sternest feature, while often justified, was still a terrible weapon – one to deploy not to satisfy vengeance, but only when it would effectively compel an enemy to abandoned an uncivilized, illegitimate action in war. A persistent hesitancy to resort too quickly, too thoroughly to retaliatory measures resulted from this basic idea about its tenuous place in a justly waged war.

While many Federal officials shared Lieber’s cautious yet not condemnatory attitude toward retaliation, they also shared his moral vision of a war in earnest. The conviction that retaliation was war’s sternest feature left many Federals wary of its hasty, vengeful, unfocused use against enemy soldiers. Similarly, the conviction that vigorous wars were humane wars convinced many Federals they were morally justified in deploying the hard hand of war against Confederate civilians and their property. This conviction soon defined the final year of the Union

⁹⁷ Francis Lieber to Charles Sumner, January 22, 1865, The Papers of Charles Sumner, ser. 1, reel 32. Lieber’s thinking in this respect – as well as the thinking of many northern opponents of S.R. 97 – confirms Mark Neely’s insightful conclusion, “Harsh war and limited war, retaliation and Christian forgiveness, existed side by side as policies in the field throughout the Civil War.” Neely, *Retaliation*, 29.

military effort, as Federal armies surged deep into the Confederacy and sought to end their war quickly and humanely.

Chapter Five: Civilians

In the war's final months, Union armies marched through the Shenandoah Valley and the Georgia and South Carolina countryside emboldened by a Lieber-style moral vision of war. Federal soldiers drew from this vision the certainty that they would achieve victory and peace only by unleashing the hard hand of war in all its terrible might against their enemies. A truly humane and moral war demanded nothing less, they believed. Southern civilians soon experienced the terrifying peril of life at the receiving end of a vigorously prosecuted war, even one tempered with flashes of restraint.

If the war endured well into 1865 and beyond, General Ulysses S. Grant reckoned his armies ought to leave the Shenandoah Valley a barren waste. Soldiers such as J.H. Kidd fulfilled Grant's orders. Kidd, colonel of the Sixth Michigan cavalry, arrived in the Valley in late summer 1864. He had survived the Battle of Gettysburg and most of Grant's Overland Campaign before being sent to the Valley to help defeat Jubal E. Early's Confederate force and "leave a trail of fire behind," decimating the Valley as a vital source of provisions for the Army of Northern Virginia.

Kidd relished the chance to subdue Early's army, which lately threatened Washington D.C. and wreaked havoc in southern Pennsylvania. But when it came time to destroy Valley mills and fields and crops and livestock, Kidd often felt far less zeal while fulfilling his duties. "It was a disagreeable business," he later wrote, "and—we can be frank now—I did not relish it." Others did, he admitted, and even he never really doubted that the destruction was necessary or just. Yet, decades later, as he remembered the sound of burning mills as "a mournful requiem," a tinge of ambivalence remained.

One incident amid the destruction made a lasting impression on Kidd. In the heart of the Valley, southeast of Harrisonburg, stood a mill in the little hamlet of Port Republic. The women and children who lived nearby, “bereft of their natural providers,” by now all gone to Confederate armies, survived in part from what the local mill produced. As the Union cavalry rode into Port Republic, the women learned of the mill’s impending destruction and made “heartrending” appeals to Federals to spare it. The destruction proceeded as planned. The fire that consumed the mill quickly raged beyond the Union cavalry’s control. Kidd hastily ordered every man to stop the spread of the fire. Despite their efforts, the flames engulfed several homes and burned an image forever into Kidd’s memory: “Women with children in their arms, stood in the street and gazed frantically upon the threatened ruin of their homes, while the tears rained down their cheeks.” Kidd confessed he saw in the anguished faces of these women a grim reality: in war the most terrible and necessary actions were sometimes the same. “It was too much for me,” Kidd admitted, “and at the first moment that duty would permit, I hurried away from the scene.”¹

Kidd believed he waged war justly, but even just wars have their tragedies, as Kidd learned in that little hamlet in the Shenandoah Valley. Kidd accepted Lieber’s moral vision of war. He waged war vigorously with the confidence that a war in earnest remained the most humane option for Union armies. But he also believed that destruction in vigorous wars must proceed according to certain limits, so he felt dismay at the unintended, unjustified burning of private homes. The best intentions of soldiers committed to just conduct in war could go awry; having unleashed war’s destruction and devastation, soldiers like Kidd sometimes found themselves unable to control it completely. But if no army could entirely overcome this tragedy,

¹ J.H. Kidd, *A Cavalryman with Custer: Custer’s Michigan Cavalry Brigade in the Civil War* (New York: Bantam Books, 1991), 290-2.

what did it really mean to wage a just war? The question accompanied tens of thousands of Union soldiers in the war's final months as they turned the destructive might of their hard war against Confederate civilians.

Henry Hitchcock pondered the same question while encamped outside Atlanta in early November 1864. William T. Sherman had recently taken on Hitchcock as a staff officer after a request from Henry's uncle, Ethan Allen Hitchcock. Henry admired Sherman immediately: "The operations of his mind seem to me more like lightening than anything else I can think of," he wrote to his uncle. On the eve of Sherman's march to Savannah, Henry suspected the campaign would wreak great and memorable destruction. But he still hoped Federal soldiers would show self-restraint and adhere to the laws of war. Above all, he desired for God to use the fierce fury of Union armies to "bring to a speedy end this terrible and lamentable war."²

Hitchcock, like Kidd, believed anything less than a vigorous prosecution of the war would lead only to greater death, suffering, and destruction: "[W]e must make war, and it must *be* war, it must bring destruction and desolation, it must make the innocent suffer as well as the guilty." To concede defeat and Confederate independence would not really end the fighting, Hitchcock thought, for "that is simply to ensure the same thing hereafter, for separate means *ceaseless war*." War was always a "horrible necessity at best" but the march across Georgia abided by the moral logic of a war in earnest: it made war "so terrible that when peace comes it

² Henry Hitchcock to Ethan Allen Hitchcock, November 9, 1864, Hitchcock Family Papers, MHM; Henry Hitchcock, *Marching with Sherman: Passages from the Letters and Campaign Diaries of Henry Hitchcock, Major and Assistant Adjutant General of Volunteers, November 1864-May 1865* (New Haven: Yale University Press, 1927), 62. Sherman returned the complement, and said of Henry to Ethan Allen: "He is a lawyer and a scholar and can dress up my rude thoughts in better array." William T. Sherman to Ethan Allen Hitchcock, January 9, 1864, Hitchcock Family Papers, MHM.

will *last*.” The shortest path from war to peace – the surest safeguard for sustaining future peace – was to wage war with great vigor against soldiers and civilians alike.³

One Sabbath morning midway to Savannah, having just witnessed the burning of a local courthouse, as the morning fog gave way to piercing sunlight that cut through the leaves of a quiet woods, Hitchcock reflected on the destructive wake of Union armies. He wondered, “How can any man engage in a war unless he believes its prosecution a sacred duty?” Soldiers who marched into battle carried with them a sacred obligation: to wage war justly and thereby forestall war’s easy descent into utter depravity.⁴

Hitchcock and Kidd participated in two of the more infamous campaigns of the Civil War’s final months – Philip H. Sheridan in the Shenandoah Valley and Sherman’s March through Georgia and South Carolina. Union armies in these campaigns brought to fruition the moral vision of warfare Francis Lieber articulated so forcefully in his code – the same vision that had emerged along the Mississippi River in the opening months of the war. The notorious destruction and surprising restraint that characterized these campaigns both emerged from this moral vision, which sought within certain limits to wage war vigorously and end it quickly. Federals who participated in Sheridan’s and Sherman’s campaigns targeted Confederate civilians and their property to hasten the war’s end. Unwarranted abuses and depredations occurred in the Valley and on Sherman’s March because Federals disagreed about what a hard yet humane war looked like in practice. Some soldiers simply did not abide by rules of just conduct at all times. Still, both stern retribution and humane restraint permeated the thoughts and actions of Union

³ Hitchcock, *Marching with Sherman*, 77, 93.

⁴ *Ibid.*, 99.

soldiers who participated in both campaigns. As a result, an element of discretion and self-discipline generally tempered impulses toward extreme and indiscriminate destruction.⁵

Union armies in guerrilla-infested Missouri and occupied New Orleans and Memphis in the opening eighteen months of war first practiced hard yet humane war policies – which derived from a moral vision of war that Francis Lieber eventually refined into coherent, comprehensive rules of conduct. This moral vision held that wars most vigorously prosecuted were wars most humane, assuming they also abided by certain rules of just conduct. In Sheridan's Valley campaign and Sherman's March across Georgia and South Carolina, this moral vision reached its

⁵ Historians once argued Sheridan's "burning" of the Valley and Sherman's March to the Sea eerily foreshadowed modern total warfare, but more recent work has convincingly documented in detail how both campaigns were not wholesale and indiscriminate in their destruction. Mark Grimsley showed how Sherman wanted the March to proceed in an "orderly, controlled manner with minimum waste and wanton destruction," and how, by and large, soldiers acted as Sherman desired. Grimsley, *Hard Hand of War*, 190. John F. Marszalek also concluded that despite the immense destruction of Sherman's campaigns, they were not "the application of senseless brutality for its own sake." John F. Marszalek, *Sherman's March to the Sea* (Abilene: McWhiney Foundation Press, 2005), 14. William G. Thomas's careful study of the destruction in Rockingham County during Sheridan's Valley campaign revealed evidence of discretion in Federal soldiers' destruction, namely the tendency to destroy wheat but leave corn largely unharmed. Despite civilians' heavy losses, Thomas argued, "Sheridan's forces had inflicted limited and targeted damage that neither destroyed the entire Valley nor subjugated its population." William G. Thomas, "Nothing Ought to Astonish Us: Confederate Civilians in the 1864 Shenandoah Valley Campaign," 240 in Gary Gallagher, ed., *The Shenandoah Valley Campaign of 1864* (Chapel Hill: University of North Carolina Press, 2006). Gary Gallagher likewise argued, "Sheridan's troopers and soldiers did not put all barns, mills, and stocks of grain and hay to the torch. Neither did they slaughter or carry off all livestock and burn private dwellings indiscriminately." *Ibid.*, 15. Mark Neely, drawing in part on Thomas's research, also concluded Sheridan's cavalry committed a "more controlled and less complete series of acts" of destruction. Sheridan chief goal, Neely argues, was to destroy Early's army, not to raid and destroy the Valley countryside; even when they went about destroying crops and other provisions, Sherman's soldiers still hardly left the Valley a "barren waste" as Grant ordered. Neely, *The Civil War and the Limits of Destruction*, 110-119. Neely moreover suggested that since the cavalry assigned the task of destroying provisions in the Valley possessed a "more traditional ... outlook on warfare," aspiring to an older "chivalric tradition," that left many cavalryman not fully reconciled to destroy civilian crops, an act "not fully compatible" with their traditional, chivalric outlook on warfare. In contrast, Michael Fellman, for one, relied upon his psycho-analysis of Sherman's immense rage to explain why Sherman and his men waged such destructive war: "There were not," he argues, "many implicit inbuilt limits on that destructiveness, and so the tendency for Sherman's men, who well understood his rage against the South and shared in it, was to escalate continually their level of destruction until they reached some undefined and often personal limit beyond which they could not go." This meant, he concluded, that the March was a "war against an essential undefended enemy civilian population ripe for the plucking [that] turned into a giant party." Fellman, *Citizen Sherman*, 213, 215.

zenith. Though mindful of constraints on their actions, Federal soldiers subjected Confederate civilians to the terrible fury of hard war in the hopes that they might speedily win victory and peace.⁶

“Crack the Dragon”: The Union War Effort in the Spring and Early Summer 1864

Ulysses S. Grant arrived in Washington D.C. in early March 1864 to assume the rank of lieutenant general and control of all Union armies. He came as the conquering hero of the West. The nation put its cautious hopes in Grant but remained unsure if he could guarantee military victory in the coming months. To many northerners, the fate of the Union war effort seemed to hinge on the outcome of the impending campaigns. “I fear that if we do not crack the dragon during the ensuing summer,” Francis Lieber wrote to Henry Halleck in early March, “we shall never do it.”⁷

Grant wanted to crack the dragon by launching coordinated offensive operations throughout the Confederacy. Advances by the two main Union armies constituted the centerpiece of this strategy. In the East, the Army of the Potomac would strike against Robert E. Lee and the

⁶ Historians who contend the actual destruction and civilian suffering in these campaigns was not as great as their notorious reputations suggested have also tried to explain what accounts for the restraint short of near-total destruction. Mark Grimsley has offered one particularly influential answer to this question in his discussion of the “directed severity” shown by Federals. This directed severity sought to dispense suffering upon Confederates “in rough proportion to the extent of their sins.” The most important motivation to continue this directed severity, Grimsley suggests, were Union soldiers’ “political sensitivity,” their recognition that widespread destruction might well undermine Federals’ goal of lasting peace and Union. Grimsley, *Hard Hand of War*, 183-6, 222-5. Mark Neely, in contrast, drawing a comparison to the actions of American soldiers in the Mexican American War, suggests that “racial beliefs” were the “major determinant” of Federal soldiers’ restraint behavior, for, despite their loathing of the Confederate cause, they still saw in Confederates a people of a similar race and comparable level of civilization, and therefore deserving humane treatment in war. Neely, *The Civil War and the Limits of Destruction*, 5. I in contrast attempt to render intelligible the beliefs and assumptions of the moral vision of war to which Federal soldiers adhered, and explain how this moral vision fostered by restraint and destruction.

⁷ Francis Lieber to Henry Halleck, March 8, 1864, The Papers of Francis Lieber, Box 28, HL. Hattaway and Jones, *How the North Won*, 515-6; Grimsley, *The Hard Hand of War*, 162-70

Army of Northern Virginia; in the West, the armies under Sherman's command would do the same to Joseph Johnston and the Army of Tennessee.

Smaller armies commanded by three political generals had key roles to fill as well in Grant's plans for the coming months. Nathaniel P. Banks was to capture Mobile and then move north into Alabama; Benjamin Butler was eventually to threaten Richmond by advancing up the James River and destroying railroad lines that connected the Confederate capital to its nation; Franz Sigel was to press up the Shenandoah Valley and neutralize the region as a source of vital support for Lee's army. Lincoln quickly appreciated the strategic significance of these three secondary operations to Grant's overall designs. The two main armies in the East and West would do the essential work, but, as Lincoln put it, "Those not skinning can hold a leg,"⁸

Unfortunately, Banks, Butler, and Sigel proved inept even at leg-holding. None accomplished what Grant directed. Mobile had little to fear from Banks, who turned his attention instead to the bounty of cotton along the Red River. Butler made it quickly up the James but then stalled before striking a potentially decisive blow against Richmond. The delay allowed P.G.T. Beauregard to take the offensive with a lately reinforced army and eventually drive Butler back to an inopportune position between the James and Appomattox rivers. As Franz Sigel closed in on Staunton, a Confederate force, composed in part of local Virginia Military Institute cadets, attacked and repulsed the Federals at the Battle of New Market.⁹

These failures, especially Butler and Sigel's, complicated Grant's showdown with the Army of Northern Virginia. The fighting between the two armies was grim and relentless as late spring gave way to early summer. Casualties escalated yet Grant did not achieve what the northern public desperately desired: decisive victory over Lee's army. Confederates stalled the

⁸ John Hay, *Letters of John Hay and Extracts from Diary* (Washington: n.p., 1908), 190.

⁹ McPherson, *Battle Cry of Freedom*, 722-3; Grimsley, *The Hard Hand of War*, 165-6; Hattaway and Jones, *How the North Won*, 555-7, 562-3; Guelzo, *Fateful Lightening*, 424-5

Union advance at the Wilderness by May 7, which saw particularly harsh and often confused fighting in thick woods set ablaze. Yet, immediately after, the men of the badly bruised Army of the Potomac witnessed firsthand the grit of their commander from the West. Grant fixed his gaze south after the fighting in the Wilderness, and moved his army toward Spotsylvania to force a weakened Lee to fight again or retreat. Lee beat Grant to Spotsylvania Court House. His army prepared entrenchments effective enough to again repel Grant's repeated attacks. The grind continued ever closer to Richmond but ended again in bloody frustration at Cold Harbor. As he plotted his next move, Grant's mind turned south of Richmond toward Petersburg. The Federals suffered more than 50,000 casualties in the four-week stretch of fighting, a once unimaginable toll that shocked the home front.¹⁰ A melancholic Lincoln anticipated his likely defeat in the imminent presidential election.

The prospect of imminent Union victory seemed dim to the loyal citizenry by late summer. In a matter of months, their revived hopes for a triumphant end to the war had been met with bloody stalemate, ignominious incompetence, and bitter defeat. Francis Lieber spoke for many northerners in early August when he concluded that the preceding months were "certainly the gravest period we have yet passed through—it is a dark one."¹¹ Union armies had not cracked the dragon. It was far from guaranteed they ever would.

"War is Rough Business and Demands All the Amities of Life to Smooth the Rugged Edges": The Shenandoah Valley Campaign of 1864

In these fearful summer days, a dramatic campaign unfolded in the Shenandoah Valley. The fortunes of both armies fluctuated wildly, and the fighting held the rapt attention of the

¹⁰ Hattaway and Jones, *How the North Won*, 552-615; Guelzo, *Fateful Lightening*, 429-36; McPherson, *Battle Cry of Freedom*, 725-35.

¹¹ Francis Lieber to Martin Russell Thayer, August 8, 1864, The Papers of Francis Lieber, Box 50, HL.

Union citizenry and high command. Federals looked upon the Valley with three years of memories of frustration and failure. Despite Franz Sigel's fiasco weeks earlier, Grant did not waver in his determination to rob Lee's army of the bounty of the Valley.

Grant turned to Major General David Hunter to accomplish this task. By early June, Hunter seemed well poised to do so. His force advanced up the Valley through Piedmont and then Staunton, leaving behind a trail of destruction – most infamously in Lexington, where Hunter's men burned the Virginia Military Institute and the home of John Letcher, a former Virginia governor who had sought to stir up rebel civilians to guerrilla warfare against the Federals. Lee recognized this second front in Virginia demanded a serious response. He sent the corps commanded by Jubal A. Early to confront Hunter. Early arrived first to Lynchburg, and Hunter, now faced with an imposing enemy army, decided to retreat into West Virginia. In doing so, Hunter left open a route down the Valley for Confederates to take to threaten an exposed northern home front, including Washington D.C.¹²

Early seized the opportunity. His army crossed the Potomac River into Maryland by July 6, defeated a small Federal force near Frederick, Maryland, and soon advanced on Washington's outer fortifications. Optimistic Federals who weeks prior thought their armies would soon take Richmond now found their own capital threatened. The corps Grant hastily sent to reinforce Washington D.C. proved hearty enough to discourage an attack by Early. Though he withdrew for a time, Early soon struck fear and anger into Federals' hearts again – first with a victory at

¹² McPherson, *Battle Cry of Freedom*, 737-9; Grimsley, *The Hard Hand of War*, 166-7, 178-81; Hattaway and Jones, *How the North Won*, 575, 585-7. Mark Grimsley, though, has rightly noted that Hunter's raid in Valley, despite all the outrage it provoked, showed "a consistent – almost finicky – insistence upon a directed severity," that is, destruction confined to limited target, not wanton and unnecessary. Although Grimsley also notes that Hunter's burning of the Virginia Military Institute violated a provision in General Orders No. 100 against damaging educational institution, he also notes, "in fairness to Hunter, most of the Institute's corps of cadets had recently fought Union forces at the Battle of New Market," the scene of Sigel's defeat. Grimsley, *The Hard Hand of War*, 178-9.

Second Kernstown, and then when a portion of his cavalry burned Chambersburg, Pennsylvania after it refused to pay \$500,000 (or \$100,000 in gold) to compensate for the property destroyed by David Hunter. “I am perfectly satisfied with my conduct on this occasion,” Early wrote of the burning in his memoir, “and see no reason to regret it.”¹³ This was hardly what Lincoln had hoped for mere months before the loyal citizenry returned to the polls to decide if they should again place their trust in him to save the Union.

Early’s actions hardened Grant’s commitment to devote significant resources to the Valley. The beginning of August marked a watershed in the campaign. Sheridan assumed command of Union forces in the Valley, by no means an obvious choice. Lincoln and Stanton did not hide their concerns but Grant successfully persuaded them to appoint Sheridan to command the newly created Middle Division. Sheridan received from Grant three major objectives: drive Confederates from the Potomac and further up the Valley, destroy the Valley’s ability to provide provisions and other resources to Lee, and damage the Virginia Central Railroad. Federals enjoyed somewhere near a three-to-one manpower advantage with the 43,000-strong Army of the Shenandoah. Although the main armies of the East remained tied up near Petersburg, no one could now mistake the fighting in the Valley for a mere sideshow.¹⁴

The decisive period of the campaign came between September 19 and October 19. Sheridan scored a string of victories and forced Early’s army to retreat deep up the Valley. Federal successes at Third Winchester, Fisher’s Hill, and Tom’s Brook weakened the Confederates and forced a start to their retreat. Even Lincoln’s reelection fortunes looked more promising than they had for quite some time. “The military value of this victory is great,” George

¹³ Jubal A. Early, *A Memoirs of the Last Year of the War for Independence* (Lynchburg: Charles W. Button, 1867), 70; Gallagher, ed., *The Shenandoah Valley Campaign of 1864*, x-xii, 6-8, 42; McPherson, *Battle Cry of Freedom*, 756-7; Hattaway and Jones, *How the North Won*, 615.

¹⁴ Hattaway and Jones, *How the North Won*, 615-6; Gallagher, ed., *The Shenandoah Valley Campaign of 1864*, 9, 14-16.

Templeton Strong wrote after Third Winchester, “but it is worth still more as influencing the political campaign.” Early then decided to make a last ditch surprise attack at Cedar Creek on October 19. Despite early hopeful signs of a rout of the Federals, Sheridan rallied his men for a successful counterattack. It left Early’s army in shambles and fighting in the Valley campaign effectively finished. Sheridan’s force had by late August already taken to heart a directive Grant earlier gave to Hunter that “nothing should be left to invite the enemy to return. Take all provisions, forage and stock wanted for the use of your command. Such as cannot be consumed, destroy.” However, after Federals drove Early all the way to Staunton, they fixed their gaze on the exposed Valley landscape and continued the destruction in earnest.¹⁵

Grant believed this destruction was integral to the present campaign in the Valley. “Do all the damage to railroads and crops you can,” he ordered, “... so as to prevent further planting. If the war is to last another year, we want the Shenandoah Valley to remain a barren waste.” In bringing destruction to Valley residents, Grant sought to ensure Confederate forces could no longer “subsist among them,” much less draw resources to send to Lee’s army in eastern Virginia.¹⁶

However, Grant and Sheridan alike sought to set certain restrictions on how soldiers carried out this destruction. When Sheridan directed his subordinates to follow Grant’s commands and destroy “all mills, all grains and forage, you can, drive off or kill all stock,” he also insisted to a division commander that Federals should not burn “villages or private houses.” Sheridan here simply echoed directions Grant had given to Federal armies in the Valley. Though Grant hoped to leave nothing “to invite the enemy to return,” he insisted it was “not desirable

¹⁵ *The Diary of George Templeton Strong*, eds. Nevins and Thomas, 3:491; *OR*, ser.1, vol. 43, pt. 1, 698. Hattaway and Jones, *How the North Won*, 617-20; Gallagher, ed., *The Shenandoah Valley Campaign of 1864*, xiv. See also Jeffry D. Wert, *From Winchester to Cedar Creek: The Shenandoah Campaign of 1864* (Mechanicsburg, PA: Stackpole Books, 1987).

¹⁶ *OR*, ser. 1, vol. 43, pt. 2, 202; *OR*, ser. 1, vol. 43, pt. 1, 58.

that the buildings should be destroyed.” Grant displayed an inclination toward targeted destruction that singled out the patently disloyal and offered some protection to Unionists. “It is in our interest,” he said, that the region, “should not be capable of subsisting a hostile army, and at the same time we want to inflict as little hardship upon Union men as possible.”¹⁷ Union forces should destroy whatever sustained the Confederate war effort – crops, especially grown by disloyal farmers, and railroads – and leave relatively unscathed what did not.

Sheridan agreed with Grant’s justification of the destruction of railroads, crops, and other provisions in the Valley. Destroying or controlling the agricultural bounty of the region would “cut off one of Lee’s main-stays in the way of subsistence,” Sheridan explained. Yet, as Sheridan later reflected on his initial rationale for pursuing this targeted destruction in the Valley, he also raised a more fundamental justification rooted in his vision of the nature of warfare. “I do not hold war to mean simply that lines of men shall engage each other in battle, and material interests be ignored,” Sheridan insisted. “This is but a duel, in which one combatant seeks the other’s life; war means much more, and is far worse than this.”¹⁸ Farmers in the Valley supplied some of the most vital material interests to the Army of Northern Virginia and therefore could not expect to avoid war’s devastation.

If Union armies brought this devastation to the doorsteps of civilians who normally “rest at home in peace and plenty,” it might result in a swifter victory. Sheridan offered a Lieber-style justification for the hardships in the Valley as a means of ending war quickly and restoring peace as soon as possible. “Death is popularly considered the maximum of punishment in war,”

¹⁷ *OR*, ser. 1, vol. 43, pt. 2, 202; *OR*, ser. 1, vol. 43, pt. 1, 698; Philip H. Sheridan, *Personal Memoirs of P.H. Sheridan* (New York: Charles L. Webster, 1883), 478. Grant had earlier made a particular effort to protect the Quaker population of Loudoun county, “who are favorably disposed to the Union,” from property seizures and arrests. Mark Grimsley has suggested the destruction in the Valley was “probably one of the more controlled acts of destruction during the war’s final year.” Grimsley, *Hard Hand of War*, 178.

¹⁸ Sheridan, *Personal Memoirs*, 485. For similar justifications see *Ibid.*, 460-1.

Sheridan ominously explained, “but it is not; reduction to poverty brings prayers for peace more surely and more quickly than does the destruction of human life, as the selfishness of man has demonstrated in more than one great conflict.” For Union armies to wrench from enemy civilians prayerful cries for peace and mercy, they would have to wage a war of vigorous destruction that might reduce many to poverty. The chilling fact remained that while this style of warfare might end war quickly, it also, by Sheridan’s own admission, was perhaps more terrible for those on the receiving end than swift and certain death.¹⁹

When Federal soldiers under Sheridan’s command traversed the Valley, they often marveled at its grandeur and beauty. Sheridan himself lauded the Valley’s “fertile soil” and “ample subsistence.” A soldier in a New York regiment proclaimed to his wife the Valley was “the most beautiful country I ever saw.” The bountiful crops of wheat, corn, apples, and peaches all convinced the New Yorker the Valley “would be a desirable country to live in in time of peace.” “It is without exception the most beautiful country naturally, I ever saw,” a Pennsylvania soldier told his wife, “& it is the few remaining traces of former beauty that now give it the mournful aspect it has.”²⁰

The abundant and colorful bounty of the Valley soon became the target of Federal foraging and destruction. The latter proceeded as Grant and Sheridan hoped. An Iowa infantryman thought the scenes of devastation near Berryville formed “the most desolate looking picture I ever saw.” “The country has been pretty well devastated,” he wrote, fences and railroads destroyed, “stock all driven off, orchards stripped of fruit.” By late summer, Brigadier General George A. Custer reported in detail the recent destruction carried out by the force under

¹⁹ Sheridan, *Personal Memoirs*, 487-8.

²⁰ Ibid., *Personal Memoirs*, 470; John B. Burrud to Wife, August 6, 1864, August 8, 1864, September 7, 1864, John B. Burrud Papers, Boxes 1 and 3, HL; John Suter to Wife, November 25, 1864, John Suter Papers, The Harrisburg Civil War Roundtable Collection, Box 32, USAMHI.

his command. In one day, Custer said, his men destroyed nine “large mills” full of flour and wheat along with nearly one hundred nearby barns filled with wheat and hay. Custer’s force also seized hundreds of sheep and cattle, and he pointedly reported, “No dwelling houses were destroyed or interfered with.” In early October, a young Rutherford B. Hayes, soon promoted to brigadier general, similarly noted how Federals outside of Harrisonburg identified three mills in a nearby neighborhood and travelled to them “to grind up [their] wheat.” At the same time, a cavalry force near Staunton destroyed “Military Stores & Railroad material,” along with “culverts ... bridges, barns [and] Grain.” Thomas Campbell, an Ohio infantry private, recounted hearing how some particular cavalymen deceitfully promised civilians “on the payment of a certain sum of money (in specie) they would save their property.” As soon as the cavalry rode away with the bounty, along came “the squad appointed to do the burning,” which, having finished the destruction, “shared the spoils.” “Could human depravity go further,” Campbell wondered as he lamented war’s tendency “to intensify all the baser passions of humane nature.”²¹

As they destroyed, Federals also foraged to supply their own needs. A cavalry force raiding near Staunton enjoyed so much “Butter fine apples & plenty of Apple Butter & Honey,” that most men “had the best supper he ever had” in the region. One private also noted how Federals stripped two towns in the Valley of “everything eatable,” raiding smoke houses, chicken coops, and sheep pens. Another soldier wrote home about enjoying all the “fresh beef and all the fruit and green corn” he could eat after a recent forage expedition. A Massachusetts

²¹ Julie Holcomb, ed., *Southern Sons, Northern Soldiers: The Civil War Letters of the Remley Brothers, 22nd Iowa Infantry* (Dekalb: Northern Illinois University Press, 2004), 157; *OR* ser. 1, vol. 43, pt. 2, 220; Rutherford Birchard Hayes, *Diary and Letters of Rutherford Birchard Hayes*, Charles Richard Williams, ed. (Columbus: F.J. Heer Printing Company, 1922), 2: 519; John Hartwell, *To My Beloved Wife and Boy at Home: The Letters and Diaries of Orderly Sergeant John F.L. Hartwell*, eds., Anne Hartwell Britton and Thomas J. Reed, eds., (Madison: Fairleigh Dickinson University Press, 1997), 293; Diary of Thomas Campbell, September 30, 1864, Civil War Document Collection, Box 20, USAMHI.

soldier, having enjoyed hearty meals with plenty of sheep and turkey, thought the foraging necessary: “we should not starve ... as long as we could find anything in the country.”²²

Foraging brought Federals into frequent contact with civilians in the Valley. Sometimes these civilians tried to alleviate their potential suffering by extending temporary hospitality or respect to Federals. When one foraging corporal in a New York regiment came upon a large stone house and began to look for something to eat, the patriarch of the family who lived there invited the New Yorker to join them for dinner. The soldier assumed his hosts were Unionists until at the end of a long meal when the daughters spoke of their brother, a captured Confederate held prisoner at Camp Chase. In contrast, when an officer heading up a foraging party near Winchester asked a “rich old farmer” for some apples, the farmer “abruptly refused.” So, the incensed Federal officer recounted, as “soon the Boys came up & I made no effort to restrain them from helping themselves.” Union soldiers could commit far more heinous crimes against civilians. Private Campbell wrote in his diary of efforts underway to “ferret out the vile rascal” who raped a woman living not far from their camp. The disgusted private hoped the perpetrator would be executed. “Such villains,” he concluded, “bring disgrace on the best & holiest causes.” Similarly, a New York cavalryman worried that excessive pillage and plunder – or even worse depredations – by “lawless and drunken” Federals only “rendered often fruitless” the otherwise “worthy” Union cause.²³

²² Hartwell, *To My Beloved Wife and Boy at Home*, eds., Britton and Reed, 293; Diary of Thomas Campbell, August 16, 1864, Civil War Document Collection, Box 20, USAMHI; *Dear Catharine, Dear Taylor: The Civil War Letters of a Union Soldier and His Wife*, ed., Richard L. Kiper (Lawrence: University Press of Kansas, 2002), 257; John W. Chase, *Yours for the Union: The Civil War Letters of John W. Chase, First Massachusetts Light Artillery*, eds., John S. and Bonnie B. Collier (New York: Fordham University Press, 2004), 361.

²³ Bayard Taylor to Sister, August 20, 1864, Taylor Family Correspondence, HL; Hartwell, *To My Beloved Wife and Boy at Home*, eds., Britton and Reed 310; Diary of Thomas Campbell, September 7, 1864, Civil War Document Collection, Box 20, USAMHI; “With the First New York Dragoons: From the

Sheridan likewise denounced such “wanton and disgraceful conduct” and promised “summary punishment” for unwarranted depredations against civilians in the Valley. As destruction in the Valley began in earnest, Sheridan issued orders prohibiting “pillaging of houses,” that is, the seizure of private property other than livestock and commonly foraged provisions like fruits or vegetables. Sheridan also directed brigade quartermasters to provide civilians with vouchers detailing items Federals seized, so that “on proof of loyalty to the United States” civilians might receive some reimbursement.²⁴

By late September, Sheridan bragged to Halleck of the vast extent and importance of his army’s destructive work in making the Valley a “barren waste.” “What we have destroyed and can destroy in this Valley is worth millions of dollars to the rebel Government,” Sheridan concluded. But just how immense was the destruction Sheridan unleashed in the Valley? It is important to remember that Sheridan primarily embarked on a military campaign, not a raid, in the Valley in late summer 1864. His chief goal was to defeat Early’s army, not to utterly ruin the Confederate countryside. Recent historians have convincingly argued the cavalry-led destruction was far more targeted, discriminate, and limited than once assumed. William G. Thomas examined in minute detail the destruction in Rockingham County, which was among the most extensive anywhere in the Valley. Thomas discovered that official estimates undertaken by the

Letters of Jared L. Ainsworth,” Letters of Jared L. Ainsworth, The Harrisburg Civil War Roundtable Collection, Box 1, USAMHI.

²⁴ *OR*, ser. 1, vol. 43, pt. 2, 50, 58. A Federal cavalry staff officer, in, admittedly, an unduly rosy account of the destruction unleashed by Sheridan, still insisted Sheridan “appreciated at its proper value the vital importance of maintaining strict discipline in every condition of warfare ... and nobody ever saw him unnecessarily harass the hostile people among whom he was campaigning.” Eric J. Wittenberg, ed., *With Sheridan in the Final Campaign against Lee, by Lt. Col. Frederick C. Newhall, Sixth Pennsylvania Cavalry* (Baton Rouge: Louisiana State University Press, 2002), 9-10. Private Thomas Campbell, though, remained forever pessimistic that these policies and threatened punishments actually constrained Federal behavior in the Valley: “...the fact is the officers wink at [unwarranted pillage] and take their share of what ever comes along. Tis shameful the way some of the men pillage & plunder.” Diary of Thomas Campbell, September, 29 1864, Civil War Document Collection, Box 20, USAMHI.

governor of Virginia reported perhaps one-third of the wheat and less than one-seventh of all corn produced in the country was destroyed. This discrepancy led Thomas to conclude:

“Sheridan’s forces had inflicted limited and targeted damage that neither destroyed the entire Valley nor subjugated its population.” The destruction in the Valley, in short, was neither wholesale nor indiscriminate; it embodied the ascendant hard yet humane war spirit.²⁵

As destruction proceeded, Federals justified their actions as vigorous measures essential to winning the war. The destruction sought to deal a stern blow to Confederate armies by depriving them of vital provisions, they said; it was not mere bloodthirsty and vengeful retribution. Union forces, one soldier wrote bluntly, intentionally “destroyed nearly everything that could be used to subsist an Army.” A cavalry staff officer deemed the destruction “necessary,” for it stripped the Valley “of the sustenance that rendered it possible to subsist an army there.” A New York cavalryman hoped that having “burned everything of account to the enemy,” the Confederacy would soon “[fall] fast.” By early October, Rutherford B. Hayes judged that the destruction had accomplished its intended goal: “This valley will feed and forage

²⁵ *OR*, ser. 1, vol. 43, pt. 2, 250; Thomas, “Nothing Ought to Astonish Us,” in Gallagher, ed., *The Shenandoah Valley Campaign of 1864*, 240-241. Thomas compares the estimated losses with agricultural production levels recorded in the 1860 census. Approximately 100,000 bushels of wheat was destroyed, compared to the 358,653 bushels produced in 1860; approximately 50,000 bushels of corn was destroyed, compared to the 684,239 bushels produced in 1860. For two wartime accounts from Federals in the Valley that emphasize the destruction of wheat, see Bayard Taylor to Elizabeth H. Taylor, September 7, 1864, Taylor Family Correspondence, HL; *OR*, ser. 1, vol. 43, pt. 1, 40-57. Mark Neely, drawing also in part upon Thomas’ research, suggested that the fact that the cavalry was assigned to carry out this destruction probably accounts for some of this restraint. “Destroying civilian crops was not fully compatible,” with the self-image many cavalymen held of themselves as men of “the chivalric tradition of the sword and not as a mounted scavenging horde.” Neely, *The Civil War and the Limits of Destruction*, 113, 124-6. For additional estimations from Sheridan in this final stage of the Valley campaign on the extent of the destruction committed by his army, see *OR*, ser. 1, vol. 43, pt. 1, 28-33, 43-57. The question of the extent of destruction in the Valley has elicited over-the-top, misleading accounts. See, for example, John L. Heatwole, *The Burning: Sheridan in the Shenandoah Valley* (Charlottesville: Rockbridge Publishing, 1998); Michael G. Mahon, *The Shenandoah Valley, 1861-1865: The Destruction of the Granary of the Confederacy* (Mechanicsburg: Stackpole Books, 1999). Even James McPherson, albeit with must greater tact, affirmed the heart of this picture of the “burning” of the Valley, especially its supposedly indiscriminate destruction. McPherson, *The Battle Cry of Freedom*, 777-79.

no more Rebel armies. It is completely and awfully devastated.” One Pennsylvania infantry captain agreed that the devastation decisively harmed Confederate armies but he predicted that if rebel forces ever advanced into Pennsylvania again they would make everything “they pass over a desert waste.”²⁶

Although some Federals expressed slight regret over the destruction, they still insisted it remained necessary to the war effort. One Federal cavalryman admitted to his mother it was “hard to burn barns,” but he did so knowing that “if we didn’t destroy the grain the Rebels would get it for their army to live on.” A Pennsylvania soldier thought it “seemed a shame,” that Union army’s “burnt all the barns and mills” as far up the Valley as Staunton. Yet he too concluded, “I suppose it was a military necessity to keep the rebels from getting supplies.” John B. Burrud told his wife how Federals near his regiment’s camp wasted some of “the best wheat I ever saw” on feeding their horses. It “looks a pity,” Burrud wrote, “but I had rather see it destroyed then let the Enemy have it.” Ohio private Thomas Campbell recounted in his diary a scene “enough to make a man blush for his kind”: a family with seven small children “literally strip’d of everything,” first by rebels, then by Federals, who together took nearly everything edible the family owned.²⁷

Federals justified this civilian suffering as the incidental but necessary consequences of a vigorously waged war. Others also believed rebel civilians in the Valley merely received the punishment they justly deserved. “All the folks up the valley are hot secesh,” one Vermont

²⁶ Hartwell, *To My Beloved Wife and Boy at Home*, eds., Britton and Reed, 293; Newhall, *With Sheridan in the Final Campaign Against Lee*, ed., Wittenberg, 9; “With the First New York Dragoons: From the Letters of Jared L. Ainsworth,” Letters of Jared L. Ainsworth, The Harrisburg Civil War Roundtable Collection, Box 1, USAMHI; Hayes, *Diary and Letters of Rutherford Birchard Hayes*, 2:523; John Suter to Wife, November 1, 1864, John Suter Papers, The Harrisburg Civil War Roundtable Collection, Box 32, USAMHI.

²⁷ Morgan W. Lindsley to Mother, October 18, 1864, Lewis Leigh Collection, Box 5, USAMHI; William M. Martindell to Father, October 12, 1864, Civil War Document Collection, Box 76, USAMHI; John B. Burrud to Wife, August 20, 1864, John B. Burrud Papers, Box 3, HL; Diary of Thomas Campbell, August 15, 1864, Civil War Document Collection, Box 20, USAMHI.

soldier wrote, “and the way our army stripped things was a caution,” a stern warning that rebels could no longer resist the all-mighty power of Union armies and ought to abandon their struggle for independence. Valley citizens’ complicity in slavery and its manifold evils, an Iowa soldier concluded, was reason enough to justify their present hardships. The Iowan reflected in anger on how such an ugly institution like slavery tainted such a beautiful land like the Valley. The region’s residents – along with the rest of the nation, for that matter – were “now paying out in blood for the sins it has permitted to lay and fester around this most beautiful part of God’s earth.” He continued: “When I come to think and reflect that the nation has permitted and assisted in that most iniquitous institution I do not wonder at the Rivers of blood that has been shed and the lives destroyed to make a just atonement for its crimes.”²⁸

Perhaps the most ominous consequences of this civilian suffering, one Pennsylvania infantry captain worried, was that it fostered “such a sea of bitterness & hatred between the two parties in this war that it occurs to me the prospect of peace is yet far distant.” Adhering to just restraints might salvage hopes for a lasting peace after victory. “War is rough business,” private Campbell from Ohio concluded, “and demands all the amities of life to smooth the rugged edges.”²⁹

However, Federals in the Valley – like those earlier in the war in Missouri or Memphis – did not smooth war’s rugged edges when it came to combating local bands of guerrillas. “The valley is terribly infested by guerrillas,” one soldier reported home, some serving under Lieutenant Colonel John S. Mosby, others independent of any regular Confederate force. A Pennsylvania officer loathed these “cursed” guerrillas whose “praise is sung in every southern

²⁸ James Herbert George to Emma George, August 24, 1864, Papers of James Herbert George, HL; Kiper, ed., *Dear Catharine, Dear Taylor*, 265.

²⁹ John Suter to Emmy Suter, November 25, 1864, John Suter Papers, The Harrisburg Civil War Roundtable Collection, USAMHI; Diary of Thomas Campbell, September, 26, 1864, Civil War Document Collection, Box 20, USAMHI.

family,” he assumed. Sheridan’s orders to arrest all men suspected of aiding or belonging to guerrilla bands hardly quieted guerrilla activity. Instances of guerilla attacks on Federal troops persisted. Near the end of the Valley campaign, an angry Sheridan wondered if the only way to “exterminate” the intractable guerrilla fighters in the region was to “burn out the whole country.”³⁰

The battalion of partisan cavalry commanded by John S. Mosby posed chronic problems to Sheridan, not least in wreaking havoc on his supply lines. Despite the nuisance, Jubal A. Early still remained Sheridan’s chief focus, so Mosby avoided until late fall the full brunt of Union forces in the Valley. When Federals did encounter Mosby’s Rangers it inevitably raised a host of longstanding questions about how to justly treat guerrillas in their many manifestations. In late September, near Front Royal, Federals captured six of Mosby’s men. News quickly spread within the Union ranks that in the preceding engagement the Confederate rangers had killed a wounded Federal soldier after he surrendered. The six captured Confederates were executed soon thereafter, a decision Mosby came to believe that George Custer had authorized without justification.³¹

The executions infuriated Mosby. He pledged to retaliate in kind against an equal number of Custer’s men. Robert E. Lee and James A. Seddon both approved Mosby’s plan. The retaliation occurred on November 6, even though, in the end, only three of the captured Federals chosen were killed. Mosby later justified the executions as “not an act of revenge, but a judicial

³⁰ Bayard Taylor to Elizabeth H. Taylor, October 22, 1864, Taylor Family Correspondence, HL; John Suter to Emmy Suter, November 25, 1864, John Suter Papers, The Harrisburg Civil War Roundtable Collection, USAMHI; *OR*, ser. 1, vol. 43, pt. 1, 843, 32. For two reports of guerrilla attacks against Federals in the Valley, see Beverly Hayes Kallgren and James L. Crouthamel, eds., “*Dear Friend Anna*”: *The Civil War Letters of a Common Soldier from Maine* (Orono, ME: University of Maine Press, 1992), 95-97.

³¹ For further discussion of the inspiration of the executions, and who in reality likely authorized them, see Jeffry D. Wert, *Mosby’s Rangers* (New York: Simon and Schuster, 1990), 221-222.

sentence to save not only the lives of my own men, but the lives of the enemy.” The retaliation proceeded according to the laws of war in an effort to secure for captured Confederates the humane treatment afforded them by the laws of war, Mosby insisted. The truly unexpected twist in the story came one week later. Mosby sent a lieutenant to Union lines to deliver to Sheridan a letter in which he promised “any prisoners falling into my hands will be treated with the kindness due to their condition, unless some new act of barbarity shall compel me reluctantly to adopt a course of policy repulsive to humanity.” Sheridan’s exact reply is unknown, but the two did seemingly settle on some sort of agreement. No similar execution of captured soldiers occurred again.³²

Regardless of whatever understanding Sheridan and Mosby reached, the death of Lieutenant John Rodgers Meigs in early October revealed the vigorous lengths to which Sheridan might resort to stamp out guerrilla activity. Meigs, Sheridan’s twenty-three-year-old chief engineer and son of Quartermaster General Montgomery C. Meigs, was killed under somewhat mysterious circumstances. Initial reports suggested that Meigs encountered a band of Confederate partisans during an evening trip back to Harrisonburg, and that as Meigs began to take them prisoner the rebels shot him while he could not fairly defend himself. Later investigations indicated this was not entirely the case, that the Confederates fairly engaged Meigs, but Sheridan initially responded under the assumption that Meigs was murdered in cold blood. Sheridan immediately ordered Federals to burn all the houses within a five-mile radius of Meigs’ murder in retaliation for the “atrocious act” – as harsh and far-reaching a retaliation for presumed guerrilla activity as any that occurred in the Valley in 1864. “Of course the whole thing was murder,” George B. Sanford, at the time a cavalry staff officer in the Valley, insisted

³² Quoted in Wert, *Mosby’s Rangers*, 246, 250. William E. Boyle, “Under the Black Flag: Execution and Retaliation in Mosby’s Confederacy,” *Military Law Review* Vol. 144 (Spring 1994): 148-168.

years later. “This sort of works is not war, and is not so regarded in any civilized community.”

Sheridan later rescinded these orders when more details of the incident came to light but the harsh vigor of his immediate response is telling.³³

When in late November Sheridan more fully turned his attention toward subduing Mosby’s Ranger and other guerrilla fighters, he reminded the Federals under his command that the stern hard hand of war was the only just and effective way to deal with the guerrillas. “Their real object is plunder and highway robbery,” Sheridan wrote of the partisans, and so they brought “destruction upon the innocent as well as their guilty supporters by their cowardly acts. The solution to defeating the guerrillas, Sheridan concluded, was to carry forth Grant’s original vision for the campaign in the Valley: “consume and destroy all forage and subsistence, burn all barns and mills and their contents, and drive off all stock in the region.” However, in these same orders Sheridan also reiterated that “no dwellings are to be burned and that no personal violence be offered to the citizens.” Although Sheridan advocated hard war measures to stamp out guerrilla activity, he still sought to reconcile hard war with certain humane constraints on Federal actions toward non-combatants in the Valley.³⁴

The Sheridan-led phase of the 1864 Shenandoah Valley Campaign occurred in the heat of Lincoln’s re-election campaign. Not surprisingly, some Democrats highlighted the conduct of Union armies in the Valley as a way to criticize the supposedly radical and excessive destruction

³³ OR, ser. 1, vol. 43, pt. 1, 30; E.R. Hagemann, *Fighting Rebels and Redskins: Experiences in Army Life of Colonel George B. Sanford, 1861-1892* (Norman: University of Oklahoma Press, 1969), 302-3; Rutherford B. Hayes disapproved of Sheridan’s initial retaliation, which, he said, did not accord with “my views or feelings.” *Diary and Letters of Rutherford Birchard Hayes*, 2:522. George Sanford later speculated that Sheridan never really intended to fully carry out the orders, but instead meant for them to “give the people a severe lesion.” Hagemann, *Fighting Rebels and Redskins*, 303. For the most thorough account of Meigs’ death, see Mary A. Giunta, ed., *A Civil War Soldier of Christ and Country: The Selected Correspondence of John Ridgers Meigs, 1859-1864* (Urbana: University of Illinois Press, 2006) This work includes fascinating information on Montgomery Meigs’ post-war effort to find his son’s killer.

³⁴ OR, ser. 1, vol. 43, pt. 2, 679.

of the Republican-led war effort. These election-season criticisms reveal how divisive and politically potent debates over just conduct in war could be.³⁵

Hard war measures secured military victories for the Union army, but Lincoln's Democratic critics hoped these same measures might also spell political defeat for the Republican Party. "The damage has been immense," the *Philadelphia Age* sorrowfully reported. "The people, deprived of food and homes, will have to wander off. Few, not accustomed to the desolations of war, can realize the extent of the destruction made." The Valley, the *Cincinnati Inquirer* declared, "is now a waste and desolation ... its old men murdered or starving to death; its women and children the victims of murder, lust and want of food and shelter." The *Valley Spirit* denounced Grant's orders to leave the Valley a barren waste as "so desperately wicked, so contrary to the spirit of Christianity, and so revolting to the civilization of this age," a war measure utterly contrary to the true character of "a free, civilized, religious nation." Democratic editors evoked heartbreaking scenes of hardship to denounce Republicans for subjecting wayward white southerners to unjustifiably harsh devastation – all in the service of radical, partisan aims. One Massachusetts artillery officer who favored McClellan agreed. He disparaged the Republican-led war effort as "a damn Humbug any way." He explained: "it is not for principle but Party we are fighting." In railing against the destruction in the Valley, Democrats hoped to convince northerners to reject Lincoln and his fellow Republicans because of their radical embrace of excessive and unjust war measures. These criticisms ultimately failed to sway the election, but the benefit of hindsight should not obscure the persistent, volatile, and

³⁵ The paragraphs that follow are indebted to Andre Fleche's insightful study of the Northern Democratic Press' partisan-tinged reporting on the destruction in the Valley. Fleche, "Uncivilized War: The Shenandoah Valley Campaign, the Northern Democratic Press, and the Election of 1864," in Gallagher, ed., *The Shenandoah Valley Campaign of 1864*.

politically-tinged disagreements within northern society over how Union armies might best wage just and successful war.³⁶

Federals in the Valley followed the election closely. Most tended to favor Lincoln. Their political convictions generally flowed from even more deeply held opinions about how the war ought to be waged. Federal soldiers who supported Lincoln's re-election usually did so because they believed it would ensure that the Union war effort remained uncompromisingly vigorous in its prosecution. Lincoln's re-election allowed Federal armies to continue their moral, vigorous war that offered the swiftest path to lasting peace. A New York soldier wrote home that his infantry regiment voted almost unanimously "for honest Old Abe." The New Yorker wondered how "the Copperheaded traitors" could really believe "that the soldiers don't know any better than to vote for the cause they are fighting against." A soldier in the 119th Pennsylvania infantry hoped Lincoln would be re-elected because he thought it would "do more to end the war than anything else for the rebels will see that the north are determined to carry the war on." A Vermont infantryman likewise thought David Farragut's success in taking Mobile and Sherman's capture of Atlanta decisively proved the superiority of a vigorously waged war as the surest path to peace, despite what critics of the Lincoln administration might say. "The 'peace' men," he wrote, "don't have so much chance to find fault" after the recent successes of the hard war. Private Thomas Campbell castigated Federals for all manner of depredations in the Valley, but he directed equal ire toward McClellan and the Democratic platform – a "wishy washy

³⁶ Quoted in Fleche, "Uncivilized War," 210; Collier, eds., *Yours for the Union*, 359. Fleche concludes these sorts of Democratic editorials "used the image of a loyal white South to criticize the harsh turn in administration war policy." These Democratic critics warned of the wide-ranging ill effects of the harsh radical-Republican-inspired war measures pursued by armies in places like the Valley. Fleche aptly captures the ominous spirit of these warnings: "In the Democratic view, events in the Valley underscored the degree to which Republican programs and strategy posed threats to constitutional protections of individual rights and freedoms, to white racial control, to widely accepted norms of gender behavior, and to the possibility of an easy peace and comfortable reintegration of the white South into the national fabric." Fleche, "Uncivilized War," 218.

meaningless string of glittering generalities [that] breathes the spirit of peace at any price,” he concluded. Campbell thought McClellan ought to “repudiate the platform and come out squarely for the crushing out of the rebellion by force of arms.” This vigorous hard war, Campbell said, was after all “the only way [the rebellion] will ever be crush’d.”³⁷

“Even in the Midst of an Enemy’s Country the Dictates of Humanity Must at Least be Observed”: Sherman’s March to the Sea and through South Carolina

As Federal soldiers in the Valley ruminated on Lincoln’s re-election fortunes and the need to continue their vigorously waged war, Joseph Johnston and William T. Sherman had for several weeks methodically maneuvered their armies across northern Georgia. Grant directed Sherman in early April to strike at Johnston’s army, “break it up, and get into the interior of the enemy’s country as far as you can, inflicting all the damage you can against their war resources.”³⁸ The north Georgia terrain tended to favor the defensive, which Johnston gladly pursued. He hoped he might goad Sherman into a foolhardy offensive move against an impenetrable defensive position, and then get the best of Sherman’s much larger army.

Sherman did not rush to take the bait. Instead, he plodded toward Atlanta as Johnston retreated from Resaca and Cassville. The Confederate public grew weary of the seeming timidity and the partisan bickering intensified, especially between Johnston and John Bell Hood. Finally,

³⁷ Bayard Taylor to Elizabeth H. Taylor, October 22, 1864, Taylor Family Correspondence, HL; William Martindell to Father, October 12, 1864, Civil War Document Collection, Box 76, USAMHI; George H. Mellish to Mother, September 4, 1864, Papers of George H. Mellish, HL; Diary of Thomas Campbell, September, 1 and 12, 1864, Civil War Document Collection, Box 20, USAMHI. For two similar reflections Union soldiers bitterly denouncing the Chicago platform see Kallgren and Crouthamel, eds., “*Dear Friend Anna*,” 100-101 and Kiper, ed., *Dear Catharine, Dear Taylor*, 264. “Lincoln enjoyed overwhelming support from the men in the ranks,” Chandra Manning concluded of Federal soldiers’ political opinions in the 1864 election. Chandra Manning, *What This Cruel War Was Over* (New York: Vintage, 2007), 183-187. For similar conclusions see, Reid Mitchell, *Civil War Soldiers* (New York: Viking, 1988), 189-90.

³⁸ *OR*, ser. 1, vol. 32, pt. 3, 246

at Kennesaw Mountain, Sherman thought he had found a weak point at the center of Johnston's line worth exploiting, and he attacked, but to little effect beyond 3,000 Federal casualties. Confederate morale swelled for a moment but the larger reality remained: in less than two months Sherman's army had advanced nearly within striking distance of Atlanta.

With Sherman at this moment faced with the prospect of a siege of the city, the campaign took a critical turn. Jefferson Davis, yearning for decisive offensive action by the Army of Tennessee, replaced Johnston with John Bell Hood, a man whose maimed body seemingly testified to his aggressive daring. Sherman welcomed the change in command. He hoped Hood would abandon the city's defenses and fight in the open. Days after assuming command, Hood did as Sherman desired. In three successive assaults, Confederates failed to stymie Sherman's advance. They managed only to suffer sizeable casualties and retreat into Atlanta's defenses. Sherman eventually sent the vast majority of his army south of Atlanta to destroy the lines leading into the city and sustaining Hood's resistance. After a brief attempt to thwart Sherman's plan, Hood realized he had to abandon Atlanta to save his army, which he did on September 1.³⁹

The fall of Atlanta dramatically revived northern morale and Lincoln's reelection prospects. Yet it also raised for Sherman serious strategic considerations. Could he hold the city, protect his vulnerable line to Nashville, and still maintain offensive momentum into Georgia? To meet these three challenges, Sherman first decided on an action that shocked and infuriated Confederates – he expelled Atlanta's population from the city. Many at the time protested the

³⁹ Hattaway and Jones, *How the North Won*, 547-64, 584, 569-9; McPherson, *Battle Cry of Freedom*, 744-56, 774-5; Guelzo, *Fateful Lightning*, 441-44. Sherman's bombardment of Atlanta prior to capturing the city has drawn attention from historians interested in his application of Lieber's Code. Though Sherman directed Hood to "See the books" and thereby discover that Sherman's unannounced bombardment did not violate the laws of war, other historians have expressly criticized Sherman on these grounds, insisting that it violates article nineteen of the Lieber Code. For one argument to this effect, from a lawyer-historian generally inclined to believe that the Code restrained the actions of Union armies, see L. Lynn Hogue, "Lieber's Military Code and its Legacy," *Francis Lieber and the Culture of the Mind*, eds. Mack and Lesesne, 57-8.

action, and since then others have deemed it a cruel decision emblematic of a man who relished the hard hand of war. Sherman infamously did say in defiance to the protests, “war is war, and not popularity-seeking,” yet this can obscure his more fundamental conviction that the expulsion was not a barbaric action but fully justified – even humane – given the circumstances.⁴⁰

In announcing the expulsion and outlining how it would proceed, Sherman set off a short but vitriolic argument with Hood. Sherman defended the evacuation as “a kindness to these families of Atlanta to remove them now at once from scenes that women and children should not be exposed to.” Hood’s counterarguments struck Sherman as nauseating cant, and he let him know as much in blunt terms:

In the name of common sense I ask you not to appeal to a just God in such a sacreligious manner ... If we must be Enemies let us be men, and fight it out as we propose to do, and not deal in such hypocritical appeals to God and humanity. God will judge us in due time, and he will pronounce whether it be more humane to fight with a town full of women, and their families of a brave People at our back or to remove them in time to places of safety among their own friends and People.

Soon after, Sherman elaborated on his justification to Atlanta city officials. He appealed loosely to military necessity, suggesting that the evacuation was essential to “stop the war that now desolates our once Happy and Favored country.” But he also insisted that the realities of the raging war – and its inevitable effects on Atlanta – made the city no place for civilians. Greater harm would come to civilians if they stayed: “The use of Atlanta for warlike purposes is inconsistent with its character as a home for families. There will be no manufactures, commerce,

⁴⁰ Mark Grimsley has offered a similar argument in the most succinct and sensible terms in *The Hard Hand of War*, 187-89. Sherman, Grimsley writes, “did not regard the [expulsion] as barbaric or cruel, and its execution was carried out with as much regard for the civilians as circumstances allowed.” Important also is Grimsley’s recognition that the evacuation itself did not involve “the exodus of teeming thousands.” Grimsley estimates no more than 3,000 people remained in Atlanta at the moment of the order, and, even then, perhaps just a little more than half of those 3,000 people actually left the city. Grimsley concludes: “Thus, while severe, the expulsion was hardly devoid of humanity. And ironically it was far from total.” Sherman’s many biographers have not failed to cover his orders requiring the evacuation of Atlanta. See, for example, Marszalek, *Sherman*, 285; Fellman, *Citizen Sherman*, 180-1.

or agriculture here for the maintenance of families and Sooner or later want will compel the Inhabitants to go.”⁴¹

Sherman justified his decision with an appeal to an even more fundamental conviction about the nature of warfare: “War is cruelty, and you cannot refine it: and those who brought war into our Country deserve all the curses and maledictions a people can pour out.” The people of Atlanta and their fellow Confederates bore responsibility for the war. Having unleashed war’s horrors they had no right to expect to escape unscathed by them. “You might as well appeal against the thunder storm as against these terrible hardships of war,” Sherman said.

Still, these terrible hardships existed in *war*. They would not persist in peace if Confederates promptly gave up their struggle. A war waged in terrible earnest, as Francis Lieber said, ought to aim for a swiftly restored and gracious peace. Sherman promised as much to the residents of Atlanta: “when that Peace do come you may call on me for anything—Then will I share with you the last cracker, and watch with you to shield your homes & families against danger from every quarter.”⁴² In evacuating Atlanta, Sherman simply put into practice the logic Lieber enshrined in his code: short wars are the best for humanity, and subjecting a civilian population to the hardships of war helped end war quickly.

Even as he set about to expel Atlanta’s population from the city, Sherman fixed his gaze eastward. He envisioned a dramatic raid across Georgia to the Atlantic coast. Lincoln and Grant were initially skeptical of the plan, in part because they feared that in the wake of Sherman’s departure Hood might launch a successful attack on Nashville. The arguments in favor of the march, though, were too compelling. Sherman could destroy the war making resources safely harbored in the untouched Georgia landscape from Atlanta to Savannah. In the process, he could

⁴¹ *Sherman’s Civil War*, 704-7.

⁴² *Sherman’s Civil War*, 707-9.

make a terrifying and demoralizing display of Federal power that would expose the Confederacy's inability to protect its people from enemy armies. The occupation of Atlanta or anywhere else in Georgia was "useless," in Sherman's opinion. But, "the utter destruction of its roads, houses, and people will cripple its military resources," he wrote to Grant. "I can make the march and make Georgia howl."⁴³

Before marching toward Savannah, Sherman set forth certain restraints on the conduct of Federal soldiers soon to make Georgia howl. In Special Field Orders 119, issued November 8, 1864, Sherman called upon his men "to maintain that discipline, patience, and courage which have characterized you in the past," as they marched toward the Georgia coast in the hopes of "[striking] a blow at our enemy that will have a material effect in producing what we all so much desire—his complete overthrow."⁴⁴ The brief orders reiterated the necessity of a vigorous blow against the Confederate populace tempered by certain just restraints.

A day later, Sherman expounded upon this general principle. In Special Field Orders 120, he clarified what exactly traits like discipline or patience looked like in practice as soldiers traversed an enemy countryside. Sherman sought to provide his soldiers with succinct yet clear rules to govern their conduct in three particular situations: foraging for food, destroying property, and seizing property. Although Sherman infamously directed his men to "forage liberally" in Special Field Orders 120, he also ordered brigade commanders to organize carefully the foraging parties, which only "discrete officers" should command. Soldiers not in these parties could not

⁴³ *Sherman's Civil War*, 731. The two most thorough and even-handed works on Sherman's March remain Joseph Glatthaar, *The March to the Sea and Beyond* (New York: New York University Press, 1985); John F. Marszalek, *Sherman's March to the Sea* (Abilene: McWhiney Foundation Press, 2005).

⁴⁴ *OR*, ser. 1, vol. 39, pt. 3, 701. Some historians have singled out Sherman, especially for his March, as the mid-nineteenth-century's "prophet of modern total war." Charles Royster, among others, offers a brief yet convincing counterargument, namely by suggesting, "Sherman the creator of modern war has been largely a rhetorical rather than historical figure." Royster, *The Destructive War*, 356-9. However, Mark Grimsley has concluded that Sherman desired the March to proceed in an "orderly, controlled manner with minimum waste and wanton destruction." Grimsley, *Hard Hand of War*, 190.

engage in unwarranted foraging. The liberal foraging, Sherman hoped, would proceed in a strictly controlled manner, limited to a select number of soldiers. He granted foraging parties the right to take a wide array of provisions if needed – meats and vegetables and fruits and corn meal and so forth – but he also forbade them from entering civilian homes without prior authorization. For the destruction of property, Sherman invested corps commanders with power to authorize the destruction of “mills, houses, cotton-gins, &c.” Sherman’s orders left corps commanders wide discretion but did firmly establish one general principle: in places where “the army is unmolested,” Federals should destroy as little as possible; in areas infested by guerrillas or where local civilians impeded Federal progress by burning bridges or obstructing roads, corps commanders were to “order and enforce a devastation more or less relentless according to the measure of such hostility.” In short, Federals were directed to mete out destruction in rough accordance to civilians’ resistance. Sherman also gave soldiers broad license to seize private property. But he evoked the general principle of military necessity both to justify this seizure and restrain it. The cavalry and artillery, as well as foragers, could take horses, mules, and wagons as needed. Sherman offered little more guidance for property seizures, except to say that soldiers ought to discriminate “between the rich, who are usually hostile, and the poor or industrious, usually neutral or friendly.”⁴⁵

An Iowa private who took part in the March thought Sherman’s two initial orders were “humane and considerate,” a reflection of a more general disposition not “to ruin the country or cause unnecessary suffering among the inhabitants.” Sherman himself later insisted his orders “were obeyed as well as any similar orders ever were, by an army operating wholly in an

⁴⁵ *OR*, ser. 1, vol. 39, pt. 3, 713-714. My account of Sherman’s thinking about war during the March seeks to show its fundamental compatibility with Francis Lieber’s vision of a moral, vigorous war; in doing so, I challenge some historians who suggest that Sherman in this moment, as Michael Fellman put it, moved “away from remnants of forbearance and toward *moral totalism* in his attack on the Southern people.” Fellman, *Citizen Sherman*, 179.

enemy's country." But some Federal soldiers took a more sardonic view of the orders. When one officer caught up to an advance guard, he found the men "lying and sitting along road, very jolly," their cups and canteens overflowing with sorghum molasses taken from a nearby house. One soldier, "with face upturned and buried all but eyes in a cup of molasses," cried out in jubilation, "Forage liberally!"⁴⁶

Foraging presented soldiers in Sherman's army with potential benefits and added dangers. Although it offered the chance to stray for a time from regular army routine and discipline, foragers also were sometimes exposed to threats from guerrilla fighters and hostile southern civilians. Some soldiers, often known as "bummers," engaged in unauthorized foraging. According to one newspaper reporter, bummers in Sherman's army by and large possessed a "spirit of pure cussedness" that perhaps qualified them for the work of foraging in the first place but also compelled them to excessive destruction or confiscation. Foraging parties did not always procure a luxurious bounty of food, but many soldiers commented favorably on the provisions secured from the Georgia countryside. "We are now beginning to realize some of the pleasures

⁴⁶ John C. Arbuckle, *Civil War Experiences of a Foot-Soldier Who Marched with Sherman* (Columbus, OH: n.p., 1930), 107; Sherman, *Memoirs*, 651; Hitchcock, *Marching with Sherman*, 69. Accounts like these have led some to conclude that a wide gulf separated the Union military leadership from the average soldier in terms of their attitudes toward just conduct in war – and that, as a result, although rules like Lieber's Code sought to restrain warfare, this remained illusory in practice because of the wide discretion given to soldiers prone to excessive destruction and pillage. John Fabian Witt, for one, wrote of Sherman's March, "the centrifugal forces of military decentralization outraced the technological advance the code represented for the laws of war." Witt, *Lincoln's Code*, 283. Michael Fellman similarly argued, "There were not, however, many implicit inbuilt limits on that destructiveness, and so the tendency for Sherman's men, who well understood his rage against the South and shared in it, was to escalate continually their level of destruction until they reached some undefined and often personal limit beyond which they could not go." Fellman, *Citizen Sherman*, 213. I highlight the actions and ideas of regular soldiers and officers alike in this chapter to challenge this perception and show plenty privates in Sherman's army did desire to act justly. Hattaway and Jones, after surveying Sherman's "detailed regulations," concluded: "Such careful rules reflected the laws of war, but Sherman probably did not expect his men to adhere strictly to them once the march began." (Hattaway and Jones, *How the North Won*, 642.) Lee Kennett concluded even more dismissively, "there seems to be something almost chimerical about these two orders." Kennett, *Sherman*, 263-4. For a far less critical take on Special Field Orders 119 and 120, see Marszalek, *Sherman's March to the Sea*, 39-40.

attending a raid,” a telegraph officer declared, who had just enjoyed “one of the best meals it has been my fortune to partake of since I left home.” “We are living on the top shelf,” one Ohio soldier reported, “& its good enough too.” Another soldier thought, “so far as the gratification of the stomach goes, the troops are pursuing a continuous thanksgiving.” The food secured by foraging parties ranged widely – from sweet potatoes to hogs to poultry to an assortment of fruits and vegetables. Sherman thought foragers fulfilled their duties with great “skill and success,” though he granted that at times they committed acts of “pillage, robbery, and violence.” A Union captain expressed shame in a letter home of the “many cruel things ... many depredations” often done by foragers.⁴⁷

Not all foragers and bummers in Sherman’s army abided by the rules meant to govern foraging. Some Federal commanders lamented foragers’ unruly behavior and unwarranted confiscation and destruction, but they also affirmed the essential role foragers played in carrying out the Union army’s moral vision of just warfare. In stripping the Georgia countryside of food and other provisions, foragers in theory waged the sharp, short war that Francis Lieber advocated. Henry Hitchcock, for one, deplored the sight of soldiers eager to leave on daily foraging expeditions even though he still believed “it *is* a necessity.” Hitchcock thought foraging necessary to demoralize and defeat Confederates: “Nothing *can* end this war but some

⁴⁷ Charles J. Brockman, ed. “The John Van Duser Diary of Sherman’s March from Atlanta to Hilton Head.” *The Georgia Historical Quarterly*, vol. 53 no. 2 (June 1969): 221; Diary of Lovell Newton Parker, November 27, 1864, HL; George War Nichols, *The Story of the Great March* (New York: Harper & Brothers, 1865), 66; Sherman, *Memoirs*, 658-60; Wimer Bedford Diary, LC. For more on foraging throughout Sherman’s March, see Glatthaar, *The March to the Sea and Beyond* (New York: New York University Press, 1985), 119-133; John F. Marszalek, *Sherman’s March to the Sea* (Abilene: McWhiney Foundation Press, 2005), 69-73. For colorful descriptions of the provision secured by foragers see Thomas Ward Osborn, *The Fiery Trial: A Union Officer’s Account of Sherman’s Last Campaigns* (Knoxville, University of Tennessee Press, 1986), 47; James Austin Connolly, *Three Years in the Army of the Cumberland: The Letters and Diary of Major James A. Connolly* (Bloomington: Indiana University Press, 1996), 311; William Bircher, *A Drummer-Boy’s Diary: Comprising Four Years of Service With the Second Regiment Minnesota Veteran Volunteers, 1861 to 1865* (St. Paul: St. Paul Book and Stationary Company, 1889), 142-43; Diary of Sylvester Daniels, November 27 and December 15, 1864, Theophilus M. Magaw Papers, HL.

demonstration of their helplessness, and the miserable inability of [Jefferson Davis] to protect them.”⁴⁸

Given this strategic goal, foraging parties came into immediate and frequent contact with Confederate civilians and their property. Not surprisingly, division and corps commanders took a keen interest in the behavior of these parties. In the process, they reiterated and clarified Sherman’s original orders. Brigadier General John M. Corse directed officers in command of foraging parties to “enforce the strictest discipline and order” by prevent soldiers from entering private homes “except by written authority” from Corse himself. Brigadier General Giles A. Smith likewise reminded foragers under his command that “we are not warring upon women and children.” This meant that while foragers should take whatever they needed for their “health or subsistence,” they could not enter private homes without authorization; moreover, Smith warned “any person caught firing a building, or any other property, without orders” would be shot on the spot. Several weeks into the March, Major General Peter J. Osterhaus denounced the persistent “irregularities existing in foraging,” above all, the lax discipline that enabled soldiers not belonging to proper foraging parties to “straggle from the ranks and forage for themselves, without any authority whatever.”⁴⁹ These stragglers typically committed most of the pillaging and depredations, Osterhaus said, and prevented foraging from proceeding in a just manner.

These division and corps commanders all served under the deeply pious Major General Oliver Otis Howard, who chronically fretted over unwarranted and excessive foraging by Federals. As soon as the March commenced, Howard demanded “more care must be taken in the selection of foragers,” for many, he feared, were “drunk and disorderly.” Howard especially wanted to prevent plundering by foraging parties; he recognized “it is so tempting in a hostile

⁴⁸ Hitchcock, *Marching with Sherman*, 82.

⁴⁹ *OR*, ser. 1, vol. 44, 481-2, 480, 594. For a similar set of earlier rules from Maj. Gen. Frank Blair, commander of the XVII corps, see *Ibid.*, 500.

country for soldiers to load themselves with plunder that it is done almost before we think of it.”⁵⁰ Foraging remained an essential part of the March to Savannah – necessary to supplying Federal armies and useful in demoralizing Confederate civilians – yet commanders took particular care not to allow the hard war measure to spiral beyond all humane restraints.

Sherman’s army did more than forage across the Georgia countryside. It also destroyed. As the March commenced, Sherman’s corps and division commanders informed their troops at great length the strict rules that would govern the destruction in Georgia. Brigadier General William P. Carlin, who commanded a division in the XIV Corps, reminded his troops they could not set fire to any “houses, mills, or any buildings of any kind,” unless authorized by a division or corps commander. Oliver O. Howard took these prescriptions even further for the Army of the Tennessee when it came to destroying mills. “The mills along the route of this army must not and will not be damaged or destroyed without positive orders from these headquarters,” Howard ordered, mostly to keep the mills functional to feed Union armies.⁵¹ Private soldiers – and even the vast majority of officers of all ranks – could not legitimately decide for themselves what to destroy.

These same corps, division, and army commanders realized that not all the soldiers under their command strictly abided by their rules. Just days after the March began, Brigadier General Jefferson C. Davis, commander of the XIV Corps, issued another stern rebuke against the “straggling and marauding” taking place within his corps. “Men must be taught that, even in the midst of an enemy’s country,” Davis said, “the dictates of humanity must at least be observed, and that no good can result to the cause of their country from indiscriminate destruction of property or burning of the homes of women and children.” O.O. Howard went to greater lengths

⁵⁰ Ibid., 493, 579, 508-9.

⁵¹ Ibid., 483, 537. Brig. Gen. Alpheus S. Williams, commander of the XX Corps, issued similar orders demanding all destruction of private houses proceed only after his authorization. Ibid., 503.

to prevent “crimes of arson and robbery.” Anyone found “pillaging a house or burning a building without proper authority,” he informed his Army, would be shot.⁵²

Not everyone in Sherman’s army agreed about what constituted unwarranted destruction and pillage, much less how severely or consistently it ought to be punished. Henry Hitchcock, after a long talk to Jefferson C. Davis about stragglers and the depredations they committed, regretfully wondered if Sherman could do more to enforce strict discipline: “he does not seem to me *to carry out things* in this respect,” Hitchcock wrote. O.O. Howard later concluded that Sherman’s well-known “forage liberally” directive left too much discretion in the hands of average soldiers and “caused irregularities almost beyond the power of control.” A Wisconsin soldier thought for the most part “acts of vandalism by the men will be winked at,” a conclusion to which commanders like Howard and Davis surely strongly objected.⁵³

Having received these rules governing their destruction during the March, Federal soldiers completed their work. They targeted anything that might aid and prolong the Confederate war effort, including miles and miles of railroads – “the Confederacy will never be able to repair it,” one soldier predicted – along with mills, factories, and cotton gins. Public property generally stood a better chance of being destroyed than private property. Although Federals usually spared court houses, they burned to the ground the one in Sandersville because rebels had used it as a makeshift fort from which to fire on Union soldiers. The towns that dotted the Union army’s path to Savannah briefly experienced a harrowing ordeal, in part because they knew not if they soon faced immense or comparatively mild devastation. Louisville did not fare

⁵² Ibid., 489-90, 521. Davis entrusted division commanders with ensuring this indiscriminate destruction ceased. He also warned that for the worst offense, the guilty soldier as well as his clearly negligent commanding officer would be punished.

⁵³ Hitchcock, *Marching with Sherman*, 86; Oliver Otis Howard, *Autobiography of Oliver Otis Howard* (New York: Baker and Taylor, 1907), 2:77; Frank L. Byrne, ed. *Uncommon Soldiers: Harvey Reid and the 22nd Wisconsin March with Sherman* (Knoxville: The University of Tennessee Press, 2001), 202.

well. The town was so “burned & thoroughly sacked,” one Ohio soldier said, that “for once I was thoroughly ashamed that I belonged to the army.” But the devastation faced by Georgia towns was not always near-total. The fate of Madison well captures the strange mixture of discretion and destruction Federal soldiers often upheld. Madison was the home, a soldier reported, of “at least three genuine Union men,” prominent men, in fact, such as former Congressman Nathaniel Greene Foster. For this reason, the soldier said, Madison “was well guarded from depredations,” mostly “for the sake of the small leaven of righteousness it contained.” If Federals proved capable of showing mercy to Unionists when possible, they proved equally eager to punish the defiantly disloyal. A prominent local doctor, a “most notorious rebel,” also lived in Madison. Federals ransacked his abandoned office in retribution, taking many books and destroying the ones left behind.⁵⁴

The treatment of private property, especially private houses, confronted Federals with just war dilemmas. Union soldiers throughout the March proved capable of treating civilian homes with hard war fury and humane restraint. Confederate civilians responded to the sight of approaching Union armies with a wide range of emotions, from fear to anger to bewilderment. “Inhabitants seem terrified & astonished,” one Federal soldier noted in his diary. Another Illinoisan agreed: “Citizens everywhere look paralyzed and as if stricken dumb as we pass

⁵⁴ Friedrich P. Kappelman to Parents, December 28, 1864, Civil War Times Illustrated Collection, Box 17, USAMHI; Hitchcock, *Marching with Sherman*, 99; Diary of Lovell Newton Parker, November 29, 1864, HL; *Uncommon Soldiers*, 208; For an introduction to the longstanding and contentious considerations of the extent of the destruction of Sherman’s March see Glatthaar, *The March to the Sea and Beyond*, chapter eight. Brooks D. Simpson and Jean V. Berlin sensibly conclude, “It is clear that some of the more passionate and vivid accounts of the destruction wrought by Union soldiers are the product of heated and bitter imaginations. Property, not people, remained the primary target of their destructiveness; incidents of rape (at least against white women) were both rare and summarily punished.” *Sherman’s Civil War*, 759. For descriptions of the destruction of cotton gins and other factories see Connolly, *Three Years in the Army of the Cumberland*, 309; Charles J. Brockman, ed. “The John Van Duser Diary of Sherman’s March from Atlanta to Hilton Head.” *The Georgia Historical Quarterly*, vol. 53 no. 2 (June 1969): 224.

them.” During the March and after, Federals often disagreed over how scrupulously they respected private property on their way to Savannah. One Iowan later insisted his regiment, “were not ruffians” who pillaged private homes, though he admitted that they “freely helped ourselves to whatever of eatables found in outbuildings.” Sherman’s chief engineer disagreed. As the March began, he regretted the “destruction of private property by unauthorized persons,” which was, he said, “the great scandal of our army.” An artillery officer from New York concluded the orders not to seize or destroy private property unless necessary, and then only with prior authorization, “was generally complied with, though probably not always.”⁵⁵

Homes still occupied tended to face less threat of pillage than unoccupied ones. A New York soldier wrote in his diary of the particular care taken “not to wreck residences” when they still housed civilians; an Ohioan likewise noted the strict orders he received from his brigade commander not to “on any pretext go into a private house if occupied.” As an Illinois volunteer came upon a “large and fine plantation,” a little girl who lived there asked if the soldiers were going to “burn all our property.” The soldier replied, “only the cotton and cotton gins,” although Federals made off with some food as well. A larger plantation owner near Madison likewise found that while passing Union armies “stripped him of everything” they could eat, his “smart” hospitality, one soldier recounted, ultimately saved his home from greater destruction.⁵⁶

⁵⁵ E.P. Burton, *Diary of E.P. Burton, Surgeon 7th Reg. Ill. 3rd Brig. 2nd Div. 16A.C* (Des Moines: The Historical Records Survey, 1939), 42; Connolly, *Three Years in the Army of the Cumberland*, 314; Arbuckle, *Civil War Experiences of a Foot-Soldier*, 107; Diary of O.M. Poe, November 15, 1864, The Papers of O.M. Poe, Box 1, LC; Osborn, *The Fiery Trial*, 54.

⁵⁶ K. Jack Bauer, ed. *Soldier: The Civil War Diary of Rice C. Bull, 123rd New York Volunteer Infantry* (San Rafael: Presidio Press, 1977), 180; Diary of Lovell Newton Parker, November 20, 1864, HL; Diary of James E. Morrow, November 28, 1864, Civil War Times Illustrated Collection, Box 15, USAMHI; Robert Hale Strong, *A Yankee Private's Civil War* (Chicago: Henry Regnery Company, 1961), 110-113. For an additional example see Charles J. Brockman, ed. “The John Van Duser Diary of Sherman's March from Atlanta to Hilton Head.” *The Georgia Historical Quarterly*, 53 no. 2 (June 1969): 230.

Vacated homes – ones civilians often left in a hurry, leaving behind many of their possessions – usually endured greater pillage or destruction. For the civilians who “fled before us,” one Ohio soldier wrote, “of course their property had to suffer.” Sometimes the suffering was limited. One soldier repeatedly “got some books to read” from vacant houses to pass the long hours in camp. An Indiana infantryman “rummaged around” a large abandoned home that once functioned as a hotel and found “a chest with a lot of silver coin and a bag filled with ivory poker chips.” He decided to keep a few of them as souvenirs. The home of John W. Jones, a former congressman and prominent surgeon in the Confederate army, received far worse treatment. Federals found his home abandoned and, according to one Wisconsin soldier, “broke every piece of furniture in the house, throwing some of it through the windows, scattered his books and pamphlets about the yard, broke open barrels of sorghum syrup and let it run over the kitchen floors; in short, utterly ruined everything.” The soldier thought Jones’ house would have avoided the devastation “if he had staid at home.” John Emerson Anderson, a Massachusetts soldier, found “grim satisfaction” in entering abandoned homes and reading letters left behind that contained “prayers that God would cause this cruel war to cease.” Anderson’s satisfaction, he explained, came from knowing that “as soon as this sentiment became universal among our enemies the prayer would be answered right speedily, and then we could go to our homes.”⁵⁷

This confiscation and destruction of private property easily could devolve into little more than crude plunder. Yet Federal authorities attempted to punish soldiers guilty of excessive and repeated plundering. Not only did corps commanders issue strict orders prohibiting plunder and the unauthorized entering of homes. They also sought to back up these orders with equally strict

⁵⁷ F.B. Joyner, “With Sherman in Georgia—A Letter from the Coast,” *The Georgia Historical Quarterly* 42 no. 4 (December 1958): 440; Diary of Lovell Newton Parker, November 29 and December 18, 1864, HL; Oscar Osburn Winther, ed., *With Sherman to the Sea: The Civil War Letters, Diaries, & Reminiscences of Theodore F. Upson* (Bloomington: Indiana University Press, 1958), 135; Byrne, ed., *Uncommon Soldiers*, 206; John Emerson Anderson Memoir, LC.

punishments. Major General Frank Blair warned a cavalry colonel that the “outrages” committed by men under his command called for “some severe and instant mode of correction.” If the colonel could not devise the correction quickly, Blair himself would arrest the entire regiment and recommend their dishonorable discharge. Along with dishonorable discharges, some soldiers prone to plunder also faced imprisonment for the duration of the term of their service – although there is no evidence any Federal was executed for plunder as some corps commanders warned. These punishments, threatened and carried out, did not prevent all plunder. But they did signal that Federal commanders would not tolerate blatant, persistent defiance of the rules of just conduct set forth for the hard yet humane march across Georgia.⁵⁸

If Union authorities generally sought to prevent and punish unwarranted plunder, what did Federals believe justified legitimate forage and destruction? Union soldiers typically offered three justifications: it weakened Confederate armies, inflicted just retribution on disloyal civilians, and offered the swiftest means to victory and peace.

Federals justified their destruction of the Georgia countryside as necessarily targeting those things “that which if left unharmed would be of use to the enemy in prolonging the war,” as John Emerson Anderson put it. Not to wage a war of earnest destruction would risk prolonging the war, he believed. “We destroy immense quantities which would be of service to the enemy’s army,” another soldier from Ohio explained. An Illinois surgeon aptly summarized the governing logic of the March: “We eat up and destroy everything on the route that would tend to keep a man or beast alive,” especially those in Confederate armies. Property put directly to use in the Confederate war effort faced the sternest treatment. One Federal soldier justified the burning of a house because it “sheltered a rebel” who fired upon Union troops. This sort of

⁵⁸ *OR*, ser. 1, vol. 44, 504-5; Glatthaar, *The March to the Sea and Beyond*, 150. For similar conclusions from Union officers, see *OR*, ser. 1, vol. 44, 201, 226, 508-9.

persistent resistance angered an Illinois infantry major: "If citizens raise their hands against us to retard our march or play the guerrilla against us, neither youth nor age, nor sex will be respected. Everything must be destroyed." However, Henry Hitchcock insisted the effort to destroy and thereby weaken Confederate armies still required Federals to ensure "the destruction is not wanton, nor unoffending persons injured." Beyond those restraints, he concluded, "the rest is inevitable and necessary to end the war."⁵⁹

Union soldiers also believed Georgians affected by the March finally reaped the hardships of what they had sown. They helped start and perpetuate the war but until now escaped most of its horrors. They deserved their present suffering, many soldiers believed. The area Federals covered in the March, one Illinois soldier grudgingly wrote, had "suffered but little from the ravages of the army." It was a country, Henry Hitchcock said, that finally "felt the woes which they have long helped inflict on others." A sergeant in the Second Massachusetts Infantry agreed that the relatively unscathed Georgia landscape finally experienced the "war, terrible war," it had helped unleash against "the Union loving district of Eastern Tennessee, and the peace loving hills of Pennsylvania." Another Federal soldier recalled a woman begging him "not to trouble Georgia because it was last to secede." The soldier remained unconvinced by her claims of innocence: "We can't see it," he concluded. A Pennsylvanian artilleryman, reflecting on the destruction in Atlanta, admitted it was a "sad calamity," yet he still believed Georgians

⁵⁹ John Emerson Anderson Memoir, LC; Diary of Lovell Newton Parker, November 20, 1864, HL; "Civil War Letters of Major James Roberts Zearing, M.D., 1861-1865," in *Publication Number Twenty-Eight of the Illinois State Historical Library: Transactions of the Illinois State Historical Society for the Year 1921* (Springfield: Phillips Bros Print, 1922), 190-191; Charles J., Brockman, ed. "The John Van Duser Diary of Sherman's March from Atlanta to Hilton Head." *The Georgia Historical Quarterly* 53 no. 2 (June 1969): 227; Connolly, *Three Years in the Army of the Cumberland*, 314; Hitchcock, *Marching with Sherman*, 67.

deserved the calamity: “They brought this war on, and therefore must abide by the consequences.”⁶⁰

Three particular episodes during the March revealed how Federal troops subjected Georgians to the war’s consequences and justified their actions as military necessity or legitimate retribution in their war in earnest. When Union forces passed through Milledgeville, the capital of Georgia, they proceeded to destroy a great deal of public property that Confederates could easily convert “to hostile uses,” as Sherman said. A drummer boy for a Minnesota regiment witnessed the destruction in the city of the “magazines, arsenals, depots, factories, and storehouses containing property belonging to the Confederate government ... also some seventeen hundred bales of cotton.” Federals acted with great irreverence toward the state capitol, mansion, and state library. Some soldiers eagerly took books from the library, but others, like a major in the 123rd Illinois Infantry, objected to the plunder of the state library; he thought it should be left alone “to enlarge and increase for the benefit of the loyal generations that are to people this country long after we shall have fought.” Federals insisted that their destruction spared private homes, but one Confederate surgeon lamented that the city’s residents were “plundered and robbed of their provisions & clothing & many families to day have nothing to eat.” A soldier in an Illinois infantry regiment, like Sherman, ultimately insisted that the

⁶⁰ Allen Morgan Geer, *The Civil War Diary of Allen Morgan Geer: Twentieth Regiment, Illinois Volunteers* (New York: Cosmos Press, 1977), 176; Hitchcock, *Marching with Sherman*, 77; John Emerson Anderson Memoirs, LC; Diary of James E. Morrow, November 18, 1864, Civil War Times Illustrated Collection, Box 15, USAMHI; David Nichol to Mother, October 26 1864, The Harrisburg Civil War Roundtable Collection, Box 28, USAMHI. Not all Georgians supported the Confederacy, but an aid-de-camp to Sherman believed that most self-professed Unionists only had a sudden and shallow change of heart once Federal armies arrived. He explained: “almost every old man, when he sees his pigs and poultry killed in his very door-yard, and gazes with mournful eyes upon the wagons that are filled with his corn, protests that he always was a Union man.” Nichols, *The Story of the Great March*, 67.

destruction in Milledgeville justly occurred because it sought “the ruin of all property that could be used by the rebel army.”⁶¹

Nearly ninety miles east of Milledgeville, Union forces arrived in Millen and discovered a prisoner of war camp that held around 1,300 Federals. The camp was really more of a makeshift “hideous prison-pen,” even by Civil War era standards. One soldier described it as “three hundred feet square, inclosed by a stockade, without any covering whatsoever,” exposing Federals “to heavy dews, biting frosts, and pelting rains.” The camp was a “hell-hole ... so filthy and forsaken,” an Iowan wrote. One soldier could only rejoice he was not “taken to one of these hells at the time I was wounded at Chancellorsville.” Rumor soon spread among Union troops that as many as 750 soldiers had died there; some prisoners, the whisperings said, were killed just prior to the Union army’s arrival.⁶²

As Federals beheld the prison-pen at Millen – and imagined all manner of unspeakable horrors committed against their fellow soldiers – they responded in fury by burning “everything here that a match would ignite,” in the words of one soldier. Henry Hitchcock likewise noted the particularly vigorous destruction in Millen resulted directly from soldiers’ outrage over the prisoner camp. The burnings, one Federal reported with satisfaction, were a “magnificent spectacle.” Federals did protect at least one local widow’s plantation from destruction because for four months she had nursed back to health a Union soldier from the prison. One officer spoke

⁶¹ Sherman, *Memoirs*, 666; Bircher, *A Drummer-Boy’s Diary*, 143; Connolly, *Three Years in the Army of the Cumberland*, 318; J.R. Bratton, “Letter of a Confederate Surgeon on Sherman’s Occupation of Milledgeville,” *The Georgia Historical Quarterly*, vol. 32 no. 3 (September 1948): 232; James A. Congleton Diary, November 23, 1864, LC. A tactical overview of Sherman’s advance upon and capture of Milledgeville is covered in Marszalek, *Sherman’s March to the Sea*, 55-66.

⁶² Nichols, *The Story of the Great March*, 84; Alexander G. Dowing, *Downing’s Civil War Diary* (Des Moines: The Historical Department of Iowa, 1916), 234; Bauer, ed. *Soldier*, 193; Sylvester Daniels of the 11th Iowa Volunteer Infantry records hearing these rumors. Diary of Sylvester Daniels, December 3, 1864, Theophilus M. Magaw Papers, HL.

for many Federals who passed through Millen when he warned, “God certainly will visit the authors of all this crime with a terrible judgment.”⁶³

This outrage over the treatment of captured Union soldiers led also to disastrous consequences for the plantation of a Mr. Stubbs not far from Millen. Stubbs had a reputation as a particularly vicious hunter of runaway slaves and Union prisoners of war – a reputation that had circulated among at least some Union troops by the time they arrived at his plantation. One Federal thought Stubbs’ heinous and violent hunting of slaves and prisoners of war was an “excellent reason” for the vast destruction of his property, which the soldier described in detail: “The house, cotton-gin, press, corn-ricks, stables, every thing that could burn was in flames, and in the door-yard lay the dead bodies of several bloodhounds, which had been used to track and pull down negroes and our escaped prisoners.” Henry Hitchcock affirmed that most Union soldiers who passed directly by Stubbs plantation knew his reputation and approved the near-total destruction of Stubbs’ home and property. “He kept hounds to hunt our men with,” an Iowa soldier wrote in his diary, which to him sufficiently justified the harsh retribution.⁶⁴

Thousands of fugitive slaves flocked to and followed Sherman’s army through Georgia in anticipation of freedom. One Michigan infantryman noted that while passing by a 7,000-acre plantation near Milledgeville “every able bodyed negro was taken with the army ... and the side of the road was lined with them.” Federal soldiers’ attitudes toward these fugitives varied widely. One Wisconsin soldier scorned these refugees as “a great hindrance, if not to say a nuisance.” In contrast, an Ohio captain lamented that the “silly prejudice of color is as deeply rooted among

⁶³ Dowling, *Downing’s Civil War Diary*, 234; Geer, *The Civil War Diary of Allen Morgan Geer*, 180; Hitchcock, *Marching with Sherman*, 132-134; Diary of O.M. Poe, December 2, 1864, The Papers of O.M. Poe, Box 1, LC; Diary of James E. Morrow, December 3, 1864, Civil War Times Illustrated Collection, Box 15, USAMHI; Nichols, *The Story of the Great March*, 84. For an additional discussion of the destruction in Millen, see Marszalek, *Sherman’s March to the Sea*, 83-89.

⁶⁴ Nichols, *The Story of the Great March*, 83-84; Hitchcock, *Marching with Sherman*, 143; Diary of Sylvester Daniels, December 5, 1864, Theophilus M. Magaw Papers, HL.

northern as among southern men,” leaving the Federal soldiers with “no idea of treating the oppressed race with justice.” The Ohioan’s explicit talk of this sort of a justice was somewhat uncommon. Still, some Federal soldiers felt outrage or sorrow at the fates of the fugitives who followed Federal forces. On one occasion, a corporal’s rifle unintentionally fired, killing a young fugitive standing nearby. A court martial did not sentence the corporal to execution or imprisonment after witnesses testified that the Federal wept bitterly after the accident, mourning it as the “most careless and meanest trick he had ever done.” Ultimately, though, for Federals who participated in Sherman’s March the pre-eminent just war concern was not how to treat fugitive slaves but how to unleash the hard hand of war against white Confederate civilians.⁶⁵

In little more than a month after leaving Atlanta, Sherman’s army had cut across the Georgia countryside and captured Savannah. The conclusion of the March prompted Federals to reflect on the nature and necessity of the destruction they had wrought in Georgia. These reflections – many penned from the outskirts of Savannah to loved ones at home, or to the private pages of diaries – justified the March in ways reminiscent of Lieber’s ideas about the morality of a war waged in vigorous earnest.

Federals soldiers believed their March dealt a consequential blow to the Confederate war effort. “I think the backbone of rebellion is pretty well cracked by this time,” a Pennsylvania cavalry officer wrote. An Illinois soldier agreed: “the march has been the greatest blow to the Confederacy that has yet been struck,” he proudly concluded. A Connecticut soldier called the March a “glorious old tramp right through the heart of the state.” In tramping through the state and cracking the rebellion’s backbone, an Ohio volunteer thought he and the rest of Sherman’s

⁶⁵ Delos W. Lake to Mother and Brother, December 16, 1864, Delos W. Lake Correspondence, HL; Quoted in Glatthaar, *The March to the Sea and Beyond*, 53-6. For a further consideration of the attitudes and actions of Sherman’s soldiers’ toward fugitive slaves, see Glatthaar, *The March to the Sea and Beyond*, 52-65.

army accomplished “some of the grandest feats of the war.” If Union forces accomplished grand feats, many Confederate civilians now faced great hardships. One Federal who wrote home to describe the March thought first of what Georgians now had to endure: “I tell you we didn’t leave them plenty. Starvation, gaunt and hunger stares them in the face. God pity them.”⁶⁶

Feelings of pity, though, did not outweigh the war-hardened certainty that the March accorded with the spirit of the Union army’s vigorous war effort. Henry Hitchcock admitted it was “a terrible thing to consume and destroy the sustenance of thousands of people, and most sad and distressing in itself to see and hear the terror and grief of these women and children.” But he also ultimately concluded that only by these “means the war can be ended.” “War is terrible,” Brigadier General Judson Kilpatrick wrote, “and the people of Georgia are now being made to feel this in all its force.” Still, the March proceeded “as a means to an end, and not as an essential act of war.” It was a quintessential means in a Lieberian war in earnest – vigorous and therefore ultimately humane in seeking to end war victoriously as quickly as possible. As one Indiana soldier put it after the March, “The only way to stop the war is to fight it out.”⁶⁷

As Sherman arrived outside of Savannah in the waning days of December 1864, he sent word to William J. Hardee and his Confederate forces in Savannah that if they promptly surrendered the city, the Federals would “grant liberal terms to the inhabitants.” This promise of

⁶⁶ Diary of George Shuman, December 17, 1865, The Harrisburg Civil War Roundtable Collection, Box 11-A, USAMHI; Thaddeus H. Capron, “The War Diary of Thaddeus H. Capron, 1861-1865,” *Journal of the Illinois State Historical Society*, Vol. 12, no. 3 (October 1919): 397; Rufus Mead to “Folks at Homes,” December 18, 1864, Rufus Mead Papers, LC; William Z. Corin to Sister, January 6, 1865, Civil War Times Illustrated Collection, Box 8, USAMHI; Delos Van Deusen to Wife, December 28, 1864, Delos Van Deusen Correspondence, HL.

⁶⁷ Hitchcock, *Marching with Sherman*, 124-5; *OR*, ser. 1, vol. 44, 706-7; Sherman, *Memoir*, 697; Lorna Lutes Sylvester, ed., “Gone for a Soldier”: The Civil War Letters of Charles Harding Cox,” *Indiana Magazine of History*, vol. 68 no. 3 (September 1972): 221. As another soldier and self-professed “war democrat” said, “I don’t want no peace until the last rebel has laid down his arms.” Delos W. Lake to Brother, December 26, 1864, Delos W. Lake Correspondence, HL. John F. Marszalek, in his thorough study of the March, concluded it “was not the application of senseless brutality for its own sake; it was a well-planned attempt to break the will of the Confederacy and bring the Civil War to a more rapid end.” Marszalek, *Sherman’s March to the Sea*, 14.

mild treatment came also with an ominous threat. If Confederate did not surrender, and thereby forced Federals to assault or lay siege to the city, Sherman warned he felt “justified in resorting to the harshest measures, and shall make little effort to restrain my Army, burning to avenge a great National wrong they attach to Savannah.” Three days later, Hardee evacuated the city and left it effectively defenseless. The next day, the mayor of Savannah formally surrendered the city to Sherman. In doing so, he appealed to Sherman’s “generosity and humanity” in the hopes of securing the promised liberal terms – the merciful “protection of the lives and private property of the citizens and of our women and children.”⁶⁸

When Sherman entered Savannah he endeavored to make good on his promise to occupy the city in a just and restrained manner. The earliest guidelines Sherman issued to govern the actions of occupying Federals reflected his intentions for a mostly mild and humane occupation. He empowered his chief quartermaster to retain a tight grip on the seizure and use of public property. Federals soldiers and officers had to appeal to the chief quartermaster to seize private property from buildings, and, even then, only if necessity demanded. Sherman also directed his chief commissary to take possession of all subsistence stores and cooperate with the municipal government to distribute the provisions to “destitute families,” as needed.⁶⁹

Sherman promised to cooperate with the city government and restore the normalcy of peacetime life as much as possible: “During war the military is superior to civil authority, and where interests clash the civil must give way, yet where there is no conflict every encouragement should be given to well-disposed and peaceful inhabitants to resume their usual pursuits.”

⁶⁸ *Sherman’s Civil War*, 769; *OR*, ser. 1, vol. 44, 772. For a more thorough introduction to the capture and occupation of Savannah, see Campbell, *When Sherman Marched North from the Sea*, 8-30. Marszalek, *Sherman’s March to the Sea*, 99-115.

⁶⁹ *OR*, ser. 1, vol. 44, 801-802. On Christmas Eve, Sherman issued General Orders No. 2, which expanded on his earlier orders calling for the general protection of private property and constraint on soldier behavior. The orders also directed Federals to cooperate with municipal officials, namely the city’s fire department and those persons in charge of the city’s water-works and gas-works See *Ibid.*, 804-805.

Families should feel safe and undisturbed in their homes; churches, schools, and “places of amusement” should continue their normal activities; commerce with the outside world should resume – all under the close watch of occupying Federals. This mild occupation had its limits. For example, Sherman threatened stern punishment against any newspaper that printed “libelous publications, mischievous matter, premature news, exaggerated statements, or any comments whatever upon the acts of the constituted authorities.”⁷⁰ Sherman promised to protect private property and aid the impoverished, as well as constrain the actions of his soldiers far short of the destruction unleashed on the march from Atlanta.

As Federals prepared to leave Savannah to march north, they nursed “an insatiable desire to wreak vengeance upon South Carolina,” Sherman informed Halleck. “I almost tremble at her fate, but feel that she deserves all that seems in store for her.” Francis Lieber confessed to Charles Sumner he feared once Sherman’s army entered the state it would act “in a ruthless manner.”⁷¹ On the eve and outset of the march through South Carolina, Union soldiers widely called for a particularly harsh treatment of what they deemed the cradle and sustainer of the rebellion. Soldiers justified this treatment as South Carolina’s just reward for causing war.

Union soldiers frequently affirmed a fundamental difference between South Carolina and Georgia, North Carolina, or any other Confederate state – certainly in terms of the destruction and devastation it deserved to endure. “We have laid a heavy hand on Georgia,” an Indiana

⁷⁰ Ibid., 812-813. Jacqueline Glass Campbell has also uncovered aspects of the occupation of Savannah that do not fit with the traditional “mild” image, namely the difficulties faced by families living on the city’s outskirts, as well as the acts of angry resistance by Confederate women who were by no means subdued and dissuaded from their loyalty to the Confederacy by the conquest of Federal armies. See Campbell, *When Sherman Marched North From the Sea*, chapter one.

⁷¹ OR, ser. 1, vol. 39, 799; Francis Lieber to Charles Sumner, February 7, 1865, The Papers of Charles Sumner, Houghton Library, Harvard University, microfilm edition, reel 79. Sherman also said to Grant in late December, “With Savannah in our possession, at some future time, if not now, we can punish South Carolina as she deserves ... it would have a direct and immediate bearing on your campaign in Virginia.” *Sherman’s Civil War*, 771.

surgeon wrote, “but that is light compared to what S.C. will catch.” Union soldiers “had it in” for South Carolina, an Illinois infantryman explained, “and they took it out in their own way.” By comparison, Federals generally avoided treating North Carolina civilians and their property in the same distinctly harsh manner. “We are now in North Carolina,” an Ohioan wrote home, “& we will burn nothing save what is rebel government property.” A fellow soldier from Ohio agreed that there was “a marked change in the conduct of the troops” once they passed from South to North Carolina: “less vandalism,” he explained. Having passed through North Carolina, another soldier concluded that the state received “a little more compassion” than South Carolina but, he added, Federals still burned enough in the state “to keep the memory alive, for where we passed through nothing edible remained.”⁷²

South Carolina deserved sterner treatment because it treasonously seceded first and thereafter remained “the viper’s nest of this rebellion,” as Francis Lieber said soon after Sherman left Savannah. Upon entering South Carolina, an Illinois infantryman issued in his diary a “dire warning to South Carolina,” the place “where treason was conceived, where this dreadful war was launched”: “You have been in the forefront—you have brought us here—you are responsible—you must pay the penalty. The foot of the hated yankee will press your sacred soil.” A “terrible retribution” awaited South Carolina, one soldier similarly warned, “the great heart of treason, from which fires the strength of the rebellion.” Another confessed he felt a “terrible

⁷² Robert G. Athern, ed., “An Indiana Doctor Marches with Sherman: The Diary of James Comfort Patten,” *Indiana Magazine of History* Vol. 49, No. 4 (December 1953), 420; Connolly, *Three Years in the Army of the Cumberland*, 384; Wilfred W. Black, ed., “Marching Through South Carolina: Another Civil War Letter of Lieutenant George M. Wise,” *Ohio Historical Quarterly*, vol. 66 (January 1956), 193; Lovel Newton Parker Diary, March 6, 1865, HL; Fridrich P. Kappelman to Parents, March 26, 1865, Civil War Times Illustrated Collection, Box 25, USAMHI. Mark Grimsley concluded that the destruction in South Carolina revealed “what a federal army could do when it *wanted* to wreak indiscriminate havoc.” Grimsley, *The Hard Hand of War*, 200. Joseph Glatthaar suggested that when comparing the extent of destruction in South Carolina and North Carolina, it is as if “the army had undergone a massive transformation overnight.” Glatthaar, *The March to the Sea and Beyond*, 146. For a similar conclusion see, Marszalek, *Sherman*, 327.

gladness” in seeing the “cowardly traitor state” that “dragged her Southern sisters into the caldron of secession” finally receiving the punishment it deserved. “It does me good,” an Ohio soldier likewise admitted, “to see the instigators of secession suffer.”⁷³

Federals marched through South Carolina with a grim determination to see the state suffer for its sins. “I want to see the long deferred chastisement begin,” a major in the 123rd Illinois Infantry wrote. Another soldier noted that while orders against wanton destruction were “as strict as ever,” Union troops understood “they are in South Carolina and are making good their old threats.” A private in the 89th Ohio Infantry wrote in his diary that when his regiment crossed out of Georgia, one soldier “settled out from the ranks and turning around yelled in a lusty voice, ‘Boys, this is old South Carolina, lets give her h-ll,’ to which there was many favorable response.” A soldier sympathetic to this favorable response believed South Carolina had “escaped too long” the suffering they deserved. When Federals destroyed property known to belong to an “active secessionist,” a New York soldier explained, they “excused their actions by saying that they wished such people to suffer for their responsibility in bringing upon our country the Civil War.” Union soldiers sought to punish “poor, proud, aristocratic, ignorant South Carolina,” as one soldier labeled the state, for having brought on the war. Another soldier admitted that when he heard cries of help and mercy from South Carolinians – when he beheld the fear upon their faces – he was reminded only of how “shameless and cowardly has been the action of this state,” which now met “the fate she deserves.”⁷⁴

⁷³ Francis Lieber to Henry Halleck, February 18, 1864, The Papers of Francis Lieber, Box 10, HL; James A. Congleton Diary, January 4, 1865, LC; John J. Safely to Mary Frances McEwen, December 22, 1864, McEwen Family Papers, MHM; Nichols, *The Story of the Great March*, 131-2; Lovel Newton Parker Diary, February 8, 1865, HL.

⁷⁴ Connolly, *Three Years in the Army of the Cumberland*, 375; Charles W. Wills, *Army Life of an Illinois Soldier: Including a Day-by-Day Record of Sherman's March to the Sea* (Carbondale: Southern Illinois University Press, 1996), 342; W.C. Johnson Journal, February 5, 1865, LC; Theophilus M. Magaw to

Federals justified the particularly vigorous hard war measures unleashed in South Carolina as necessary to ending the war and restoring peace quickly. One Ohio soldier predicted the destructive campaign through South Carolina would accomplish “the overthrow of this Rebellion.” Sherman assured a New Yorker shortly before leaving Savannah that he would pass through South Carolina “not as they say with a heart bent on desolation and destruction, but to vindicate the just power of the Government.” Sherman promised he would gladly “try to temper the harsh acts of war,” because, ultimately, he sought “to accomplish Peace and honor at as small a cost to life and property as possible.”⁷⁵

Sherman and his corps and division commanders still officially insisted, as one told his men, that “all orders regulating the march from Atlanta to Savannah, Ga., will remain in force” for the march through South Carolina. Soon after arriving in the state, Major General Alpheus S. Williams, commander of the XX corps, ordered all officers under his command to endeavor “to put a stop to practices disgrace to our arms and shocking to humanity,” namely, the “indiscriminate pillage of houses.” Williams called for stricter control over foraging parties, sterner punishments against unauthorized foragers, and rigidly enforced daily roll calls to prevent straggling. Major General John A. Logan, commander of the XV corps, also sought early in the Carolinas campaign to prevent future pillaging of private homes, a practice he labeled “disgraceful in the extreme.” Logan reminded his men they could not enter occupied homes without authorization. Oliver O. Howard likewise reiterated to the Army of the Tennessee his zero tolerance for “wanton and indiscriminate destruction.” Officially, the same rules against

Sister, January 28, 1865, Letters of Theophilus M. Magaw, HL; Bauer, ed., *Soldier*, 207; Black, ed., “Marching Through South Carolina,” 193; Nichols, *The Story of the Great March*, 140-1.

⁷⁵ William N. Benedict to Mother, January 18, 1865, The Harrisburg Civil War Roundtable Collection, Box 2, USAMHI; *Sherman's Civil War*, 803. Although John Marszalek does not point out the Lieberian moral dimension of this manner of waging war, he has similarly argued that Sherman's “major purpose for marching to the sea was not to brutalize but to end the war as quickly as possible with the least loss of life.” Marszalek, *Sherman*, 14.

unwarranted pillage and destruction applied even to the cradle of the Confederacy. However, as a soldier in the 105th Ohio Infantry noted as he watched “two splendid plantations” burn to the ground, Federals had “always wished ‘to be let loose’ in S.C. & now the wish is realized.”

Wanton and indiscriminate destruction remained unauthorized, yet destroying public and private property was still an essential part of the Union army’s war in earnest against South Carolina.

“We, as an army,” the Ohioan proudly concluded, “are marking our course with fire.”⁷⁶

Foraging continued. So too did the destruction of public property – what Oliver O. Howard called, “property made use of for furthering the interests of the war,” such as railroads and railroad stations, powder mills, armories and other stashes of “small arms and ammunition.” Federals also on occasion destroyed private homes; as Sherman explained, “we don’t burn occupied houses, but if people vacate their own houses I don’t think they should expect us to protect them.” Not long after Sherman wrote these words, one soldier wrote in his diary of the destruction of a particularly “elegant large fine” plantation home, which occurred mostly because “no one at home except the negroes.” An Illinois soldier agreed that “this kind of campaigning” was essential to defeating Confederates but he worried it might become “just as vicious to our army in its discipline.” Towns such as Winnsboro soon encountered the destructive force of an army that marked its course with fire and zealously sought to defeat and punish rebel instigators of war. One New York soldier called the sight there “deplorable”; Federals destroyed all the buildings “holding supplies” useful to the Confederate war effort, but also “many of the private

⁷⁶ *OR*, ser. 1, vol. 47, part 2, 173, 184-85, 331, 360; Lovel Newton Parker Diary, February 7, 1865, HL. For further consideration of Federal efforts to restrain unwarranted pillage and destruction in South Carolina, see Glatthaar, *Sherman’s March to the Sea and Beyond*, 146-51; Campbell, *When Sherman Marched North from the Sea*, 53-4.

houses were badly dealt with.”⁷⁷ Although Union commanders sought to restrain excessive and indiscriminate destruction, war in earnest had come to South Carolina.

Soldiers justified this destruction for the same reasons as the destruction in Georgia. The “Mother State of Secession,” on Ohio soldier proclaimed, now “severely yet justly” reaped the discord and war it had sowed. A chaplain marching with his regiment noted the many “fine plantation residences” burned just north of Orangeburg and concluded: “Thus the instigators and abettors of Rebellion get their reward.” A private in the Fourth Iowa Infantry admitted that certain feelings of revenge motivated this destruction, although he quickly insisted on the humane restraints on the Union’s war in earnest: “we were not making war on women and old men, but on men with guns, able to fight.” This devastation of the home front hastened the defeat of Confederate armies, which the private believed justified it.⁷⁸

If the South Carolina countryside felt the hard hand of war, Columbia endured the most infamous destruction of the Union army’s entire march through the state. Soon after the city fell on February 17, fires erupted as Federal soldiers destroyed and plundered – many, at the time, emboldened by a notoriously hearty helping of liquor. While careful recent study has debunked

⁷⁷ Howard, *Autobiography*, 2:125-126; *OR*, ser. 1, vol., 47, part 2, 351; W.C. Johnson Journal, February 22, 1864, LC; Jennifer Cain Bohrnstedt, ed., *Soldiering with Sherman: Civil War Letters of George F. Cram* (DeKalb: Northern Illinois University Press, 2000), 161-2; Bauer, ed., *Soldier*, 214. For several accounts of Federals foraging during the Carolinas campaign see, Strong, *A Yankee Private’s Civil War*, 161-2; Osborn, *The Fiery Trial*, 151; Downing, *Downing’s Civil War Diary*, 256. Lovel Newton Parker Diary, February 10, 1865, HL. Federals proved capable of flashes of humane restraint against private homes. One Ohio soldier was assigned to burn down a house even though the family living in it had not fled. “The old lady and daughter came to me a begged for me to leave it stand,” the soldier wrote in his diary. And eventually, since they “talked respectable,” his superiors decided not to burn the house. Diary of Edward E. Schweitzer, February 9, 1865, Papers of Edward E. Schweitzer, Box 1, HL. However, for a report from O.O. Howard that lists in detail several examples of “outrageous” abuses and depredations committed by Federal troops – a report that also includes Howard’s instruction to Maj. Gen. Frank Blair to prevent similar acts in the future “at all hazard” – see, *OR*, ser. 1, vol. 47, pt. 2, 505-506.

⁷⁸ W.C. Johnson Journal, February 8, 1864, LC; Ensign H. King Diary, February 15, 1865, Civil War Document Collection, Box 65, USAMHI; Arbuckle, *Civil War Experiences of a Foot-Soldier Who Marched with Sherman*, 124. John Marszalek concluded of Federal troops in South Carolina: “they blamed the Palmetto State for starting the war at Charleston’s Fort Sumter, and they were determined to mete out proper punishment.” Marszalek, *Sherman*, 320.

the myth that Sherman intentionally started these fires to leave the city in ruins, the fact remains that gusty winds swept the fires across Columbia in short time, destroying much of the heart of the city.⁷⁹

Federal soldiers who witnessed the destruction in Columbia could not help but comment on its arresting magnitude. "I never saw such a sight," another Federal wrote in his diary as he came upon the "city almost in ruins." Another soldier simply concluded, "It was a night of terrors and distress the like of which I had never before witnessed and hope I may never witness the like again." A New York artillery officer agreed that the burning city appeared "both terrible and grand," for despite the "scene of pillaging, the suffering and terror of the citizens," there remained a "magnificent splendor" in the image of Columbia destroyed.⁸⁰

Although some Federals disavowed the scope and scale of the destruction in Columbia, others entered the city ready to make it feel the hard hand of war. "The boys were full of hatred for the center of rebellion," an Iowa infantryman concluded. Arriving in Columbia, another soldier wrote, awakened "bad feelings" like no other place. The "temper and feeling of the men in the ranks," the soldier continued, left little doubt that "a terrible day of retribution had at last come to this beleaguered and doomed city."⁸¹

⁷⁹ For further detail on the burning of Columbia and the contentious question of who started the fires, see Marion B. Lucas, *Sherman and the Burning of Columbia* (College Station: Texas A&M University, 1976); Campbell, *When Sherman Marched North From the Sea*, 58-74; Royster, *The Destructive War*, 3-33; Marszalek, *Sherman*, 322-5; Glatthaar, *The March to the Sea and Beyond*, 143-5; Grimsley, *The Hard Hand of War*, 204. James McPherson concluded, "Sherman did not burn Columbia, but some of his men unquestionably helped to do so." McPherson, *The Battle Cry of Freedom*, 830.

⁸⁰ Diary of John W. Bates, February 18, 1865, Civil War Document Collection, Box 6, USAMHI; Arbuckle, *Civil War Experiences of a Foot-Soldier Who Marched with Sherman*, 133; Osborn, *The Fiery Trial*, 127, 131.

⁸¹ Howard Norman Monnett, ed., "The Awfulest Time I Ever Seen': A Letter From Sherman's Army," *Civil War History* vol. 8 no. 3 (September 1962), 286; Arbuckle, *Civil War Experiences of a Foot-Soldier Who Marched with Sherman*, 128.

Not surprisingly, reports of unwarranted plunder and destruction soon appeared. A soldier in the 11th Iowa Infantry noted how as the destruction of the city began, “the boys were just going in for trophies. There were many nice things found and got but I was not the lucky one.” Another soldier confessed, “Oh, you out to of seen us go for things. The store doors and everything just flew,” and soon his regiment enjoyed a full bounty of tobacco and whiskey, even though, the soldier said, “It was the awfulest time I ever seen.” One Federal pessimistically concluded “nothing but violence has pervaded” the city, and “the United States uniform has received no lustre.” An Illinois soldier agreed that Federals could justly destroy Columbia, but he denounced the behavior of some troops engaged in the destruction: “the boys loaded themselves with what they wanted. Whiskey and wine flowed like water, and the whole division is now drunk. This gobbling of things so, disgusts me much. I think the city should be burned, but would like to see it done decently.” These sorts of comments from Federal soldiers are more than merely confirmation that excessive destruction and illegitimate plunder occurred in Columbia; they also confirm that some soldiers viewed this same behavior as a gross violation of just conduct in war – a violation, as the Illinoisan put it, of destroying the city “decently.”⁸²

Union soldiers treated and talked about Columbia civilians affected by the destruction in a manner befitting their hard yet humane war. Federals could not help but often look upon suffering civilians and the hardships they now faced as a tragic culmination to the rebellion, a “scene of appalling distress,” one private wrote. A sergeant in the 11th Iowa Infantry thought it was “a sad sight to see the citizens standing in groups on the streets, holding little bundles of their most valued effects and not knowing what to do.” A New Yorker likewise recounted how

⁸² Diary of Sylvester Daniels, February 17, 1865, Theophilus M. Magaw Papers, HL; Monnett, ed., “The Awfulest Time I Ever Seen’: A Letter From Sherman’s Army,” 285; Diary of O.M. Poe, February 19, 1865, The Papers of O.M. Poe, Box 1, LC; Wills, *Army Life of an Illinois Soldier*, 350. O.O. Howard, in fact, quickly sought to establish clear rules and punishments to prevent unwarranted destruction and pillage inside Columbia. See, *OR*, ser. 1, vol. 47, pt. 2, 475-6.

civilians stood in the charred streets of Columbia “stupefied by the terror of last night and their present destitution ... they had neither provisions nor clothing, nor did they know where to go to procure it.” Another Federal wrote in his diary of the “terrible” sight of “old men, women and children unknown to indigence, or suffering, thrown, at once, upon the almost hopeless charities of a destroyed city.” The soldier had no idea who would care for them all, but he did appeal to God “to save their unnecessary suffering.”⁸³

Federals made some effort to alleviate civilian suffering after the destruction of Columbia – namely, to help feed the city’s newly destitute. Oliver O. Howard, at Sherman’s prompting, gave the mayor of Columbia 500 head of cattle, along with salt and other provisions from the Union army, to help provide for the impoverished and hungry citizens of the city. Howard also urged Columbia’s mayor to advise citizens “to leave Columbia for the country as far as possible.” One family who lost their home and decided to take Howard’s advice headed north with Union armies and soon found themselves travelling with a soldier in the 55th Illinois infantry who sought to make “everything as comfortable for them as it was possible for me to do.” The soldier explained in his diary: “I felt that it is doing as I would wish to be done by.”⁸⁴

This sympathy and support had its limits and never outweighed Federals’ certainty that Columbia and its citizens had received a “just retribution,” as a New York soldier put it. One Missouri private, after recounting scenes of “the screaming of women and children turned into the streets destitute of homes or food,” ultimately concluded, “such is the fortunes of war and nothing else better be expected.” An Ohioan agreed the burning of Columbia “is what the Confederacy gets” for its rebellion. A private in the Fourth Iowa Infantry similarly thought

⁸³ Arbuckle, *Civil War Experiences of a Foot-Soldier Who Marched with Sherman*, 135; Downing, *Downing’s Civil War Diary*, 255; Osborne, *The Fiery Trial*, 134; Diary of Ensign H. King, February 18, 1865, Civil War Document Collection, Box 65, USAMHI.

⁸⁴ *OR*, ser. 1, vol. 47, pt. 2, 485; Howard, *Autobiography*, 124-5; Capron, “The War Diary of Thaddeus H. Capron, 1861-1865,” 399.

Confederates now received what they deserved: Columbia “was the spot where they had sown the wind, and now at last had come the whirlwind.” Another Federal soldier, after recounting scenes of burned buildings and plundered private property, observed:

God only knows how much of this is in accordance with his will, and how guiltless are our commanders for this abandonment of rule and order, and the sacking of this beautiful, but rebellious city. To our mind, the punishment is but commensurate with the crime. The Capital, where treason was cradled, and reared a mighty raving monster, is a blackened ruin.⁸⁵

Scenes of blackened ruins in Columbia, across South Carolina and Georgia, and throughout the Shenandoah Valley confirmed that the Union’s hard war effort had come to fruition in the final stages of the conflict. Civilians living in areas where Federal armies traveled frequently found themselves subjected to war’s hardships and horrors. These campaigns in the Valley and across Georgia and South Carolina witnessed not only far-reaching destruction but also persistent restraints on the devastation unleashed by Federal armies. Hard war and humane war remained conjoined in the final phase of the Union army’s military effort, just as it had in the opening months of the conflict in Missouri and occupied Memphis and New Orleans. Soldier under Sherman and Sheridan did not always abide by these restraints – unwarranted abuses and depredations persisted – but most usually did, and Union army rules governing just conduct in warfare continued to define the spirit and limits of its hard war against the Confederacy.

These campaigns in the Shenandoah Valley, Georgia, and South Carolina embodied Francis Lieber’s moral vision of warfare. This vision inspired both immense destruction and

⁸⁵ Osborn, *The Fiery Trial*, 132; Solomon B. Childress Journal, February 17, 1865, MHM; William Garret to Sister, March 29, 1865, The Harrisburg Civil War Roundtable Collection, Box 4, USAMHI; Arbuckle, *Civil War Experiences of a Foot-Soldier Who Marched with Sherman*, 135; Diary of Ensign H. King, February 18, 1865, Civil War Document Collection, Box 65, USAMHI After the war, Federals also went to great lengths to demonstrate the Union army was not guilty of starting the fire in Columbia. See, for example, F.Y. Hedley, *Marching Through Georgia* (Chicago: Donohue, Hennenberry & Co., 1890), 376; Howard, *Autobiography*, 2:120-3; Sherman, *Memoirs*, 767-8.

remarkable restraint, but, at its core, it blessed a vigorous war effort – even against civilians – as ultimately the most moral manner of waging war. Sheridan, Sherman, and the soldiers they commanded justified the devastation they wrought not simply as stern punishment for long-deserving Confederates. They also considered it moral and humane – for the vigorous war in earnest, though often terrible in its prosecution, offered the swiftest path to victory and peace.

Conclusion: The American Way of Just Warfare

The Lieber code established an American way of just warfare. That is to say, it constructed a particular vision of waging war justly that influenced how American forces acted in subsequent wars, and also shaped later U.S. Army manuals on the rules of land warfare issued in 1914, 1934, and 1940. At the heart of this moral vision of just war was a principle Lieber defended as a truly realistic yet humane attitude toward war: “The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.” Here was the only sure way to reduce war’s carnage and suffering, Lieber and like-minded Civil War Americans believed: wage war with a spirit of uncompromising vigor and thereby end war as quickly as possible. This was Lieber’s solution to the direst moral and humanitarian tragedy of the modern world: the stubborn permanence of war. Hopes for a world eradicated of armed conflict increasingly seemed chimerical. If war endured, Lieber believed his moral vision of just warfare could curtail its terror and inhumanity. The fundamental premise of Lieber’s moral vision of war endured among Americans long past Lieber’s death and well into the modern age of global total war. Heirs to this American way of just war continued to confront a grave question that Lieber himself faced: if humane wars were brief wars, why shouldn’t the United States resort to any means necessary to win a war as quickly as possible?¹

Lieber did not singlehandedly construct the American way of just war that emerged out of the Civil War but he did more than any other Federal to refine it into a coherent body of rules for all soldiers to follow. General Orders No. 100 sought to justify and standardize hard yet humane just warfare. But for Lieber, the preeminent and most sacred goal of the Federal war

¹ “Instructions for the Government of Armies of the United States in the Field,” article 29. While historians have extensively traced the Lieber code’s influence on later developments in international law, far less attention has been devoted to the legacy of the code within the United States army. For exceptions to this trend, see Hartigan, *Lieber’s Code and the Law of War*, 23; Witt, *Lincoln’s Code*, 324-364.

effort was not the creation of a usable guide to the laws of war. Lieber was an ardent American nationalist; to him, the chief end of the war forever remained the preservation of the Union. His code outlined the moral means to achieving that end.²

As Confederate armies lurched toward their final defeat in early 1865, Lieber hoped the Lincoln administration would insist on four conditions for ending of the war: “No armistice, no adoption of rebel debt, no slavery, no division of the country.” Lieber long recognized that the end of the war and the reconstruction of the Union would raise as many problematic legal and constitutional questions as the prosecution of the war itself. He increasingly devoted his attention to these questions in early April 1865 after Robert E. Lee’s surrender at Appomattox. Then tragedy struck. “My God! That even this should befall us!” Lincoln had been assassinated, and Lieber, on the morning of the President’s death, condemned the true culprit: “It is Slavery, Slavery.” Only the barbaric institution could teach a man like John Wilkes Booth to commit such an atrocity. Lieber desired for Ulysses S. Grant to respond as “a stern uncompromising man of the sword and the sword alone.” But Lieber also believed “the masses” in the southern states would soon “rise against their own fiends, and hang them or drive them out ... [and] offer themselves, re-revolutionized, back to the Union.”³ If any silver lining could be found in Lincoln’s death, perhaps the bloodshed would finally disentrall the mass of white southerners from the Slave Power aristocracy and its violent designs.

Secretary of War Edwin Stanton soon presented Lieber with the chance to aid in justly punishing the most egregious traitors among the Confederate elite. In July 1865, Stanton entrusted Lieber to head a recently established bureau charged with collecting and archiving

² Lieber’s identity as a “nationalist,” American and otherwise, is a prominent theme of Frank Freidel’s biography of him. See especially, Freidel, *Francis Lieber*, 342-359.

³ Francis Lieber to Charles Sumner, February 2, 1865, Francis Lieber to Henry Halleck, April 15, 1865, Papers of Francis Lieber, HL.

official Confederate documents. Lieber recognized the potential historical significance of this work. He expected that the documents, if carefully preserved and catalogued, would stand for all time as a humiliating testament to Confederate treachery. However, members of the Johnson Administration, especially Stanton and Attorney General James Speed, had more immediate goals in mind. They hoped in particular that Lieber would uncover evidence to prosecute and convict Jefferson Davis of committing war crimes, what Lieber called “acts of injury not covered by the laws of war.”⁴

By late summer, Lieber, his son Norman, and a team of clerks began work in their Washington office sifting through the immense quantity of letters and official papers, many still caked with dirt and mud, having been gathered up hastily by Federals in Richmond at the war’s end. The documents arrived in utter disarray to Lieber and his team, who eventually organized them, and, in effect, prepared the materials one day to be published. However, Lieber did not succeed in finding irrefutable evidence of Davis’ complicity in unlawful wartime atrocities. Nothing definitively linked Davis to Lincoln’s assassination. By May 1866, when Lieber submitted a final report of his ultimately inconclusive findings to the House, he lamented to Henry Halleck of the now nearly certain likelihood that Davis would never face a criminal trial: “Davis will not be found guilty and we shall stand there as completely beaten. The time was lost, and can never be re-covered.”⁵

Lieber was forever a man of fiercely held opinions who possessed an even fiercer desire to share those opinions with anyone who would listen. Not surprisingly, as the Reconstruction era unfolded, Lieber hardly limited his attention to his work as an archivist of Confederate

⁴ Lieber, *The Miscellaneous Writings of Francis Lieber*, 294; Freidel, *Francis Lieber*, 370-372.

⁵ Francis Lieber to Henry Halleck, May 19, 1866, Papers of Francis Lieber, HL. Freidel, *Francis Lieber*, 370-2; Witt, *Lincoln’s Code*, 319-20. Lieber uncovered Davis’ approval of a proposed plan to assassinate Lincoln, but even this (already made public) proved no direct connection with the Booth assassination plot.

documents. He engaged publicly and privately in the contentious debates over how exactly to reconstruct the social and economic life of the South. Though inclined to support the plans of Radical Republicans like his friend Charles Sumner, Lieber qualified his support. He loathed the black codes and similarly repressive measures that took root across former Confederate states during the Andrew Johnson-led phase of Reconstruction. He feared that the social and economic lives of newly freed slaves differed little from their lives in bondage. While Lieber agreed that Congress ought to take charge of Reconstruction, he believed equality before the law for black southerners should not include universal suffrage for African American men. To extend to them the vote, Lieber believed, would likely introduce across the South all the apocalyptic disorder of demagoguery run amok.⁶

Lieber remained active in the nation's political and intellectual life until his death in 1872. He left behind a scholarly corpus that testified to his productivity and wide-ranging interests as an intellectual. So too did Lieber's major writings capture his genius as a masterful "conveyer and synthesizer, if not as an originator" of important ideas, in the words of historian Frank Freidel.⁷ Lieber's talents as a conveyer and synthesizer of ideas were certainly at their highest when he drafted General Orders No. 100, but also was his lesser brilliance as an "originator": while Lieber adapted many of rules contained in the code from pre-existing legal traditions, the form and function of the code itself was innovative. Nothing quite like it had existed before. Its influence as a guide to the laws and usages of war stretched well into the twentieth century.

Embedded in General Orders No. 100 was a particular moral vision of just warfare: certain constraints in war were inviolable but the truly moral, humanitarian way to wage war was

⁶ Freidel, *Francis Lieber*, 372-77.

⁷ *Ibid.*, 417.

to end it victoriously as quickly as possible. The Civil War confronted Federals with a potentially vexing moral quandary. How could they possibly reconcile the hard war measures they deemed necessary for defeating the Confederacy with the humane restraints on their armies they considered incumbent upon themselves as a Christian, civilized people? The loyal Union citizenry replied that both hard war measures and humane restraints were vital components of just wars. They believed this to be true because they assumed like Lieber that vigorously waged wars were moral wars. The moral quandary inherent in hard yet humane warfare did not alarm those who believed that all the carnage and destruction wrought by Union armies ultimately served the humanitarian goal of ending war quickly.

Federals still faced a far more difficult task: refining a wide array of ideas – legal, religious, cultural, and political – about just warfare into actual military policies. The first serious effort to reconcile hard war and humane war into a concrete body of rules emerged in the vast Mississippi River Valley during the opening eighteen months of the war, particularly as Federals sought to subdue guerrillas in Missouri and occupy New Orleans. Eventually, Francis Lieber refined these often ad hoc policies into consistent, coherent rules applicable to Union soldiers in all theaters. The fact that most soldiers acted in accordance with letter and spirit of General Orders No. 100 suggests that the code cohered with their own assumptions about the nature of just wars. As such, in the war's final two years, official just war policies remained far more than words on a page. Federal soldiers abided by these policies and brought to life the destruction *and* restraint inherent in their vision of just warfare. Nowhere was this truer than in the Union's formal use of retaliation and its treatment of southern civilians during William T. Sherman's March to the Sea and Philip Sheridan's 1864 Shenandoah Valley Campaign.

When the Civil War ended in the spring of 1865, Francis Lieber's vision of just warfare lived on. Many later Americans found compelling his argument that vigorously waged wars were moral wars. They made the idea their own, sometimes using it to justify actions that Lieber likely would have condemned. Lieber's son Norman was initially responsible in part for ensuring that his father's moral vision of war endured. Norman graduated from Harvard Law School on the eve of the Civil War. Once the war erupted, he fought for a time in George B. McClellan's Army of the Potomac and later served as a judge advocate in the Department of the Gulf. He concluded his war service in the Judge Advocate General's office, headed by Joseph Holt. Then, starting in 1878, Norman taught the laws of war at West Point for four years – doing his best to instill in cadets a knowledge and admiration of the code his father drafted.⁸ In 1895, Norman's legal career came full circle when he was appointed Judge Advocate General, an office he held for the next six years.

Thanks largely to Norman, Francis Lieber's code "remained the standard instructions for the United States Army" throughout the late nineteenth century. Now a standard feature in the West Point curriculum, the code not surprisingly appeared in the Spanish-American and Philippine Wars. With only the slightest alterations it continued to offer guidance – and potentially chastisement – to American soldiers who fought in both conflicts. At the outset of the Spanish-American War, Norman Lieber as Judge Advocate General had printed several thousand copies of General Orders No. 100 to distribute to American soldiers. Norman intended for

⁸ As Frank Freidel put it: "By this time it had been drilled into so many classes of West Pointers – many of them taught by Lieber's son, Norman – that army officers looked upon it with the deepest reverence." Freidel, *Francis Lieber*, 340. Theodore J. Crackel, *West Point: A Bicentennial History* (Lawrence: University Press of Kansas, 2002), 286.

soldiers to use the code and carry it with them for quick reference when needed, so his reprinting was three-inches by five-inches, small enough to be stowed away safely in a soldier's pocket.⁹

Throughout the Philippine War, the American military displayed at times an ambivalent, even strained, attitude toward the code and its constraints. Some army officers appealed to the code as a venerated defense of precisely the sort of vigorous warfare they believed necessary to subdue Filipino insurgents. In late 1900, on the eve of intensified campaigns, Major General Arthur MacArthur distributed a significantly abbreviated version of Lieber's code to American forces – a version comprised of the portions of the code that justified stern measures against illegitimate guerrilla warriors and noncombatants aiding them. The conflict in the Philippines was terrifyingly gruesome, particularly after Emilio Aguinaldo and the Filipinos who fought for independence under his command turned increasingly to guerrilla tactics. Americans eventually responded in ways that stretched – and then surpassed – what Francis Lieber considered acceptable vigorous war measures.¹⁰

The most egregious violation was the grisly, methodical torture of Filipino prisoners – most notoriously, the use of the “water cure” by Major Edwin F. Glenn, a veteran judge advocate, and the men under his command. “Glenn's Brigade” became grimly efficient at administering the water cure, which consisted of restraining a Filipino and pouring water over his nose and mouth to the point of near drowning. Glenn, a West Point graduate, was an established authority on international law, publishing in 1895 the law school textbook *Hand-Book for International Law*. He knew the laws of war well, particularly the articles and

⁹ Freidel, *Francis Lieber*, 340; Witt, *Lincoln's Code*, 356. Joseph Smith, *The Spanish-American War: Conflict in the Caribbean and the Pacific, 1895-1902* (New York: Longman, 1994).

¹⁰ Brian McAllister Linn, *The Philippine War, 1899-1902* (Lawrence: University Press of Kansas, 2000); David J. Silbey, *A War of Frontier and Empire: The Philippine-American War, 1899-1902* (New York: Hill and Wang, 2007); Witt, *Lincoln's Code*, 357.

underlying logic of Lieber's code. When Glenn was court-martialed for his role in authorizing the water cure, he defended his actions by arguing that he sought only to wage the war vigorously, end it quickly, and thereby lessen the sum total of carnage and suffering. Glenn insisted the acts "resulted in hastening the termination of hostilities and directly resulted in saving many human lives." Here resurrected again was Lieber's argument that short, stern wars were moral wars. Yet Glenn used the argument to justify torture, something Lieber explicitly prohibited in his code. General George B. Davis, Judge Advocate General, remained unconvinced by Glenn's defense, insisting that the laws and usages of war forbade torture. Glenn was convicted yet given a remarkably lenient sentence: fined fifty dollars and removed from his command for one month.¹¹

Was this an ominous harbinger of the world to come – a world that disregarded conventional restraints and did not hold soldiers accountable to outdated legal rules? Were the old ideas about constraint in war giving way inexorably to a modern world of unbridled, ghastly total war? Should anyone living in the early twentieth century pay much attention to the Lieber code, a document increasingly from a far removed time and place?

Elihu Root, for one, certainly thought Americans still ought to adhere to and admire the code. Root served as Secretary of War and State in the Theodore Roosevelt administration, and later U.S. Senator from New York. On the fiftieth anniversary of the code's drafting, Senator Root devoted his 1913 presidential address at the annual meeting of the American Society of International Law to praise Lieber and his code. In April 1913, Root could not have foreseen the impending world war little more than a year away, much less a second world war of even greater horror a generation later. Yet Root's oration affirmed the continued relevance of Lieber's code

¹¹ Edwin F. Glenn, *Hand-Book of International Law* (St. Paul: West Publishing, 1895); "Defended the Water Cure: Major Edwin F. Glenn Declared It Had Saved Many Lives—Some Instances Given," *New York Times*, July 26, 1902, p. 9; Witt, *Lincoln's Code*, 359-61.

fifty years after his original issuance. A half-century later, the code proved nearly as instructive, intelligible, and practical as ever: “The definitions are clear, the injunctions and prohibitions distinct and unambiguous.” Root insisted Lieber was “no vapid theorist ... but a sagacious, practical man,” whose code sought to deal realistically with human nature in “all its weakness and folly and error, all its nobility and power.” This clear-eyed, perceptive understanding of human nature – particularly of “man at his worst, in the extreme exercise of force” – guaranteed Lieber’s code would remain relevant in the modern world.¹²

But perhaps not wholly relevant. Lieber’s code still was an unmistakable product of the mid-nineteenth century. By the early twentieth century, in the wake of immeasurable changes in the nature of warfare and a series of watershed international agreements on the rules of warfare, the U.S. Army decided it was time to produce an updated code. It selected Edwin F. Glenn for the job. Glenn, recently promoted colonel, worked at the time at the Army War College. The torture conviction had not irreparably destroyed his military career. Ironically, his war crime aside, Glenn was remarkably qualified for the task of updating Lieber’s code: he was both a soldier and a legal expert, a published authority on international law who also had significant experience as a judge advocate. The War Department issued the new code in 1914 as the *Rules of Land Warfare*, a document that did not officially acknowledge Glenn as its author.¹³

Glenn assured readers of his *Rules* that “everything vital” from General Orders No. 100 remained in the updated document. This was necessary, Glenn explained, because Army officers knew Lieber’s code well and still admired it: “Wherever practicable the original text has been used herein, because it is believed that long familiarity with this text and its interpretation by our

¹² Elihu Root, “Francis Lieber; Opening Address by Elihu Root as President of the American Society of International Law at the Seventh Annual Meeting in Washington April 24, 1913,” in *Addresses on International Subjects* (Cambridge: Harvard University Press, 1916), 103, 95, 92.

¹³ Donald A. Wells, *The Laws of Land Warfare: A Guide to the U.S. Army Manuals* (Westport, Connecticut: Greenwood Press, 1992), 4-5.

officers should not be interfered with if possible to avoid doing so.” But if this was true, what exactly then made the updated *Rules of Land Warfare* necessary? Put simply, the world fifty years after the first issuance of Lieber’s code had changed dramatically, especially in the realm of warfare and international law. U.S. Army rules needed to respond to these changes, to the emergence of new technologies and tactics in warfare, as well as to the international agreements at Geneva and The Hague, among others, on just restraints in war.¹⁴

In the end, despite these reasons for innovation, there were far more similarities than differences between Glenn’s rules and Lieber’s code. Most importantly, Glenn embraced Lieber’s overarching moral vision of warfare: “The object of war is to bring about the complete submission of the enemy as soon possible by means of regulated violence,” the *Rules of Land Warfare* proclaimed, for ending wars quickly meant reducing total suffering.¹⁵

Moreover, the text of the *Rules of Land Warfare* undoubtedly confirms that Glenn had indeed kept “everything vital” from Lieber’s code. Glenn copied almost verbatim from General Orders No. 100 when addressing the most consequential and controversial laws of war topics. The definition of military necessity – particularly what it does and does not allow – found in the *Rules of Land Warfare* replicated exactly the definitions found in Lieber’s code. Glenn also included verbatim the most essential articles from General Orders No. 100 on the issues of guerrilla warfare and retaliation, two topics Lieber had thought about extensively. Glenn kept Lieber’s apt label for retaliation – “the sternest feature of war” – and he also agreed with Lieber that retaliatory acts “should not be excessive or exceed the degree of violence committed by the

¹⁴ *Rules of Land Warfare*, (Washington: U.S. Government Printing Office, 1914), 7. Wells, *The Laws of Land Warfare*, 5-6.

¹⁵ *Rules of Land Warfare*, 1914, article 10.

enemy.”¹⁶ The close parallels hardly ended there: Glenn copied extensively from Lieber on topics like denying quarter, paroling captured soldiers, bombarding besieged cities, and limiting what Lieber called “wanton devastation.”¹⁷ The vital definitions and constraints that Lieber had laid down still endured.

The most obvious differences between the *Rules of Land Warfare* and General Orders No. 100 came in the sections on prisoners of war. On this topic more than any other, Glenn drew heavily from the latest international law agreements. In doing so, Glenn did not really depart from the spirit of Lieber’s pioneering work; instead, he adapted Lieber’s code to later, more extensive considerations of the just treatment of prisoners during war. In the paragraphs in the *Laws of Land Warfare* on who constituted a prisoner of war and how they ought to be treated, Glenn quoted and cited significantly from both The Hague Convention of 1907 and General Orders No. 100 – seeking to fit together the latest of international law and a half-century old American contribution to the laws of war tradition.¹⁸

When Edwin Glenn adapted “everything vital” from General Orders No. 100 to his updated *Rules of Land Warfare*, he appropriated not only passages verbatim from Lieber’s code but also its underlying vision of just warfare. Glenn instructed a generation of Army officers that despite living at the dawn of a modern world of innovations in technology, warfare, and international law, they still ought to embrace a notion bequeathed to them by the generation that

¹⁶ On military necessity, compare articles 13 and 14 in the 1914 *Rules of Land Warfare* with articles 15 and 16 in General Orders No. 100; On guerrillas, compare *Rules of Land Warfare* articles 370, 371, 373, and 374 with General Orders No. 100 articles 85, 82, 84; On retaliation, compare *Rules of Land Warfare* articles 380-81 with General Orders No. 100 articles 27-28; See also paragraph 386 in *Rules of Land Warfare*.

¹⁷ On no quarter, compare: *Rules of Land Warfare* article 368 and General Orders No. 100 articles 62 and 66; on parole: *Rules of Land Warfare* articles 73-77 and General Orders No. 100 articles 121, 126-128, 132; on treatment of cities: *Rules of Land Warfare* article 217 and General Orders No. 100 article 19; on wanton destruction: *Rules of Land Warfare* article 13 and General Orders No. 100 article 16.

¹⁸ *Rules of Land Warfare*, 46-66.

lived through the Civil War, the idea that vigorously waged wars are just, humane wars. Given Glenn's own record in the Philippines it would be easy to dismiss the rules he drafted as the pristine example of the hypocrisy that supposedly defines the history of the laws of war. However, this dismissive attitude would only fail to reckon with what John Fabian Witt has rightly noted as the most important thing about the *Rules of Land Warfare*, "not the identity of its author, but the restraint of its terms. The manual bore few traces of its author's terrible past."¹⁹ What the manual did bear was a deep debt to Francis Lieber and the vision of just warfare he refined during the Civil War.

The same was also true of the two manuals issued amid the anxious lull between America's involvement in two world wars. In early January 1934, Douglas MacArthur, then Chief of Staff of the U.S. Army, officially approved publication of an updated version of the *Rules of Land Warfare*; six years later, the Army issued another revised edition of the manual, which differed only slightly from the 1934 edition. In the wake of a total world war, and, in its aftermath, a new round of international agreements on the conduct of war (particularly the 1929 Geneva Convention), it seemed fitting to update the Army's official *Rules of Land Warfare*. Yet, perhaps the most remarkable thing about the 1934 and 1940 manuals is how little they differ from the 1914 manual. On nearly every substantive matter, the 1934 and 1940 manuals copied nearly verbatim from the 1914 manual. In the two later manuals, the paragraphs on military necessity, retaliation, no quarter, guerrilla warfare, besieged cities, and the necessity of avoiding "wanton devastation" deviated in no significant way from the 1914 manual. There were a few noticeable differences: the 1934 edition contained even weaker restrictions on the use of "toxic or nontoxic gases," and in 1944 the Army revised the manual to insist that "superior orders" was

¹⁹ Witt, *Lincoln's Code*, 364.

not a legitimate defense in a war crimes prosecution – an change undertaken in anticipation of potential postwar prosecutions of Japanese and German soldiers.²⁰

But these differences paled in comparison to the continuities between the three editions of the *Rules of Land Warfare*. Above all, the 1934 and 1940 manuals preserved the vision of just warfare set forth in the Lieber code. Both manuals followed the 1914 edition verbatim in assuming that vigorously waged wars were the most humane wars: “The object of war is to bring about the complete submission of the enemy as soon as possible by means of regulated violence,” the later manuals declared. And yet, so too did they acknowledge that the “right of belligerents to adopt means of injuring the enemy is not unlimited.”²¹ Sharp, short wars were the most humane wars, the twentieth-century Army manuals argued, but they like Lieber also insisted that this did not mean *all* restraints in war ought to be disregarded.

Still, the world had changed immeasurably from 1863 to 1945, and with it ideas about legitimate destruction and inviolable constraints in war. Warring nations now had the technological power to destroy cities, ravage countrysides, and kill civilians on a scale Lieber could have only dimly foreseen. Even so, his moral vision of warfare endured, remarkably resilient in era of truly modern, total war. Nowhere was the logic of Lieber’s moral vision more at work than in Harry S. Truman’s decision to use atomic weapons against Japan to end the Second World War.

How did Truman justify the decision? Above all, as a resort to weapons of terrible power that, despite the mind-numbing extent of their destruction, would end in the war against Japan as

²⁰ Wells, *The Laws of Land Warfare*, 10, 9, 24. For continuities in the later manuals on military necessity, retaliation, no quarter, guerrilla warfare, besieged cities, and the necessity of avoiding “wanton devastation,” see especially articles 23-25, 33, and 363 in *Rules of Land Warfare* (Washington: U.S. Government Printing Office, 1934) and *Rules of Land Warfare* (Washington: U.S. Government Printing Office, 1940). Wells, *The Laws of Land Warfare*, 23-42, 81, 85, 94, 109.

²¹ Compare article 22 and 26 in the 1934 and 1940 edition of the *Rules of Land Warfare*.

quickly as possible. Since a land invasion would no longer be necessary, using the atomic bombs would ultimately result in less total destruction and fewer American and Japanese deaths. However, not surprisingly, historians have debated why exactly Truman decided to use the bombs. Was the decision really a military necessity, or one made primarily out of other geopolitical considerations, namely the United States' postwar relationship with the Soviet Union? Were the bombs necessary to ending the war in short order? J. Samuel Walker, in the most balanced and persuasive treatment of these questions, has argued convincingly that in the summer of 1945 the United States "never faced a categorical choice between the bomb and an invasion that would cost hundreds of thousands of American lives" as often implied then and later.²²

In short, the public justifications by Truman and his confidants hardly offered the full story. But these justifications are still revealing in their own right. They reflected the same assumptions and arguments central to the moral vision of just war that Lieber articulated. The fact that the Truman administration justified using the bomb in this way suggests that Lieber's arguments about the morality of "sharp, short wars" constituted by the mid-twentieth-century the heart of an American way of just war – that is, a set of publicly acceptable arguments about what justified immense, indiscriminate destruction in a total war.

"It seems to be the most terrible thing ever discovered," Truman wrote of the bomb in his diary in late July 1945, "but it can be made the most useful." The world learned on August 6, and again three days later, precisely how terrible and useful. Practically all life within a half-mile radius of ground zero died instantly. The casualty tolls defy precise calculation: all told, perhaps

²² J. Samuel Walker, *Prompt and Utter Destruction: Truman and the Use of Atomic Bombs Against Japan* (Chapel Hill: University of North Carolina Press, 2004), 5. For a fine introduction to the debate over why Truman authorized usage of the bomb, see Sean Malloy, "Harry S. Truman and the Decision to Use the Atomic Bomb," in *A Companion to Harry S. Truman* (Malden, Massachusetts: Wiley-Blackwell, 2012).

as many as 200,000 died in Hiroshima and Nagasaki.²³ Never before had two cities been destroyed so completely so immediately.

When the War Department formally announced to American citizens, and the rest of the world, that it had dropped the bomb on Hiroshima, its press release rightly said that the atomic weapon had an “explosive force such as to stagger the imagination.” More importantly, the release continued, it was a force that offered “tremendous aid in the shortening of the war against Japan.” On the day America dropped the second bomb on Nagasaki, Truman wrote to Senator Richard Russell of Georgia that in resorting to atomic weapons his “object is to save as many American lives as possible.” In a defiant editorial published in the *Atlantic Monthly* in December 1946, Karl T. Compton, a prominent physicist who had served on the committee formed to advise Truman on the use of the bomb, castigated those who “look back and say that Japan was already a beaten nation, and to ask what therefore was the justification for the use of the atomic bomb to kill so many thousands of helpless Japanese.” Compton’s counterargument was by now a familiar refrain: without the atomic bombs, Japan would not have surrendered “without a great deal more costly struggle and bloodshed.” In using the bomb, the United States “saved hundreds of thousands—perhaps several millions—of lives, both American and Japanese.” Secretary of War Henry Stimson echoed these arguments two months later in an article in *Harper’s Magazine*. “My chief purpose was to end the war in victory with the least possible cost in the lives of the men in the armies which I had helped to raise,” Stimson argued. And so, Stimson

²³ Robert H. Ferrell, ed. *Harry S. Truman and the Bomb: A Documentary History* (Worland, Wyoming: High Plains Publishing Company, 1996), 31; Walker, *Prompt and Utter Destruction*, 77, 80. Initial estimates from the United States Strategic Bombing Survey put the death toll in Hiroshima at 70,000-80,000 and in Nagasaki at more than 35,000 – numbers that subsequent scholars have persistently raised.

supported using the bomb “to end the war in the shortest possible time and to avoid the enormous losses of human life which otherwise confronted us.”²⁴

For the rest of his life, Truman never wavered in justifying his decision as the best option for ending the war as quickly as possible and thereby limiting its total carnage. Using the bomb, he told an interviewer, “saved the lives of a great many of our soldiers. That is all I had in mind.” In 1958, the Hiroshima City Council passed a formal resolution protesting “in deep indignation” the fact that Truman still “felt no compunction whatever after directing the atomic bombing of Hiroshima and Nagasaki.” Truman, remarkably, replied to the city council. The sentiment expressed in their resolution, he wrote, “is easily understood, and I am not in any way offended.” Yet Truman believed the city council had lost sight of historical context, lost sight of the vital aspects of the war’s status in the summer of 1945. How else could the Allies have compelled Japanese surrender? A land invasion, he argued again, would have cost “at least” a quarter-million more Japanese deaths, and likely the same amount of Allied soldiers as well. For that reason, Truman felt no great moral guilt over his decision; it was, he believed, “necessary for the prospective welfare of both Japan and the Allies.”²⁵

Could it be that Truman’s decision was the most horrific and humanitarian act of the Second World War? For Americans like Truman, Compton, and Stimson steeped in the assumptions of the American way of just war, using the bomb was horrible and humane – and ultimately also morally justified. “The face of war is the face of death,” Henry Stimson confessed. Yet his article in *Harper’s Magazine* was hardly a public penance. It was more like a

²⁴ Ferrell, ed. *Harry S. Truman and the Bomb*, 53, 70, 89. Henry L. Stimson, “The Decision to Use the Atomic Bomb,” *Harper’s Magazine* 194 no. 1161 (February 1947), 106. Later that month, Truman wrote to Compton thanking him for his article and assuring him that the considerations that weighed most heavily on his mind before deciding to use the bombs “were substantially those set out in your article.” Ferrell, ed. *Harry S. Truman and the Bomb*, 94.

²⁵ Ferrell, ed. *Harry S. Truman and the Bomb*, 110, 115.

strident justification of the American way of just war: “The decision to use the atomic bomb was a decision that brought death to over a hundred thousand Japanese. No explanation can change that fact and I do not wish to gloss it over. But this deliberate, premeditated destruction was our least abhorrent choice. The destruction of Hiroshima and Nagasaki put an end to the Japanese war.” Could this particular moral vision of just warfare – with its assurance that vigorous wars were moral wars – really adapt to the age of atomic weaponry? What if ending war quickly meant not destroying two cities, but nearly well annihilating a nation and its people? Was all hope lost for carving out a place for inviolable constraints in atomic warfare? Stimson could not say for certain in February 1947. He could only acknowledge the grimly obvious: “War in the twentieth century has grown steadily more barbarous, more destructive, more debased in all its aspects. Now, with the release of atomic energy, man's ability to destroy himself is very nearly complete.”²⁶

Francis Lieber never could have fully anticipated the destructive power of atomic weapons. We can only speculate what he would have thought about the carnage at Hiroshima and Nagasaki. Would he affirm that Truman’s decision was further proof that the “more vigorously wars are pursued, the better it is for humanity”? Or would he cry aloud in protest, “the law of war imposes many limitations and restrictions on principles of justice, faith, and honor”? Would he justify using the bomb by insisting again, “To save the country is paramount to all other considerations”? Or would he denounce the act as a cruel violation of the rule: “Unnecessary or revengeful destruction of life is not lawful”?²⁷ The ambiguities at the heart of hard yet humane warfare are never fully resolvable. To say that vigorously waged wars are moral

²⁶ Stimson, “The Decision to Use the Atomic Bomb,” 106-107.

²⁷ “Instructions for the Government of Armies of the United States in the Field,” articles 29, 30, 5, and 68.

wars, but also ought to have their limits, is barely to begin to grapple with the more consequential and complicated question: what are those limits, and are they timeless?

The world of the mid-nineteenth century is in so many ways long gone, not least in the awesome power we now wield in waging war. Henry Stimson was right: our ability to destroy ourselves is nearly well complete. But what remain unchanged – what unite us with Civil War Americans – are the moral dilemmas of warfare. War lives on. So too to Lieber's warning: "Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God." Is it really possible to wage war in a manner that upholds our obligations as moral beings? Francis Lieber and the loyal Union citizenry he spoke for offered one answer. Their answer sought to reconcile the felt need to kill and destroy in war with the responsibility to restrain war's horrors. Their answer found a humanitarian spirit in the most unlikely of places, a war vigorous and uncompromising in its prosecution. Their answer defined how Federal armies fought against their Confederate enemies, and continued to shape American military endeavors well into the twentieth century. Even now, war remains with us. So too does the burden of confronting a dilemma both urgent and unending: how moral is this American way of just war and should it still endure?

Bibliography

Primary Sources

Archival Material

Houghton Library, Harvard University, Cambridge, Massachusetts

Papers of Charles Sumner [microfilm edition]

The Huntington Library, San Marino, California

Papers of Lewis N.T. Allen
 Correspondence and Diary of George W. Andrews
 Correspondence of Henry Glesey Ankeny
 Civil War Letters of Charles Atkin
 Papers of Frank Dwight Baldwin
 Papers of Samuel L.M. Barlow
 Papers of Hiram Barney
 Beecher Family Papers
 Henry Breidenthal Diary
 Letters of Alfred C. Brundage
 Papers of John B. Burrud
 Papers of Leonard T. Caplinger
 Letters of Joseph M. Chambers
 Papers of Joseph W. Collingwood
 Correspondence of Henry I. Colyer
 Correspondence of Delos Van Deusen
 Papers of R. Curtis Edgerton
 Papers of James Edward Glazier
 Papers of Edmund English
 Papers of James Monroe Forbes
 Papers of John A. Gilmore
 Papers of Goff-Williams
 Papers of Lemuel H. Hazzard
 Civil War Diaries of Harvey Henderson
 Papers of Daniel Horn
 Correspondence of Samuel F. Gay
 Papers of Calvin Gibbs Hutchinson
 Papers of Levi S. Graybill
 Papers of Judson-Fairbanks
 Papers of William Devereux Kendall
 Papers of Delos W. Lake
 Papers of Francis Lieber
 Papers of George W. Lowe

Papers of James M. McClintock
 Papers of Moses Ayers McCoid
 Letters of Harvey A. Marckres
 Papers of Theophilus M. Magaw
 Papers of George H. Mellish
 Miller Family Correspondence
 Letters of Friedrich Ockershauser
 Papers of Luther Osborn
 Papers of Lovel Newton Parker
 Papers of George D. Patten
 Civil War Letters of Ransom Allen Perkins
 Papers of George S. Phillips
 Papers of William James Potter
 Papers of Samuel Roper
 Papers of Saxton Family
 Papers of Edward E. Schweitzer
 Correspondence of Charles Steedman
 Papers of George Tate
 Taylor Family Correspondence
 Diary of William S. Trask

Library of Congress, Manuscript Division, Washington D.C.

John Emerson Anderson Memoir
 Daniel Carter Beard Papers
 Wimer Bedford Papers
 Blair Family Papers
 William H. Bradbury Papers
 Charles Buford Papers
 Benjamin F. Butler Papers
 James A. Congleton Diary
 Josiah Dexter Cotton Papers
 Sylvanus Crossly Diary
 George Stanton Denison Papers
 Andrew Jackson Donelson Papers
 Hamilton Fish Papers
 Henry W. Halleck Papers
 James J. Hartley Papers
 Nathaniel Hayden Family Papers
 William G. Hills Diary
 Ethan Allen Hitchcock Papers
 Hiram P. Howe Papers
 Andrew Johnson Papers
 Reverdy Johnson Papers
 W.C. Johnson Journal

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 John A. Lair Correspondence
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 David D. Porter Family Papers
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 Hazard Stevens Papers
 Samuel Treat Correspondence
 Benjamin F. Wade Papers
 Daniel Webster Whittle Papers
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The Milton S. Eisenhower Library, Special Collections, The Johns Hopkins University

Francis Lieber Papers

Missouri History Museum Archives, St. Louis, Missouri

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Harrisburg Civil War Roundtable Collection

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David S. Scott
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Laurens W. Wolcott

Marvin Family Collection

McPheeters Family Papers

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Park Family Papers

Newspapers

Army and Navy Journal
Army and Navy Register
Boston Daily Advertiser
Boston Evening Transcript
Boston Post
Brooklyn Daily Eagle
Chicago Times
Chicago Tribune
Christian Advocate and Journal
Cincinnati Commercial
Cincinnati Daily Gazette
Daily Missouri Democrat
Frank Leslie's Illustrated Newspaper
Harper's Weekly
Memphis Bulletin
Memphis Daily Appeal
Monthly Religious Magazine
New Orleans Daily Picayune
New Orleans Commercial Bulletin
New York Herald
New York Times
New York Tribune
New York World
St. Louis Daily Missouri Republican
Washington Daily National Intelligencer

Government Documents

Congressional Globe
General Orders 100: Instructions for the Government of Armies of the United States in the Field.
 Washington: War Department, 1863.
Rules of Land Warfare. Washington: U.S. Government Printing Office, 1914.
Rules of Land Warfare. Washington: U.S. Government Printing Office, 1934.
Rules of Land Warfare. Washington: U.S. Government Printing Office, 1940.
 U.S. War Department. *War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies.* 128 vols. Washington: Government Printing Office, 1880-1901.

Published Primary Sources

Abernethy, Alonzo. "Incidents of an Iowa Soldier's Life, or Four Years in Dixie." *Annals of Iowa* vol. XII no. 6 (October 1920): 401-28.

- Anderson, Galusha. *The Story of a Border City During the Civil War*. Boston: Little, Brown, and Company, 1908.
- Angle, Paul M., ed. *Three Years in the Army of the Cumberland: The Letters and Diary of Major James A. Connolly*. Bloomington: Indiana University Press, 1959.
- Anderson, William M., ed. *We Are Sherman's Men: The Civil War Letters of Henry Orendorff*. Macomb, IL: Western Illinois University, 1986.
- Arbuckle, John C. *Civil War Experiences of a Foot-Soldier Who Marched with Sherman*. Columbus, OH: n.p., 1930.
- Armitage, Thomas. *The Past, Present, and Future of the United States*. New York: Holman, 1862.
- Ashkenazi, Elliott, ed. *The Civil War Diary of Clara Solomon: Growing Up in New Orleans, 1861-1862*. Baton Rouge: Louisiana State University Press, 1995.
- Athern, Robert G., ed. "An Indiana Doctor Marches with Sherman: The Diary of James Comfort Patten." *Indiana Magazine of History* 49 no. 4 (December 1953): 405-422.
- Bacon, Leonard. *Conciliation: A Discourse at a Sunday Evening Service, New Haven, July 20, 1862*. New Haven: Peck, White, & Peck, 1862.
- Banaski, Michael E., ed. *Missouri in 1861: The Civil War Letters of Franc B. Wilkie, Newspaper Correspondent*. Iowa City: Camp Pope Bookshop, 2001.
- Barnes, Albert. *The Conditions of Peace. A Thanksgiving Discourse Delivered in the First Presbyterian Church, Philadelphia, November 27, 1862*. Philadelphia: William B. Evans, 1863.
- Barnes, Francis C. "Imprisoned under Fire." *Southern Historical Society Papers* 25 (January-December 1897).
- Bascom, Elizabeth Ethel Parker, ed. "Dear Lizzie": *Letters Written by James "Jimmy" Garvin Crawford to his sweet heart Martha Elizabeth "Lizzie" Wilson while he was in the Federal Army during the War between the States, 1862-1865*. Bascom, 1978.
- Basler, Roy P., ed. *The Collected Works of Abraham Lincoln*. 9 vols. New Brunswick, New Jersey: Rutgers University Press, 1953-1955.
- Beecher, Henry Ward. *Freedom and War: Discourses on Topics Suggested by the Times*. Boston: Ticknor and Fields, 1863.

- Bellows, Henry W. *How We Are to Fulfill Our Lord's Commandment, "Love your Enemies," in a Time of War*. New York: Baker & Godwin, 1861.
- Berlin, Ira, et al., eds. *Freedom: A Documentary History of Emancipation, 1861-1867*, ser. I, vol. I: *The Destruction of Slavery*. Cambridge: Cambridge University Press, 1985.
- Bircher, William. *A Drummer-Boy's Diary: Comprising Four Years of Service With the Second Regiment Minnesota Veteran Volunteers, 1861 to 1865*. St. Paul: St. Paul Book and Stationary Company, 1889.
- Black, Wilfred W., ed. "Marching with Sherman Through Georgia and the Carolinas Civil War Diary of Jesse L. Dozer, Part II." *The Georgia Historical Quarterly*, 52 no. 4 (December, 1968): 451-479.
- Black, Wilfred W., ed. "Marching Through South Carolina: Another Civil War Letter of Lieutenant George M. Wise." *Ohio Historical Quarterly* 66 (January 1956): 187-195.
- Boardman, Henry A. *The Sovereignty of God, the Sure and Only Stay of the Christian Patriot in our National Troubles. A Sermon Preached in the Tenth Presbyterian Church, Philadelphia, Sept. 14 and in the West Spruce Street Church, September 25, 1862* (Philadelphia: William S. & Alfred Martien).
- Bohrnstedt, Jennifer Cain, ed. *Soldiering with Sherman: Civil War Letters of George F. Cram*. DeKalb: Northern Illinois University Press, 2000.
- Bratton, J.R. "Letter of a Confederate Surgeon on Sherman's Occupation of Milledgeville." *The Georgia Historical Quarterly* 32 no. 3 (September 1948): 231-232.
- Breed, William P. *Faith and Patience ... preached in the West Spruce Street Presbyterian Church, Philadelphia, Thanksgiving morning, November 27, 1862* (Philadelphia: John Alexander).
- Britton, Anne Hartwell and Reed, Thomas J., eds. *To My Beloved Wife and Boy at Home: The Letters and Diaries of Orderly Sergeant John F.L. Hartwell*. Madison: Fairleigh Dickinson University Press, 1997.
- Brockman, Charles J., ed. "The John Van Duser Diary of Sherman's March from Atlanta to Hilton Head." *The Georgia Historical Quarterly* 53 no. 2 (June 1969): 220-240.
- Burton, E.P. *Diary of E.P. Burton, Surgeon 7th Reg. Ill. 3rd Brig. 2nd Div. 16A.C.* Des Moines: The Historical Records Survey: 1939.
- Butler, Benjamin F. *Autobiography and Personal Reminiscences of Major-General Benjamin F. Butler*. Boston: A.M. Thayer, 1892.

- Byrne, Frank L., ed. *Uncommon Soldiers: Harvey Reid and the 22nd Wisconsin March with Sherman*. Knoxville: The University of Tennessee Press, 2001.
- Campbell, S.M. *The Light in the Clouds. A Thanksgiving Discourse, Delivered before the United Congregations of the Reformed Dutch, First Presbyterian and Westminster Churches, of Utica, N.Y. November 27, 1862, in the Reformed Dutch Church*. Utica: Curtiss & White.
- Capron, Thaddeus H. "The War Diary of Thaddeus H. Capron, 1861-1865." *Journal of the Illinois State Historical Society* 12 no. 3 (October 1919): 330-406.
- Carmony, Donald F., ed. "Jacob W. Bartmess Civil War Letters." *Indiana Magazine of History* 52 no. 2 (June 1956): 157-186.
- "Civil War Letters of Major James Roberts Zearing, M.D., 1861-1865," in *Publication Number Twenty-Eight of the Illinois State Historical Library: Transactions of the Illinois State Historical Society for the Year 1921*. Springfield: Phillips Bros Print, 1922.
- Collier, John S. and Bonnie B., eds. *Yours for the Union: The Civil War Letters of John W. Chase, First Massachusetts Light Artillery*. New York: Fordham University Press, 2004.
- Corsan, W.C. *Two Months in the Confederate States: An Englishman's Travels Through the South*. Baton Rouge: Louisiana State University Press, 1996.
- Connolly, James Austin. *Three Years in the Army of the Cumberland: The Letters and Diary of Major James A. Connolly*. Bloomington: Indiana University Press, 1996.
- Conyngham, David P. *Sherman's March Through the South*. New York: Sheldon and Company, 1865.
- Cozzens, Peter and Girardi, Robert I., eds., *The Military Memoirs of General John Pope*. Chapel Hill: University of North Carolina Press, 1998.
- Croffut, W.A., ed. *Fifty Years in Camp and Field: Diary of Major-General Ethan Allen Hitchcock*. G.P. Putnam's Sons: New York, 1909.
- De Forest, John William. *A Volunteer's Adventures: A Union Captain's Record of the Civil War*. New Haven: Yale University Press, 1946.
- De Laubenfels, David J. "With Sherman Through Georgia: A Journal." *The Georgia Historical Quarterly* 41 no. 3 (September 1957): 288-300.
- Dowing, Alexander G. *Downing's Civil War Diary*. Des Moines: The Historical Department of Iowa, 1916.
- Early, Jubal A. *A Memoirs of the Last Year of the War for Independence*. Lynchburg: Charles W. Button, 1867.

- Eaton, Clement, ed. "Diary of an Officer in Sherman's Army Marching Through the Carolinas." *The Journal of Southern History* 9, no. 2 (May 1943): 238-54.
- Ellison, Janet Correll, ed. *On to Atlanta: The Civil War Diaries of John Hill Ferguson, Illinois Tenth Regiment of Volunteers*. Lincoln: University of Nebraska Press, 2001.
- Ferrell, Robert H., ed. *Harry S. Truman and the Bomb: A Documentary History*. Worland, Wyoming: High Plains Publishing Company, 1996.
- Foner, Philip S., ed. *The Life and Writings of Frederick Douglass, Volume III: The Civil War, 1861-1865*. New York: International Publishers, 1952.
- Friedman, Leon. *The Law of War: A Documentary History*. New York: Random House, 1972.
- Fulkerson, Abram. "The Prison Experience of Confederate Soldier Who Was under Fire, on Morris Island, from Confederate Batteries." *Southern Historical Society Papers* 22 (January-December 1894).
- Geer, Allen Morgan. *The Civil War Diary of Allen Morgan Geer: Twentieth Regiment, Illinois Volunteers*. New York: Cosmos Press, 1977.
- Giunta, Mary A., ed. *A Civil War Soldier of Christ and Country: The Selected Correspondence of John Ridgers Meigs, 1859-1864*. Urbana: University of Illinois Press, 2006.
- Grant, Ulysses S. *Ulysses S. Grant: Memoirs and Selected Letters*. New York: Library of America, 1990.
- Hagemann, E.R. *Fighting Rebels and Redskins: Experiences in Army Life of Colonel George B. Sanford, 1861-1892*. Norman: University of Oklahoma Press, 1969.
- Halleck, Henry. *International Law; or, Rules Regulating the Intercourse of States in Peace and War*. New York: D. Van Nostrand, 1861.
- Hallum, John. *The Diary of an Old Lawyer, or Scenes Behind the Curtain*. Nashville: Southwestern Publishing House, 1895.
- Harwell, Richard and Racine, Philip N., eds. *The Fiery Trial: A Union Officer's Account of Sherman's Last Campaigns*. Knoxville: The University of Tennessee Press, 1986.
- Hay, John. *Letters of John Hay and Extracts from Diary* (Washington: n.p., 1908).
- Hazen, W.B. *A Narrative of Military Service*. Boston: Ticknor and Compnay, 1885.
- Hedley, F.Y. *Marching Through Georgia*. Chicago: Donohue, Hennenberry & Co., 1890.

- Hill, Sarah Jane Full. *Mrs. Hill's Journal—Civil War Reminiscences*. Chicago: R.R. Donnelley & Sons Company, 1980.
- Holcomb, Julie, ed. *Southern Sons, Northern Soldiers: The Civil War Letters of the Remley Brothers, 22nd Iowa Infantry*. Dekalb: Northern Illinois University Press, 2004.
- Hotchkiss, Jedediah. *Make Me a Map of the Valley: The Civil War Journal of Stonewall Jackson's Topographer*. Dallas, Southern Methodist University Press, 1973.
- Howard, Oliver Otis. *Autobiography of Oliver Otis Howard*. New York: Baker and Taylor, 1907.
- Howe, Mark Anthony de Wolfe., ed. *Marching with Sherman: Passages from the Letters and Campaign Diaries of Henry Hitchcock, Major and Assistant Adjutant General of Volunteers, November 1864-May 1865*. New Haven: Yale University Press, 1927.
- Joyner, F.B. "With Sherman in Georgia--A Letter from the Coast." *The Georgia Historical Quarterly* 42 no. 4 (December, 1958): 440-441.
- Kallgren, Beverly Hayes and Crouthamel, James L., eds. *"Dear Friend Anna": The Civil War Letters of a Common Soldier from Maine*. Orono, ME: University of Maine Press, 1992.
- Kidd, J.H. *A Cavalryman with Custer: Custer's Michigan Cavalry Brigade in the Civil War*. New York: Bantam Books, 1991.
- Kiper, Richard L., ed. *Dear Catharine, Dear Taylor: The Civil War Letters of a Union Soldier and His Wife*. Lawrence: University Press of Kansas, 2002.
- Leavitt, W.S. *God the Protector and Hope of the Nation. A Sermon, Preached on Thanksgiving Day, November 27, 1862, By Rev. W.S. Leavitt, Pastor of the First Presbyterian Church, Hudson, N.Y.* Hudson: Bryan & Webb, 1862.
- "Letters of General Thomas Williams, 1862." *The American Historical Review* 14 no. 2 (Jan.1909): 304-328.
- Lennard, George. "'Give Yourself No Trouble About Me': The Shiloh Letters of George W. Lennard." Edited by Paul Hubbard and Christine Lews. *Indiana Magazine of History* 76 no. 1 (March 1980): 21-53.
- Lieber, Francis. *Manual of Political Ethics*. Boston: Charles Little and James Brown, 1839.
- Lieber, Francis. *The Miscellaneous Writings of Francis Lieber*. Philadelphia: Lippincott, 1881.
- Livermore, L.J. *Perseverance in the War, the Interest and Duty of the Nation: A Sermon, Preached in the Church of the First Parish, Lexington, Sunday, September 11, 1864*. Boston: T.R. Marvin, 1864.

Monnett, Howard Norman, ed. "'The Awfulest Time I Ever Seen': A Letter From Sherman's Army." *Civil War History* 8 no. 3 (September 1962): 283-289.

Nichols, George War. *The Story of the Great March*. New York: Harper & Brothers, 1865.

Norton, Sara and Howe, Mark Anthony de Wolfe., eds. *Letters of Charles Eliot Norton*. Boston: Houghton Mifflin, 1913.

Osborn, George C., ed. "Sherman's March Through Georgia: Letters from Charles Ewing to his Father Thomas Ewing." *The Georgia Historical Quarterly* 42 no. 3 (September 1958): 323-327.

Osborn, Thomas Ward. *The Fiery Trial: A Union Officer's Account of Sherman's Last Campaigns*. Knoxville, University of Tennessee Press, 1986.

Palmer, Benjamin Morgan. *Thanksgiving Sermon, Delivered at the Presbyterian Church, New Orleans*. New York: George F. Nesbitt, 1861.

Porter, David Dixon. *Incidents and Anecdotes of the Civil War*. New York: D. Appleton and Company, 1885.

Post, M.M. *A Thanksgiving Sermon, Delivered at Logansport, Ind., November 27, 1862*. Logansport: Dague & Rayhouser, 1862.

Reminiscences of the Civil War from Diaries of Members of the 103d Illinois Volunteer Infantry. Chicago: J.F. Learning, 1914.

Root, Elihu. *Addresses on International Subjects*. Cambridge: Harvard University Press, 1916.

Roth, Margaret Brobst, ed. *Well, Mary: Civil War Letters of a Wisconsin Volunteer*. Madison: The University of Wisconsin Press, 1960.

Rowland, Kate Mason and Croxall, Morris L., eds. *The Journal of Julia LeGrand: New Orleans, 1862-1863*. Richmond: Everett Waddey, 1911.

Shedd, William G.T. *The Union and the War. A Sermon, Preached November 27, 1862*. New York: Charles Scribner, 1863.

Sherman, William T. *Memoirs of General William T. Sherman*. New York: Library of America, 1990.

Sheridan, Philip H. *Personal Memoirs of P.H. Sheridan*. New York: Charles L. Webster, 1883.

Simon, John Y., ed. *The Papers of Ulysses S. Grant*. Carbondale and Edwardsville: Southern Illinois University Press, 1967-.

- Simpson, Brooks D. and Berlin, Jean V., eds. *Sherman's Civil War: Selected Correspondence of William T. Sherman, 1860-1865*. Chapel Hill: University of North Carolina Press, 1999.
- Solomon, Clara. *The Civil War Diary of Clara Solomon: Growing Up in New Orleans, 1861-1862*. Baton Rouge: Louisiana State University Press, 1995.
- Strong, George Templeton. *The Diary of George Templeton Strong*. New York: The MacMillian Company, 1952
- Strong, Robert Hale. *A Yankee Private's Civil War*. Chicago: Henry Regnery Company, 1961.
- Sumner, Charles. *The True Grandeur of Nations: An Oration Delivered before the Authorities of the City of Boston*. Boston: William D. Ticknor, 1845.
- Sylvester, Lorna Lutes, ed. "'Gone for a Soldier': The Civil War Letters of Charles Harding Cox." *Indiana Magazine of History* 68 no. 3 (September 1972): 181-239.
- Thompson, Joseph P. *The Psalter and the Sword, A Sermon Preached in the Broadway Tabernacle Church, On Thanksgiving Day, November 27, 1862*. New York: W.L.S. Harrison, 1863.
- Velazques, Loreta J. *The Woman in Battle: A Narrative of the Exploits, Adventures, and Travels of Madame Loreta Janeta Velazques*. Hartford: Belknap, 1876.
- Welles, Gideon. *The Diary of Gideon Welles*. Boston: Houghton Mifflin, 1911.
- Wittenberg, Eric J., ed. *With Sheridan in the Final Campaign against Lee, by Lt. Col. Frederick C. Newhall, Sixth Pennsylvania Cavalry*. Baton Rouge: Louisiana State University Press, 2002.
- Wills, Charles W. *Army Life of an Illinois Soldier: Including a Day-by-Day Record of Sherman's March to the Sea*. Carbondale: Southern Illinois University Press, 1996.
- Williams, Charles Richard, ed., *Diary and Letters of Rutherford Birchard Hayes*. Columbus: F.J. Heer Printing Company, 1922.
- Winther, Oscar Osburn, ed. *With Sherman to the Sea: The Civil War Letters, Diaries, & Reminiscences of Theodore F. Upson*. Bloomington: Indiana University Press, 1958.

Secondary Sources

Books

- Adamson, Hans Christian. *Rebellion in Missouri: Nathaniel Lyon and His Army of the West*. Philadelphia: Chilton Company, 1961.

- Alotta, Robert Ignatius. *Military Executions of the Union Army, 1861-1866*. Philadelphia: Temple University, 1984.
- Arenson, Adam. *The Great Heart of the Republic: St. Louis and the Cultural Civil War*. Cambridge: Harvard University Press, 2011.
- Ash, Stephen V. *Firebrand of Liberty: The Story of Two Black Regiments That Changed the Course of the Civil War*. New York: W.W. Norton, 2008.
- Ash, Stephen V. *When the Yankees Came: Conflict and Chaos in the Occupied South, 1861-1865*. Chapel Hill: University of North Carolina Press, 1995.
- Astor, Aaron. *Rebels on the Border: Civil War, Emancipation, and the Reconstruction of Kentucky and Missouri*. Baton Rouge: Louisiana State University Press, 2012.
- Benedict, Michael Les. *A Compromise of Principle: Congressional Republicans and Reconstruction 1863-1869*. New York: W.W. Norton, 1974.
- Berlin, Ira, Reidy, Joseph P., Rowland, Leslie S., eds. *Freedom's Soldiers: The Black Military Experience in the Civil War*. Cambridge: Cambridge University Press, 1998.
- Berry, Mary Frances. *Military Necessity and Civil Rights Policy: Black Citizenship and the Constitution, 1861-1868*. Port Washington, NY: Kennikat Press, 1977.
- Best, Geoffrey. *Humanity in Warfare*. New York: Columbia University Press, 1980.
- Black, Jeremy. *Rethinking Military History*. London: Routledge, 2004.
- Blassingame, John W. *Black New Orleans, 1860-1880*. Chicago: University of Chicago Press, 1973.
- Boman, Dennis K. *Lincoln and Citizens' Rights in Civil War Missouri: Balancing Freedom and Security*. Baton Rouge: Louisiana State University Press, 2011.
- Bragg, Jefferson Davis. *Louisiana in the Confederacy*. Baton Rouge: Louisiana State University Press, 1941.
- Brasher, Glenn David. *The Peninsula Campaign and the Necessity of Emancipation*. Chapel Hill: The University of North Carolina Press, 2012.
- Browning, Judkin. *Shifting Loyalties: The Union Occupation of Eastern North Carolina*. Chapel Hill: University of North Carolina Press, 2011.
- Bruce, Robert V. *Lincoln and the Tools of War*. Urbana: University of Illinois Press, 1989.

- Burkhardt, Geroge S. *Confederate Rage, Yankee Wrath: No Quarter in the Civil War*. Carbondale: Southern Illinois University Press, 2007.
- Burnham, Philip. *So Far From Dixie: Confederates in Yankee Prisons*. Lanham: Taylor Trade, 2003.
- Capers, Gerald M. *The Biography of a River Town: Memphis: It's Heroic Age*. Chapel Hill: University of North Carolina Press, 1939.
- Capers, Gerald M. *Occupied City: New Orleans Under the Federals, 1862-1865*. Lexington: University of Kentucky Press, 1965.
- Carnahan, Burrus M. *Act of Justice: Lincoln's Emancipation Proclamation and the Laws of War*. Lexington: University Press of Kentucky, 2007.
- Carnahan, Burrus M. *Lincoln on Trial: Southern Civilians and the Law of War*. Louisville: University Press of Kentucky, 2010.
- Catton, Bruce. *A Stillness at Appomattox*. New York: Doubleday, 1953.
- Cimprich, John. *Fort Pillow, A Civil War Massacre, and Public Memory*. Baton Rouge: Louisiana State University Press, 2005.
- Clausewitz, Carl Von. *On War*. Princeton: Princeton University Press, 1976.
- Connelly, Donald B. *John M. Schofield and the Politics of Generalship*. Chapel Hill: University of North Carolina Press, 2006.
- Crackel, Theodore J. *West Point: A Bicentennial History*. Lawrence: University Press of Kansas, 2002.
- Curran, Thomas F. *Soldiers of Peace: Civil War Pacifism and the Post War Radical Peace Movement*. New York: Fordham University Press, 2003.
- Dawson, Joseph G. *Army Generals and Reconstruction: Louisiana, 1862-1877*. Baton Rouge: Louisiana State University Press, 1982.
- Dawes, James. *The Language of War: Literature and Culture in the U.S. From the Civil War through World War II*. Cambridge: Harvard University Press, 2002.
- Davis, James D. *History of Memphis. The History of the City of Memphis, Being a Compilation of the Most Important Documents and Historical Events*. Memphis: Hite, Crumpton, & Kelly, 1873.
- Faust, Drew Gilpin. *This Republic of Suffering: Death and the American Civil War*. New York: Knopf, 2008.

- Fellman, Michael. *Inside War: The Guerrilla Conflict in Missouri During the American Civil War*. New York: Oxford University Press, 1989.
- Fellman, Michael. *Citizen Sherman: A Life of William Tecumseh Sherman*. New York: Random House, 1995.
- Forster, Stig, and Nagler, Jorg. *On the Road to Total War: The American Civil War and the German Wars of Unification, 1861-1871*. Cambridge: Cambridge University Press, 1997.
- Freidel, Frank. *Francis Lieber: Nineteenth-Century Liberal*. Baton Rouge: Louisiana State University Press, 1947.
- Gallagher, Gary W., ed. *The Antietam Campaign*. Chapel Hill: University of North Carolina Press, 1999.
- Gallagher, Gary W., ed. *The Shenandoah Valley Campaign of 1864*. Chapel Hill: University of North Carolina Press, 2006.
- Garrison, Webb. *Civil War Hostage: Hostage-Taking in the Civil War*. Shippensburg: White Mane, 2000.
- Gerteis, Louis S. *Civil War St. Louis*. Lawrence: University of Kansas Press, 2001.
- Gillespie, Alexander. *A History of the Laws of War*. Oxford: Hart Publishing, 2011.
- Gillispie, James M. *Andersonvilles of the North: The Myths and Realities of Northern Treatment of Civil War Confederate Prisoners*. Denton: University of North Texas Press, 2008.
- Glatthaar, Joseph. *Forged in Battle: The Civil War Alliance of Black Soldiers and White Officers*. New York: Free Press, 1990.
- Glatthaar, Joseph. *The March to the Sea and Beyond*. New York: New York University Press, 1985.
- Goldfield, David. *America Aflame: How the Civil War Created a Nation*. New York: Bloomsbury, 2011.
- Goodrich, Thomas. *Black Flag: Guerrilla Warfare on the Western Border, 1861-1865*. Bloomington: Indiana University Press, 1995.
- Goss, Thomas J. *The War within the Union High Command: Politics and Generalship During the Civil War*. Lawrence: University Press of Kansas, 2003.
- Grant, Susan-Mary and Reid, Brian Holden, eds., *Themes of the American Civil War: The War Between the States*. London: Routledge, 2009.

- Griffith, Paddy. *Battle Tactics of the Civil War*. New Haven: Yale University Press, 1987.
- Grimsley, Mark, ed. *Civilians in the Path of War*. Lincoln: University of Nebraska, 2002.
- Grimsley, Mark. *The Hard Hand of War: Union Military Policy Toward Southern Civilians, 1861–1865*. Cambridge: Cambridge University Press, 1995.
- Guelzo, Allen C. *Fateful Lightening: A New History of the Civil War and Reconstruction*. New York: Oxford University Press, 2012.
- Guelzo, Allen C. *Lincoln's Emancipation Proclamation: The End of Slavery in America*. New York: Simon & Schuster, 2004.
- Hagerman, Edward. *The American Civil War and the Origins of Modern Warfare: Ideas, Organization, and Field Command*. Bloomington: Indiana University Press, 1988.
- Hamilton, Daniel W. *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy During the Civil War*. Chicago: University of Chicago Press, 2007.
- Hart, Peter. *The Great War: A Combat History of the First World War*. New York: Oxford University Press, 2013.
- Hartigan, Richard Shelly, ed. *Military Rules, Regulations and the Code of War: Francis Lieber and the Certification of Conflict*. New Brunswick, New Jersey: Transaction Publishers, 2011.
- Hartigan, Richard Shelly. *Lieber's Code and the Law of War*. Chicago: Precedent, 1983.
- Harris, William C. *Lincoln and the Border State: Preserving the Union*. Lawrence: University Press of Kansas, 2011.
- Hattaway, Herman and Jones, Archer. *How the North Won*. Urbana: University of Illinois Press, 1983.
- Hattaway, Herman. *Shades of Blue and Gray: An Introductory Military History of the Civil War*. Columbia: University of Missouri Press, 1997.
- Heatwole, John L. *The Burning: Sheridan in the Shenandoah Valley*. Charlottesville: Rockbridge Publishing, 1998.
- Hearn, Chester G. *When the Devil Came Down to Dixie: Ben Butler in New Orleans*. Baton Rouge: Louisiana State University Press, 1997.
- Hess, Earl J. *The Civil War in the West: Victory and Defeat from the Appalachians to the Mississippi*. Chapel Hill: University of North Carolina Press, 2012.

- Hesseltine, William Best. *Civil War Prisons: A Study in War Psychology*. Columbus: The Ohio State University Press, 1930.
- Hirshon, Stanley P. *The White Tecumseh: A Biography of General William T. Sherman*. New York: John Wiley & Sons, 1997.
- Holt, Earl K. *William Greenleaf Eliot: Conservative Radical*. Village Publishers, 2011.
- Horan, James D. *Matthew Brady: Historian with a Camera*. New York: Crown, 1955.
- Horigan, Michael. *Elmira: Death Camp of the North*. Mechanicsburg, PA: Stackpole Books, 2002.
- Howard, Michael, Andreopoulos, George J., and Shulman, Mark R., eds., *The Laws of War: Constraints on Warfare in the Western World*. New Haven: Yale University Press, 1994.
- Johnson, James Turner. *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry*. Princeton: Princeton University Press, 1981.
- Joseph, Alvin M., Jr. *The Civil War in the American West*. New York: Alfred A. Knopf, 1991.
- Kalyvas, Stathis N. *The Logic of Violence in Civil War*. New York: Cambridge University Press, 2006.
- Keegan, John. *The First World War*. New York: Knopf, 1999.
- Kennett, Lee B. *Sherman: A Soldier's Life*. New York: HarperCollins, 2009.
- Klement, Frank L. *The Limits of Dissent: Clement Vallandigham and the Civil War*. New York: Fordham University Press, 1998.
- Leonard, Elizabeth D. *Lincoln's Forgotten Ally: Judge Advocate General Joseph Holt of Kentucky*. Chapel Hill: University of North Carolina Press, 2011.
- Linn, Brian McAllister. *The Philippine War, 1899-1902*. Lawrence: University Press of Kansas, 2000.
- Lufkin, Edwin B. *History of the Thirteenth Maine Regiment*. Brighton, Maine: H.A. Shorey, 1898.
- Mack, Charles R. and Lesesne, Henry H. eds. *Francis Lieber and the Culture of the Mind*. Columbia: University of South Carolina Press, 2005.
- Mackey, Robert R. *The Uncivil War: Irregular Warfare in the Upper South, 1861-1865*. Norman: University of Oklahoma Press, 2004.

- Manning, Chandra. *What This Cruel War Was Over*. New York: Vintage, 2007.
- Margolies, Daniel S. *A Companion to Harry S. Truman*. Malden, Massachusetts: Wiley-Blackwell, 2012.
- Marszalek, John F. *Commander of All Lincoln's Armies: A Life of General Henry Halleck*. Cambridge: Harvard University Press, 2004.
- Marszalek, John F. *Sherman: A Soldier's Passion for Order*. New York: Free Press, 1993.
- Marszalek, John F. *Sherman's March to the Sea*. Abilene: McWhiney Foundation Press, 2005.
- Masur, Louis P. *Lincoln's Hundred Days: The Emancipation Proclamation and the War for the Union*. Cambridge: Harvard University Press, 2012.
- McGinty, Brian. *The Body of John Merryman: Abraham Lincoln and the Suspension of Habeas Corpus*. Cambridge: Harvard University Press, 2011.
- McKenzie, Robert. *Lincolmites and Rebels: A Divided Town in Civil War America*. New York: Oxford University Press, 2006.
- McPherson, James. *Tried By War: Abraham Lincoln as Commander in Chief*. New York: Penguin, 2008.
- McPherson, James. *Drawn with the Sword: Reflections on the American Civil War*. New York: Oxford University Press, 1996.
- McPherson, James. *War on the Waters: The Union and Confederate Navies*. Chapel Hill: University of North Carolina Press, 2012.
- Meredith, Roy. *Mr. Lincoln's Camera Man: Mathew B. Brady*. New York: Dover, 1946.
- Mills, Walter. *The Martial Spirit: A Study of Our War with Spain*. New York: Viking, 1965.
- Mitchell, Reid. *Civil War Soldiers*. New York: Viking, 1988.
- Morris, Edmund. *The Rise of Theodore Roosevelt*. New York: The Modern Library, 2001.
- Nash, Howard P. *Stormy Petrel: The Life and Times of General Benjamin F. Butler, 1818-1893*. Rutherford: Fairleigh Dickinson University Press, 1969.
- Neely, Mark E. *Lincoln and the Triumph of the Nation: Constitutional Conflict in the American Civil War*. Chapel Hill: University of North Carolina Press, 2012.
- Neely, Mark E. *The Fate of Liberty: Abraham Lincoln and Civil Liberties*. New York: Oxford University Press, 1991.

- Neely, Mark E. *Retaliation: The Problem of Atrocity in the American Civil War*. Gettysburg: Gettysburg College, 2002.
- Neff, Stephen C. *Justice in Blue and Gray: A Legal History of the Civil War*. Cambridge: Harvard University Press, 2010.
- Neff, Stephen C. *War and the Law of Nations: A General History*. Cambridge: Cambridge University Press, 2005.
- Nosworthy, Brent. *The Bloody Crucible of Courage: Fighting Methods and Combat Experience of the Civil War*. New York: Carroll & Graf, 2003.
- Nystrom, Justin A. *New Orleans After the Civil War: Race, Politics, and a New Birth of Freedom*. Baltimore: Johns Hopkins University Press, 2010.
- Oakes, James. *Freedom National: The Destruction of Slavery in the United States, 1861-1865*. New York: W.W. Norton, 2013.
- Paludan, Phillip Shaw. *Victims: A True Story of the Civil War*. Knoxville: The University of Tennessee Press, 1981.
- Paret, Peter, ed. *Makers of Modern Strategy: from Machiavelli to the Nuclear Age*. Princeton: Princeton University Press, 1986.
- Parton, James. *General Butler in New Orleans. History of the Administration of the Department of the Gulf in the Year 1862*. New York: Mason Brothers, 1864.
- Pickenpauh, Roger. *Camp Chase and the Evolution of Union Prison Policy*. Tuscaloosa, Alabama: University of Alabama Press, 2007.
- Pickenpauh, Roger. *Captives in Gray: The Civil War Prisons of the Union*. Tuscaloosa: University of Alabama Press, 2009.
- Pierce, Lyman B. *History of the Second Iowa Cavalry*. Burlington, IA: Hawk-Eye Steam Book: 1865.
- Pierson, Michael D. *The Mutiny at Fort Jackson: The Untold Story of the Fall of New Orleans*. Chapel Hill: University of North Carolina Press, 2008.
- Rable, George. *Fredericksburg! Fredericksburg!* Chapel Hill: The University of North Carolina Press, 2002.
- Rable, George. *God's Almost Chosen Peoples*. Chapel Hill: University of North Carolina Press, 2010.

- Reardon, Carol. *With a Sword in One Hand and Jomini in the Other: The Problem of Military Thought in the Civil War North*. Chapel Hill: University of North Carolina Press, 2012.
- Rolfs, David. *No Peace for the Wicked: Northern Protestant Soldiers and the American Civil War*. Knoxville: University of Tennessee Press, 2009.
- Royster, Charles. *The Destructive War: William Tecumseh Sherman, Stonewall Jackson, and the Americans*. New York: Knopf, 1991.
- Sanders, Charles W. *While in the Hands of the Enemy: Military Prisons of the Civil War*. Baton Rouge: Louisiana State University Press, 2005.
- Schantz, Mark. *Awaiting the Heavenly Country: The Civil War and America's Culture of Death*. Ithaca: Cornell University Press, 2008.
- Schutz, Wallace J. and Trenerry, Walter N. *Abandoned by Lincoln: A Military Biography of General John Pope*. Urbana: University of Illinois Press, 1900.
- Scott, Sean. *A Visitation of God: Northern Civilians Interpret the Civil War*. New York: Oxford University Press, 2010.
- Siddali, Silvana R. *From Property to Person: Slavery and the Confiscation Acts, 1861-1862*. Baton Rouge: Louisiana State University Press, 2005.
- Solis, Gary D. *The Law of Armed Conflict: International Humanitarian Law in War*. Cambridge: Cambridge University Press, 2010.
- Sutherland, Daniel E., ed. *Guerrillas, Unionists, and Violence on the Confederate Homefront*. Fayetteville: University of Arkansas Press, 1999.
- Sutherland, Daniel E. *A Savage Conflict: The Decisive Role of Guerrillas in the American Civil War*. Chapel Hill: University of North Carolina Press, 2010.
- Sears, Stephen W. *George B. McClellan: The Young Napoleon*. New York: Ticknor & Fields, 1988.
- Silbey, David J. *A War of Frontier and Empire: The Philippine-American War, 1899-1902*. New York: Hill and Wang, 2007.
- Slocum, Charles Elihu. *The Life and Services of Major-General Henry Warner Slocum*. Toledo: The Slocum Publishing Company, 1913.
- Smith, Ronald D. *Thomas Ewing Jr. Frontier Lawyer and Civil War General*. Columbia: University of Missouri Press, 2008.

- Smith, Joseph. *The Spanish-American War: Conflict in the Caribbean and the Pacific, 1895-1902*. New York: Longman, 1994.
- Speer, Lonnie R. *War of Vengeance: Acts of Retaliation against Civil War POWs*. Mechanicsburg, Pa.: Stackpole Books, 2002.
- Stout, Harry. *Upon the Altar of the Nation: A Moral History of the Civil War*. New York: Viking, 2006.
- Sullivan, George. *In the Wake of Battle: The Civil War Images of Matthew Brady*. Munich: Prestel, 2004.
- Tap, Bruce. *Over Lincoln's Shoulder: The Committee on the Conduct of the War*. Lawrence: University Press of Kansas, 1998.
- Urwin, Gregory J.W., ed. *Black Flag over Dixie: Racial Atrocities and Reprisals in the Civil War*. Carbondale: Southern Illinois University Press, 2004.
- Walker, J. Samuel. *Prompt and Utter Destruction: Truman and the Use of Atomic Bombs Against Japan*. Chapel Hill: University of North Carolina Press, 2004.
- Walters, John Bennett. *Merchant of Terror: General Sherman and Total War*. Indianapolis, IN: Bobbs-Merrill, 1973.
- Waugh, Joan and Gallagher, Gary W., eds. *Wars within a War: Controversy and Conflict over the American Civil War*. Chapel Hill: The University of North Carolina Press, 2009.
- Weber, Jennifer L. *Copperheads: The Rise and Fall of Lincoln's Opponents in the North*. New York: Oxford University Press, 2006.
- Weigley, Russell F. *The American Way of War*. New York: Macmillan, 1973.
- Weigley, Russell F. *A Great Civil War*. Indianapolis: Indiana University Press, 2000.
- Wells, Donald A. *The Laws of Land Warfare: A Guide to the U.S. Army Manuals*. Westport, Connecticut: Greenwood Press, 1992.
- Wert, Jeffry D. *From Winchester to Cedar Creek: The Shenandoah Campaign of 1864*. Mechanicsburg, PA: Stackpole Books, 1987.
- Wert, Jeffry D. *Mosby's Rangers*. New York: Simon and Schuster, 1990.
- Werlich, Robert. *"Beast" Butler: The Incredible Career of Major General Benjamin Franklin Butler*. Washington, D.C.: Quaker Press, 1962.

Williams, T. Harry. *McClellan, Sherman, and Grant*. New Brunswick, New Jersey: Rutgers University Press, 1962.

Winters, John D. *Louisiana in the Confederacy*. Baton Rouge: Louisiana State University Press, 1963.

Articles

Baxter, R.R. "The First Modern Codification of the Law of War: Francis Lieber and General Order No. 100." *International Review of the Red Cross* 25 (April 1963): 171-189.

Boyle, William E. "Under the Black Flag: Execution and Retaliation in Mosby's Confederacy." *Military Law Review* Vol. 144 (Spring 1994): 148-168.

Browning, Judkin. "'I Am Not So Patriotic as I Was Once': The Effects of Military Occupation on the Occupying Union Soldiers during the Civil War," *Civil War History* 55 no. 2 (June 2009): 217-243.

Campbell, Jacqueline G. "'The Unmeaning Twaddle about Order 28': Benjamin F. Butler and Confederate Women in Occupied New Orleans, 1862." *The Journal of the Civil War Era* 2 no. 1 (March 2012): 11-30.

Carnahan, Burrus M. "Lincoln, Lieber and the Laws of War: The Origins and Limits of Military Necessity." *American Journal of International Law* 92 (1998): 213-31.

Childress, James. "Francis Lieber's Interpretation of the Law of War: General Orders No. 100 in the Context of his Life and Thought." *American Journal of Jurisprudence* 21 (1976): 34-70.

Curti, Merle. "Francis Lieber and Nationalism." *Huntington Library Quarterly* 4 (1941): 263-92.

Freidel, Frank. "Francis Lieber, Charles Sumner, and Slavery," *The Journal of Southern History* 9 no. 1 (February 1943): 75-93.

Fisher, Noel C. "Prepare Them For My Coming: General William T. Sherman, Total War, and Pacification in West Tennessee," *Tennessee Historical Quarterly* 51 no. 2 (Summer 1992): 75-86.

Hacker, J. David. "A Census-Based Count of the Civil War Dead," *Civil War History* 57 no. 4 (December 2011): 306-347.

Hsieh, Wayne. "Total War and the American Civil War Reconsidered: The End of an Outdated 'Master Narrative,'" *The Journal of the Civil War Era* 1 no. 3 (September 2011): 394-408.

Janda, Lance. "Shutting the Gates of Mercy: The American Origins of Total War, 1860-1880," *The Journal of Military History* 59 no. 1 (January 1959): 7-26.

Keil, Hartmut. "Francis Lieber's Attitudes on Race, Slavery, and Abolition." *Journal of American Ethnic History* 28 (2008): 13-33.

Lash, Jeffrey N. "The Federal Tyrant at Memphis: General Stephen A. Hurlbut and the Union Occupation of West Tennessee, 1862-64," *Tennessee Historical Quarterly* 48 no. 1 (Spring 1989): 15-28.

Lippincott, George E. "Lee-Sawyer Exchange." *Civil War Times Illustrated* 1 no. 3 (June 1962).

Mancini, Matthew J. "Francis Lieber, Slavery, and the 'Genesis' of the Laws of War." *Journal of Southern History* 77 (2011): 325-48.

Merton, Theodor. "Francis Lieber's Code and the Principles of Humanity." *Columbia Journal of Transnational Law* 36 (1997): 269-81.

McPherson, James M. "Two Strategies of Victory: William T. Sherman in the Civil War." *Atlanta History* 33 (1990): 5-17.

Neal, Harry E. "Rebels, Ropes, and Reprieves." *Civil War Times Illustrated* 14 no. 10 (February 1976).

Neely, Mark. "Was the Civil War a Total War?" *Civil War History* 37 no. 1 (March 1991): 5-28.

Phillips, Christopher. "Lincoln's Grasp of War: Hard War and the Politics of Neutrality and Slavery in the Western Border States, 1861-1862," *The Journal of the Civil War Era* 3 no. 2 (June 2013): 184-210.

Reid, Brian Holden, "Historians and the Joint Committee on the Conduct of the War," *Civil War History* 38 (1992): 319-41.

Smith, W. Wayne. "An Experiment in Counterinsurgency: The Assessment of Confederate Sympathizers in Missouri," *The Journal of Southern History* 35 no. 3 (August 1969): 361-380.

Tap, Bruce. "'These devils are not fit to live on God's earth': War Crimes and the Committee on the Conduct of the War, 1864-1865." *Civil War History* 42 no. 2 (June 1996): 116-132.

Trefousse, Hans L., "The Joint Committee on the Conduct of the War: A Reappraisal," *Civil War History* 10 (1964): 5-19.

True, Marshall, "A Reluctant Warrior Advises the President; Ethan Allen Hitchcock, Abraham Lincoln and the Union Army, Spring 1862." *Vermont History* 50 no. 3 (Summer 1982): 129-150.

Urwin, Gregory J.W. “‘We cannot treat negroes ... as prisoners of war’: Racial Atrocities and Reprisals in Civil War Arkansas.” *Civil War History* 42 no. 3 (September 1996): 193-210.

Dissertations

Hooper, Ernest Walter. “Memphis, Tennessee: Federal Occupation and Reconstruction, 1862-1870.” Ph.D. Dissertation, University of North Carolina, 1957.

Lang, Andrew F. “The Garrison War: Culture, Race, and the Problem of Military Occupation during the American Civil War Era.” Ph.D. Dissertation, Rice University, 2013.

Sude, Barry. “Federal Military Policy and Strategy in Missouri and Arkansas, 1861-1863: A Study in Command Level Conflict. Ph.D. Dissertation, Temple University, 1986.