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Publication Date

2022

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UNIVERSITY OF CALIFORNIA SAN DIEGO

A Freedom No Greater Than Bondage: Black Refugees and Unfree Labor at the Dawn of Mass
Incarceration during the Civil War and Reconstruction

A dissertation submitted in partial satisfaction of the
requirements for the degree Doctor of Philosophy

in

History

by

Samantha Quiambao de Vera

Committee in Charge:

Professor Daniel Widener, Chair
Professor Rebecca Jo Plant, Co-Chair
Professor Dennis Childs
Professor Rachel Klein
Professor Simeon Man

2022

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This dissertation of Samantha Quiambao de Vera is approved, and it is acceptable in quality and form for publication on microfilm and electronically.

University of California San Diego
2022

DEDICATION

To those who sought/seek freedom.

TABLE OF CONTENTS

Dissertation Approval Page..... iii

Dedication.....iv

Table of Contents.....v

Acknowledgments.....vi

Vita.....viii

Abstract of Dissertation.....x

Introduction.....1

Chapter One: The Growth of the Union Military Justice System.....27

Chapter Two: A Dream Deferred: Legal Enslavement, Provost Marshals, and Black Resistance in Border States.....53

Chapter Three: “This System of Fource Labour”: Refugees from Slavery, Impressment, and Penal Servitude.....88

Chapter Four: Trials by Military Commission and White Resistance to Racial Justice in Post-Emancipation South.....120

Conclusion.....148

Bibliography.....167

ACKNOWLEDGEMENTS

This perhaps is one of the most challenging sections to write, as I know I will not be able to fully thank those who have supported this project. First, I would like to thank my professors and committee members for guiding me through the graduate program. My intellectual development owes a great deal to my committee members, Daniel Widener, Rebecca Jo Plant, Rachel Klein, Simeon Man, and Dennis Childs. I am honored to have benefitted from their brilliance. At UCSD, I received invaluable mentorship from Nancy Kwak and Wendy Matsumura. From them, I received a much-needed push, helping me expand my project beyond what I thought it could be. There is no way to repay their generosity.

I would not be where I am now had it not been for Pier Gabrielle Foreman who took me under her wing when I started my graduate career at the University of Delaware. Foreman's creativity, innovativeness, and excellence have always left me (and many others) in awe. Her mentorship has extended beyond my time in Delaware, and I continue to learn from her. I have made lifelong friends with her mentees, Denise Burgher, Brandi Locke, Harrison Graves, Simone Austin, and Kelli Coles Barnes—stellar scholars who have made graduate school exciting in spite of the many challenges we faced. Their insights, critiques, humor, and support have sustained me all these years. At Delaware, I also had the privilege to be taught by phenomenal historians, Erica Armstrong–Dunbar and Tanisha Ford. Their scholarships continue to inform and inspire me. I want to thank Jean Pfaelzer, whose wit and brilliance, made my studies in Delaware all the more rigorous and enjoyable.

I would like to acknowledge my colleagues at UCSD who have been generous with their time and read the drafts of my chapters. Kate Flach and Mary Klann provided invaluable critiques of my drafts, helping me rethink the implications of my work. I have also had the privilege of working on my chapters with Luís Martin-Cabrera, Alexis Meza, and Miguel Castañeda. Apart from

supportive colleagues, I received grants from and found a wonderful community in the Black Studies Project. I am grateful to its directors.

Outside of UCSD, I have been supported by a community of scholars. In 2018, I was wandering in Washington, D.C., looking for a dissertation topic. By then, I was already deeply committed to Black women's history. I would not have embarked on this project had it not been for Frances M. Clarke of the University of Sydney who pointed to a specific shelf in the National Archives where I eventually found my dissertation topic. My productive conversations with Barbara Smith of the National Museum of American History encouraged me to trudge on with this project in spite of the daunting scale of the records I was dealing with. Clare Colquitt of San Diego State University was the first mentor I had. I owe my very first publication to her, and I would not be in graduate school without her encouragement.

As an impoverished student, I am indebted (in every sense of the word) to my sister, Sabrina. Her financial bailouts carried me through my graduate career. I am also grateful to her partner, Charlotte Benson, who always opened her home to me. Boba and Spectre, whom I have had since my undergraduate years, remain a constant source of joy and comedy. My achievements are in part my family's achievements.

And, of course, my heart and gratitude to Kevan Aguilar. Magpakailanman.

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ABSTRACT OF THE DISSERTATION

A Freedom No Greater Than Bondage:
Black Refugees and Unfree Labor at the Dawn of Mass Incarceration during the Civil War and
Reconstruction

by

Samantha Quiambao de Vera

Doctor of Philosophy in History

University of California San Diego, 2022

Professor Daniel Widener, Chair

Professor Rebecca Jo Plant, Co-Chair

“A Freedom No Greater Than Bondage: Black Refugees and Unfree Labor at the Dawn of Mass Incarceration” centers the lives of Black refugees and formerly enslaved people whom the Union army incarcerated during and after the Civil War. This research tackles central questions: Why and how did the Union military justice system, which expanded to police white citizens’ politics, come to be used against the enslaved and recently emancipated? How did the U.S. state expand its carceral capacities in this period? While there have been many studies that center enslaved persons’ transition “from slavery to freedom” and the role of the Union army, I argue that the Union military justice system created a blueprint for a penal and carceral system that was later coopted by Democrat-controlled governments in the South. My work fills a critical gap in the scholarship by

locating the dawn of mass incarceration in the Civil War rather than the Jim Crow era. I thus demonstrate how policing and state violence underpin what many think of as institutions and locations of progressive reform, bringing to light the process by which the enslaved became “slaves of the state.” Their narratives complicate popular understandings of emancipation, which elides continuing forms of slavery and fundamental role of anti-Blackness in nation-building. This study uses the trial records, testimonies, and letters of those who did not make it to freedom in 1865 and those who never made it all. I therefore use military records to trace the making of U.S. incarceration but also to foreground Black resistance against it.

INTRODUCTION

This dissertation traces the lives of Black refugees and formerly enslaved people who experienced incarceration at the hands of the Union military and thereby the federal government. My research is animated by the question: How did the Union military justice system come to be used against the enslaved and recently emancipated? While there have been many studies that center enslaved persons' transition "from slavery to freedom," I argue that the Union military justice system made emancipation a protracted process for thousands of Black southerners by instituting a system of forced labor. Tried by military courts, those convicted of petty offenses such as vagrancy, public drunkenness, and theft were sentenced to months of hard labor in prisons and public works projects. Individuals convicted of more serious crimes were given life sentences in penitentiaries in the Midwest and the North. The U.S. army, therefore, ushered the birth of our current system of mass incarceration, affirming that Black liberation could not be attained through the state. This dissertation contributes to recent scholarship in slavery and incarceration studies by looking at how the recently emancipated became "slaves of the state."¹ Whereas the state apparatus refused to acknowledge the humanity of enslaved persons, incarcerated Black persons and refugees from slavery persistently professed their subjectivity and humanity in court testimonies and written correspondence.

During the Civil War, many Southern Blacks took advantage of the presence of Union military to gain unprecedented freedoms. More and more enslaved persons fled to Union camps, believing that emancipation was coming. As Hahn asserts, "slaves were far more conversant with local and national with local and national politics than has generally been recognized and they fashioned their own interpretations of the sectional conflict." Enslaved persons saw military officials as resources

¹ Dennis Childs, *Slaves of the State: Black Incarceration from the Chain Gang to the Penitentiary* (Minneapolis: University of Minnesota Press, 2015).

and knew that chaos in the South could work to their advantage. Many turned to Union soldiers and officials to challenge slaveowners, subverting the South's racial hierarchy. This dissertation pays careful attention to Black resistance but also attends to a different side of Black refugees' experience. Black southerners were subjected to military authority and became its prisoners as well.

Scholars have overlooked the experiences of Black persons whom the Union imprisoned during and after the Civil War. Their discussions have instead tended to focus on military tribunals that heard cases of political prisoners, including those alleged to be Confederate spies, abettors, and guerilla fighters—people that the Union military had every reason to suppress. Nevertheless, historians have produced critical scholarship that interrogates African Americans' encounters with the Union army, presenting a more complex picture of wartime alliances, negotiations, and the enslaved's sojourn to freedom. This dissertation takes its cue from previous works that shift our perspective from familiar celebratory stories about the war. It considers the Union military not only as a vehicle of liberation, but also as a regime of Black incarceration. For these Black southerners, martial rule signaled another form of captivity, but this time, in the hands of the same institution that waved the banner of freedom.

Black civilians imprisoned by the Union military were not simply the collateral damage of martial rule imposed by Union forces. President Abraham Lincoln's suspension of habeas corpus as well as the wide use of military tribunals criminalized anti-Unionism, but it also led to the convictions of Black refugees (also known as contrabands), enslaved persons in border states, and freedmen who broke military regulations. There are over 240 preserved records of military commission trials involving around 440 Black defendants. The Union Provost Marshal files include thousands more who were incarcerated without trial. Moreover, the Union's provost courts convicted countless Black southerners—the numbers of which remain imprecise as records are incomplete. Although the Records of the Judge Advocate General and the Provost Marshal General

Bureau document the imprisonment of these individuals, historians have yet to account for their experiences.

This dissertation centers Black southerners who traversed the Union's military justice system. It explores the limits of military justice at a time when freedom seemed close at hand. Caught in the throes of the Civil War, many Black men, women, and children were convicted of non-political crimes that resulted in their incarceration. They transitioned from one captivity to another: from the plantation to guarded refugee camps, military prisons, and penitentiaries. Looking at the cases of these Black southerners allows us to see the Union military as a force not only of emancipation but also as one that enforced Black incarceration and labor exploitation. Convicting civilians became a convenient tool for silencing rebel sympathizers and taking advantage of Black southerners who could be directed to building fortifications and performing other tasks. This project thus seeks to engage with the growing scholarship on racialized penal systems. It argues that mass incarceration is not a twentieth-century phenomenon but rather a historical process that saw crucial transformations during the Civil War. Individual U.S. states had long been imprisoning different classes of people, but it was during the Civil War that the federal government expanded its powers to imprison an unprecedented number of persons, both white and Black, free and enslaved. In all likelihood, at the very least one-eighth of enslaved persons in the South experienced some form of imprisonment under the Union military.² By the end of the war, it was the formerly enslaved who filled the cells of penitentiaries in the South.

How and why did the Union military serve as penal institution? During the Civil War, different impulses converged—abolitionist, pro-slavery, colonizationist, and so forth—all of which carried with them different ideas about what a post-slavery world would look like. The Union

² This imprecise estimate is based on the ratio of Black prisoners and white prisoners in military prisons and penitentiaries included in this study. It is, by no means, definite.

military, though composed of mostly Northern men, could not be reduced to one line of thinking. As this dissertation shows, soldiers and military officials' beliefs were diverse; some were sympathetic to the enslaved, others were deeply hostile. Others attributed the enslaved's alleged criminal acts to biology while some saw it as a result of ignorance bred by their condition of enslavement. The logic behind the incarceration of enslaved people was bolstered by these beliefs as well as the paternalist notion that Black person needed to be disciplined in order to be part of white society. But as the following chapters also show, there were military officials who did not believe in the reformatory purposes of prisons but simply sought to confine and subjugate persons of African descent. As Richard Newman argues, Northerners, even those against slavery, have long held concerns about Black freedom and its consequences; discourses about societal degeneration and biological inferiority pervaded anti-Black literature and framed emancipation as problematic and Black persons as incapable of civilization.³

Looking more closely at what individual military officers were doing, it becomes clear that, in dealing with enslaved persons, they were grappling with an ideological question—how much coercion could be used against the enslaved? What was permitted in this shifting landscape when Black freedom seemed at hand? What were the boundaries of forced labor and imprisonment? Yet one thing was certain for military officials: to win the war, they needed the labor of the enslaved, if such labor could be secured with force, then so be it. Later, they knew that for the nation to survive what was an economic disaster, formerly enslaved people needed to be tied down to plantations. And as many plantations and prisons became one and the same, the South was reborn—its agricultural industry not as it was when cotton was king but still a capitalist juggernaut with its gears

³ Richard Newman, “The Grammar of Emancipation: Putting Final Freedom in Context,” in *Beyond Freedom: Disrupting the History of Emancipation*, eds. David Blight and Jim Downs, (Athens: University of Georgia Press, 2017): 11–25.

oiled by penal slaves.

Historiography

This dissertation builds upon Eric Foner's and W.E.B. Du Bois's scholarship.⁴ To both, democracy gave way to plutocracy as Republicans abandoned their commitment to labor rights, tied themselves to powerful industrialists, and thereby subordinated themselves under the dictatorship of capital. In this dissertation, I assert that, on the ground, Black labor rights was hardly the priority for officials since the beginning of the war and even after it. Union officials have placed too much value in subjugated Black labor, even going as far as displacing Black refugees hundreds of miles away to work in camps and prisons. Indeed, the Civil War and Reconstruction era stand as the "second founding" of the nation, but this process can also be better understood when we look at how the war expanded and rebuilt carceral institutions so that they might serve as sources of slave labor. Du Bois posited that the enslaved were a revolutionary proletariat. This dissertation also asks: might we consider incarceration as a response to their general strike? When we look at how Black labor was mobilized during the war, threats of and actual confinement and corporal punishment emerge as essential tools used by the U.S. military.

Mark Neely Jr. Pulitzer Prize-winning book *The Fate of Liberty* was the first to systematically explore and study civilian arrests and imprisonment during the Civil War. Neely's emphasis on how the Lincoln administration curbed civil liberties fills a gap in our understanding of martial rule, wartime presidential powers, and military justice.⁵ The book paved the way for more scholars to

⁴ See Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: Norton, 2019); and W. E. B. Du Bois, *Black Reconstruction in America: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860-1880* (Cleveland: World Pub. Co., 1964).

⁵ Mark Neely, *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (Oxford: Oxford University Press, 1992).

study how Lincoln stretched the powers granted to presidents by the Constitution.⁶ The focus on the Civil War and its implications on civil liberties has not been limited to the nineteenth-century history. It has been a major topic of debate through subsequent political crises in the twentieth and twenty-first centuries. In particular, the aftermath of 9/11 renewed interest in military justice. Chris Bray was among the first to track the evolution of military justice from the revolutionary period to 9/11, providing a discussion on how enslaved people confronted the Union military justice system during the Civil War.⁷ However, these scholars were predominantly concerned about white civilians, specifically white male civilians who were arrested, tried, and imprisoned by the military for sympathizing and aiding the Confederacy. In contrast, Sharon Romeo's scholarship explores how Black women in Missouri navigated the Union military justice system by demanding government protection and citizenship rights long before the conception of the Fourteenth Amendment.⁸

Romeo's study is complemented by the recent focus on Black refugees' experiences.

Chandra Manning's *Troubled Refuge* details the conditions in contraband camps as well as the unstable alliance that refugees forged with Union soldiers; like Steven Hahn, Manning acknowledges slaves' political consciousness, specifically, their determined conviction that slavery—and its abolition—was at the heart of the war.⁹ By looking at camps, Manning illuminates slaves' assertion of freedom even in times when Union officials themselves proved to be obstacles. Amy Murrell Taylor, on the other hand, analyzes Black refugees' quests for freedom during the Civil War by focusing on their day-to-

⁶ Among such historians was Dennis K. Boman who argues that Lincoln infringed upon Missouri citizens' rights in order to curb secessionism in the state. See Dennis K. Boman, *Lincoln and Citizens' Rights in Civil War Missouri: Balancing Freedom and Security* (Baton Rouge: Louisiana State University Press, 2011).

⁷ Chris Bray, *Court-Martial: How Military Justice Has Shaped America from the Revolution to 9/11 and Beyond* (New York: W.W. Norton & Company, 2016).

⁸ Sharon Romeo, *Gender and the Jubilee: Black Freedom and the Reconstruction of Citizenship in Civil War Missouri* (Athens: The University of Georgia Press, 2016).

⁹ Chandra Manning, *Troubled Refuge: Struggling for Freedom in the Civil War* (Westminster: Knopf Doubleday Publishing Group, 2016).

day experiences in various Union camps. She argues that the enslaved's wartime exodus from plantations was crucial to the Union's victory and the weakening of the plantation as a social and labor institution. My work speaks to Taylor's emphasis on wartime mobility and the "long emancipation" by highlighting how the Union's bureaucracy and its conciliatory policies toward white southerners impeded upon the enslaved's search for freedom.¹⁰

In line with recent studies that rethink women's roles during the war, this dissertation recognizes that Black women's experiences cannot be flattened to fit within predominant narratives about surviving the war and navigating the post-war South. Scholars such as Thavolia Glymph rethinks the motivations that drove women's actions during the war, centering their diverse political allegiances and leanings.¹¹ Privileging the experiences and perspectives of non-military persons—women and enslaved persons—have yielded compelling arguments about the Civil War.¹² Historians' focus on Black women's wartime roles allows us to better understand their direct participation in Reconstruction politics, which, as Elsa Barkley Brown asserts, was much more active than previous scholars have assumed.¹³ Black women's fight for sustenance, family reunification, and government protection are clearly visible within the records of the Union military justice system, and the ways that they navigated this policing and carceral apparatus informed their demands of the Freedmen's

¹⁰ Amy Murrell Taylor, *Embattled Freedom: Journeys through the Civil War's Slave Refugee Camps* (Chapel Hill: University of North Carolina Press, 2018).

¹¹ Thavolia Glymph, *The Women's Fight: the Civil War's Battles for Home, Freedom, and Nation* (Chapel Hill: The University of North Carolina Press, 2020).

¹² Stephanie McCurry has argued that the Confederacy's destruction was brought upon by enslaved people and women—persons who did not count as political rights-bearing people in the new nation. McCurry's more recent text, *Women's War*, builds upon this thesis by following the stories of women spies, Black refugee women who defied Union policies, and Black soldiers' wives who stretched the meaning of government protection to their advantage. Stephanie McCurry, *Confederate Reckoning: Power and Politics in the Civil War South* (Cambridge: Harvard University Press, 2010); and Stephanie McCurry, *Women's War: Fighting and Surviving the American Civil War* (Harvard University Press, 2019).

¹³ Elsa Barkley Brown, "To Catch the Vision of Freedom: Reconstructing Southern Black Women's Political History, 1865–1880," in *African American Women and the Vote, 1837–1965*, ed. Ann D. Gordon, et al. (Amherst: University of Massachusetts Press, 1997), 66–99.

Bureau later on.

My inquiry into the relationship of emancipation, coercion, racial policing and security is further informed by studies about slavery and abolition in the Caribbean. As this dissertation shows, the very specter of Black freedom incited racial fears among Northerners, who believed that new migrants would be idle or become vagrants. At the same time, they feared that they would become a cheap source of labor, threatening the livelihoods of white working men. Military and federal officials were concerned that the formerly enslaved would become a burden to the government and therefore used various forms coercive and penal practices to get Black southerners to work. The prospect of abolition thus compelled state officials and private entities to use new and old technologies of domination and confinement to control the lives and labor of the formerly enslaved, a dynamic that can also be observed in the Caribbean. Rebecca Scott's *Slave Emancipation in Cuba*, in particular, sees convict labor in Cuba as a way to "combine the economic flexibility of free labor with the coercion of slavery."¹⁴ Similar forms in coercion were also common in post-abolition Jamaica and Haiti.¹⁵ The promulgation of coercive labor codes testified to the difficulties—if not the impossibility—of reconciling the plantation agriculture with free labor. Attempts to turn the enslaved into wage laborers throughout the Americas were riddled with contradictions. The story of emancipation in the U.S. thus becomes non-exceptional when approached from a hemispheric perspective. As the following chapters demonstrate, the U.S. military used similar coercive and repressive measures against the formerly enslaved.

¹⁴ Rebecca J. Scott, *Slave Emancipation in Cuba: The Transition to Free Labor, 1860-1899* (Princeton: Princeton University Press, 1985).

¹⁵ In Jamaica, as Thomas C. Holt shows, officials relied on coercion and repressive measures against Black Jamaicans to impose their vision of "freedom." Under Toussaint Louverture and his successors, Haitians resisted against labor codes that emulated slavery. Thomas C. Holt, *The Problem of Freedom: : Race, Labor, and Politics in Jamaica and Britain, 1832-1938*. (Baltimore: John Hopkins University Press, 1992); and Carolyn E. Fick, *The Making of Haiti: The Saint Domingue Revolution From Below* (Knoxville: University of Tennessee Press, 1990).

This dissertation explores the modes of criminalization of Black persons that have often been connected to the growth of urban centers in the U.S. Khalil Gibran Muhammad and Tera Eva Agyepong trace the making of Black criminality by looking at urban spaces, northward Black migration, and the works of social scientists who promoted notions of inherent criminality at the turn of the century.¹⁶ Rather than look to urban spaces decades after the war, I turn our attention to the first instances in which masses of enlisted Northern men interacted with a great number of enslaved people. As they arrested, confined, and tried enslaved and formerly enslaved people, preexisting denigrative notions about Black persons were forming, being bolstered, and perhaps even solidifying for many of these men. In this dissertation, I show that the U.S. military criminalized the mobility and resistance of enslaved and formerly enslaved persons. The enslaved who acted in self-defense against enslavers were tried as murderers. Black women's presence in camps and public spaces were rendered as prostitution. Black refugees who fled became fugitives subject to be returned, illegal blockade runners, and vagrants. The criminalization of Blackness was not just tied to state efforts to direct and control Black labor. Military officials also arbitrarily punished Black southerners, acting upon their impulse to subjugate whom they deemed to belong to an inferior race.

Despite the widespread interest in the conflict's military prisons, the enslaved-turned-prisoner has largely escaped scholarly attention. Scholars have instead tended to focus on Union and Confederate soldiers and hardly ever acknowledge the imprisonment of Black civilians by the military.¹⁷ As of yet, there has not been a comprehensive study on how refugees and later free men

¹⁶ See Tera Eva Agyepong, *The Criminalization of Black Children: Race, Gender, and Delinquency in Chicago's Juvenile Justice System, 1899–1945* (Chapel Hill: University of North Carolina Press, 2018); and Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America, With a New Preface* (Cambridge: Harvard University Press, 2019).

¹⁷ See Charles W. Sanders, *While in the Hands of the Enemy: Military Prisons of the Civil War* (Baton Rouge: Louisiana State University Press, 2005) and Lonnie R. Speer, *Portals to Hell: Military Prisons of*

and women experienced incarceration at the hands of the Union. There are, on the other hand, numerous studies on the emergence of the Southern prison industrial complex and how it essentially re-enslaved Black southerners. Attending to the specificity of the convict lease system, Matthew Mancini argues against the notion that the convict prison lease system that emerged in the late nineteenth century was kind of slavery, positing instead that it was a form of an extremely oppressive penal servitude.¹⁸ However, to David Oshinsky, convict leasing was "a functional replacement for slavery, a human bridge between the Old South and the New... Dark skin and forced labor went hand in hand."¹⁹ However, these scholars have largely overlooked the role of Union military generals and governors in instituting convict leasing immediately after the war. The rise of convict leasing, I argue, cannot be fully understood without attending to the various institutional supports that both the U.S. military and the federal government provided to individual penitentiaries in the South.

Black women have largely been absent in earlier studies about southern prisons until recently. My work has greatly benefitted from the scholarship on race, gender, and imprisonment, which have emerged in the last few years. In particular, my analysis of contraband camps builds upon Leflouria's assertion that Black women experienced captivity in deeply gendered ways, positing that Black refugee women's perceived criminality was inextricable from how Union officials maligned their sexual identity. Methodologically, I draw from Leflouria's approach, weaving together the fragmentary and scattered records of Black refugee women who were ever present in Union camps yet rendered silent in the archives. Leflouria argues that the imagined construction of Black

the Civil War (Mechanicsburg: Stackpole Books, 1997).

¹⁸ Matthew J. Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866-1928* (Columbia: University of South Carolina Press, 1996).

¹⁹ David Oshinsky, *"Worse than Slavery": Parchmann Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996), 57.

criminality rationalized the mass imprisonment of Black southerners and, as in slavery, the degradation of Black women and their labors served as the backbone of the New South.²⁰ In understanding the logics behind the criminalization of Black women, Sarah Haley's masterful study *No Mercy Here* has been invaluable.²¹ How Black women's difference and unassimilability were constructed through convict camps speaks to the ways that the freedmen camps I discuss here became spaces in which Black female deviance were manufactured and Black motherhood was denied.

In spite of their differences and disagreements, what these studies have in common is that they all place the rise of mass incarceration in the late nineteenth century. My work intervenes in this scholarship by rethinking the beginning of mass incarceration. As this dissertation shows, the official abolition of slavery in the U.S. and the Thirteenth Amendment did not introduce new practices of re-enslavement. The U.S. military was diverting enslaved people to prison labor as early as 1862, and they were leased as convicts upon their imprisonment in cash-strapped penitentiaries throughout the U.S. Even military governors reinstated the system of convict labor to rebuild destroyed cities. In thus tracing the afterlives of chattel slavery, I look at the Civil War, not as a rupture, but as a crucial period of adjustment and transformation for institutions that allowed the continuance of white supremacy, racial terror, and destruction of Black life. I center the Civil War and Reconstruction as a moment when countless momentarily emancipated persons became penal slaves. The transition from chattel slavery to prison slavery and the building of federally supported prison complex were already well under way by the time the Thirteenth Amendment was ratified.

²⁰ Talitha L. LeFlouria, *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill: The University of North Carolina Press, 2015).

²¹ Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: University of North Carolina Press, 2016).

Argument and Interventions

My dissertation makes three interventions in the study of the Civil War, Reconstruction and U.S. incarceration. First, by documenting enslaved people's encounters with the military police or provost marshals, I argue that the Union military justice system was the first institution that rendered services to enslaved people en masse and recognized them as rights-bearing persons. It was also the first institution to incarcerate thousands of enslaved persons. Historians of the Civil War and Reconstruction have often looked to the Freedmen's Bureau to understand the development of African Americans' relationship with the federal government. However, long before the establishment of the Bureau (March 3, 1865), the provost marshal system had the task of controlling the civilian population. While provost marshals' policing duties focused on seeking out and arresting rebels, spies, disloyal civilians, and Union army deserters, they also instituted a judicial and surveillance systems that policed Black southerners. Provost marshals brought civilians—Black and white—before military courts to be tried for civil crimes and offenses that involved the military. In the process, the federal government for the first time recognized the civil identity of millions of enslaved people. Military officials had to be reminded of this; as Judge Advocate General Joseph Holt wrote in an 1864 decision over one military commission case, "The Administration of the government must and does recognize the colored population of the rebellious states, as occupying the status of freedmen. This office, in considering the present and kindred cases necessarily accepts this recognition with all its legitimate consequences."²² In accepting Black testimony and enslaved people's right to bring whites to court, the military justice system affirmed this civil identity, but by privileging white testimony and failing to account for the needs of freedpeople, it also shored up

²² Report in the Case of West Bogan. Negro, May 30, 1864, Office of Judge Advocate General in "West, Bogan" Court-martial Case Files (from herein CMCF), ID NN-1823, Records of the Office of the Judge Advocate General, 1792-2010, RG 153, NARA.

Black criminality and the second-rate free status of Black people.

Second, I argue that military policies preceded the ratification of Thirteenth Amendment, with its loophole allowing for the recapture of Black people in prisons. The Thirteenth Amendment abolished slavery except as a punishment for a crime. The Union military justice system made penal slaves out of enslaved persons as early as 1862, when the widespread use of trials by military commission began. Hard labor sentences proved useful to the Union, as prison labor accelerated public works in loyal states and the construction of fortifications. It was not uncommon to send prisoners to different locations where their labor was needed. For instance, the Union provost courts in Norfolk, Virginia, sentenced Black southerners to hard labor in various forts and prisons including Fort Monroe and Craney Island.²³ There, they worked alongside “contrabands” who were yet to receive their wages. The military thus blurred the line between a free men and penal slaves. Although these courts provided the military with a source of labor, the military still forcibly took “ablebodied colored men” from the same fort and island in 1863 “to send them to Washington to work in the Quartermaster’s Department.”²⁴ The men resisted, alleging that they have not been paid for their services. During and after the war, as the last chapter of this dissertation recounts, persons convicted by the military were imprisoned and leased to contractors, with whom penitentiaries had outstanding contracts. Given Black refugees’ experiences of being impressed, imprisoned, and coerced into laboring for the military, it is necessary to think more broadly about the ways that the Thirteenth Amendment’s provisions were applied even before its conception. The Amendment can

²³ Studying the provost court records in Norfolk reveals that Black men, women, and even children were convicted of disorderly conduct, vagrancy, and other petty crimes more often than their white counterparts. Their sites of confinement varied from Fort Monroe, Virginia Penitentiary, Castle Thunder, and Craney Island.

²⁴ Asa Prescott to Edwin M. Stanton, July 11, 1863, in Ira Berlin, Steven F. Miller, Joseph P. Reidy, Leslie S. Rowland eds., in *The Wartime Genesis of Free Labor: The Upper South*, Freedom: A Documentary History of Emancipation, 1861-1867, ser. 1, vol. 2 (New York: Cambridge University Press, 1993), 157.

thus be better understood as an articulation of practices widely used in penitentiaries in the North, such as convict leasing, coercive military practices, and technologies of domination that had been used against enslaved persons in the South.

By positing that the Union military provided a blueprint for the South's post-war incarceration system, this dissertation troubles the organizational schema that often divides the history of incarceration into sets: before the Thirteenth Amendment and after Thirteenth Amendment. This amendment did not instantly transform institutions. Rather, it embedded into the Constitution what had already been building up on the ground. By the time Georgia ratified the Thirteenth Amendment in December 1865—the last southern state to do so—the racial demographics of prisons in the South were already becoming increasingly Black, and Union military had already sent thousands of Black southerners to hard labor prisons.²⁵ As the last chapter shows, the rise of convict leasing in the South was facilitated by various Union military officials as they collaborated with both Republican and Democrat state legislators.

While enslaved people in theory possessed the rights of free people in the eyes of the Union military justice system, it remained unclear what those rights were. For instance, the First Confiscation Act, passed in August 1861, essentially emancipated enslaved people who labored for the Confederate army. The act does not mention the words “free” and “slave” and did not grant any civil right to enslaved people. It instead gave official support to General Benjamin Butler's contraband policy. As chapter one shows, the Second Confiscation Act of 1862 explicitly emancipated persons enslaved by rebels and granted them the “rights and privileges of freemen.”²⁶

²⁵ The military's hard labor prison records of Norfolk, Virginia, for instance, show a steady increase in Black prisoners beginning in 1863. See Miscellaneous Lists of the Superintendent, Prisoners Hard Labor Prison, vol. 267, Record Group 393, Part IV, Entry 2126, ID 5608956, National Archives.

²⁶ U.S., *Statutes at Large, Treaties, Proclamations of the United States of America*, vol. 12 (Boston, 1863), 589-92.

The Lieber Code of 1863 and several other general orders reiterated Second Confiscation Act; refugees who reached Union lines or were enslaved by belligerents were entitled to the rights of freemen.²⁷ The vagueness of these guarantees would be carried over into the Fourteenth Amendment, which, as Laura Edwards writes, “was something of an empty vessel.”²⁸ The Fourteenth Amendment “delegated the federal government to protect the rights that it had no power to grant or define” as the “substantive authority over the distribution and meaning of rights lay with the states.”²⁹ Likewise, during the war, military officers were tasked with protecting the rights and persons of the enslaved, and they were often caught between upholding the rights of white citizens and that of the formerly enslaved. . Besides the general instruction that the formerly enslaved should be deemed as freepersons and could not be re-enslaved, military officers had to judge for themselves what rights they possessed and whether to or not to protect them. Black southerners subsequently tried to define for themselves the rights to which they were entitled and the meaning of “government protection.” In this dissertation, I focus on how enslaved people took advantage of their right to sue and to testify against white people. However, while military justice was supposed to blind, the judgments in military courts were clearly informed by racial, class, and gender biases.

²⁷ Specifically, the Lieber Code mandated that “Therefore, in a war between the United States and a belligerent which admits of slavery, if a person held in bondage by that belligerent be captured by or come as a fugitive under the protection of the military forces of the United States, such person is immediately entitled to the rights and privileges of a freeman To return such person into slavery would amount to enslaving a free person, and neither the United States nor any officer under their authority can enslave any human being. Moreover, a person so made free by the law of war is under the shield of the law of nations, and the former owner or State can have, by the law of postliminy, no belligerent lien or claim of service.” Francis Lieber, Article 43, *Lieber Code or General Orders No. 100: Instructions for the Government of Armies of the United States in the Field* (Adjutant General’s Office, 1863).

²⁸ Laura Edwards, *A Legal History of the Civil War and Reconstruction: A Nation of Rights* (New York: Cambridge University Press, 2015), 108.

²⁹ Ibid.

Third, I argue that the beginning of mass incarceration can be better understood as having started during the Civil War. The Civil War produced an unprecedented number of federal prisoners composed of soldiers (Union and Confederate), civilians, and enslaved people. Never before had the federal government been confronted with the task of imprisoning so many persons. In all, scholars accept that around 400,000 persons were imprisoned, the greater half of which were incarcerated by the Union army. This oft-repeated estimate comes from the Commissary-General of Prisoners 1866 report, presented before the House of Representatives, which had specifically asked the Secretary of War for a tally of “Union and rebel soldiers who died while held as prisoners of war.”³⁰ The report indicated “First. That 26,436 deaths of rebel prisoners of war are reported. Second. That 22,576 Union soldiers are reported as having died in Southern prisons. The report also show that 220,000 rebel prisoners were held in the North, and about 126,950 Union prisoners in the South.”³¹ There is a slippage of terms in this report—from “rebel soldiers” to “rebel prisoners”—which have led historians to assume that these numbers only refer to soldiers. Even U.S. Army officials found it difficult to come up with precise numbers. At the turn of the century, Congress passed a bill for providing gravestones for dead Confederate soldiers, which imposed an impossible logistical task upon the War Department.³² The Quartermaster General’s office took up the unhappy assignment and found that some 31,000 rebel prisoners were buried in different parts of the country, but the “number of known and unknown rebel prisoners who died at Federal prisons at the North” was yet to be confirmed.³³ This incomplete but updated figure included civilian prisoners. As Southerners

³⁰ Edwin Stanton to Schuyler Colfax, July 19, 1866, in *The War of the Rebellion: Compilation of the Official Records of the Union and Confederate Armies*, Series 2 Vol. 8, (Washington: Government Printing Office, 1902), 948.

³¹ Ibid.

³² In 1904, Senate Bill 6486 appropriated over 100,000 dollars to locate and put appropriated headstones on the graves of Confederate soldiers.

³³ Alex J. Perry, Brevet Brigadier-General and Quartermaster to Quartermaster-General’s Office, February 6, 1869, in *United States Congressional Serial Set* vol. 4414 (Washington: U.S Government

honored and memorialized dead Confederate soldiers through efforts to locate their graves, they would find in 1902 that Confederate soldiers' gravestones were no different from that of civilian prisoners.³⁴ National cemeteries had given thin white marble headstones to these soldiers—the same headstones used to mark the graves of contrabands, rebel civilians, state prisoners, and persons employed by the quartermasters. Given that Confederate soldiers and civilians convicted by military commissions were often labeled in penitentiary rolls as “U.S. prisoner,” it comes to no surprise that in their deaths, cemeterial clerks would not make the distinction.³⁵ The figures presented in the Commissary-General of Prison's 1866 report thus needs to be interrogated. At the very least, historians need to acknowledge that it is likely that these imprecise estimates included civilians.

As yet, the number of civilians imprisoned by the Union military remains uncertain. As Mark Neely Jr. has noted, scholars have generally accepted an early twentieth-century historian's assertion that the Union army imprisoned 13,535 civilians between 1862 and 1865 even though this number is unverifiable.³⁶ Still, if historians were able count the number of persons imprisoned by the U.S. army through its records, crucial questions remain: how might we account for the countless enslaved persons who experienced incarceration in one form or another but were never named in prisoner rolls? How might we account for those whom generals disciplined at their discretion and threw in prisons to work or the Black “servants” who were imprisoned with their Confederate enslavers? What do we make of enslaved people who were confined in jails by Union officers so they could be

Printing Office, 1900), 3.

³⁴ Samuel E. Lewis, “The Locations and Condition of the Graves of the Confederate Soldiers who Died in Federal Prisons and Military Hospitals and were Buried Near their Places of Confinement” in *United States Congressional Serial Set* vol. 4414 (Washington: U.S Government Printing Office, 1900), 12.

³⁵ As Mark Neely notes, federal authorities distinguished their prisoners from one another. Confederate soldiers were labeled as “prisoners of war”; civilians as “prisoners of state”; and U.S. military officers as “U.S. prisoners.” However, the appropriate use of terms was limited among higher military officials. Neely, *The Fate of Liberty*, 120.

³⁶ Neely 116.

returned to their enslavers? Or Black refugees who were detained—essentially imprisoned—in the same facilities as Confederate prisoners in D.C. for fear they might make their way further North, even though they were not considered as prisoners? These imprisoned persons escape official records, though they were often referenced in military correspondence. In other cases, the enslaved themselves testified to being imprisoned informally and without any due process. Lastly, no one has calculated the number of Black persons imprisoned by provost courts. As soon as provost courts were established in the South, the populations of military prisons and penitentiaries in the region changed from mostly court-martialed Union soldiers and rebel prisoners to Black southerners convicted of petty crimes.

Numbers remain imprecise and elusive, yet, without a doubt, the Civil War created a large population of prisoners, the scale of which required the expansion of the state. While indeed military tribunals in the South were the only sites where Black southerners could seek a semblance of justice, we must not lose sight of the fact that such tribunals were crucial parts of the Union military justice system, a carceral institution that continued to function in the South long after the war. The population growth of military prisoners did not stop after the war, but its racial dynamics changed; freedpeople accused of petty crimes such as theft increasingly filled the cells of prisons supervised by the U.S. military.

To cope with this growing population, the federal government dramatically expanded its carceral capacities, in part by forging new relationships with the states. The federal government—by way of the War Department—created a system and network of incarceration that involved not just military prisons, forts, and camps but also state penitentiaries throughout the United States. To alleviate logistical problems in the South, thousands of convicted military personnel, Confederates, and enslaved peoples in the South were transported in penitentiaries in the Midwest and the North. These penitentiaries financially benefited from adding military prisoners into their prison population

(hitherto composed of prisoners convicted by local county and state courts), as the federal government paid each penitentiary for the boarding of its prisoners. Individual state penitentiaries, which had operated independently prior to the war, became parts of a network created by the federal government, connected to military prisons and in direct communication with the War Department. This unprecedented collaboration was mutually beneficial, as state penitentiaries were also allowed to lease U.S. prisoners to contractors for their labor and keep the profits.

Although numerous military prisons were built during the war, existing penitentiaries and slave pens in the South were still coopted by the Union military to confine the growing number of prisoners of war. Mass incarceration is a loaded term often used in the context of the twentieth century, but we cannot ignore that the Civil War marked the first time that thousands of enslaved persons became federal prisoners. The Union army embedded them within the system of forced military labor and convict leasing, a practice that would fuel the building of the New South. While the number of Black persons in military prisons and Northern penitentiaries never exceeded that of white people, it is important to note that it was Black civilians who bore the brunt of the Union military's system of forced servitude. As rebel prisoners were being released on parole and received pardons, Black women, men, and children were being funneled into the South's emerging incarceration system, which the Union helped to build.

The process whereby formerly enslaved individuals came to be essentially re-enslaved by the state is clearly illustrated by looking at what happened when the Union military took over the city of Richmond in 1865. Soon thereafter, military authorities began trying Black southerners for stealing, vagrancy, and other petty crimes. Military prisons in Norfolk and Richmond, once filled with prisoners of war, began filling up with Black civilians convicted by Union provost courts as early as 1863. They were also then sent to the Virginia Penitentiary where they stayed for as late as 1868. As county courts in Virginia reopened, Black Virginians would again fill the penitentiary. Francis

Pierpont, the military governor of Virginia appointed by President Andrew Johnson, immediately oversaw the reconstruction of the city by putting Black prisoners to work. In March 1866, the legislature voted to authorize Pierpont to lease out convicts to work in coal pits.³⁷ The next month, Pierpont leased 48 prisoners to Clover Hill Mines, all of whom were Black.³⁸ By then, the penitentiary's population was almost entirely Black, an amalgamation of persons convicted by provost courts and county courts. Sometime in May 1867, the James River and Kanawha Company acquired a convict leasing contract with the penitentiary, and for the rest of the year, the company acquired 10 to 43 Black prisoners a month to work on canals.³⁹ Pierpont celebrated convict leasing in his report to the legislature:

...a favorable opportunity presented itself of employing a number of the colored- convicts; on the excavation of two short railroad tracks, where they were employed, with mutual profit to the institution and the contractor, and doubtless to the welfare of the prisoners: they were not over-worked, and had the benefit of the open air. I think it would be well to enlarge the authority of the superintendent, with the sanction of the executive, to employ this class of convicts; outside of the penitentiary.⁴⁰

As this dissertation shows, penitentiaries throughout the country held and leased formerly enslaved persons convicted by military courts. As county courts took over in the South, military governors oversaw the transition of formerly enslaved persons to penal slaves. Their imprisonment testifies to the pipeline that connected the plantation to the penitentiary—from chattel slavery to prison slavery.

³⁷ Virginia General Assembly, *Journal of the House of Delegates of the State of Virginia, for the Session of 1865–1866* (Richmond: Allegre & Goode, 1866), 290.

³⁸ This might have been the first time that Pierpont leased out groups of convicts to mining companies. Records also show that a few persons convicted by provost courts were also hired out to Mason & Gallagher. Records of the Virginia Penitentiary, Series II, Prisoner Register No. 2, Reel 5989. Accession 41558. State Records Collection, The Library of Virginia, Richmond, Virginia.

³⁹ Out of the 66 persons leased out to the James River and Kanawha Company between May and October 1867, six were possibly white and the rest were Black. Virginia Penitentiary's register did not indicate these six persons race next to their name (as it usually did). See Records of the Virginia Penitentiary, Series II, Prisoner Register No. 2, Reel 5989. Accession 41558. State Records Collection, The Library of Virginia, Richmond, Virginia.

⁴⁰ Francis Pierpont, "Message to Senate and House of Delegates," in *Journal of the House of Delegates of the State of Virginia, for the Session 1866–'67* (Richmond: Enquirer, 1867), 668.

Terms and Organization

I privilege the “refugees from slavery” rather than “fugitives from slavery.” Calling a person as a fugitive not only marks them as someone who was fleeing, but as someone fleeing from legal accountability. I firmly believe that it is a disservice to call enslaved persons fugitives, as it gives legal and moral credence to the institution of slavery. A refugee is one who is fleeing from an egregious situation, in this case, slavery and war. A refugee is one who has made the decision to escape in order to preserve themselves. However, I am not using the term “refugee” to validate the Confederacy as a nation. When we think of refugees, we think of persons fleeing political upheavals in their countries. Refugees from slavery, for the most part, were not able to flee to the North. They stayed in camps in the South, and even after the war, many remained in the region.⁴¹ Black refugees were fleeing from enslavement and persecution in the hands of the people that continued to insist they were not persons deserving of any human dignity. The liminal status of Black refugees and persons still enslaved make it difficult to come up with an all-encompassing term. For this reason, I use the term “Black southerners” when referring to both enslaved and formerly enslaved persons.

Rather than follow a strictly chronological structure, this dissertation is organized to reflect how a Black refugee-turned-prisoner might have experienced the expansion of the Union military’s incarceration system. It begins by discussing the anatomy of the US military justice system, the policies that bolstered its powers and how Union officials sought to determine the treatment and

⁴¹ Tera Hunter and Cara Caddoo have both challenged common assumptions about the Great Migration. In particular, they show that African Americans’ movements were not always directed northward. Hunter shows that Black southerners also moved to large cities in the South, particularly Atlanta. On the other hand, Caddoo argues that the Black southerners’ mobility can be better understood as a gradual “step migration,” moving from one small town to another and eventually to larger urban centers. See Tera W. Hunter, *To ‘Joy My Freedom’: Southern Black Women’s Lives and Labors After the Civil War* (Cambridge: Harvard University Press, 1997); and Cara Caddoo, *Envisioning Freedom: Cinema and the Building of Modern Black Life* (Cambridge: Harvard University Press, 2014).

status of Black persons. The subsequent chapters respectively discuss Black southerners' encounters with provost marshals or military police, their confinement in camps and prisons, and their trials by military commission.

Chapter Overview

Chapter one analyzes how military penal institutions grew in response to rebellious white civilians and the perceived need to control the masses of Black persons seeking freedom. It explores the various policies that allowed the Union military to indefinitely detain and imprison white citizens, free persons, and enslaved people. Here, I demonstrate that the federal government and the Union military superseded existing local and state justice systems through various military policies, orders, and force. By using the records of the provost marshals, I show that the Union military justice system, a penal and carceral institution, was the first federal apparatus that refugees from slavery encountered en masse instead of the Freedmen's Bureau. Chapter two explores Black refugees' encounters with Union army provost marshals, who policed, arrested and, on many occasions, returned them to their enslavers. By focusing on the interactions between enslaved people and provost marshals in loyal slave states, I show how Union officers perpetuated the captivity of enslaved persons throughout the war. In Missouri, where planters could keep Black persons in bondage for as long as they swore loyalty to the Union, enslaved persons had to navigate their way to freedom with tact: they had to prove that their enslavers were either rebels themselves or sympathized with the rebellion. If the enslaver had sworn an oath of loyalty to the Union, enslaved persons then had to prove they had lied, an even more difficult task. Moreover, the case of the enslaved women and children show that provost marshals could not be trusted to apply the military orders fairly and uniformly. Justifying their actions on the grounds of military necessity, generals carried out radically different policies regarding refugees from slavery. Many provost

marshals, on the other hand, made arbitrary decisions that did not conform to existing policies or even the principles of military necessity.

Chapter three looks at the carceral spaces that the Union military created, including contraband camps, coopted slave pens, and military prisons. Here, I demonstrate how the U.S. government grappled with—and has yet to resolve—the tension between the perceived necessity to contain racialized persons and the fear of creating dependency. The U.S. military sought to curb Black refugees’ mobility, detaining them in prisons and in camps, thus rendering them dependent upon the government, a condition which Union officials sought to alleviate by forcing them to work. The fear of Black vagrancy and dependency were thus resolved through confinement. Previous studies have described the U.S. military as an army of deliverance and Union camps as sites of freedom. These “from slavery to freedom” narratives simplify the process of emancipation, obscuring continued forms of enslavement. My study instead looks at camps as sites of confinement; this interpretation compels us to connect the Civil War to other historical periods where the U.S. government actively blocked racialized persons, such as Native Americans and Japanese Americans, from being part of U.S. polity through containment. In these cases, reservations and camps aroused anxieties about a government-dependent race among policymakers and the white public. Controlled Black labor was vital to the Union’s success. In prioritizing military needs, Union officials were willing to make former slaves do the same work they did before they fled from planters—a policy that the Freedmen’s Bureau would later struggle with as former slaves resisted.

Chapter four explores the trial cases of Black southerners under military commissions. As whites brought charges against formerly enslaved persons, offenses against white people became offenses against the state. White southerners were therefore reconfiguring their relationship with the federal government by demanding that the U.S. military punish perceived transgressions against

them. Military commissions tried hundreds of Black men, women, and children, handing down sentences that ranged from hard labor at military facilities, imprisonment, to executions. Southern whites accused hundreds of former slaves of various crimes and mainly succeeded in getting them imprisoned. In narratives that privilege the progress of freedom, there is very little space for Black men, women, and children who were held captive by the Union's military justice system. This chapter explores how the individual will of military officers and the gender, race, and age of both defendants and accusers determined the outcome of such trials. It also argues that through these trials, we can see how the changes and continuities in the sexual politics of the South.

Lastly, the conclusion centers the experiences of enslaved persons who were convicted by military commissions and imprisoned in penitentiaries in the Midwest and the North well into the 1870s. Penitentiaries outside the South served as places where formerly enslaved individuals served long-term sentences with hard labor. In 1870, one such imprisoned person, Thomas Brown, asked President Ulysses Grant for a sentence remittance: "I am innocent of the crime alleged against me and shall I suffer for the crimes committed by another man because they suspect me of knowing something about it..."⁴² Centering the experiences of the enslaved-turned-prisoner, this research troubles the view of the North as a free labor landscape and the notion of a post-slavery era. The punitive and penal practices of the military were later incorporated into the South's Black codes, establishing a carceral and labor regime that severely constrained the newly won freedoms of emancipation. My study shows that the war did not disrupt the growth of prisons. Instead, the military's coercive and carceral practices helped usher in prison slavery.

A Note on the Impact of Covid-19

⁴² "Thomas Brown," Court-martial Case Files, MM 2094, Records of the Office of the Judge Advocate General, 1792-2010, RG 153, NARA.

I began this research in the summer of 2018 as a Smithsonian Fellow in Washington, D.C. When I started researching records of Civil War era military commissions and courts martial, I envisioned a project about the incarceration of enslaved and formerly enslaved people during the Civil War and Reconstruction. For the next two years, I collected the trial records of Black southerners but then realized that they were imprisoned not only through convictions by military commissions. I therefore expanded the parameters of my research to include records of the military police, military prisons, and various state penitentiaries until March 2020 when the state of California officially declared a lockdown. In those two years, I have managed to create more than about 500 profiles of Black southerners who were imprisoned by the Union army. They represent a small sample of a large population, but their experiences are nevertheless illuminating. My research relies on their fragmented stories—stories which I plan to more fully investigate once the archives open in full capacity.

The pandemic has impeded my ability to do further research in the National Archive's vast collection of records of Union provost courts, which convicted many Black southerners of petty crimes. I had originally planned another chapter about these courts to explore how they criminalized Black mobility and presence through vagrancy and anti-theft laws. My goal was to flesh out the connections between emancipation and policing. What disciplinary systems emerged out of the Union military's perceived need to control the movement and labor of freedwomen and freedmen? Unfortunately, the National Archives opened only briefly in 2021 before fully closing again due to the Omicron variant. A chapter on provost courts would have allowed me to trace more directly the Union military's role in ushering Jim Crow justice in the South, as my research on Virginia Penitentiary indicates that there were numerous emancipated persons imprisoned there upon being convicted by provost courts. I hope to bolster this argument by doing further research in state archives in Missouri, Louisiana, North Carolina, and South Carolina. The records that I have now

show that a large number of enslaved-turned-prisoners came from these states. By exploring the records of individual penitentiaries in these states, I anticipate finding a similar story as that of Virginia Penitentiary.

My plan for the fifth chapter also had to be adjusted. For this chapter, I intended to provide an overview of how the federal government expanded its carceral capacities and to explore the lives of enslaved persons who were convicted, displaced, and imprisoned hundreds of miles away from where they came. While I have been able to trace some of these individuals, I have not been able to access the records of the penitentiaries in which they were incarcerated, presidential pardon records, as well as the proceedings of their trials. For this reason, I have decided instead to incorporate Chapter 5's limited sources into the conclusion. As I revise this dissertation into a book manuscript, I will build upon my current findings and complement them with new ones. Knowing which archival collections contain information on the War Department's prison expansion and its prisoners, I am confident that I will be able to find more than enough materials to complete this chapter.

CHAPTER ONE

The Growth of the Union Military Justice System

In February 1864, the Union military's Medical Inspector of Prisoners of War, A. M. Clark, wrote a scathing report on the conditions of Myrtle Street Prison: "I can say no word for this building except in unqualified condemnation. It is overcrowded and extremely filthy in every part..."¹ Clark further noted the presence of two prisoners in a cell no more than 12 by 8 by 5, a white woman confined for stealing and a "colored girl for no crime, but detained as a witness."² To emphasize the gravity of the situation, he continued, "When the door was closed the only possible supply of air was through a partly broken pane of glass. The air of the room was rendered still more foul by a close stool, which bore evidence of not having been cleansed for some time."³ Myrtle Street Prison was a two-story building that could only hold 100 persons, but over the course of the war, it would consistently hold 150 or so prisoners at a time. Shortly after General John C. Frémont declared martial law in Missouri in August 1861, the U.S. military coopted the building to use as a military prison; before that, it was St. Louis's largest slave pen and auction house. For the most part, the inmates of Myrtle Street Prison were white men and women suspected of and/or charged with aiding and abetting the Confederate army. In his account of the Civil War in St. Louis, pastor and theologian Galusha Anderson recounts a Black wagon driver's thoughts about the repurposed pen: "'You kno's dat slave-pen, corner Fifth an Myrtle?...Well, de col'ed folks used to carry tings dar fo der chillen to eat. Dis mawnin, boss, I seed white folks carrying in tings for der folks to eat. Ha! ha!

¹ A.M. Clark to Col. W. Hoffman, February 22, 1864, in *The War of the Rebellion: Compilation of the Official Records of the Union and Confederate Armies*, series 2 vol. 6, eds. Fred C. Ainsworth and Joseph W. Kirkley (Washington: Government Printing Office, 1899), 983.

² Ibid.

³ Ibid.

Strange tings happen des days.”⁴ The edifice stood as the site of traffic in human beings, even children, and now it confined the very persons who fought to keep that system alive. The irony was not lost to the people of St. Louis. But as the presence of a “colored girl” indicated, the prison maintained a semblance of its original purpose.

Myrtle Street Prison was emblematic of what the Union military justice system was at the time: an imposing penal and carceral institution for individuals who forfeited government protection when they chose to support the Confederacy. Yet, during the war, the prison also confined the very same persons it had been built to hold—enslaved and formerly enslaved persons. Under Union martial law, many Black southerners would find that captivity and incarceration would remain a feature of their wartime experience. Aside from the need to keep her as a witness, two policies validated the imprisonment of the “colored girl.” First, if her enslaver was a rebel, then the Union army, under the Confiscation Acts, could keep her under their supervision. This same policy had legitimated the Union military’s expropriation of Myrtle Street Prison. When its owner, a rebel and prolific slave trader, fled the city, General Frémont’s men confiscated the building as contraband of war. Just like the enslaved men, women, and children whose enslavers were in active rebellion against the United States, Myrtle Street Prison became the “lawful subject of prize and capture” of the United States under the First Confiscation Act of 1861.⁵ By the time Clark wrote his report, however, the Second Confiscation Act of 1862 had declared persons enslaved by rebels to be free, not just captured subjects of the government. Still, even if Union officials had deemed the imprisoned Black girl to be a free person, Lincoln’s suspension of the writ of habeas corpus meant that she could be confined indefinitely. The girl’s experience was not unusual; numerous Black

⁴ Galusha Anderson, *The Story of a Border City During the Civil War* (Boston: Little, Brown, and Company, 1908), 187.

⁵ *Statutes at Large, Treaties, and Proclamations of the United States of America*, vol. 12 (Boston: Little, Brown, and Company, 1863), 319.

Missourians would find themselves confined in Myrtle Street Prison, not for political crimes or rebellious activities, but for disturbing the order that the military sought to maintain. At times, the reasons for their imprisonment were arbitrary. Whatever freedom martial law under Union authority had brought, it still subjected enslaved and formerly enslaved people under a different disciplinary power that relied on imprisonment.

This chapter looks at how the Union military dealt with disloyal citizens and refugees from slavery during the war and the policies that grew out of these encounters. In particular, it focuses on how the U.S. military served as a police and incarceration apparatus by analyzing the expansion of existing military institutions in response to rebellious white civilians and the perceived need to control the masses of Black persons seeking freedom. It thus shows how the federal government granted more powers to the military to bring civilians to military courts—to bypass civil courts—and incarcerate them indefinitely. Many formerly enslaved persons who reached the Union lines were liable to be arrested and incarcerated for alleged idleness, theft, and various other crimes that white people accused them of committing. By analyzing the growth of the Union military justice system, this chapter illuminates how the Union army, typically viewed as an engine of freedom, also captured refugees fleeing slavery. The work of emancipation was deeply intertwined with Black incarceration. In seeking to maintain control and to discipline masses of civilians, Union troops relied on policing and imprisonment. Discipline entailed returning enslaved people to enslavers who ostensibly remained loyal to the Union, forcing Black refugees to work, and policing their movements, lest they should make their way up North where anxieties about Black vagrancy abounded.

Scholars of Reconstruction have focused much attention on the Bureau of Refugees, Freedmen, and Abandoned Lands—later turned into the Freedmen’s Bureau—but they have largely overlooked the expansion of the military justice apparatus and its effects on enslaved and recently freed people. Contrary to accepted wisdom, the Freedman’s Bureau, established on March 3, 1865,

was not the first federal agency instituted to handle the affairs the thousands of Black persons emerging from bondage. I argue that it was the military justice apparatus—namely, the provost marshal system, military commissions or tribunals, and military prisons—that first dealt with enslaved peoples. From early in the war, Lincoln’s efforts to suppress dissent among white civilians demanded a robust military justice apparatus. At the same time, on the ground, generals were confronted with the challenge of disciplining inexperienced troops and controlling thousands of refugees from slavery flocking to camps. It became increasingly clear to Union generals that the military needed a system that could punish not only soldiers who violated military law, but also disloyal civilians and Black refugees who appeared to threaten the tenuous order that the military strived to maintain.

When the war began, the U.S. military did not have a system that could address the humanitarian crisis that the Civil War created. However, what it did have was a justice system that would expand its powers and functions as the war progressed. Alongside this justice system was a range of varying policies designed to extract labor from Black southerners. Although Union military generals gave different orders that at times contradicted one another, policies toward refugees from slavery tended to prioritize containment and labor productivity. As more and more refugees were confined in contraband camps, Union officials increasingly worried about their dependence and expense upon the government. Getting refugees to work under force and violence thus became a common practice.

Moreover, several policies initiated by both the White House and military generals coalesced to become crucial parts the Union military justice system. These policies did not often align with one another, but they nevertheless became part and parcel of the state’s and the military’s effort to police and contain dissidents, to establish control over southern civilians, and to take advantage the enslaved’s labor. To attain these ends, containment—whether through incarceration or other

means—was necessary. Therefore, when Black southerners reached Union lines or became subject to martial law, they confronted a penal and carceral system.

The Suspension of the Writ of Habeas Corpus

On April 27, 1861, concerned about brewing uprisings in Maryland, Lincoln ordered one of his generals to suspend the writ of habeas corpus (if necessary) near the railroad tracks that connected Philadelphia and Washington, D.C. Shortly after, John Merryman, a Maryland legislator, tried to stop federal troops on their way to Washington, D.C., by destroying bridges. Merryman was promptly arrested on May 25, 1861. The next day, Justice Roger B. Taney issued a writ of habeas corpus in an effort to bring Merryman before a circuit court, but Lincoln's general refused to surrender Merryman. In *Ex parte Merryman*, the federal circuit court sided with Merryman, with Taney ruling that Lincoln did not have the authority to suspend the writ of habeas corpus.⁶ Instead of responding immediately to Taney's decision, Lincoln presented his case to the Congress, arguing that the Constitution is "silent as to which or who is to exercise the power" to suspend the writ.⁷ Thereafter, the Congress approved Lincoln's subsequent suspensions.⁸ In September 1862, Lincoln issued a sweeping suspension of the writ "in respect to all persons arrested, or who are now, or hereafter during the rebellion shall be, imprisoned in any fort, camp, arsenal, military prison, or other place of confinement, by any military authority, or by martial or military commission."⁹ Under

⁶ "The Merryman Case: Decision of Chief Justice Taney." *The New York Times*, June 4, 1861, 9.

⁷ Roy P. Basler et al., eds., *The Collected Works of Abraham Lincoln*, 9 vols. (New Brunswick, N.J.: Rutgers University Press, 1953–1955), 4:430–31.

⁸ "Message of President Lincoln at the First, or Extra Session of the 37th Congress, July 4, 1861." *Collected Works of Abraham Lincoln*, vol. 4. (Ann Arbor: University of Michigan Digital Library, 2001), 430.

⁹ Abraham Lincoln, "Proclamation Suspending the Writ of Habeas Corpus. By the President of the United States of America: A Proclamation, September 24, 1862," in *Abraham Lincoln: Complete Works, Comprising His Speeches, Letters, State Papers, and Miscellaneous Writings*, eds. John George Nicolay, Lincoln, Abraham., Hay, John (New York: Century Company, 1894), 239.

the president's order, all civilians who aided the rebellion and engaged in "disloyal practice"—even those outside of rebellious zones—became subject to martial law and to the military's justice system.

Scholars have long debated the constitutionality of Lincoln's orders, and it is beyond the scope of this chapter to outline those examinations.¹⁰ They have largely focused on the issue of undermining civil liberties, as the suspension of habeas corpus allowed Lincoln to quash dissent. However, the suspension of the writ entailed much more than the repression of whites' anti-Union sentiments and actions.¹¹ Indeed, putting civilians under military jurisdiction and trying them in military tribunals were part of the federal government's efforts to police civilian politics in and outside of the South while quelling support for the Confederacy.¹² As Chris Bray notes, "military commanders had granted themselves the power to decide what political sentiments civilians would be allowed to express..."¹³ Their policies differed from one region to another; nevertheless, whenever white civilians were arrested and imprisoned, public outcry over government overreach and military tyranny almost always followed. But such conclusion should not obscure the fact that the U.S. military arrested and tried thousands of Black southerners for actions that cannot be counted as political dissent. Union officers also sought to maintain order in the South and used their authority to police enslaved persons, marking them as troublesome, idle, criminal, or simply as

¹⁰ For extensive discussion of civil liberties and constitutional law in regard to the Civil War, see Neely, *Fate of Liberty*; Dennis K. Boman, *Lincoln and Citizens' Rights in Civil War Missouri: Balancing Freedom and Security* (Baton Rouge: Louisiana State University Press, 2011); and Laura F. Edwards, *A Legal History of the Civil War and Reconstruction: A Nation of Rights* (Cambridge: Cambridge University Press, 2015).

¹¹ For more on the consequences of the suspension of the writ, see Frances M. Clarke and Rebecca Jo Plant, "No Minor Matter: Underage Soldiers, Parents, and the Nationalization of Habeas Corpus in Civil War America." *Law and History Review* 35, no. 4 (2017): 881-927.

¹² Mark Neely's *The Fate of Liberty* offers a comprehensive and critical look at the political realities of Lincoln's orders during the Civil War. Here, Neely examines Lincoln's suspension of the writ of habeas corpus and how different factions of the political community responded to it. Mark Neely, *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (Oxford: Oxford University Press, 1992).

¹³ Chris Bray, *Court-Martial: How Military Justice Has Shaped America from the Revolution to 9/11 and Beyond* (New York: W.W. Norton, 2016), 136.

persons who needed to be confined for arbitrary reasons.

Focusing on the suspension of the writ and how it threatened the civil liberties of white civilians elides the experiences of the enslaved and Black refugees, for whom the writ meant many things and nothing at the same time. Before the Civil War, northern abolitionists used the writ to demand the release of detained fugitives in their states. In 1855, the Massachusetts legislature passed a law extending the writ of habeas corpus to fugitives from slavery.¹⁴ The provisions of the law were meant to counteract the mandates of the Fugitive Slave Act. Specifically, the law made it difficult for slave claimants to seek legal counsel within the state and illegal to recruit aid from state officials. But there were no such protections for the enslaved in the South; after all, personal liberty laws did not apply to them. Before, during, and after the Civil War, enslaved people in the South were imprisoned in jails indefinitely without a possibility of legal redress. In slave states loyal to the Union, enslavers continued using county jails to confine enslaved persons for safekeeping and when in the middle of a sale. The U.S. military also imprisoned enslaved persons as witnesses and to accompany their Confederate enslavers upon the latter's capture. For instance, names of Black individuals often appear on prisoner rolls with the description "Officer's Servant CSA" with no attending entry of a crime, indicating that Union prison commissioner deemed the needs of Confederate POWs more important than the enslaved themselves. Correspondences between Union officers also confirm that they had allowed the imprisonment "faithful" Black servants upon the request of these POWs.¹⁵ In the South, very few people would or could demand their release from military prisons or county jails, and even when this did occur, the chances for gaining release

¹⁴ "An Act to Protect the Rights and Liberties of the People of the Commonwealth of Massachusetts," in *Acts and Resolves Passed by the General Court of Massachusetts in the Year 1855: Together with the Messages* (Boston: William White, 1855), 924-929.

¹⁵ I.G.W. Steedman, R. M. Hewitt, J.B. Wilson, and O.P. Amacker to Lt. Col. Pierson, October 17, 1863, in *The War of the Rebellion: Compilation of the Official Records of the Union and Confederate Armies*, Series 2 Vol. 6, (Washington: Government Printing Office, 1899), 398.

depended on individual Union officers, whose sentiment for the enslaved often varied from pity to indifference or hatred. For Black southerners, therefore, enslavers, the U. S. military, and the Confederates were all forces unencumbered by the writ of habeas corpus.

In the South's militarized terrain, white southerners brought accusations against Black southerners who challenged them, refused to be re-enslaved, and demanded wages. They turned to Union officers to punish Black men, women, and children, knowing fully well that their words carried weight. Historians have generally overlooked the experiences of Black persons whom the Union imprisoned during the Civil War. Discussions have instead tended to focus on military tribunals that heard cases of white political prisoners, including those alleged to be Confederate spies, abettors, and guerilla fighters—people that the Union military had reason to suppress. Some historians have focused on how formerly enslaved persons took advantage of the situation to free themselves from slavery and resist the power of the slaveholding class. Sharon Romeo argues that Black women turned to the Union military to resist white southerners seeking to reestablish the former racial order; in so doing, they asserted the federal government's relationship with—specifically responsibility to—them and actively carved out their own way to freedom. Chandra Manning's *Troubled Refuge* explores the conditions in contraband camps as well as the unstable alliance that refugees forged with Union soldiers; like Steve Hahn, Manning acknowledges slaves' political consciousness, specifically, their determined conviction that slavery was the central issue of the war.¹⁶ By looking at refugee camps, Manning illuminates enslaved people's assertion of freedom even in times when unsympathetic Union officer themselves proved to be obstacles. I share these scholars' inclination to look at what was happening on the ground rather than focusing primarily on

¹⁶ See Chandra Manning, *Troubled Refuge: Struggling for Freedom in the Civil War* (New York: Knopf, 2016); and Steve Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge: Harvard University Press, 2003).

the war measures that emanated from the White House and Congress. As this chapter shows, policies authorized by the White House did not institute new approaches, but only made official what the military was already being practiced in Union-occupied areas.

Trials by Military Commission

A military commission is a tribunal put together and ran by military officers to try civilians although it had not always been for non-military personnel. As Mark Neely notes, the military commission was an “indisputable institutional legacy” of the Mexican American War—specifically, of General Winfield Scott.¹⁷ In 1847, Scott had grown exasperated with “the wild volunteers [who] as soon as beyond the Rio Grande, committed, with impunity, all sorts of atrocities on the persons and property of Mexicans.”¹⁸ Indeed, as Scott noted, there was no legal structure outlined in the U.S. Constitution or the Articles of War that could hold federal troops in occupied territory accountable for “murder, rape, theft, &c., &c.”¹⁹ Scott subsequently issued a series of orders, creating a military court system that would try soldiers for various offenses. Mexican civilians could also be tried under a military commission if their alleged offense involved the U.S. army and/or its personnel; crimes that only involved Mexican civilians, even within territories that the U.S. army occupied, still fell under the purview of local Mexican courts. Under Scott’s martial law order, “all offenders, Americans and Mexicans, were alike punished—with death for murder or rape, and for other crimes proportionally.”²⁰ Unsurprisingly, Scott saw only benefits to his order, but it is indeed striking that he at least attempted to institute equal treatment of offending civilians and soldiers under martial

¹⁷ Mark E. Neely, *The Civil War and the Limits of Destruction* (Cambridge: Harvard University Press, 2007), 10-11.

¹⁸ Winfield Scott, *Memoirs of Lieut.-General Scott, LL. D.* (New York: Sheldon & Company, 1864), 392.

¹⁹ *Ibid.*

²⁰ *Ibid.*

law. In the Civil War, racism marred the prosecution of Black civilians, as later chapters will show. Military commissions may have seemed colorblind on paper, but the very officers who tried Black persons carried their own prejudices.

It was during the Civil War that generals used military commissions wholesale and expanded its functions. Shortly after declaring martial law in Missouri in August 1861, General John C. Frémont began using military commissions to try disloyal civilians, essentially resurrecting the use of military commissions. Missouri was overrun by rebels, spies, and armed individuals who were deeply hostile to the Union effort though they were not part of the Confederate army. When General Halleck replaced Frémont, he immediately issued General Orders No. 13, which officially authorized the use of military commissions against civilians. It is abundantly clear that Halleck intended commissions to try and punish rebels and their supporters: “Commissions will be ordered from these headquarters for the trial of persons charged with aiding and assisting the enemy, the destruction of bridges, roads, and buildings, and the taking of public or private property for hostile purposes, and also for the condemnation of property taken by our forces from disloyal inhabitants for the use of the Army.”²¹ Owing to his encounters with white women spies, Halleck specified that anyone abetting the enemy “will be arrested, tried, condemned, and shot as spies. It should be remembered that in this respect the laws of war make no distinction of sex; all are liable to the same penalty.”²² Military commissions, therefore, were reinstated as part of a broader counterinsurgency

²¹ General Orders No. 13, Department of Missouri, December 4, 1861, in *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, series 1, vol. 8 (Washington: Government Printing Office, 1901), 405.

²² As Stephanie McCurry shows, Halleck was influential in the creation of the Code. He made sure that women who supported the Confederacy would be considered as disloyal citizens and their “accountability as war traitors [was] provided for.” Halleck’s provisions were outcomes of his experience dealing with white women who served the Confederacy in various capacities. See Stephanie McCurry, *Women’s War: Fighting and Surviving the American Civil War* (Harvard University Press, 2019), 52.

effort.

The suspension of the writ of habeas corpus in September 1862 further expanded the jurisdiction nationwide of military commissions nationwide and subjected any offense by a civilian that could be counted as “affording aid and comfort to Rebels against the authority of the United States” to trials by military commissions.²³ Under martial law, Union generals moved forward with replacing the governmental structure of towns and cities as a way to police and punish southern civilians who supported the Confederate army. Only regions that were deemed rebellious experienced this kind of overreaching military takeover, but the U.S. military still had the authority to arrest persons outside of these regions. The U.S. military overrode civil courts, and even offenses involving only civilians and no military personnel became a matter for the military. Lincoln’s suspension of the writ of habeas corpus was vital in the process of undermining and replacing local governments and courts in the South.

A critical military development also emerged at the same time, the Lieber Code or “General Orders No. 100: Instructions for the Government of the Armies of the United States in the Field” issued in April 1863. The Lieber Code was the very first codification of the laws and customs of war. It outlined a set of rules of conduct for the army, addressed the types of violence that were permissible during wartime, and delineated between combatants and civilians. It also validated and codified the cessation of “of the criminal and civil law, and of the domestic administration and government in the occupied place or territory” under martial law.²⁴ As Gideon M. Hart writes, the Code authorized military commissions to try violations of the “common law of war,” a broadly

²³ Abraham Lincoln, “Proclamation Suspending the Writ of Habeas Corpus,” in *The Collected Works of Abraham Lincoln*, eds. Roy P. Basler, Marion Dolores Pratt, and Lloyd Dunlap (New Brunswick, Rutgers University Press, 1953), 437.

²⁴ Francis Lieber, Article 3, *Lieber Code or General Orders No. 100: Instructions for the Government of Armies of the United States in the Field* (Adjutant General’s Office, 1863).

defined term, which “left many of the details of which offenses were triable by commission up to the individual department commanders.”²⁵ With no Constitutional provision nor congressional act that limited the jurisdiction of military commissions, “the Lieber Code allowed for the trial before military commission of almost any offense, except those under statutory court-martial jurisdiction...committed almost anywhere in the United States.”²⁶ Therefore, by 1863, the U.S. military was empowered to act upon Lincoln’s 1862 suspension of the writ—to arrest and hold any person indefinitely if such person were deemed to be disloyal. With its broad jurisdiction and unclear restrictions, trials by military commissions would be used not just for disloyal and rebellious citizens but also refugees from slavery and formerly enslaved people accused of egregious crimes unrelated to the Union military.

In 1863, the Supreme Court struck down challenges against the jurisdiction of military commissions in *Ex Parte Vallandigham*. When Clement Vallandigham, an ardent and fiery anti-Lincoln politician, was charged and convicted by a military commission of “declaring disloyal sentiments and opinions,” he and his supporters publicly decried the military commission’s arbitrary powers to charge, convict, and sentence civilians at their discretion, agitating for the supremacy of free speech. An Ohio appellate court refused to review the case, compelling Vallandigham to seek a writ of certiorari from the Supreme Court.²⁷ The Supreme Court did review Vallandigham’s case but maintained that it did not have the jurisdiction to review military commission cases. By deciding that the Supreme Court could not intervene with military court decisions, the justices skirted the larger

²⁵ Gideon M. Hart, “Military Commissions and the Lieber Code: Toward a New Understanding of the Jurisdictional Foundations of Military Commissions.” *Military Law Review*, vol. 203, p. 1, (Spring 2010): 29.

²⁶ Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997), 40

²⁷ A writ of certiorari is a request that the Supreme Court demand records of the case from a lower court to review such case. In essence, it is a petition for the Supreme Court to take on the case.

issue of free speech and upheld the president's authority to silence dissent through military power.

The question of the military commission's jurisdiction was raised again in September 1864, when Lambdin Milligan, a zealous anti-Lincoln lawyer was arrested for advocating for violent rebellion against the Union. Milligan sought a writ of habeas corpus from the circuit court; his demand for discharge challenged the military commission's jurisdiction, but two judges clashed over the issue of federal courts' power over appeals arising from military commissions' decisions. They therefore referred the matter to the Supreme Court. In *Ex Parte Milligan* (1866), the Supreme Court sided with Milligan, declaring his trial and conviction by military commission illegal. The Supreme Court upheld the power of *functioning* civil courts over military commissions, claiming that the former should have precedence for as long as they were open and able to carry out its duties. However, this decision did not completely curb military rule; military commissions continued to be used in rebellious zones with generals' support. Moreover, when Congress passed the Reconstruction Act in 1867, dividing the South into military districts, military governors were empowered to assign commissions that stood in for civil courts until rebel states were readmitted to the Union.

Because the use of military commissions started in Missouri, more than half of the existing records of military commission trials occurred in that state. The vast majority of those tried were white, with very few Black individuals. Outside of Missouri, military commissions were used for various offenses by civilians such as murder, rape, arson, and grand larceny. As the war progressed and more Southern towns and cities came under Union control, Black and white southerners turned to military officials to seek redress, hoping that military commissions could dispense the kind of justice they wanted. This nascent system, as chapter four discusses, was up for grabs. Black and white southerners both tried to determine whom and whose interests the Union justice system would serve. As whites brought charges against Black southerners and vice versa, the fight for

control in the South played out in military commission trials.

The Confiscation Acts

Not everyone had the privilege to be tried before a military commission. The suspension of the writ allowed military officials to detain citizens without trial. However, enslaved persons were neither citizens nor even legal persons. Their detainment, therefore, would have amounted to a violation of property rights. Congress maneuvered around this dilemma by passing the First Confiscation Act, and Lincoln signed it into law in August 1861, four months after suspending the writ between D.C. and Philadelphia. The Act deemed enslaved persons who were forced to work for the Confederate army as contraband property, subject to confiscation by the Union military. In essence, the Act complemented the suspension of the writ, as it also allowed for the detainment of persons indefinitely. Only in this case, to detain was to “confiscate,” and the person being held was property, devoid of legal personhood and political consciousness (therefore, their labor for the Confederate army could not be considered as treasonous activity).

Upon being “confiscated,” many enslaved persons were put to work on whatever the U.S. military needed to build or maintain. The policy of confiscating and employing enslaved people began in May of 1861 before the First Confiscation Act was passed when three refugees from slavery approached General Benjamin Butler in Fort Monroe, Virginia, and asked for work in exchange for refuge. Knowing that Confederates were using them for military constructions, Butler refused to return the refugees, declaring them contrabands of war. Congress simply made Butler’s policy official by passing the First Confiscation Act, which stripped rebels of any claim over the persons they enslaved. The word “slave” does not appear in the 1861 Act, as it was not meant to emancipate the enslaved but rather intended to be a practical measure to weaken the Confederates

while providing a labor force for the U. S. military.²⁸ In 1862, Congress passed the Second Confiscation Act, which explicitly stated that enslaved persons within Union lines or whose rebel enslaver has been captured were free. As Siddali Silvana argues, the striking difference between the two acts reflected the debates and rapidly changing in opinion regarding the war in the North. She argues that Americans had to reckon with the tensions between “private property rights, as defined by the Constitution, and individual rights, as defined by the Declaration of Independence,” and, ultimately, Americans reluctantly had to make the shift from honoring private property rights to respecting the rights of all human beings to be free and to enjoy the fruit of their labor.”²⁹ The shift was not swift; there is a marked difference between recognizing enslaved persons as “free” and seeing them as equals, whose personhood was beyond question. Union soldiers and officials would continue using the term “contraband” throughout the war and even after the declaration of Emancipation Proclamation, intimating their inability to disjoin property from person.

While Northern public opinion and discourse turned toward seeing the rebellion as a war for freedom, on the ground, not all military officers and southern Union civilians were of the same mind. The exigencies of war had left many tired, sullen, and desperate—freeing the enslaved was too big of an ask. They were Union men, but not all were abolitionists. Among military ranks, the Emancipation Proclamation was not entirely welcome. Headquartered in St. Louis, Missouri, General Samuel Curtis reported to Lincoln that a “few snarling officers and rebel slaveholders oppose, but the great mass demand that the acts of Congress and your proclamation shall appear a living reality.”³⁰ However, Curtis spoke too soon and underplayed the chasm between pro-slavery

²⁸ While the word “slave” does not appear in the first Confiscation Act, the word “property” is used to refer to enslaved persons. “The First Confiscation Act,” U.S. See *Statutes at Large, Treaties, and Proclamations of the United States of America*, 319.

²⁹ Silvana R. Siddali, *From Property to Person: Slavery and the Confiscation Acts, 1861-1862* (Baton Rouge: Louisiana State University Press, 2005), 2, 5.

³⁰ Samuel Curtis to Abraham Lincoln, Jan. 31, 1863, in *The War of the Rebellion: A Compilation of the*

and anti-slavery factions among Union troops and supporters. Six months after the Proclamation, Curtis's replacement General John M. Schofield reported to Lincoln that the "most serious difficulty I shall have to overcome will arise from the differences...between the factions into which the Union people are unfortunately divided."³¹ Schofield saw his inability to pacify the people in Missouri as "one of my most embarrassing difficulties."³² To his shame, bushwhackers massacred about 150 men and boys in Lawrence, Kansas, specifically targeting freepeople.³³ Schofield had conciliated enslavers, released rebels upon taking the oath of allegiance, and allowed his marshals to aid civil authorities in apprehending refugees from slavery.³⁴ It was clear that conciliation was not enough to restrain slave power. Generals' measures to appease to enslavers did little to pacify militant civilians and only led to the re-enslavement of refugees, as military officers turned them away from Union lines, surrendered them to civil authorities, and even incarcerated them until claimed.

Looking at the Confiscation Acts, the suspension of the writ, and the authority conferred to military commissions together allows us to see the ways that Lincoln and Congress were expanding the military's power to detain persons indefinitely. Certainly, the ends of these policies were to weaken the Confederacy and its popular support. However, granting the government the power to imprison a person indefinitely not only ensnared rebels and Confederate sympathizers. With this

Official Records of the Union and Confederate Armies, vol. 2, series 22 (Washington: Government Printing Office, 1901), 89.

³¹ J. M. Schofield to Abraham Lincoln, Jun. 1, 1863, in *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, Series I—Volume XXII—In Two Parts. Part II—Correspondences, (Washington: Government Printing Office, 1888), 301.

³² *Ibid.*

³³ Lawrence, Kansas at the time was an anti-slavery stronghold. The attack is more popularly known as Quantrill's Raid, after the guerrilla perpetrator's leader William Quantrill. As Chris Post asserts, while historical documents attest to Lawrence's racial strife and pro-slavery guerilla's killings, in Lawrence, popular memory glosses over them, failing to acknowledge and memorialize lost lives. See Chris Post, "Rejecting Violence on the Landscape in Lawrence, Kansas." *Geographical Review* 99, no. 2 (2009): 186-207.

³⁴ J. M. Schofield to Abraham Lincoln, Aug. 28, 1863, in *The War of the Rebellion*, series 1, vol. 22 (1888), 482-484.

authority, Union officials held enslaved persons and refugees from slavery. At a time when everything was in flux and when military orders and policies seem to be jumbled, this authority served as a unifying character among them.

The Confiscation Acts did not stop pro-slavery Union officers from returning persons with free papers or whose enslavers had been proven to be rebels. In 1863, the Superintendent of Contrabands at Helena inquired about a girl named Alice, an imprisoned refugee in Missouri, whose case exemplifies the Union military's often conciliatory approach to enslavers.³⁵ She had been granted free papers, indentured, and then arrested upon a white man's claim that he owned her. Alice was most likely one of the many refugees sent by steamboat to St. Louis when the general in Helena, Arkansas, could no longer maintain the camps there.³⁶ The Superintendent then relayed the matter to the provost marshal general, a white supremacist and enslaver who was all too willing to return enslaved persons even to known rebels.³⁷ The latter subsequently ordered Alice to be released only to re-imprison her again when two other white men claimed her. A Unionist German newspaper, not without merit, accused the provost marshal in question of turning St. Louis's jails into "a real 'slave-pen'" and voiding free papers.³⁸ The Superintendent of Contrabands decried

³⁵ Sharon Romeo acknowledges that there was an ambivalence in Black persons' newly acquired rights, showing how Alice and other women and girls like her were prone to recapture and re-enslavement. Here, I focus on the Union military justice system and officers' denigrating assumptions rendered those rights insignificant. See Romeo, *Gender and Jubilee*, 33-34; "Alice, 1863," Union Provost Marshal's File of Papers Relating to Individual Civilians (hereafter UPM), ID 27511752, M345-Roll 4, RG 109, National Archives and Records Administration (hereafter NARA).

³⁶ The camps in Helena were highly unsafe for refugees and military officers did little to mitigate its problems other than to ship off refugees to different states.

³⁷ Provost marshal James Broadhead was ardently pro-slavery, even proclaiming that he was "willing to go as far as any living man to protect the institution of slavery in the State of Missouri," *Journal and Proceedings of the Missouri State Convention, March 1861* (St. Louis: George Knapp & Co., Printers and Binders 1861), 122.

³⁸ Translation of *Westliche Post*'s article "Missouri as Hunting Ground for Negro-Catchers" in *The War of the Rebellion* (1888), 547.

Alice's imprisonment, asserting that "Arrests made as was this, renders wholly unsafe all contrabands, arriving here, under Government protection."³⁹ Officials' disagreements over what do with Alice was not unique. Union policies were being worked out and debated, and the military's individual encounters with enslaved and formerly enslaved people laid bare what would become a national question: What was the nation going to do with emancipated persons? Alice's free papers were meaningless, because the provost marshal did not see her as having an "independent social existence;" rather, in Orlando Patterson's words, she existed "only through and for the master."⁴⁰ For this reason, he did not follow any legal statutes in her case, and all three white men's claims, no matter how questionable, were entertained. Alice's case is one of the many archival fragments that nevertheless illuminate a continuum of racial, carceral regime—from slavery, indentured labor, to imprisonment.

Certainly, the Union military's policies and procedures were muddled. Generals had essentially given themselves the power determine the fates of enslaved persons much to the frustration of Republican congressmen. Generals' policies varied according to their own predispositions regarding slavery and to what they perceived was practical for the army. As mentioned, General Benjamin Butler had declared refugees from slavery as "contrabands of war" in May 1861. In November of the same year, General Henry Halleck, then in Missouri, issued an order barring enslaved persons from Union lines, claiming that his order "was in my mind, a military necessity. Unauthorized persons, Black or white, free or slave, must be kept out of our camps, unless we wish to publish to the enemy every thing we do or intend to do. It was a military and not a political order."⁴¹ Republican congressmen were outraged and called Halleck's concern about leaking

³⁹ "Alice, 1863," UPM, ID 27511752, M345-Roll 4, RG 109, NARA.

⁴⁰ Orlando Patterson, "Slavery, Alienation, and the Female Discovery of Personal Freedom." *Social Research* 58, no. 1 (1991): 162.

⁴¹ Henry Halleck to F. P. Blair, *Burlington Weekly Free Press* (Burlington, Vermont), Dec. 12, 1861.

information “too bold a pretence[sic]” and a poor excuse for excluding enslaved people, given that other generals had been using them as scouts and informants regarding the enemy’s movements.⁴²

What Republicans and anti-slavery activists in the North found even more egregious was the return of refugees to their enslavers under the command of General George B. McClellan. In a letter to Lincoln, McClellan claimed that, in the course the war, the abolition of slavery should not “be contemplated for a moment” and that “all private property and unarmed persons should be strictly protected, subject only to the necessity of military operations.”⁴³ Protecting the right to private property—human bondage—McClellan further claimed, “would impress the rebel masses and all foreign nations.”⁴⁴ McClellan was responding a recent act that Lincoln approved, the 1862 Act of Prohibiting the Return of Slaves, which forbade exactly what McClellan had just done to appease to enslavers. In contrast to the actions of Halleck and McClellan, generals John C. Frémont and David Hunter ordered the emancipation of *all* enslaved persons under their departments in August 1861 and May 1862 respectively, much to Lincoln’s ire. They had overstepped their bounds, and Lincoln did not see emancipation at the time as an “indispensable necessity.”⁴⁵

The Lieber Code

The lack of uniformity and consistency in the generals’ orders and the overall chaotic military situation compelled Secretary of War Edwin Stanton and General Halleck to solicit the help of Columbia professor and veteran of the Napoleonic wars Francis Lieber. Lieber produced one of the most significant documents to ever emerge out the Civil War: the Lieber Code. As mentioned, it

⁴² “Gen. Halleck’s Case,” *Burlington Weekly Press* (Burlington, Vermont), Dec. 20, 1861.

⁴³ General George McClellan to President Abraham Lincoln, July 7, 1862, in Emory Upton’s *Military Policy of the United States* (Washington: United States War Department, 1912), 319.

⁴⁴ *Ibid.*

⁴⁵ Abraham Lincoln to Albert Hodges, Apr. 4, 1864, in Thomas Harry Williams ed., *Abraham Lincoln: Selected Speeches, Messages, and Letters* (New York: Rinehart, 1957), 262.

was the first codification and clarification of laws by which war should be conducted. There had been other attempts to create such code, but none was ever as thorough and concerned with civilians as the Lieber Code was. Moreover, the Lieber Code identified “military necessity as a general principle to limit violence, in the absence of any other rule.”⁴⁶ Lincoln issued the order in April 1863, as there was a pressing need for guidelines among the Union army’s ranks. Articles in the Lieber Code outlined how prisoners of war, belligerents, and non-combatant civilians should be treated. At its core, however, the Code upholds military necessity as a primary justification for various actions; it allows for the “direct destruction of life or limb of *armed* enemies, and other persons whose destruction is incidentally *unavoidable* in the armed contests of the war.”⁴⁷ At the same time, it prohibits cruelty, including “the infliction of suffering for the sake of suffering or for revenge,” such as torture to gain confession, unwarranted destruction of property, and sexual violence.⁴⁸ The Lieber Code’s principle of military necessity aligned very much with how Union generals viewed it: military necessity warranted measures that might be cruel and/or unjust but were crucial to suppressing the rebellion.⁴⁹ The principle of military necessity privileged courses of action that best serve the war effort over less effective but more humane measures.⁵⁰

The Lieber Code was part and parcel of the federal government’s efforts to control a large army mostly composed of volunteers with limited training and to deal with masses of people extricating themselves from bondage. On the surface, Francis Lieber appears to have had Winfield

⁴⁶ 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 (1998): 213.

⁴⁷ Article 15, *Lieber Code*.

⁴⁸ Article 16, *Lieber Code*.

⁴⁹ For instance, Article 17 deemed it lawful “to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy.” Article 17, *Lieber Code*.

⁵⁰ For a discussion on how Union generals saw the destruction of the South as an incidental result of military necessity, see Mark Grimsley’s chapter “From Pragmatism to Hard War,” *The Hard Hand of War: Union Military Policy Toward Southern Civilians, 1861-1865* (Cambridge: Cambridge University Press, 1997), 142-151.

Scott's concerns about licentiousness and lack of discipline among military ranks when the latter instituted military commissions during the Mexican American War. However, the military's inconsistent treatment of enslaved persons and the absence of uniform legal procedure with which to deal with them also perturbed the professor. In a letter dated in 1865, Lieber recalls telling the Secretary of War that "something ought to be done to organize the negroes who came to us from the enemy, and whom General McClellan was so desirous to return with his compliments."⁵¹ Lieber disagreed with McClellan, and he was further exasperated by one appointed military governor's decision to return enslaved persons to those who claimed them.⁵² Lieber was no abolitionist by his own admission; he too enslaved people for his own household, though he deeply deplored slavery and the Democrats who fiercely protected it. For many years living in South Carolina, he was an active participant in this "nasty, dirty, selfish institution!"⁵³ Like many nineteenth-century Northern politicians, Lieber couched his position against slavery in legal terms, believing that "Slavery exists by municipal law; not by the law of nature... when men are arrayed against each other as belligerents, municipal law falls from them like scales."⁵⁴ Articles 41, 42, and 43 of the Code reiterated the primacy of the law of nature—specifically that which mandates that men are created equal—over municipal laws that uphold slavery and the nullification of the latter upon military occupation. Most importantly, the Lieber Code mandated that all refugees from slavery were free

⁵¹ "Francis Lieber to General Halleck," 10 September 1865, in *Life and Letters of Francis Lieber*, ed. Thomas S. Perry (Boston: James R. Osgood and Company, 1882), 359.

⁵² Not only did Edward Stanley, military governor of North Carolina, return enslaved persons, he also forbade Black children from being taught in school. The military governor's idea of maintaining order was to let North Carolina operate as it did before the war and honor the institution of slavery. See "Edward Stanley to E. M. Stanton," 12 June 1862, in *The War of the Rebellion: Reports, both Union and Confederate, of the first seizures of United States Property in the Southern States, and of all Military Operations in the Field, with the Correspondence, Orders and Returns Relating Specially Thereto* (U.S. Government Printing Office, 1883), 399-402.

⁵³ Lieber, *Life and Letters*, 108.

⁵⁴ Francis Lieber to Edward Bates, Jun. 8, 1862, in *Lieber Papers*, Huntington Library.

upon reaching Union lines, “immediately entitled to the rights and privileges of a freeman.”⁵⁵ What appears to be an evident rebuke of McClellan’s actions, the Code also deems returning refugees to enslavers as an act that “would amount to enslaving a free person, and neither the United States nor any officer under their authority can enslave any human being.”⁵⁶ The Lieber Code was disseminated throughout the U.S. military in the South. To what extent military officers followed them is difficult to determine, but certainly, the return of refugees to rebel masters, their imprisonment, and cases of denied wages confirm that the Code’s principles regarding their status as free people were not entirely upheld.

The Lieber Code afforded legal protection to women, a privilege that women forfeited if they sympathized with and/or aided the enemy. As Stephanie McCurry argues, by outlining who counted as combatants and non-combatants, loyal and disloyal, the Lieber Code “[disjoined] women and innocence” and eroded civilian immunity.⁵⁷ Article 37 gave civilian women the right to demand redress and accountability and mandated that offenses against them be punished: “The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; strictly private property; the persons of the inhabitants, especially those of women: and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.”⁵⁸ As Crystal Feimster argues, the code “defined rape as a war crime without regard to race,” and Black women made use of this law, “[making] visible their continued resistance to sexual violence and claims for sexual justice.”⁵⁹ As the fourth chapter shows, however, in spite of the Code’s colorblind language, rape

⁵⁵ Article 43, *Lieber Code*.

⁵⁶ *Ibid*.

⁵⁷ McCurry 18-19

⁵⁸ Article 37, *Lieber Code*.

⁵⁹ Crystal N. Feimster, “‘What if I am a woman’: Black Women’s Campaigns for Sexual Justice and Citizenship.” In *The World the Civil War Made*, edited by Gregory P. Downs and Kate Masur, 249–68 (University of North Carolina Press, 2015): 256-257

cases involving white and Black women were treated differently. In particular, men accused of the crime—be they Black or white—were more likely to be acquitted or given light sentences when the victim was Black.

Finally, the Lieber Code outlined the power of martial law, clearly codifying the power to arrest, try, and imprison civilians as vested in provost marshals and military commissions. As discussed in the following sections, the Code empowered the Union justice system by not putting clear limits on its jurisdiction. Provost marshals, the military police, were authorized to arrest civilians in regions occupied by the military or without bringing them before military commissions. This military authority would be challenged several times.

The Provost Marshal System

The provost marshal system grew in tandem with the increasing use of military commissions. In March 1863, the U.S. War Department created the Provost Marshal General's Bureau by an act of Congress.⁶⁰ As with many policies passed during the war, congressmen were responding to what was already happening on the ground. U. S. generals have been expanding the duties of provost marshals even before the act; in 1862, General George McClellan organized the Provost Marshal Department and assigned it with “a class of duties which had not before in our service been defined.”⁶¹ Apart from recruiting eligible men for the draft, army provost marshals took on policing responsibilities, patrolling Union-occupied areas, and exercising the authority to arrest civilians who broke military orders or were suspected of treasonous activities and sympathies. McClellan's order was an

⁶⁰ “An Act for enrolling and calling out the national Forces, and for other Purposes,” Congressional Record. 37th Cong. 3d. Sess. Ch. 74, 75. 1863. March 3, 1863.

<https://www.loc.gov/law/help/statutes-at-large/37th-congress/session-3/c37s3ch75.pdf>

⁶¹ “Provost-Marshals Department,” United States War Department, *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, series 1, vol. 5 (Washington: U.S. Government Printing Office, 1881), 30.

important development because it speaks to what generals perceived to be necessary to keep some measure of peace and order. In McClellan's mind, it was crucial to expand the policing capacities of the military. The order also signaled the militarization of public civilian spaces; the very first duty he defined was the "Suppression of marauding and depredations, and of all brawls and disturbances, preservation of good order, and suppression of disturbances beyond the limits of the camps."⁶² "Disturbances" and "good order" were capacious terms, and up to the interpretation of individual provost marshals. The provost marshal general department was also tasked with the "Regulation of hotels, taverns, markets, and places of public amusement."⁶³ As subsequent chapters will show, Black refugees would find themselves arrested for allegedly disturbing public order, and the lack of specificity in their arrest records leave much to be interpreted.

There had been provost marshals before the Civil War, and their roles mainly consisted of ensuring order and discipline among soldiers. However, the Civil War saw the provost marshal system grow, as generals granted marshals more duties in order to control the civilian population. To surveil the going-ons in occupied areas, the U.S. military issued travel passes, without which, Black and white civilians were liable to be arrested. As Wilton P. Moore writes, "Once again, military authority in the person of a provost marshal probed deep into the lives of American citizens. Movement and the right to trade dependent upon passes and permits issued by the provost. Passes and permits, in turn, depended upon the provost's estimate of the loyalty and sincerity of the citizen. The provost marshal acted as both policeman and judge."⁶⁴ However, Moore neglects to note that Black refugees had to contend with provost marshals and guards as they traversed the South to find freedom. Neither citizens nor enslaved, they still fell under the surveillance of provost marshals. The

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Wilton P. Moore, "Union Army Provost Marshals in the Eastern Theater." *Military Affairs* 26, no. 3 (1962): 124.

system was no longer a small organization only responsible for military enrollment; it had essentially turned into a new military policing and surveillance apparatus.

The expansion of the provost marshal system and the dramatic increase in the use of military courts created a highly policed landscape, and enslaved persons were ever more visible as they took advantage of the chaos to free themselves and challenge their enslavers. While both systems emerged from the U.S. military's need maintain order among its ranks, both grew to address the need to control a rebellious swath of the civilian population and to deal with half a million individuals fleeing slavery, many of whom were now asserting a kind of civil existence they had always been denied. The Union military's encounters with Black southerners marked a new interaction with the state. Black men, women, and children could bring charges against their enslavers, testify against any white person, and demand that military personnel defend them. Likewise, white people could bring charges against Black southerners, which often led to the latter's incarceration. Thus, in becoming subject to the Union justice apparatus, enslaved persons became subject to the laws and punishments that the federal government imposed without the full privileges it granted to citizens. They also experienced carceral practices that were not used against white civilians: en masse, they were concentrated in neglected settlements, shipped to different states to labor in military camps where the promise of wages was unmet, and separated from their loved ones—alienated from the kinship ties they forged and maintained with great difficulty in slavery.

Conclusion

In falling under military jurisdiction, refugees, as officers saw it, were bestowed their “freedom,” a condition which the government could revoke when they committed crimes of destitution and hunger. As refugees became nominally free, they were also deemed autonomous and culpable. But as Saidiya Hartman asks, “What does autonomy mean in the context of coercion,

hunger, and certainty?”⁶⁵ Hartman asks this to urge us to think about the condition of destitute Black southerners, as the Freedmen’s Bureau compelled them to enter into labor contracts, lest they should become idle. It is, too, an apt question when applied to refugees during wartime. The arrests and incarceration of refugees for crimes such as vagrancy, stealing, or simply being an enslaved person with a living claimant speaks of Union officers’ impulse to punish the supposedly indolent.⁶⁶ The “government protection” was a guarantee that, on many occasions, proved to be fiction, as refugees were returned, indentured to enslavers or made to labor for meager provisions. Among officers, there was a prevalent concern that they would be a burden for the government. The federal government, in subjecting the enslaved to military justice, recognized Black persons’ alleged criminality first before it recognized their personhood. Having crossed Union lines, refugees experienced another relation of domination.

⁶⁵ Hartman, “Venus in Two Acts,” 127.

⁶⁶ Hartman maintains that during post-emancipation, “Vagrancy statutes provided a means of enforcing the contract system, for basically these laws subjected the unpropertied classes to arrest if they were without a labor contract.” It speaks of how the free labor system was hardly free, circumscribing the lives of Black southerners until there were no options but to subordinate under a contract. Likewise, the conditions of war, Union policing, and Confederate violence rendered the “free” status of refugees meaningless. See Hartman, *Scenes of Subjection*, 147.

CHAPTER TWO

A Dream Deferred: Legal Enslavement, Provost Marshals, and Black Resistance in Border States

On March 17, 1864, an enslaved 16-year-old boy gave his statement to Union officials while imprisoned in St. Louis County jail. The boy, Ashley Bennett, had been torn away from his mother, father, and 14 siblings after their enslaver died. His mother was sold along with his other siblings, while he and his sisters “Mary, Sarah, Almira, Lizzie, Fanny, and Belle, and my Brothers Dan, and Frederick, who is now only a year old” fell into the hands of a new enslaver named Willis Hord.

¹ According to the *Daily Missouri Republican*, Bennett tried to escape as he was being brought to jail for safekeeping, but he was eventually subdued and imprisoned.² Missouri had been a violent hotbed for secessionism, leading General John C. Frémont to establish martial law in 1861 and to conduct investigations of suspected Confederate sympathizers. Enslaved persons in Missouri were well aware that proving their enslavers’ disloyalty to—or simply incendiary remarks about—the Union could spell their release. So, when a provost marshal came to St. Louis jail to inspect its premises and prisoners, Bennett knew exactly what to say:

I am now confined in jail only because I am a slave and my master wants to sell me. I never been guilty of stealing, drinking whisky, or other crime. I was at work at a tobacco factory where a man came there and told me he wanted to hire me, and he then took me right strait[sic] to jail. He did not show me or offer to show me any paper or authority for doing so. I know my master Willis Hoard[sic] to be a strong Secessionist, heard him curse the Union People and say he hoped the South would gain the day and also call the Yankees potbellied sons of Bitches and many other names.³

¹ “Bennett, Ashley,” Union Provost Marshal's File of Papers Relating to Individual Civilians (hereafter UPM), ID 27555496, M345, RG 109, National Archives and Records Administration (hereafter NARA).

² “Tried to make his escape,” *Daily Missouri Republican*, March 15, 1863, 3.

³ “Bennett, Ashley,” UPM, ID 27555496, M345, RG 109, NARA.

The statement was sent to Colonel Bernard Farrar, who had already suspected Hord of aiding rebels before Bennett gave his statement. While serving as a provost marshal in St. Louis two years prior, Farrar had arrested Hord for giving provisions and equipment to the Confederate army. Twelve enslaved persons had incriminated Hord, giving sworn statements that echoed one another: according to them Hord received four strangers in his house and gave them a horse, guns, bread, and butter on August 9, 1862.⁴ Hord pled his case and accounted for the horse and other goods. He walked out of Gratiot Street Prison as a free man. Bennett perhaps knew that Hord was in a precarious position with the Union army; he also almost certainly understood that, if he could prove Hord was a secessionist, he would be free under federal law.

Enslaved people like Bennett stretched the emancipatory potential of the Confiscation Acts. The First Confiscation Act, passed in August 1861, took its cue from General Benjamin Butler's contraband policy, which mandated that enslaved people would not be returned to enslavers, as they were properties being used to wage war against the United States. As Paul Finkelman writes, "[the First Confiscation Act] was not a general emancipation act and was narrowly written to allow the seizure of slaves only in actual use by Confederate forces. The law did not jeopardize the slave property of masters in the loyal slave states, even those sympathetic to the Confederacy."⁵ Yet, the Second Confiscation Act represented a dramatic change in military policy and established a more punitive stance toward enslavers. As many scholars note, it was essentially an emancipation order because it mandated "That every person who shall hereafter commit the crime of treason against the United States, and shall be adjudged guilty thereof, shall suffer death, and all his slaves, if any, shall

⁴ Testimony of Lewis Hoard, Joel Hoard, Rachel Hoard, Susan Gardner, Martha Gardner, Anthony Gardner, Nelson Gardner, Larkin Gardner, Wilson Gardner, and Cyrus Henley. Missouri's Union Provost Marshal Papers: 1861 - 1866 (hereafter MUPMP), Reel F1590, File 2905, Missouri Digital Heritage (hereafter MDH).

⁵ Paul Finkelman, "Lincoln, Emancipation, and the Limits of Constitutional Change." *The Supreme Court Review* 2008, no. 1 (2009): 367.

be declared and made free...⁶ Anyone found supporting Confederates and bushwhackers either in action or in word were liable to lose the persons they enslaved. With the politics of their enslavers policed, enslaved people now had some leverage.

The Emancipation Proclamation meant nothing to Ashley Bennett and his family. Enslaved people in border states were exempt from the Proclamation's mandates, and Missouri would not abolish slavery until January 1865. Tennessee, West Virginia, Kentucky, and Delaware would follow suit that same year. Maryland abolished slavery in February 1864, the first among the border states to do so. Although Tennessee officially joined the Confederacy, eastern Tennessee remained a Union stronghold; keeping slavery intact in Tennessee was initially part and parcel of Lincoln's efforts to maintain his administration's tenuous hold on the state. For Black Missourians, the disappointment was twofold. Two weeks after General John C. Frémont declared martial law in the state and all its enslaved residents free in August 1861, President Abraham Lincoln ordered Frémont to rescind his emancipation edict. Then, sixteen months later, when the Emancipation Proclamation went into effect, Black Missourians would learn that they did not count among the three and half million persons declared to be free.

Lincoln had to handle border states delicately, wary he might lose the loyalist southern majority. But as historian Mark Grimsley notes, "Indeed, in the western states generally, in many respects, the Union army treated the region as if it were enemy country, and indeed enemy country of a particularly virulent kind."⁷ As Dennis K. Boman shows in his treatment of civil liberties in Missouri, Lincoln and military generals faced various difficulties in trying to curb rebel and guerilla

⁶ "An Act to suppress Insurrection, to punish Treason and Rebellion, to seize and confiscate the Property of Rebels, and for other Purposes," in *U.S., Statutes at Large, Treaties, and Proclamations of the United States of America*, vol. 12 (Boston: Little, Brown & Company, 1863), 589–92.

⁷ Mark Grimsley, *The Hard Hand of War: Union Military Policy Toward Southern Civilians, 1861-1865* (Cambridge: Cambridge University Press, 1995), 36.

activities in the state; still, as he argues, Lincoln resorted to curbing the civil liberties of Missourians under martial rule in order to institute a measure of control over the chaotic region.⁸ Turning our attention away from the experiences of white Missourians, Sharon Romeo explores how Black women asserted citizenship rights and demanded service from Union officials, thus conceptualizing their belonging into the nation-state and birthright citizenship before the Fourteenth Amendment guaranteed it to African Americans.⁹ What both scholars show is that in the throes of chaos, Black and white Missourians were caught in the struggle for control of the state and for and against the destruction of the institution of slavery.

This chapter tells the story of how enslaved people navigated the Union army's police, the provost marshal system, and how they used their knowledge of military, federal, and state policies to free themselves and keep their families together. It focuses on enslaved people in border states and their interactions with provost marshals to show that emancipation was a multifaceted process rather than a single event.¹⁰ In seeking freedom, thousands of enslaved people in border states first went to provost marshals to negotiate or demand their freedom. They asserted their rights, as secured by the Confiscation Acts. But this was also story of resistance and its limits in the face of federal power. Not all who went to provost marshals got their freedom; despite the military regulations that deprived rebels of the legal right to own slaves, many enslaved people were returned

⁸ See Dennis K. Boman, *Lincoln and Citizens' Rights in Civil War Missouri: Balancing Freedom and Security* (Baton Rouge: LSU Press, 2011).

⁹ See Sharon Romeo, *Gender and the Jubilee: Black Freedom and the Reconstruction of Citizenship in Civil War Missouri* (Athens: The University of Georgia Press, 2016).

¹⁰ More recently, several scholars have made the same argument. Jim Downs makes the argument that emancipation was a "series of complicated legal, economic, political, and social transitions." On the other hand, Richard Newman argues that emancipation was neither a process nor an event but an ideology often simplified as a loss for whites and gains for African Americans. See Jim Downs, *Sick from Freedom: African-American Illness and Suffering During the Civil War and Reconstruction* (Oxford: Oxford University Press, 2012), 13; and Richard Newman. "The Grammar of Emancipation: Putting Final Freedom in Context," *Beyond Freedom: Disrupting the History of Emancipation*. eds. Jim Downs and David Blight (Athens: University of Georgia Press, 2017), 11-26.

to their enslavers. Provost marshals were vested with the authority to use state-sanctioned violence against those who betrayed the state and to deal with those who were rightless and stateless at the same time. But they also had discretionary power, and their individual will and politics varied. Enslaved persons' journeys to freedom were even more complicated in border states; as provost marshals sought to maintain the uneasy order in these regions, they appealed to alleged Unionist enslavers and honored their requests for assistance in finding Black women, men, and children who had escaped their grasp.

The role of the provost marshals in border states were clearly laid out in December 1862, a year after Lincoln rescinded Frémont emancipation. General Orders. No. 35 issued for the Department of Missouri gave provost marshals the power to police, investigate, and arrest suspected disloyal civilians, spies, guerilla members, and Confederates.¹¹ Moreover, it gave the provost marshals the power to enforce the Confiscation Acts and to protect the right to freedom of “slaves in this department that belonged to rebels in arms, and disloyal men who have given them[rebels] aid.”¹² But they also had to protect the property rights of Unionist enslavers: Article XVIII stated that “And the loyal men may not be interfered with in their rights, whenever slaves seek protection, under circumstances provided for in said act of Congress, it shall be the duty of all provost marshals to take evidence as to the fact.”¹³ Therefore, on paper, provost marshals were obligated to investigate enslaved people's claims that their enslavers were disloyal. If proven to be true, the provost marshal would give the enslaved person a certificate, which mandated that its carrier be

¹¹ By late 1863, the Department of Missouri was organized to cover Missouri, Arkansas, Illinois, parts of western Kentucky, Kansas, Colorado, and Nebraska.

¹² General Orders. No. 35, Hdqrs. Department of the Missouri, St. Louis, December 24, 1862, in *The War of the Rebellion: Compilation of the Official Records of the Union and Confederate Armies Volume XXII - in Two Parts. 1888, Part 1—Reports*, Series I Vol. 22, (Washington: Government Printing Office, 1888): 868–871.

¹³ Ibid.

“considered and treated as a captive of war, and as such is entitled to the protection of all officers of the United States.”¹⁴ The words “free” and “emancipated” do not appear in this certificate although possessing one rendered its carrier technically emancipated, and no military officer was allowed to verify the certificate’s validity at the behest of enslavers. Therefore, the provost marshal had the power to emancipate enslaved persons. However, given the provision that loyal enslavers could keep their human property, provost marshals were caught between maintaining the institution of slavery and undermining it.

As this dissertation shows, the Union military justice system was a nascent apparatus. Its policies developed as the war progressed and were unevenly applied. As with many institutions in the U.S., white supremacy undergirded this system. The individuals who constituted this apparatus were diverse, but they carried with them white supremacist ideas and racist anxieties, so deeply embedded in American society that even abolitionist officials and/or soldiers who had never met enslaved people and acted upon their beliefs. Their preconceived notions shaped their interactions with the enslaved.

By turning our attention to the interactions between provost marshals and refugees from slavery, this chapter shows that the provost marshal system did not just grow in response to the widespread support for the Confederacy and to the need to control untrained volunteers and draftees. I argue that its powers also expanded to police refugees from slavery and to restore the racist order in loyal slave states where Unionism remained precarious. Concession to Unionist enslavers thus took precedence over enslaved peoples’ freedom. In spite of this, enslaved individuals demanded their freedom in creative ways, leaving records of their acts of resistance against the federal government’s mandates and their enslavers. Therefore, I also argue that the political

¹⁴ Ibid.

consciousness of enslaved Black women, men, and children in border states were crucial in securing freedom for themselves and their loved ones.¹⁵ Enslaved persons knew that there was an underlying wariness between military authorities and enslavers, even the ones who claimed to be Unionists. For this reason, they fanned these embers of distrust, reiterating in detail enslavers' incendiary remarks about Union soldiers and their treasonous activities. Enslaved people in these states did not wait for their freedom. They testified, they fled, and they fought for it.

Reading Black Women and Children in the Provost Marshal Archives

Scattered within the vast archive left of the military police are enslaved people's demands, testimonies, and witness accounts. But they are limited, and the archive does not represent—and was never meant to represent—the feelings, struggles, and inner lives of the enslaved. Nevertheless, in this chapter, I attend to the emotional registers of enslaved people's testimonies to expose the fiction of the archives' objectivity. Affect is evident from the actions of the enslaved themselves, tersely and dryly recorded by those in power over their freedom. For instance, after Jane Kamper took her own children from her enslaver, she testified that “My Master pursued me to the Boat to get possession of my children but I hid them on the boat.”¹⁶ It is from these documented moments that I gesture toward the enslaved's grief, fortitude, and joy, and ask readers to think beyond what the bureaucratic archive inscribed. This chapter thus takes its cue from Imani Perry's call for alternative grammars in writing about Black women, as the archive renders them outside of subjectivity and feeling. As Perry writes, “Emotions are always part of analysis and reason, but they

¹⁵ For a fuller discussion of enslaved people's political consciousness, see Steve Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge: Harvard University Press, 2003).

¹⁶ Statement of Jane Kamper, November 14, 1864, in *The Wartime Genesis of Free Labor: The Upper South*, Freedom: A Documentary History of Emancipation, 1861-1867, ser. 1, vol. 2 (New York: Cambridge University Press, 1993), 112-113.

are not often recognized as such because they are submerged according to the grammars we have been taught that treat reason as belonging on a masculine register, along with order, and set in opposition to emotion. This binary is dishonest and damaging.” A mother’s act of liberating herself and her own children is simply too powerful to be conveyed in one sentence or to be reduced as an act of disobedience; it is a determined affirmation of love and kinship. In this chapter, I invite readers to consider the familial and emotional lives of the enslaved and to imagine their journeys as more than a path to becoming a liberal subject.

I center Black women and children in this chapter because their experiences show the diversity of wartime sojourns to freedom, reminding us that enslaved persons’ stories cannot be flattened into one narrative. Gender and age shaped the interactions of enslaved people with provost marshals. Although certainly the Union army exploited the labors of Black women and children, they were deemed less valuable than that of Black men.¹⁷ The military’s labor organization also relied on the objectification and commodification of Black bodies. Black refugees often appear in the military’s records with attending entries about their age, sex, and skills—information that military officials needed so they could determine where they could be sent to work. Men dominate the lists of Black laborers employed by the army, as Black women and children were turned away or made to settle in different camps.¹⁸

However, Black women and children did labor for the army. They performed domestic tasks such as cooking and washing for troops, but, often, to be allowed into Union camps, they had to assert their right to government protection. Enslaved and formerly enslaved women and children

¹⁷ For a discussion of the labors that children, especially boys, performed in the Union military, see Frances M. Clarke and Rebecca Jo Plant. “No Minor Matter: Underage Soldiers, Parents, and the Nationalization of Habeas Corpus in Civil War America,” *Law and History Review* 35, no. 4 (2017): 881–927.

¹⁸ See Thavolia Glymph, “Noncombatant Military Laborers in the Civil War,” *OAH Magazine of History* 22 (2012): 25–29.

emerge in military records as victims of incredible violence, as they were compelled to retell the abuses of their enslavers in order to receive some form of service or the privilege of possessing a piece of paper that marked them as a “captive of war.” As Maria Fuentes writes, “enslaved women appear as historical subjects through the form and content of archival documents in the manner in which they lived: spectacularly violated, objectified, disposable, hyper sexualized, and silenced.”¹⁹ Although Fuentes refers to the records of colonial Caribbean slavery, the same could be said about the records of the provost marshals in the United States. This archive reveals how Black women’s right to freedom needed to be assessed, not according to what they have done, but to factors beyond their control. Their status was contingent upon the politics of their enslavers, who were either loyal or disloyal. Therefore, this chapter also recognized the limits of historians’ efforts to reconstruct the past.²⁰ As Saidiya Hartman reminds scholars dealing with slavery, scholars have to accept that the very archive that made enslaved people’s existence visible to us is founded on violence, marginalizes their humanity, and occludes them.²¹ While this dissertation cannot account for the full lives of its historical subjects, it strives to highlight the intimacy of historical Black resistance to present struggles against anti-Black policing.

“Union Devils”: Incriminating Rebels and the Power of Black Testimony under Martial Law

¹⁹ Maria Fuentes, *Dispossessed Lives: Enslaved Women, Violence, and the Archive* (Philadelphia: University of Pennsylvania Press, 2016), 5.

²⁰ Historians Jessica Millward and Erica Armstrong-Dunbar have expertly confronted archival limitations, weaving together stories of understudied Black women (Charity Folks and Ona Judge, respectively) through innovative use of various sources. See Jessica Millward, *Finding Charity’s Folk: Enslaved and Free Black Women in Maryland* (Athens: University of Georgia Press, 2015); and Erica Armstrong-Dunbar, *Never Caught: The Washingtons’ Relentless Pursuit of their Runaway Slave, Ona Judge* (New York: Simon & Schuster, 2017).

²¹ Saidiya Hartman, “Venus in Two Acts.” *Small Axe: A Journal of Criticism* 12, no. 2 (2008): 14.

In Missouri, guerilla violence ran rampant, more so than any other border state. Geiger attributes Missouri's "anomalously high level of guerrilla violence" partly to the number of secessionist families who were left with massive debts after secessionist politicians and bankers diverted their banks' funds into the state treasury to buy arms.²² Secessionists had essentially loaned their wealth to the state government, but with the advance of Union forces in Missouri, repayment became impossible. Unlike in other states, Missouri's guerrillas were not just composed of poor men, but also men from wealthy enslaving families who were left indebted. Missourians' violent devotion to their domestic institution, even as Lincoln guaranteed to protect it, was also bolstered by the previous events in Kansas, which entered the Union as a free state on January 29, 1861; pro-slavery forces both within and outside the state had shed blood and lost.²³

By the 1850s, Kansas territory was caught in the middle of the country's sectional strife. Southern whites wanted to fold in western territories as slave states, while many Northerners envisioned them as the land of free white labor. The Kansas-Nebraska Act of 1854 gave settlers power to decide whether to allow or prohibit slavery, thus overriding the Missouri Compromise's prohibition of slavery on unorganized territories of the Great Plains.²⁴ However, as Kristen Epps writes, slavery was already deeply embedded in the Kansas-Missouri region: "Slavery had existed

²² Mark W. Geiger, "Indebtedness and the Origins of Guerrilla Violence in Civil War Missouri." *The Journal of Southern History* 75, no. 1 (2009): 51.

²³ The period of violence throughout the 1850s came to be known as Bleeding Kansas. More recently, scholars have rethought this period, exploring the conflict's larger regional scope and national significance. In particular, they trace the longer history of violence along the Kansas-Missouri border that preceded the Civil War and analyze the struggles of the region's residents beyond the binary of pro-slavery and anti-slavery. See Jonathan Halperin Earle, and Diane Mutti Burke. *Bleeding Kansas, Bleeding Missouri: The Long Civil War on the Border* (Lawrence: University Press of Kansas, 2013).

²⁴ As a concession to slave states and to avoid outright conflict, Congress passed the Missouri Compromise in 1820. It admitted Missouri as a slave state and Maine as a free state. It also prohibited slavery in regions north of the 36° 30' latitude line in the Louisiana Territory—then composed of parts of today's Louisiana, Arkansas, Oklahoma, and midwestern states.

here for decades, the residue of an Upper South culture that inscribed slaveholding values on both the physical and metaphorical landscape, shaping the region's social geography into one based largely on slave labor, not free labor."²⁵ Kansas bled as pro-slavery forces and Free Soilers clashed violently throughout the latter 1850s, both sides trying to determine the future of the state. Kansas's pro-slavery settlers were therefore seething with anger and disappointment after the state's entry into the Union as a free state. Bushwackers who had committed massacres in Kansas would do the same in Missouri as soon as the war broke out.²⁶

Federal soldiers and officers knew that Missouri was filled with secessionists who posed as peaceful Unionists in communities that shared their sentiments. Provost marshals arrested and investigated a great number of civilians in border states. As Mark Neely notes, the U.S. military tried more persons in Missouri than in all Confederate states combined, followed by Maryland and Kentucky.²⁷ Border states were divided by national and political loyalties, and Unionists turned against their secessionist neighbors. Nevertheless, familial and personal relationships also prevailed, preventing many whites from reporting their friends, neighbors, and relatives.²⁸ It was the enslaved who outspokenly relayed enslavers' inflammatory language against the Union to assert the veracity and integrity of their words and to free themselves from bondage

In October 1864, Sabry Francis gave a statement before a provost marshal in Missouri. Francis claimed that two years ago, her enslaver, Alex Forster Barr, made her cook several times for

²⁵ Kristen Epps, *Slavery on the Periphery: The Kansas-Missouri Border in the Antebellum and Civil War Eras* (Athens: University of Georgia Press, 2016), 86.

²⁶ William Anderson and William Quantrill were among those who led the massacres of free-soil and freedmen settlements in Kansas and Missouri.

²⁷ Mark Neely Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (Oxford: Oxford University Press, 1991), 167.

²⁸ In her study of Kentuckian women diarists during the war, Ann E. Marshall shows how white families and friends were strained by opposing politics, yet they lived side by side somewhat civilly. Anne E. Marshall, "A 'Sister's War': Kentucky Women and their Civil War Diaries," *The Register of the Kentucky Historical Society* 110, no. 3/4 (2012): 481–502.

“Porter’s men.” Joseph C. Porter was a notorious guerilla leader killed by federal troops in 1863. Providing service and provisions to the enemy was not Barr’s only crime. As Francis stated, Barr actively took part in destroying railroads and telegraph lines: “That night when Barr came home, he told his wife that the bridge was burnt in the telegraph cut and that there was smarter people in the world than the Union devils.”²⁹ Francis specified that she even saw Barr take the matches on that day. Most likely she knew the gravity of the said crime. In December 1861, General Henry Halleck proclaimed that those who destroyed bridges, railroads, and telegraph lines were “guilty of the highest crime known to the code of war, and the punishment is death. Any one caught in the act will be immediately shot; and anyone accused of this crime will be arrested and placed in close confinement until his case can be examined by a military commission, and if found guilty, he also will suffer death.”³⁰ Although Francis’s entire intent is only partly visible to us, it is clear that she was not only giving her testimony to gain her freedom: she wanted her enslavers to be punished to the full extent of military law. Francis also incriminated Barr’s friends, Larkin Caldwell, who had already been imprisoned for giving intelligence to rebels and was on parole.³¹

Even more damning, Francis also implicated John D. S. Dryden, a justice of the Missouri Supreme Court. Francis swore that Dryden and his wife assured the Barrs the judge would get them out of any trouble—“that he[John Dryden] would go to the headman in Saint Louis and he would make [federal authorities] suffer for it.”³² Francis’s testimony confirmed whatever suspicions provost marshals had about the judge. Dryden was the one who helped Larkin Caldwell get out prison on bond. Moreover, only two months before Sabry Francis gave her testimony, a loyalist citizen sent a

²⁹ Testimony of Sabry Francis, October 15, 1864. UPM, ID 27544909, M345, RG 109, NARA.

³⁰ General Orders No. 32, Hdqrs. Department of the Missouri, St. Louis, December 22, 1861 in *The War of the Rebellion: Compilation of the Official Records of the Union and Confederate Armies*, Series II Vol. 1 (Washington: Government Printing Office, 1894): 237.

³¹ “Caldwell, Larkin,” UPM, ID 198456698, M345, RG 109, NARA.

³² Testimony of Sabry Francis, October 15, 1864. UPM, ID 27544909, M345, RG 109, NARA.

letter to the commander of the Department of North Missouri claiming that Dryden was “unquestionably antagonistic to our government. His only effort now seems to be to get arms into the hands of disloyal men.”³³ Dryden’s actions—corroborated by an enslaved woman and Union loyalist—was now hard to ignore, but his position shielded him. However, if Dryden had thought that the southern rebellion would prove victorious and he could keep his post, he was wrong. In May 1865, five months after Missouri abolished slavery, Thomas C. Fletcher, a Union general turned Missouri governor, ordered Dryden to vacate his position. Dryden refused until he was forcibly removed from office.

While martial law in border states meant that enslaved persons’ movements would be policed by both enslavers and Union provost marshals, it also brought opportunities for the enslaved to exert new rights. Black men, women, and children knew that they could turn to provost marshals and military courts to testify against their enslavers. In antebellum South, denying free and enslaved Black people the right to testify buttressed the institution of slavery. As soon as the war was over, southern whites conceded minimal—if not nominal—rights to Black southerners and moved to institute a racist justice system. White men in power like Dryden saw their seemingly invincible authority crumble upon the word of the enslaved. As southern whites had learned from their experience under martial law, given the chance, Black southerners would take full advantage of their right to testify against anyone. Sharon Romeo argues that Black Missourians’ “willingness to enlist military authority, and ultimately, the federal power, as an entity that could dispense rights and justice in response to a variety of petitions and complaints. Free and enslaved people made broad-based ‘rights’ claims in Civil War St. Louis, asserting their belief that federal citizenship was

³³ T.D. Price to Brigadier General Clinton Fisk, August 31, 1864, in “Dryden, John D S,” UPM, ID 27721597, M345, RG 109, NARA.

capacious and ought to include people such as them.”³⁴ Indeed, the records of provost marshals reveal how Black southerners embodied and practiced citizenship even before the federal government anticipated citizenship for all African Americans.

It is no surprise then that as soon as southern states began instituting the Black codes, one of Black southerners’ first and foremost concerns was securing equal rights in courts. In June 1865, African Americans in Virginia organized what’s called a colored convention and subsequently published an “Address from the Colored Citizens of Norfolk, Va., to the People of the United States. Also an Account of the Agitation Among the Colored People of Virginia for Equal Rights. With an Appendix Concerning the Rights of Colored Witnesses Before the State Courts.”³⁵ They argued that “the right to testify in courts of justice is not only essential to personal dignity and safety, but it is the very bulwark of defence of all other individual, domestic and social rights, and that nothing but conviction of a high crime can possibly justify its invasion.”³⁶ In August of the same year, Black Tennesseans held the State Convention of Colored Men; delegates protested “the enforcement of the old code of slave laws that prohibits us from the privilege of schools, that deny us the right to control our families, that reject our testimony in courts of justice...” Colored conventions throughout the South would echo the same grievance and demand the admission of Black testimony in state courts. In all, almost all of the southern colored conventions held in 1865

³⁴ Romeo, *Gender and Jubilee*, 75.

³⁵ The Colored Conventions movement was a series of Black-led and -organized meetings, where Black leaders and attendees discussed state and national issues. The movement began in 1830 and continued well into the end of the nineteenth century. See P. Gabrielle Foreman, Jim Casey, and Sarah Lynn Patterson, *The Colored Conventions Movement: Black Organizing in the Nineteenth Century* (Chapel Hill: The University of North Carolina Press, 2021).

³⁶ Colored Citizens of Norfolk (1865: Norfolk, VA), “Equal Suffrage. Address from the Colored Citizens of Norfolk, Va., to the People of the United States. Also an Account of the Agitation Among the Colored People of Virginia for Equal Rights. With an Appendix Concerning the Rights of Colored Witnesses Before the State Courts, June 5, 1865,” Colored Conventions Project Digital Records, accessed February 14, 2022, <https://omeka.coloredconventions.org/items/show/563>.

addressed and agitated against the denial of testimony by African Americans. Echoing one another, convention delegates in various southern states tied Black testimony to full citizenship. Although African Americans had long been fighting for “equal protection of the laws”—written into the 14th Amendment in 1868—their wartime experiences, particularly their interactions with provost marshals and military courts, could not be disentangled from their post-war demands. The struggle for equal rights in the court of law continued well into the twentieth century.³⁷

Captivity and Re-enslavement

While some provost marshals sought to carry out the letter of the law, others simply ignored it. Some went out of their way to seek justice for enslaved persons. Others willingly sided with white southerners. For enslaved people, turning to a provost marshal was a gamble. It was a risk that many took, and, at times, it only furthered their enslavement. In January 1864, a Unionist man named Thomas C. Williams wrote to Colonel Henry Eitzen, hoping the latter would put a stop to the “persistent efforts” of one Dr. Boothe “in enslaving free negroes: formerly the property of Boyle Ellit who is now and has been about three years in the rebel army.”³⁸ Williams was well aware that men like Ellit forfeited their right to human bondage when they joined the rebel army. More likely, he also knew about Eitzen’s hostility toward Missourians who took the oath under false pretenses.³⁹

³⁷ In her book, Melissa Milewski explores hundreds of post-Reconstruction court cases in the South where Black southerners stood as litigants, challenging their state-sanctioned violence, legal segregation, and disenfranchisement in a bid to protect their properties and communities. See Melissa Milewski, *Litigating Across the Color Line: Civil Cases Between Black and White Southerners from the End of Slavery to Civil Rights* (New York: Oxford University Press, 2017).

³⁸ T. C. Williams to Henry Eitzen, January 15, 1864, in “Boothe,” UPM, ID 27571174, M345, RG 109, NARA.

³⁹ In 1862, Eitzen and several Missouri Convention delegates publicly accused a judge of falsely taking the oath of allegiance and petitioned for his arrest. “To Major General W. H. Halleck, Commanding Department of Mississippi,” *Daily Missouri Republican* (St. Louis, Missouri), March 21, 1862.

If he could not appeal to Eitzen's principles, he could at least appeal to his sense of duty to the law: Williams made sure to point out that a provost marshal at Washington, Missouri, had essentially turned away the persons that Boothe claimed as his and allowed the latter to re-enslave them, violating the Second Confiscation Act. The enslaved persons in question had made the journey to Washington from St. Louis "to assert their freedom and have been subdued."⁴⁰ What is more, the assistant provost marshal in St. Louis, Samuel S. Burdett, signed an official letter authorizing Boothe to retain control of these persons.

Williams was determined, so he gave a sworn statement in court, claiming that Boothe had no legal grounds to keep enslaving Huldah, Malinda, Scylla, Jenny, Cloe, and Abraham. At 40, Huldah was the only adult Boothe kept in bondage. The four girls were all under the age of 16, and Abraham was only six months old. It is not clear who made the 50-mile trek to Washington to find a Union officer that could and would help. No matter how young the girls were, as Williams took pains to note, they knew the injustice of their situation. By February 1864, Williams was getting desperate, and the tone of his letter conveyed a stronger sense of urgency:

These poor people know that they have been held in violation of law for more than two years. They have made nightly journeys to neighboring towns and military stations in search of imaginary Prov Marshals. The state of their minds is such that they cannot be reduced to slavery again in the first morning of their freedom... I shall expect to hear from you on the subject, and I hope you will [inform] me if a rebel can traverse a loyal man's testimony. Boothe is a Rebel, and if he and Ellitt arranged a debt so as to keep the slaves in the family, then he has committed two crimes instead of one.

Tellingly, Williams also framed his request for action as a legal matter; will Union officers assist the rebels in flouting the law? A month later, the provost marshal general deemed Burdett's decision

⁴⁰ T. C. Williams to Henry Eitzen, January 19, 1864, in "Boothe," UPM, ID 27571125, M345-Roll 30, RG 109, NARA.

erroneous and that it “should be revoked by Special Order.”⁴¹ There are no testimonies from Huldah, Malinda, Scylla, Jenny, Cloe, and Abraham. Nevertheless, their experience shows how Union officers perpetuated the captivity of enslaved persons throughout the war while staunch Unionists like Williams sought to counter their efforts.

Moreover, the cases of the enslaved women and children show that not all provost marshals could be trusted to apply the military orders fairly and uniformly. Justifying their actions as military necessity, generals carried out radically different policies regarding refugees from slavery. Many provost marshals, on the other hand, made arbitrary decisions that did not conform to existing policies or even the principles of military necessity. Whether or not Huldah, Malinda, Scylla, Jenny, Cloe, and Abraham successfully fled from Boothe or were assisted by more sympathetic officers is yet to be found out.

Black women and children, more often than not, were perceived as a burden to the Union military. Generals and provost marshals often claimed that sheltering them was nothing but “misplaced charity” or further expense upon the government.⁴² Union officials, on the other hand, often viewed Black men’s labor as necessary to military operations even before they were allowed to enlist. Gender thus continued to dictate the perceived value of Black women, men, and children. Under martial law and a different system of labor organization, Black persons were still assessed according to their laboring capacities. However, whereas in chattel slavery, enslavers put monetary

⁴¹ Provost General Q. P. Anderson’s opinion regarding R. W. Booth in “Booth, Richard W,” UPM, ID 27571125, M345, RG 109, NARA.

⁴² Generals such as Stephen Hurlbut were quick to clear encampments with women and children to make way for military divisions. Calling such camps as “misplaced charity,” Hurlbut, like many other officials, looked for ways to compel them to work. Maj. Gen. Stephen Hurlbut to Lt. Col. John A. Rawlins, 26 March 1863. *The Papers of Ulysses S. Grant*, vol. 7: December 9, 1862-March 31, 1963, 488. Mississippi State University Libraries.

value on Black women's reproductive potential, during wartime, Union officials saw their children as liabilities—nuisances that kept Black mothers from working for the military.⁴³

While Black men were able to escape their enslavers and find work at Union camps more easily than women and children, their desirability as laborers also rendered them vulnerable to the military's system of forced servitude and further confinement. In April 1863, two enslaved men, William King and Paul Prince were imprisoned in Myrtle St. Prison, St. Louis's largest slave pen that was co-opted by the Union military. None of them had committed a crime, and both had worked for the Union army. William King had escaped working for a Confederate general and found his way to a Union camp, where he worked for one Captain Banks.⁴⁴ He was arrested while on furlough traveling alone. King served the Union, but he nevertheless found himself locked in Myrtle Street Prison. The official who interrogated him could not be bothered to acknowledge King's name. Finally convinced that the enslaved person he imprisoned provided important labor to the army, he issued an order to send the "n***** back to Capt Bangs." At only 18 years old, King had already

⁴³ In her study of the development of U.S. welfare policies and the racist logics behind them, Priya Kandaswamy argues that the figure of the "welfare queen" can be traced back to Black women refugees' interactions with the Freedmen's Bureau, an institution that prioritized putting them to work rather than allowing them to devote their time and energies to parenthood. The neglect of Black children was therefore institutionalized at the dawn of emancipation. See Priya Kandaswamy, *Domestic Contradictions Race and Gendered Citizenship from Reconstruction to Welfare Reform* (Durham: Duke University Press, 2021).

⁴⁴ According to King, he served as the waiter of Confederate brigadier general Jeff Thompson in Helena, Arkansas, after the latter forcibly took him from his home in Stoddard County, Missouri. King eventually fled and ended up in a Union camp. There, he was put to work again. At the time of the arrest, he was on a 15-day furlough and on his way to visit home, likely to see if his loved ones were still there. Both the Confederate general and the Union captain gave King a gun—a pistol and a shotgun respectively—indicating that they believed he would not dare use these weapons against them. King's skills were invaluable, and he made sure to point it out to the arresting officer: "I acted as a Pilot to the forces that marched into Bloomfield. I have acted as Pilot a good deal down in that county. I want to go back to Capt Bangs." The Union army was always in need of pilots and scouts, who used their navigational skills and knowledge of the land to guide the army. "King, William," Missouri's Union Provost Marshal Papers: 1861–1866 (hereafter MUPMP), Reel F1151, Missouri Digital Heritage (hereafter MDH).

been enslaved, a fugitive, a pilot, and a prisoner. King's record of laboring for the Union army released him from what seemed like endless captivity.

In prison, King more than likely shared a cell with Paul Prince. Prince had been thrown out by his enslaver some time in 1862 because he was no longer "worth his feed."⁴⁵ From St. Louis, he travelled down south of the Mississippi River to Cairo, Illinois, the strategic location of Fort Defiance, a Union camp. He ended up working on a Union fleet *USS Monarch* and witnessed the Battle of Arkansas Post, a decisive naval battle of the Vicksburg Campaign.⁴⁶ But sometime after coming back to St. Louis, another enslaver claimed Prince, bearing letters testifying to his loyalty to the Union. The enslaver managed to convince the provost marshal to confine Prince until he could be taken to Kentucky. Although many scholars have emphasized military service as a pathway to freedom and citizenship, the experiences of King and Prince show that laboring for the army did not shield the enslaved from imprisonment and re-enslavement. Prince's service did entitle him to his freedom, but such entitlement was not legible to provost marshals who followed the Confiscation Act's mandates. His status still hinged on the loyalty of his enslaver. The federal army surveilled and policed lack persons' mobility in border states, subjecting them to possible re-enslavement. Their journeys for freedom were therefore complicated by the same persons they turned to for assistance.

"The Proclamation of the President certainly secures him in his rights to this property":

Policed Refuge in Tennessee

⁴⁵ "Prince, Paul," UPM, ID 28015760, M345, RG 109, NARA.

⁴⁶ The Battle of Arkansas Post (January 9–11, 1863) was part of the Vicksburg Campaign, a series of naval operations and battles aimed at overcoming the fortress city of Vicksburg in Mississippi. Prince's recollection of his whereabouts align with factual events. It was not unusual for "contrabands" to work on Union fleets. For more on the important contributions of African Americans to the Union's naval forces, see Barbara Tomblin, *Bluejackets and Contrabands: African Americans and the Union Navy* (Lexington, Ky: University Press of Kentucky, 2009).

Scholars and artists alike have often idealized enslaved people's experiences across Union lines. While certainly Black refugees fled to Union-occupied towns and camps to find refuge, their tribulations did not end there. They had escaped their enslavers' surveillance and the carceral landscape of the plantation, but in seeking refuge across Union lines, they found that federal authorities policed their movements and efforts to secure means for survival.⁴⁷ In many ways, Union authorities conciliated to enslavers, impeding enslaved people's efforts to free themselves as they aided enslavers. In Tennessee, enslaved people found that the presence of federal troops did not signal freedom. Although Tennessee was starkly divided by the rebellion, the majority of the population had favored secession. East Tennesseans remained loyal to the Union, having been marginalized in state politics by West and Middle Tennessee for decades.⁴⁸ The success of the Union army's Knoxville and Chattanooga campaigns was a blow to Confederate forces; by fall of 1863, the Union army had a firm hold on East Tennessee.

For many white Tennesseans, the presence of federal troops had made the people they enslaved difficult to control. Indeed, Black Tennesseans were taking full advantage of their newfound freedoms. Black military enlistment and the Union army's constant need for laborers gave Black men who wanted to escape their enslavement leverage. The presence of so many formerly enslaved people—many employed by the federal army—defying their enslavers and occupying public spaces without fear of surveillance and punishment was hard to bear for enslavers. It was even more jarring to them when Black men began carrying arms provided by the army. Under

⁴⁷ Here, I draw from Walter Johnson's conception of slavery as also a "material and spatial condition" besides an "economic and legal one." Transforming the landscape to heighten the overseer's surveillance and the visibility of the enslaved was a crucial strategy to keep enslaved people confined. See Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Harvard University Press, 2013), 209–243.

⁴⁸ James L. McDonough, "Tennessee and the Civil War," *Tennessee Historical Quarterly* 54, no. 3 (1995): 193.

martial law, whites who supported Confederacy still felt they could demand the services of Union authorities. For instance, the residents of Wilson County, Tennessee, wrote to General Lovell Rousseau in 1864, complaining about enlisted Black men who were “coming back to their old homes almost every day. Many of them come back with arms, and nearly all of them conduct themselves towards their former owners and to the white citizens generally in a very insolent manner...”⁴⁹ That formerly enslaved men began taking up arms to protect themselves and their families is of no surprise. As John Cimprich notes, Black refugees who flocked to Fort Donelson in Nashville did not wait for Black military enlistment—officially allowed by the Militia Act of July 1862—but instead picked up the rifles from wounded soldiers and joined skirmishes and battles.⁵⁰ And, in spite of Governor Andrew Johnson’s refusal to recruit Black men for military enlistment once it was allowed, in Tennessee alone, the USCT grew to nearly 24,000 by the end of the war.⁵¹

The wives and families of Black soldiers followed them to camps. Union authorities often found their presence cumbersome, and army commanders were often all too willing to clear and abandon Black refugees’ encampments attached to Union camps.⁵² These places were, as one scholar puts it, a troubled refuge. Apart from being vulnerable to sexual predation by Union soldiers, Black women were policed and suspected of wayward acts. In one such case, a Black woman refugee named Susan was arrested for allegedly stealing a watch, a gold chain, a pillow slip, and a revolver

⁴⁹ J.B. Strund et al. to General Lovell Rousseau, January 21, 1864, Tennessee Union Provost Marshal Database: 1861–1867 (hereafter TUPMP), File 7603, Mf. 1047, Tennessee State Library and Archives (TSLA).

⁵⁰ John Cimprich, *Slavery's End in Tennessee. United States* (Tuscaloosa: University of Alabama Press, 2002), 81.

⁵¹ Kenneth Bancroft Moore, “United States Colored Troops,” *Tennessee Encyclopedia*, Tennessee Historical Society, 2021, last modified March 1, 2018, <https://tennesseeencyclopedia.net/entries/united-states-colored-troops/>.

⁵² For more discussion on how contraband women and children were abandoned and neglected by Union authorities, see Judith E. Harper, *Women During the Civil War: An Encyclopedia* (London: Taylor & Francis, 2004); and Downs, *Sick from Freedom*.

from military encampment in Nashville. The military commission that tried her was haphazardly organized and the witnesses' answers could not confirm the crime. Susan was nevertheless found guilty in July 1864, and she remained incarcerated for 11 months until her case was reviewed by the Judge Advocate General and pronounced void "on account of the indefiniteness of the charge."⁵³ Crossing Union lines, therefore, thus brought enslaved people under a different surveillance and disciplinary system. Susan's arrest shows how easily Black refugees were criminalized and punished even with minimal evidence.

Moreover, refugees from slavery did not escape slave power upon falling under Union martial law as military commissions in border states tried enslaved people for their alleged transgressions against enslavers. Like Susan, Wyatt Beasley was also arrested by provost marshals and tried by a military commission for stealing in 1864. In his trial, the court established that his enslaver, Thomas Beasley, had allowed Wyatt to cultivate tobacco to sell, but the enslaver backtracked; once Wyatt had harvested over 1000 pounds of tobacco, Thomas did not let him have any of it. Wyatt Beasley then ran away to Fort Defiance, not far away from the plantation in Clarksville, Tennessee, where he had been enslaved. The fort fell to Union forces in 1862, and enslaved people in Clarksville flocked to it and found work as the army expanded its fortifications. While there, Wyatt "was repeatedly threatened by his former master that death should follow his return to the place[Beasley's plantation], that he would kill him if he attempted to get his tobacco."⁵⁴ But Wyatt could not bear the thought of losing the fruits of months of hard work, so he asked for permission from provost marshals to retrieve what he was due; as Wyatt's counsel noted during the

⁵³ As the fourth chapter of this dissertation explains, military court trials are reviewed by the Office of the Judge Advocate General, a post held by Joseph Holt. "Susan," Court-martial Case Files (from herein CMCF), ID 1842669, MM-1902, Records of the Office of the Judge Advocate General, 1792-2010, RG 153, NARA.

⁵⁴ "Beasley, Wyatt," CMFC, ID 1865101, NN-2423, Records of the Office of the Judge Advocate General, 1792-2010, RG 153, NARA.

trial, “They gave him a paper, which in reality was nothing more than a pass through the lines but which he in his ignorance supposed was authority to get his tobacco.”⁵⁵ Wyatt retrieved and sold 750 pounds of his tobacco, 250 pounds less than what he had harvested. Since his tobacco was warehoused with his enslaver’s own better-quality harvest, Wyatt claimed that “he was not defrauding his master because the surplus number of pounds of his tobacco would make up the difference in quality.”⁵⁶ Provost marshals arrested Wyatt in Clarksville for larceny and incarcerated him for two months before trial. In his trial, Wyatt and his counsel successfully argued his case, making it clear that Thomas Beasley’s claim of larceny was moot. Their agreement, as the counsel noted, was a common practice in the region, and Wyatt had “served [the Beasley family] faithfully and honestly for 45 years.”⁵⁷ To accuse Wyatt of stealing and dishonesty now seemed preposterous especially given that Thomas Beasley admitted to their agreement in court.

Wyatt was acquitted, but Thomas’s actions were indicative of enslavers’ frustrations over their slipping grasp over the persons they had enslaved. Thomas had willingly entered into an agreement that affirmed Wyatt’s independence, yet, when Wyatt asserted that independence by running away, Thomas was grew spiteful and embittered. He thus turned to the policing apparatus of the Union military, a system that he knew would punish the enslaved for him. The presence of the military police did not deter enslavers from inflicting violence against the persons they enslaved. And, at times, they knew that provost marshals would partake in and support their violent institution. Susan and Wyatt Beasley had to navigate the Union military justice system. On paper, their experience was marked with procedural regularity: they were policed, arrested, tried, and acquitted. But for others, arrest did not lead to a trial nor any form of justice.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

The case of James, an enslaved person, exemplifies the arbitrary ways with which provost marshals exercised their power. James was captured by his enslaver's overseer in Knoxville and confined, shackled, and tortured in the latter's house. His brother, Bob, rescued him but was then subsequently arrested by provost marshals. Elias Smith, who employed Bob, begged the adjutant general for his release. Smith's damning letter accused the Provost Marshal General Samuel Carter of ordering his guards to "to pursue, hunt down and capture the aforesaid slave boy 'James,'"⁵⁸ and upon returning James to his enslaver, the guards stood watch by the house while James was beaten and whipped inside. A formerly enslaved man named George Wallace corroborated Smith's claims, stating that he saw Bob try to rescue his brother and a soldier who "had on a blue overboard and pants, and a sabre" standing by the shed.⁵⁹ As Bob and James fled, the enslaver shot at them, but Provost Marshal Samuel Carter still sided with the enslaver. Carter ordered Bob's imprisonment, claiming he threatened to shoot James's enslaver.

Carter was, as one historian notes, was a "politically savvy man," but his political savviness meant evading questions of fairness and morality while still maintaining the "integrity" of the law. As Carter noted, James's enslaver was a loyal man, and "The Proclamation of the President certainly secures him in his rights to this property."⁶⁰ To that end, Carter used his powers to support Tennessee's legal and brutal institution. Provost marshals were not just conceding to enslavers but actively partaking in white supremacist violence by performing the tasks of overseers and slave hunters. When we look at the individual actions of provost marshals, we see that the policing of the enslaved was not just a problem of concession. The racist logics of slavery undergirded policing under martial law.

⁵⁸ Elias Smith to Major J.A. Campbell, March 25, 1864, TUPMP, File 8499, Mf. 1047, TSLA.

⁵⁹ Testimony of George Wallace, TUPMP, File 8499, Mf. 1047, TSLA.

⁶⁰ S.P. Carter to Brig. Gen. D. Tillson, March 22, 1864, TUPMP, File 8499, Mf. 1047, TSLA.

Family and Loss: Recovering Children and Demanding the Service of Provost Marshals

The very same provost marshal system that policed the mobility of the enslaved was compelled to render service to African Americans and to address their grievances. The legality of slavery in border states meant that enslavers were even more emboldened to lay claim to their right to human bondage, and if they could not hold adults subject their will, they at least tried to hold on to children. Many, too, were willing to cling to this system even after their states had abolished slavery. Documented in the fragmentary records of the provost marshals are the plight of Black mothers and fathers seeking to recruit the services of provost marshals to retrieve their children. These records reveal that for many formerly enslaved people, emancipation was not an event but a long-drawn out struggle, as enslavers refused to honor their states' new restrictions on slavery.

Formerly enslaved people expected the abolition of slavery to bring an end to enslavers' predation of their children. As such, the first order of business for Black mothers and fathers was to secure their safety. In Catherine A. Jones's study of formerly enslaved parents and children's experiences, she writes, "By recovering family members parted by slavery and demanding recognition of the prerogatives of kinship in the new postemancipation social order, freedpeople concretized the promise of freedom."⁶¹ Black mothers, whose reproductive potential and children had been commodified, determined that emancipation should not emulate slavery's constant destruction of maternal bonds.⁶² The affective expressions of maternal love—though muted or prosaically abridged within the records of the provost marshals—still left an indelible mark,

⁶¹ Catherine A. Jones, *Intimate Reconstructions: Children in Postemancipation Virginia* (Charlottesville: University of Virginia Press, 2015), 47.

⁶² Here, I build upon Jennifer Morgan's argument that slavery relied upon the callous commodification of Black women's bodies and reproductive potential. See Jennifer Morgan, *Laboring Women: Reproduction and Gender in New World Slavery*, (Philadelphia: University of Pennsylvania Press, 2004).

testifying to the lengths that Black mothers would go to for their children. In the case of Jane Kamper, a formerly enslaved woman in Baltimore, freeing her children required outmaneuvering her enslaver. Two weeks after Maryland passed a new state constitution prohibiting slavery, Jane Kamper went to a military headquarters in Baltimore. She asked for assistance in retrieving “my bed clothes & furniture” from her enslaver.⁶³ She was unable to take them as her enslaver was hostile; he had “locked my Children up so that I could not find them. I afterwards got my children by stealth & brought them to Baltimore.”⁶⁴ Kamper had freed her own children, knowing fully well that her enslaver would willingly violate the laws that deemed her and her family free. Much like the many enslaved persons in other border states who refused to wait for emancipation, Kamper took liberation into her own hands.

Children were especially vulnerable to new forms of enslavement. Preserving and fostering kinship, as numerous scholars have noted, was a crucial mode of resistance, survival, and emotional sustenance for the enslaved.⁶⁵ That enslavers sought to keep Black children and even infants speak to the ways that slavery was not just a labor and economic regime; after all, enslavers could not put infants and toddlers to work, and it would take a few more years for them to become somewhat productive laborers. Slavery was also a set of social relations that required the subjugation of Black persons and gave the enslaver sexual, commercial, and legal license to deprive them of any semblance of a normative and stable existence. From this perspective, the actions of Jane Kamper’s enslaver appear not as a result of economic calculation but as an insidious effort to destroy Black life, a conscious practice and assertion of white supremacy. Throughout the war and upon

⁶³ Statement of Jane Kamper, 14 November 1864, in *The Wartime Genesis of Free Labor*, 112–113.

⁶⁴ *Ibid.*

⁶⁵ For a comprehensive treatment of kinship among enslaved people, see Ira Berlin and Leslie S. Rowland, *Families and Freedom: A Documentary History of African-American Kinship in the Civil War Era* (New York: The New Press, 1997).

emancipation, African Americans sought their lost loved ones, and by turning to provost marshals, they asserted their parental rights against enslavers' efforts to maintain authority over Black children. Still, the lives of enslaved families were marked with irrevocable loss, and states' different emancipation policies complicated the struggle for recuperating familial ties.

Border states' proximity to one another allowed for the slave trade to continue during the war, complicating formerly enslaved people's struggles. Sometime in 1864 in Missouri, Lucinda Farris was separated from her 15-year-old daughter, Fannie, after James Harper sold Fannie to "a man from Kentucky, who was buying negroes in this state and taking them there."⁶⁶ Harper was summoned by a provost marshal in June 1865 to give a statement regarding Fannie's possible location. When Lucinda Farris asked the provost marshal to help her locate her daughter, she pointed out that James Harper was the brother of a Confederate colonel and "if demanded by authority," Harper would talk. Now technically a free woman, Farris wanted to bring her family together, which had been broken up after her husband joined Union troops as a teamster. According to Harper, his sister had enslaved Lucinda and Fannie, and the mother and daughter tried unsuccessfully to run away to Kansas. The said sister, feeling unsafe in Boonville, took off northward with Lucinda and left Fannie with a man named Dr. Henry. Lucinda was taken across the Missouri River and into Howard County, a region with the second largest population of enslaved persons in the state.⁶⁷

In spite of the violence in Kansas, enslaved people in Missouri fled to the state. Lucinda and Fannie were perhaps hoping to join the many Black Missourians who had traveled through the

⁶⁶ Testimony of Lucinda Farris, June 14, 1865, in "Farris, Fannie," UPM, ID 27745969, M345, RG 109, NARA.

⁶⁷ The sister must have felt threatened by the Union army's growing presence. It is likely she fled northward because the region north of Boonville still remained a hotbed of secessionism at the time. By 1860, Howard County was only second to Lafayette County in terms of the number of enslaved persons.

Underground Railroad.⁶⁸ Had they managed to escape and found aid from free Black persons and abolitionists, their route would have taken them to Lawrence, a town populated by free-soilers and anti-slavery settlers. For many persons seeking freedom, the final stop was not Lawrence, but Canada by way of Iowa and Nebraska.⁶⁹ The odds were against Lucinda and Fannie; they were caught and sent back when they tried to flee.⁷⁰ Although it is not clear how far they got when they fled, they would have been discouraged to go to Lawrence. In August 1863, bushwhackers sacked the town and massacred its residents for their stance against slavery.⁷¹

Lucinda was taken to Jacksonville, Missouri, where she was forced to “[cook] constantly for 6 months day and night—a wagon being employed nightly to carry provisions to Jackman’s camp of guerrillas three miles from town.”⁷² The story of how Lucinda escaped and traveled 170 miles from Jacksonville to St. Louis has yet to be found, but it is clear that she had made the arduous journey to demand that Union authorities bring back the person she held most dear, her daughter. To Lucinda, it was important to frame her demand as a service she was due. She made it clear that she was the wife of a disabled Union soldier and that her enslavers were Confederate supporters. However, Harper was not liable to be arrested, as in the eyes of the law, he had done nothing wrong. Fannie

⁶⁸ As Cheryl Janifer LaRoche notes, Black churches settlements linked northeast eastern states to Illinois, Ohio, Indiana, Kentucky, Missouri, and Kansas. Black Missourians crossing the Mississippi River had to find their ways to Black or abolitionist settlements. See Cheryl Janifer LaRoche, *Free Black Communities and the Underground Railroad: The Geography of Resistance* (Urbana: University of Illinois Press, 2014).

⁶⁹ For more on Kansas routes and the journey of enslaved persons from Missouri, see Richard B. Sheridan, "From Slavery in Missouri to Freedom in Kansas: The Influx of Black Fugitives and Contrabands into Kansas, 1854-1865," *Kansas History* 12 no 1 (1989): 28-47.

⁷⁰ It is not clear who apprehended them. However, Lucinda and Fannie Farris attempted to flee more than once.

⁷¹ For a fuller discussion of the events that led to the Lawrence Massacre, see Michael Woods, *Bleeding Kansas: Slavery, Sectionalism, and Civil War on the Missouri-Kansas Border* (London: Routledge Taylor and Francis, 2016).

⁷² Testimony of Lucinda Farris, June 14, 1865, in “Farris, Fannie,” UPM, ID 27745969, M345, RG 109, NARA.

had been sold under the auspices of the provisional Union government in Missouri when slavery was still legal. The man who had bought Fannie would have had little to no problems transporting the persons he held in bondage. By June 1865—the same month when Lucinda went to Union officers—Fannie would still have been legally a slave. Kentucky would not abolish slavery until December 1865, when the Thirteenth Amendment was ratified. By 1870, Lucinda Farris and her husband, James Farris, were living in St. Louis. James Farris is listed on the census as “Cripple.”⁷³ Their daughter was not living with them.

For many refugees from slavery and emancipated people, finding ways to survive day by day was more than enough to strain one’s body.⁷⁴ But they also devoted what little energy they had to locate their lost loved ones. Lucinda Farris was not just driven by lofty ideas of freedom and the material comforts wage labor could bring. She had, in fact, told the provost marshal that she did not want to recover all the goods Harper had stolen from her, just information on where her daughter could be.⁷⁵ The immense pain from loss that Lucinda experienced and her fortitude, though unacknowledged in the archives, stretches and taxes the historical imagination, but to ignore them is a failure to confront the problem of the archive. The provost marshal records and censuses that note the existence of the Farris family cannot speak to the immense loss the family had endured.

Jailors Against Provost Marshals

⁷³ 1870 United States Census, Subdivision No. 15, St. Louis, Missouri, digital image s.v. “Farris, James,” *FamilySearch.com*.

⁷⁴ Amy Murrell Taylor has explored how securing basic necessities for survival were fundamental to Black refugees’ struggle for freedom. See Amy Murrell Taylor, *Embattled Freedom: Journeys through the Civil War’s Slave Refugee Camps* (Chapel Hill: The University of North Carolina Press, 2018).

⁷⁵ According to Lucinda Farris, James Harper “kept all her food clothes, twenty six yards of domestic she bought with her own money, and sugar and coffee her husband had bought her before he left for the army (an enlisted man) enough to last her one year and also \$26 in silver which her old mother had saved, and gave her when on her dying bed,” Testimony of Lucinda Farris, June 14, 1865 in “Farris, Fannie,” UPM.

Uneven emancipation in border states complicated enslaved people's efforts, and if they did find provost marshals who were sympathetic to their cause, the latter would have to act within the limits of the law or the bounds of military necessity. Jails in Kentucky operated as slave pens, much like they did prior the war. If Fannie was indeed taken to Kentucky, her enslaver would have found many jailors willing to confine her should she try to escape. Jailors kept enslaved persons for rebels and sympathizers, and provost marshals had to force them to be released. Even when faced with orders from generals, jailors protested the release of enslaved persons. One such jailor in Livingston, Kentucky, even complained to General Henry Halleck after a provost marshal forcibly took an enslaved man from his jail and sent the man to work in Ford Donaldson.⁷⁶ In May 1863, a provost marshal in Smithland, Kentucky, tried to secure the release of Ben—a jailed enslaved man who was about to be sold—on the grounds that Ben was already declared as contraband. The provost marshal had been ordered to take Ben and put him to work under his department or in Lebanon, where a federal garrison was station.

With his last name unidentified, it is difficult to determine what happened to Ben. He might indeed have been sold or “confiscated” by the provost marshal and compelled to work at the garrison. Ben's release hinged on the guiding principle behind Union officials' decisions—military necessity.⁷⁷ To such end, the labor of Black men, women, and children was used throughout the war

⁷⁶ “Super, Thomas,” UPM, ID 28259392, M345, RG 109, NARA.

⁷⁷ Francis Lieber, the drafter of Lieber Code, defined military necessity as follows: “Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist.” Francis Lieber, Article 15, Lieber Code or General Orders No. 100:

and was the primary reasoning behind the military enlistment of Black men. The small garrison in Lebanon where Ben might have been taken was certainly in need of workers. The Louisville and Nashville Railroad ran through the area, and it was a crucial supply line for the Union army. Military necessity, at times, overrode the authority of civil authorities. Union officers, after all, operated in border states as though they were all enemy territory, whether these states seceded or not.

W. H. Wetherton, the jailor who refused to hand over Ben, claimed that he was “forced to hold him as a civil prisoner unless arrested and the boy let out by military hands. This is no willful disobedience of mine, but my duty as an officer of the commonwealth of Kentucky.”⁷⁸ It was, in fact, willful disobedience on the part of Wetherton. Four months after his spat with the provost marshal, Wetherton again would confront not one but two provost marshals in a bid to keep two enslaved persons, Sam Emery and Andy Tate, in his jail. Writing an irritated letter to a Union military commander, Wetherton argued that “Sam has claimants, descendants from his master, and Andy's master was living at last accounts. If these negroes are not Subject to the proclamation, I should like to have an order for their recovery.”⁷⁹ Andy Tate was nowhere to be found, but Sam Emery was already integrating himself into the Union army, perhaps doing a variety of work for the troops. As in the case of Ben, the federal army’s need for labor superseded any desire to respect civil authorities. When the 117th Regiment U.S. Colored Troops was organized in Covington, Kentucky, a year later, Emery enlisted.⁸⁰

Instructions for the Government of Armies of the United States in the Field (Adjutant General's Office, 1863).

⁷⁸ W.H. Wetherton to Brig. Gen. M.P. Manson, May 5, 1863, in “Ben,” UPM, ID 27554902, M345, RG 109, NARA.

⁷⁹ W.H. Wetherton to Brigadier General J. T. Boyle, September 13, 1863, in “Emery Sam,” UPM, ID 27738705, M345, RG 109, NARA.

⁸⁰ Compiled service record, Samuel Emery, Private, Co. F, 117th Reg. U.S. Colored Troops; Organization Index to Pension Files of Veterans Who Served Between 1861 and 1900, compiled 1949 - 1949, documenting the period 1861 - 1942, RG 15; National Archives, Washington, D.C.

Determining Emancipation

Wetherton, like many enslavers in border states, sought to buttress slavery during the war's first few years to keep the institution intact. But in the face of enslaved people's resistance, enslavers themselves would cave in. The wave of freedom could not be subdued. As enslaved people challenged their enslavers and took advantage of martial law to move around, escape their watchful eye, and render their services to the Union army for pay, whites in border states felt their peculiar institution was crumbling. In July 1865, Thomas Bryan, an enslaver, wrote to General John M. Palmer, commander of the Department of Kentucky, asking the latter to free a multigenerational family he enslaved. Kentucky's state laws would not allow him to manumit them unless they left the state, and, as Bryan noted, he was eager to free them, as his authority slipping away: "Though the legal owner of these slaves, I can't because of military rule control them."⁸¹ Kentucky's law was designed to rid the state of free Black persons, but it was already home to thousands of enslaved people set on becoming free in the same place they had endured enslavement. Upon Bryan's request, Palmer signed free papers for the families.

A month later, Thomas Bryan's nephew made the same request to Palmer, asking for free papers for George Ann Cleary, her eight children, and her brother, Richard Keys. The enslaver noted that he "could give them the regular free papers according to our state law but in that case they would have to leave the state. So they prefer paper signed by yourself."⁸² Keys had family enslaved by someone else, and it is likely that Cleary's husband was in the same position. In a bid to preserve family and kinship ties, they refused to leave. The state of Kentucky abolished slavery in December 1865, less than five months after the Clearys and Richard Keys got their free papers. By

⁸¹ "Bryan, Thomas," UPM, ID 2760256, M345, RG 109, NARA.

⁸² "Bryan, Elijah C," UPM, ID27602389, M345, RG 109, NARA.

1870, Richard Keys was still living in the same county with his wife and three children, whom he had refused to leave behind even if it meant becoming a free man himself.⁸³ Enslaved people thus set the terms of their emancipation, refusing to be thrown out of the state and separated from their loved ones. While many refugees from slavery used their mobility to free themselves, others relied on immobility. Their refusal to work and to leave allowed them to challenge their frustrated enslavers.⁸⁴ The state in which they were enslaved was also the place they called home, a place where, in spite of slavery's horrors and hardships, they nevertheless built relationships, raised children, and clung to those they held dear. Slavery had consistently denied Black southerners the right to construct, care, and keep together their own families, and to George Ann Cleary and Richard Keys, they would not allow emancipation to do the same.

Conclusion

Whatever freedom meant to Lucinda Farris, George Ann Cleary, and Richard Keys, it also meant having their spouses and children back. And we can only surmise that for James Farris, like many Black soldiers, fighting was “for the lives and livelihoods of their families, not for abstract ideals. This was the foundation upon which they had stood armed in alliance with the nation-state in the rebellion to destroy slavery, and it would continue to propel their visions for the future.”⁸⁵ Emancipation promised family reunification—something that Union officials did not prioritize

⁸³ 1870 United States Census, Fifth Precinct, Fayette, Kentucky, digital image s.v. “Keyes, Richard,” *FamilySearch.com*.

⁸⁴ Stephanie Camp re-conceptualizes different forms of resistance among enslaved persons. She posits that acts of truancy, sneaking away, slowing down, and refusing to work challenge containment within the plantation and can be read as expressions of affirmations of bodily freedom. See Stephanie M. H. Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* (Chapel Hill: The University of North Carolina Press, 2004).

⁸⁵ Tera W. Hunter, *Bound in Wedlock: Slave and Free Black Marriage in the Nineteenth Century* (Cambridge: The Belknap Press of Harvard University Press, 2017), 204.

unless prompted to by the enslaved themselves. But the enslaved dreamed of it and allied themselves with the U.S. army for it. The measures they had to take in the name of freedom were not the end goal. They were just that: means to something greater, something unrealized.

Dreams of freedom—deferred by Lincoln’s repeal of Frémont’s emancipation in Missouri and by Lincoln’s Emancipation itself—exploded. Black Missourians and enslaved persons in other border states refused to wait. Given their numbers, provost marshals, even those willing, could not police the movements of all refugees from slavery. The political turmoil in Kansas before the war did not curb escapes, and neither did the outbreak of the war. Richard Sheridan estimates that as many as 15,000 Black Missourians took refuge in the state.⁸⁶ Enslaved people weaponized their mobility and testimony against enslavers, claiming rights long before they gained the constitutional guarantees of the Thirteenth and Fourteenth Amendment long before their ratification.

It was the enslaved who demanded that the federal government realize the emancipatory potential of military policies such as the Confiscation Acts and the democratic promises that this nation claimed as founding principles. By centering enslaved people’s testimonies and demands to provost marshals, we can more fully understand the movement for reparations. As Robin D.G. Kelley reminds us, the call for reparations was “never entirely, or even primarily, about money,” rather it was about “social justice, reconciliation, reconstructing the internal life of Black America, and eliminating institutional racism.”⁸⁷ It is telling that when Black women, men, and children went to provost marshals, more often than not, they named the family members they had lost and sought—making visible their inner lives—and not the material possessions taken from them at a time when such possessions were crucial to their literal survival. Surviving the war and technical

⁸⁶ Sheridan, “From Slavery in Missouri to Freedom in Kansas,” 37.

⁸⁷ Robin D. G. Kelley, *Freedom Dreams: The Black Radical Imagination* (Boston: Beacon Press, 2002), 114.

emancipation were never the ends in of themselves. They were, to the enslaved, the beginning steps to making their lives whole.

CHAPTER THREE

“This System of Fource Labour”: Refugees from Slavery, Impressment, and Penal Servitude

After a visit to Fort Monroe, Virginia, in January 1862, Rev. Lewis Lockwood wrote to U.S. Senator Henry Wilson to address the treatment of Black refugees whom General Benjamin Butler recently declared as contrabands. The refugees had been forced to work for meager rations and living quarters, and those who refused were whipped, beaten, and forced back into work gangs. The reverend, so disturbed by what he saw, vehemently wielded his pen:

Contrabandism at Fortress Monroe is but another name for one of the worst forms of practical oppression—government slavery. Old Pharaoh slavery was government slavery, and Uncle Sam’s slavery is a Counterpart—the subordinate officials of the latter viewing with the taskmasters of the former in bad preeminence....by what constitutional right does government treat these persons as slaves?...And by what military right does the government become a practical slaveholder?¹

What Lockwood witnessed was common among those deemed as contrabands—a form of slavery, at best involuntary servitude. Northerners who traversed the South and visited military and contraband camps were not the only ones to decry how contraband labor emulated slavery. When the Union army impressed able-bodied men in North Carolina, Black southerners petitioned to military authorities against it, not wanting “to labor upon the Public woorks[sic] without compensation.”² In perceiving this “System of fource[sic] labor,” they, like Lockwood, recognized slavery’s continuum, unbroken by the war’s chaos.³

There are many studies on the emergence of Black free labor in the South, but the road to it

¹ Lewis C. Lockwood to Senator Henry Wilson, January 29, 1862, in Ira Berlin, Steven F. Miller, Joseph P. Reidy, Leslie S. Rowland eds., in *The Wartime Genesis of Free Labor: The Upper South, Freedom: A Documentary History of Emancipation, 1861-1867*, ser. 1, vol. 2 (New York: Cambridge University Press, 1993), 112-113.

² Robert Henry et al. to Maj. Genl. B. F. Butler, November 20, 1863, in Ira Berlin et al., in *The Wartime Genesis of Free Labor: The Upper South*, 166.

³ Ibid.

was not a clear path, and, for many Black southerners, it was simply cut short.⁴ This chapter highlights the role of penal practices and involuntary servitude in shaping Black wartime experiences. It explores how the U.S. military used force, violence, and spatial control to compel refugees to work. The conditions of refugees were intimately tied to that of Black prisoners, and, at times, they were one and the same; refugees became prisoners as military officers made varying decisions as to how they were going to be treated. Involuntary servitude in the Union military was not an anomaly or a series of isolated incidents. Accepting that slavery takes various forms across historical periods permits us to see unfree labor, racial violence, and imprisonment as core components that maintained dominant federal institutions, such as the U.S. military. As Dennis Childs writes, “Indeed, when read as one overarching, cross-fertilizing, and temporally unfixed network of racial and spatial terror, the U.S. system of mass imprisonment represents a centuries-old regime of chattelized prison–industrial genocide that began well before the term PIC [Prison Industrial Complex] was ever uttered...”⁵ This chapter therefore explores the Union military’s place in this regime and its crucial role in establishing the post-war prison system. I posit that wartime and Reconstruction—often viewed as a transitional period between unfree and wage labor—was a moment when what Lockwood called “government slavery” abounded.

I utilize arrest records, testimonies, and affidavits of captive Black persons, as well as Union officials’ investigation reports to show the conditions the federal army and officials created to extract labor from Black refugees and free persons. I argue that the Union military used penal practices and

⁴ Chief among them are the volumes in the series *Freedom: A Documentary History of Emancipation, 1861–1867*, edited by Ira Berlin, Steven F. Miller, Joseph P. Reidy, and Leslie S. Rowland. See also Willie Lee Rose, *Rehearsal for Reconstruction: The Port Royal Experiment* (Athens: University of Georgia Press, 1999). For a Caribbean perspective, see Rebecca Jarvis Scott, *Slave Emancipation in Cuba: The Transition to Free Labor, 1860–1899* (Pittsburgh: University of Pittsburgh Press, 2000).

⁵ Dennis Childs, *Slaves of the State: Black Incarceration from the Chain Gang to the Penitentiary* (Minneapolis: University of Minnesota Press, 2015), 2.

its prison apparatus to force Black persons into servitude, thus serving as a carceral institution. This chapter recognizes that countless Black southerners wanted to participate in the broader fight for emancipation through military enlistment or by voluntarily working for the army, and not all were forced to work under duress. For this reason, I also use the *Federal Writers' Project's Slave Narratives*, in which interviewees often expressed ambivalence toward Union troops. I rely on these records despite the oft-repeated concern by some scholars that the span of time between the interviewees' enslavement and actual interviews complicate their recollection of the day-to-day experiences of their bondage.⁶ The power of memory, in my view, should not be easily disregarded. As Fannie Berry told her interviewer, "How com' I don't member? Don't tall me I don't 'cause I do. I don't care if its done bin a thousand years."⁷ To continually question the accuracy of the recollections of formerly enslaved persons, who were often determined to relate and leave a record of their experiences, is tantamount to disputing their intellectual capacity and personal integrity. While memory can be tricky, privileging written documents left by white individuals—be they third-party witnesses, state bureaucrats, or enslavers themselves—over these testimonies assumes that affect, personal judgment, bias, and predisposition did not "blemish" written documents.

Moreover, I also focus on how age, gender, and disability shaped refugees' interactions with

⁶ For decades, scholars repeatedly questioned the usefulness of formerly enslaved persons' interviews, offering a slew of criticisms. Many historians nevertheless continued to use them to understand and interpret the everyday lives of former slaves. Scholars such as Stephanie Shaw, on the other hand, shows how the WPA narratives could be used to better understand the African Americans' struggles during the Great Depression, particularly how old age and gender shaped their experiences. See Thomas F. Soapes, "The Federal Writers' Project Slave Interviews: Useful Data or Misleading Source," *The Oral History Review* 5 (1977): 33-38; David Thomas Bailey, "A Divided Prism: Two Sources of Black Testimony on Slavery," *Journal of Southern History* 46, no. 3 (1980): 381-404 and Stephanie Shaw, "Using the WPA Ex-Slave Narratives to Study the Impact of the Great Depression," *The Journal of Southern History* 69 no. 3 (2003): 623-658.

⁷ Interview with Fannie Berry, in *Born in Slavery: Slave Narratives from the Federal Writers' Project, 1936-1938*, Digital Collection, Library of Congress, Manuscript Division (hereafter BS), vol. 17, *Virginia Narratives*, 1.

the Union army and their overall experiences. The U.S. military distinguished between unproductive and productive Black individuals, with mothers, children, persons with disabilities, and the elderly falling under the former category. However, all, by virtue of being Black, were marked as idle unless proven otherwise. Camps and other temporary dwellings set up for refugees functioned as a pool of potential laborers, from which the military can draw. Military officers arrested and confined refugees from slavery and free Black persons with the intention of compelling them to work. The purpose of this chapter is not to elide the agency of Black individuals who willingly served or worked for the Union army but to show that their stories are more complex than they are often presented. Refugees from slavery did not instantly enjoy the right to wages as soon as they became part of the military institution.

When Black southerners encountered the U.S. military en masse, the latter was systematically unprepared to deal with a large number of refugees, and the many individuals that made up that system believed that Black persons and their labor should be subjugated. As a result, they gave into the racist impulse to confine them when they were perceived to be idle. Still, within the U.S. military, there were conflicts of motives and principles. While some Union and state officials decried and reported the ill-treatment of Black refugees, others claimed military necessity left no place for mercy and charity. Conflicting views manifested in conflicting policies; some generals emancipated enslaved persons, others perpetuated their enslavement.⁸ The question of what the war was about—liberation of enslaved people or preservation of the Union—permeated down to the lowest ranks of the military.⁹ Soldiers grappled with the same question and with their duties, as they were caught

⁸ Henry Halleck and George McClellan gave orders to turn away refugees and return enslaved persons to their enslavers. On the other hand, John C. Frémont and David Hunter ordered the emancipation of *all* enslaved persons in August 1861 and May 1862 respectively, much to Lincoln's ire; both orders were promptly rescinded.

⁹ Chandra Manning argues that ordinary soldiers understood slavery to be the cause of the war, having grown up in an era when the slavery debate was prevalent and took violent turns. Chandra

between dealing with Black refugees and advancing military operations. Prejudice shaped their interactions; advocating for the destruction of slavery was not the same as fighting for racial equality. Even for civilians and Union soldiers who had abolitionist inclinations expressed discomfort with incorporating the formerly enslaved into U.S. polity. Antebellum Black codes and calls for colonization were indicative of Americans' inability to imagine living in a multiracial society.¹⁰ During the war and Reconstruction, white racial fantasies about confinement and exclusion intensified, as enslaved people fled, migrated, and agitated for political and civil rights. By acknowledging Americans' anxieties over the consequences of Black freedom, we can more fully understand how and why Union camps functioned as places of containment.

While the federal army did not have an apparatus for dispensing humanitarian aid, what it did have in place was a system for punishing transgressions and a tradition of instilling discipline among its ranks.¹¹ When Black southerners reached Union camps, they encountered a hierarchical and disciplinary institution. Racial prejudice, military necessity, and punitive discipline all worked to justify Black involuntary servitude, which proved central to military operations. At the same time that many Union officials and Republicans touted free labor, on the ground, refugees emerged from slavery and crossed Union lines only to find themselves forced to survive in slavery-like conditions. The promise of egregiously low wages for dangerous and strenuous work did not entice refugees,

Manning, *What This Cruel War Was Over: Soldiers, Slavery, and the Civil War* (New York: Knopf, 2007).

¹⁰ White northerners' hostility and discomfort over what a post-emancipation world would look like manifested in legal efforts to limit Black rights over public institutions and spaces. Kate Masur's text offers an excellent analysis of how shifting attitudes in Congress, Black activism, and white resistance to social changes converged in Washington, D.C., turning the district into a kind of laboratory and an example of what a post-slavery society could look like. See Kate Masur, *An Example for All the Land: Emancipation and the Struggle over Equality in Washington, D.C.* (Chapel Hill: University of North Carolina Press, 2010).

¹¹ For more in-depth discussion on military discipline during the Civil War, see Lorien Foote, "Rich Man's War, Rich Man's Fight: Class, Ideology, and Discipline in the Union Army," *Civil War History* 51 (2005): 269-287.

and, for this reason, federal officers used threats of—and actual—force and physical violence to put them to work.¹² Union officials also understood that food and provisions drew Black refugees to Union lines, and the denial of rations became a way suppress those who complained about working conditions. Black southerners saw the war as “the Slavery war”—a war that would spell the end that violent institution, but war and Emancipation could not destroy the very assumptions and beliefs upon which slavery was grounded.¹³ Military officials sought to curb what they perceived as inherent idleness and to exploit their supposed physical suitability to difficult labor. In this process of extracting labor for the military, arrests and imprisonment played a crucial role.

This chapter turns our attention to different camps and prisons in the Chesapeake region, focusing on their unifying features. The spaces I discuss here did not simply vacillate between a place of refuge and of confinement; rather, they functioned simultaneously as spaces of indefinite imprisonment and detention for refugees, of labor extraction, and involuntary servitude. I begin by discussing the role of violence and coercion in so-called freedmen’s camps, departing from the notion that these places were theaters for an experiment on free labor. Compelling testimonies allow us to see them instead as carceral spaces. Rather than dispute Steven Hahn’s and Eric Foner’s arguments that Black southerners asserted their agency upon crossing Union lines, I build upon their

¹² In line with Cedric Robinson’s racial capitalism, which posits that racialization is integral and deeply embedded in capitalism, several other scholars have argued that wage labor and slavery are not diametrically opposed to one another. Seth Rockman asserts that the oppression of a wage-earning underclass and enslaved peoples went hand in hand in ushering the early U.S. republic’s economy. Michael Perelman points out that claims that capitalism is predicated on free labor ignore the fact that eliminating the commons and forcing of peasants into wage labor were fundamental to the development of capitalism as an economic system. See Cedric J. Robinson, *Black Marxism: The Making of the Black Radical Tradition* (Chapel Hill: University of North Carolina Press, 2015); Seth Rockman., *Scraping By: Wage Labor, Slavery, and Survival in Early Baltimore* (Baltimore: Johns Hopkins University Press, 2009); Michael Perelman, *The Invention of Capitalism: Classical Political Economy and the Secret History of Primitive Accumulation* (Durham: Duke University Press, 2000).

¹³ Lizzie Barnett, a formerly enslaved person, referred to the Civil War as the Slavery War in an interview conducted by the Federal Writers’ Project. See Interview with Lizzie Barnett, BS, vol. 1, part 1, *Arkansas Narratives*, 112.

interpretation by highlighting the repercussions of affirming one's humanity and demanding civil and human rights.¹⁴ I also look at military prisons that held Black refugees and white political prisoners to show that, just like in contraband camps, detained persons were put under incredible duress to gain their "consent" to work. Chandra Manning and Amy Murrell Taylor have also emphasized how the needs of the Union military and Black refugees often clashed, illuminating the power dynamics that Black refugees navigated.¹⁵ As spaces of containment, however, camps and military prisons afforded very little room for negotiation.

Lastly, I privilege the terms "captive" and "captured" in some cases as it deconstructs the U.S. military's veneer of morality. In the same vein as Sarah Haley's use of the term, I aim to bring forth the notion that justice was absent in the process of imprisonment and that racial discrimination informed the habits of captors and the nature of captivity.¹⁶ While I use "refugees" instead of contrabands—a loaded term that, in my view, reinscribes their status as property—to refer to enslaved persons who fled to Union camps, I recognize that Union officers did not necessarily see them as such. As this chapter shows, there were a number of persons who advocated for humanitarian aid, seeing formerly enslaved persons as refugees. However, it is the notion that Black refugees were a mass of potential laborers and the fear that they would be burdens to the state that

¹⁴ See Steve Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge: Harvard University Press, 2003); and Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988).

¹⁵ Chandra Manning and Amy Murrell Taylor both offer compelling accounts of refugees' struggles, acknowledging that camps were sites of pain and suffering but also of freedom. Abigail Cooper has also explored how Black refugees were mistreated in camps, positing these places as a sources of wartime trauma for many formerly enslaved people. See Amy Murrell Taylor, *Embattled Freedom: Journeys through the Civil War's Slave Refugee Camps* (Chapel Hill: University of North Carolina Press, 2018); Chandra Manning, *Troubled Refuge: Struggling for Freedom in the Civil War* (New York: Knopf, 2016); and Abigail Cooper, "Lord, until I reach my home": Inside the Refugee Camps of the American Civil War," PhD diss., (University of Pennsylvania, 2015).

¹⁶ See Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: UNC Press Books, 2016).

shaped military policy in great measure. I reserve the term “involuntary servitude” for when formerly enslaved persons were impressed and forced to labor for the military.¹⁷ This is not to minimize the brutality of their experience but to distinguish it from slavery under private hands. The multifaceted nature of Black refugees’ experiences complicates the language we use to write about them. Indeed, when we consider the forms of forced labor and practices of domination used against Black southerners during and after the war, their positionality appears liminal—in between enslavement and free labor, rather than transitional—from slavery to freedom.

The Role of Coercion and Violence in Refugee Camps

At the outset of the war, the American Missionary Association (AMA) sent members to the South to aid and provide education to Black refugees. The AMA was a Protestant, abolitionist group that worked with the U.S. military to help run so-called contraband camps. Some of its members would fill in the positions of Superintendents of Contrabands, responsible for providing shelter for refugees and finding them employment. As this section shows, military officers and superintendents were adept in using coercion and violence in organizing refugees’ labor, thus turning contraband camps into a carceral space where brutal practices of punishment and domination were prevalent.

In colonial North America, as Jennifer Morgan has adeptly argued, enslavers methodically speculated upon enslaved women’s reproductive potential to create agricultural wealth.¹⁸ Throughout the antebellum era, too, enslaved women’s perceived childrearing capacities determined their monetary value as enslavers contemplated both their physical labor on the fields and the

¹⁷ Throughout this dissertation, however, I use the term “slave/s of the state” to reference the ruling in *Ruffin v. Commonwealth* (1871), in which a judge ruled that the defendant’s crime validated penal enslavement by the state. Dennis Childs interprets this ruling “as an open declaration of re-chattelizing.” See Childs, *Slaves of the State*, 3.

¹⁸ Jennifer L. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2011), 8.

enslavement of their potential children.¹⁹ When women refugees settled in camps, however, federal officials came to see their reproduction as a burden and women's desire to keep their children an added nuisance. When two army inspectors visited Freedman's Village, a refugee settlement in Arlington, Virginia, they heavily criticized the facility's operations. Inspectors especially took issue with mothers who refused work that required them to part from their children. They suggested that women be sent "to those portions of our country where their labor is greatly demanded, taking with them children under 4 years of age."²⁰ Children between four and 14 would remain in the camp, where they would be taught at a school. Federal officials considered Black girls and boys above the age of 14 and without any perceived illness or disability as fit enough for employment. Ultimately, the inspectors were primarily concerned with putting every able-bodied person—adult or child—in the camp to work, claiming that, "the necessities of the times compel separations."²¹

Superintendents of Contrabands often used the same language when deciding to assist refugees. These officials had been operating even before the creation of the Freedmen's Bureau under the purview of the office of the General Superintendent of Contrabands, established in 1862. Underfunded and ill-prepared, superintendents did not prioritize providing relief for refugees. As their reports and correspondences show, the prevalent concern was that refugees from slavery would become idle and rely on state assistance. In April 1865, Jennie Cole approached an assistant superintendent, asking for assistance and a pass to travel from St. Louis to Hannibal, Missouri. The official recommended that she be granted transportation as it would "release the government of all further trouble on her account."²² Two months prior, Malinda Freeman, another Black woman

¹⁹ Daina Ramey Berry, *The Price for Their Pound of Flesh: The Value of the Enslaved from Womb to Grave in the Building of a Nation* (Boston: Beacon Press, 2017), 72.

²⁰ Maj. E. H. Ludington and Maj. C. E. Compton to Col. James Hardie, July 30, 1864, in Ira Berlin et al., *The Wartime Genesis of Free Labor: The Upper South*, 343-344.

²¹ Ibid.

²² "Cole, Jennie," UPM, ID 27658674, M345, RG 109, NARA.

refugee, had asked a different official for transportation for her and a child. The response was the same: that their assisted departure would “relieve the government from any further expense.”²³ One superintendent who ran a freedmen’s home in Cincinnati, Ohio, suggested that all the refugees be transferred to “camp Nelson or some other high where there is a greater variety of labor, and where something might be found for these men and women to do—something they could do and where there is military authority and force to compel obedience to orders.”²⁴ In his mind, they could force those “who are disabled to some extent and incapable of performing a man or a woman's work in full” to work to some extent.²⁵ He believed doing so would further mitigate government expense. The home was hardly a refuge; the “able-bodied” men who were given work had not been allowed their rations for weeks, and in just one month, 21 persons died, 13 of whom were children.²⁶

In 1863, Danforth B. Nichols, another superintendent and member of the AMA, testified before the American Freedmen’s Inquiry Commission about the conditions of Camp Barker in Washington, D.C. Nichols was reluctant to admit that guards and soldiers violently beat and forced refugees under his watch, because Nichols actively presented the camp as a success. When asked if male refugees have ever been “taken with violence” to work as teamsters, Nichols answered, “In one or two cases, there was violence used, I believe. In one instance, I was away.”²⁷ Teamsters were responsible for loading and unloading supplies from trains and in between camps, driving mules and wagons. The job was arduous, requiring men to follow regiments and drag their wagons on difficult terrain, and it inevitably took male refugees away from family and closer to the battlefield. Nichols

²³ “Freeman, Malinda,” UPM, ID 28219059, M345, RG 109, NARA.

²⁴ J. P. Barber to Major General Hooker, May 1, 1865, in “Barber, J P,” UPM, ID 27541878, M345, RG 109, NARA.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Testimony of D. B. Nichols before the American Freedmen’s Inquiry Commission, in Berlin et al., *The Wartime Genesis of Free Labor: The Upper South*, 290

further confirmed that captains used corporal punishment and confinement in the guard house to force men to work. Soldiers even tortured refugees who expected some aid; Lucy Ellen Johnson testified that Nichols had beaten her, and subsequently, soldiers tied her up to a tree after she had told Nichols that she wanted to “*earn* her board and the same clothes that others have.”²⁸ Several more refugees testified against Nichols, recounting the beatings they endured when they deviated from the kind of labor he wanted them to perform. Lewis Johnson perhaps captured what many of the refugees felt: “I speak from my heart before the Lord when I say that the conduct of Mr Nichols was worse than the general treatment of slave owners.”²⁹ These testimonies compel us to rethink what it took to maintain an army and the role of penal practices in sustaining it. Torture, confinement, corporal punishment, policing of perimeters, and deprivation of necessities all played a critical role in extracting labor from refugees.

We need not focus on Camp Barker alone to find evidence of violence against the formerly enslaved. As many former Black soldiers and non-combatant laborers testified, working for the military provided a degree of protection. However, even those who attested to this often alluded to the military’s use of coercion and violence. Boston Blackwell, a former non-combatant laborer, looked back on the war with positive things to say about the U.S. army: “Was they more run-aways there? Oh, Lordy, yessum. Hundreds, I reckon. Yessum, the Yankees feeds all them refugees on contraband. They made me a driver of a team in the quatemasters department. I was always keerful to do everything they telled me. They telled me I was free when I gets to the Yankee camp, but I couldn't go outside much.”³⁰ Blackwell was 98 years old when the Federal Writers’ Project (FWP)

²⁸ Testimony of Luisa Jane Barker, (January 14, 1864), as in the case of Lucy Ellen Johnson, in *The Wartime Genesis of Free Labor: The Upper South*, 308–311.

²⁹ “Testimony of Lewis Johnson,” in Ira Berlin et al., *The Wartime Genesis of Free Labor: The Upper South*, 296

³⁰ Interview with Boston Blackwell, BS, vol. 1, part 1, *Arkansas Narratives*, 169.

interviewed him, and although he did not elaborate on why he “couldn’t go out much,” he intimated that the consequences of not obeying orders would be dire; “You says did I like living in the army? Yessum, it was purty good. Iffen you obeyed them Yankee officers they treated you purty good, but iffen you didn’t, they sure went rough on you.”³¹ We may never know what “rough” precisely meant in Blackwell’s case, but other records illuminate the disciplinary practices that officers used on refugees.

Some have questioned the veracity of these interviews, and while it is possible that formerly enslaved interviewees were appealing to their Southern white interviewers by speaking harshly of the Union, we must also recognize that in the same breath that interviewees spoke of the violent Union soldiers, they also condemned Confederates and the Ku Klux Klan. Moreover, perpetrators of brutality, of family separations, and death are stamped in Black southerners’ memories even some 70 or so years later.³² 98-year-old “Soldier” Williams captured the irony of the Union soldiers’ proclaimed cause: “I run away to Louisville to j’ine the Yankees one day. I was scared to death all the time. They put us in front to shield themselves. They said they was fighting for us--for our freedom... I wanted to quit but they would catch them and shoot them if they left. I didn't know how to get out and get away.”³³ Another interviewee, Lucindy Allison, 61, recounts the stories her mother told her about those who refused the soldiers: “If they wanted a colored man to go in camp with them and he didn't go they would shoot you down like a dog. Ma told about some folks she knowd got shot in the yard of his own quarters.”³⁴ Some war stories were passed down, perhaps as

³¹ Ibid., 170.

³² Stephanie E. Jones-Rogers also explains that traumatic and significant life events often become indelible memories, and gerontologists and psychiatrists have acknowledged so. Stephanie E. Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South* (New Haven: Yale University Press, 2019), xviii.

³³ Interview with “Soldier” Williams, BS, vol. 1, part 1, *Arkansas Narratives*, 191.

³⁴ Interview with Lucindy Allison, BS, vol. 1, part 1, *Arkansas Narratives*, 41.

the enslaved generation tried to keep their children wary of those who claim to be on their side.

The fear of Yankees that so often appears in the FWP records makes even more sense when we take into account how Black southerners, in their search for refuge and freedom, became noncombatant laborers. It was through coercion and threats of violence that many Union soldiers secured labor for their camps and even deterred desertion. It is also through the system of camps—the conditions of hunger and death within them—that the Union military subjugated refugees to perform what was supposedly wage labor.³⁵ Military prisons functioned hand in hand with this system, where “contrabands” were forced into involuntary and penal servitude.

Unfree in the Nation’s Capital

Much like refugee camps, the Union’s military prisons functioned to assess captive persons’ fitness to work and to determine where their loyalty laid—as officials often mistook Black southerners’ service to enslavers as devotion—and their usefulness for the Union army. Indeed, prisons during the war served both as detention centers for both free Black persons and refugees from slavery. Black persons who roamed around Union-occupied territory were liable to be arrested. These arrests did not always carry charges, only suspicion, and in Washington, D.C.’s militarized terrain, any Black individual freely moving about was suspect to Union officers. Moreover, in the eyes of Northerners, the number of enslaved persons fleeing to the North would lower the cost of labor, endangering the livelihoods of the white laboring classes. As Eric Foner argues, Republicans’ and Northerners’ commitments to free labor were rooted in a fierce hatred for slavery’s effects upon

³⁵ In November 1861, a general order was issued indicating how much Black laborers were to be paid. Able-bodied Black men over the age of 18 were categorized as “Class 1” workers to be paid 10 dollars a month. Black boys aged 12 to 18 were categorized as “Class 2” and were assigned only five dollars a month. The order did not indicate how much Black women and girls should be paid. General Orders No. 34, Head Quarters Dept. of Va. &c, November 1, 1861, in Berlin et al., *The Wartime Genesis of Freedom: The Upper South*, 111–112.

the free, laboring white man.³⁶ To them, slavery's stagnant and rigid hierarchy left no space for social and economic mobility for free whites and kept the enslaved ignorant and barbaric. In other words, many advocates of free labor believed that Black persons did not have the spirit of industry nor the desire to improve their conditions.

Northerners believed that for as long as slavery was the dominant institution in the South, Black southerners would attempt to flee to the North. A bold strike to abolish slavery—not gradual emancipation—was therefore the answer to the problem of refugees. As the governor of Massachusetts claimed, “nothing but the entire abolition of slavery at the South will prevent a large influx of blacks into the free States.”³⁷ Similarly, *The Liberator* echoed the *New York Independent's* claim that “Emancipation will bring no colored laborers to the North, but will drain a great many out of it.”³⁸ If slavery were immediately abolished, the formerly enslaved would supposedly stay in the South, as “it is the dread and hatred of slavery that drives them, against their tastes, into an uncongenial climate.”³⁹ In advancing these arguments, politicians and newspapers were responding to Lincoln's conciliatory scheme of gradual emancipation and to the recent Compensated Emancipation Act in Washington, D.C. This law as well as the much anticipated “influx” of refugees fostered a general and self-contradictory anxiety about Black persons becoming beggars, vagabonds, and vagrants in Northern cities who would also steal labor from the white working class.

In April 1862, Lincoln signed into law “An Act for the release of certain persons held to service or labor in the District of Columbia,” legislation meant to end slavery by paying enslavers to release the persons they enslaved.⁴⁰ A commission was formed to file and examine enslavers'

³⁶ Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War* (Oxford: Oxford University Press, 1995), 42.

³⁷ “Free Negroes Overrunning the North,” *National Republican*, August 22, 1862, 2.

³⁸ “The True Southern Laborers,” *The Liberator*, October 24, 1862, 2.

³⁹ *Ibid.*

⁴⁰ Lincoln championed compensated emancipation along with colonization as measures to emend

petitions for compensation and determine the value of the enslaved. In a process that eerily resembled slave auctions, enslavers emphasized enslaved persons' skills and health, hoping to get more money. A woman enslaver from Georgetown asked for 1000 dollars for James Sims, "a first rate house and dining room servant" and 800 dollars for his brother, "a stout, able bodied laboring man."⁴¹ Ultimately, the Board of Commissioners did not pay more than 600 dollars per person, and the highest compensation they granted was 17,771.85 dollars for 69 enslaved peoples.⁴² Overall, by 1863, the federal government had paid about 1,000 enslavers, who altogether held more than 3,000 persons in bondage. For D.C.'s emancipated persons, this meant being bought, only to be thrown out. William Doles, a recently emancipated 70-year-old man, was reportedly found lying sick in a pile of manure on the streets.⁴³ Nevertheless, as word spread that enslaved persons in D.C. were freed, more refugees from Maryland and Virginia made their way to the district to seek refuge, to find loved ones, and to procure a means of living. Persons like Doles who were "freed" in the nation's capital and refugees who crossed the Potomac River only exacerbated Northerners' anxieties. However, there was a military system of policing and imprisonment already in place to deal with unemployed Black persons. The provost marshal—the Union's military police—and D.C.'s prisons for political prisoners served as an apparatus that would alleviate this perceived problem.

In 1862, the War Department appointed Levi C. Turner as Associate Judge Advocate for the

the problems of slavery. For a more comprehensive discussion of Lincoln's attitudes and policies on the matter, see Phillip W. Magness and Sebastian N. Page, *Colonization After Emancipation: Lincoln and the Movement for Black Resettlement* (Columbia: University of Missouri Press, 2011); and Eric Foner, *The Fiery Trial: Abraham Lincoln and American Slavery* (New York: W. W. Norton, 2011).

⁴¹ "Elizabeth Abbott, Filed May 18, 1862," Records of the Board of Commissioners for the Emancipation of Slaves in the District of Columbia (hereafter RBC), 1862-63, Petition no. 239, M520, RG 217, NARA.

⁴² In my investigation of the "Summary List of Awards," I found that only one enslaver was given more than 600 dollars per person. Bulk payments for families tended to be smaller, as enslaved children were assigned little monetary value. See RBC, "Summary List of Awards," Petition no. 239, 398, and 69, M520, RG 217, NARA.

⁴³ "An Ex-Slave," *Evening Star*, April 25, 1862, 3.

Army around Washington. His office was responsible for reviewing all military arrests in Washington, D.C. and surrounding counties in Virginia and Maryland. At the same time, Lafayette C. Baker became the department's special provost marshal, tasked with investigating subversive activities, conspiracies, and cases of disloyalty in the same region. Among the many cases that can be found in the Turner-Baker documents are those of Black men, free and enslaved, who had been imprisoned arbitrarily. They ended up in Carroll Prison, which was an extension of Old Capitol Prison, and both were meant for the confinement of Confederate spies and prisoners of war. Early on in the war, Old Capitol proved to be too small for countless political prisoners, and so Carroll Prison became an annex to hold prisoners and refugees from slavery who were coming into Washington, D.C. The experiences of Black men confined in Carroll Prison show that Union officers used military prisons to confine potential laborers for the army and to imprison them without trial as punishment for an alleged offense. Some, it appears, were simply forgotten after having been accused of running the blockade when in search of loved ones.

There are many cases in which refugees who worked for the Union were arrested by officers from different regiments and thrown into prison. Upon verifying that they were non-combatant laborers for the Union army, they were released. Refugees were aware that their labor was their leverage and that their perceived capacity to be of service to the military could save them. In July 1865, John F. Butler, having been imprisoned in Carroll Prison for months with no idea of the charges against him, gave his testimony to Turner:

I am 30 three years of age, a native of Virginia a miller by trade. I came away from Virginia May 2nd 1863 and was sent to Carroll Prison as a refugee and after being confined about five months I was released and remained working around the prison on wages until July 1864 when I left it, thinking I would try and get something better to do. I got a pass to go to Alexandria to see an aunt but did not find her and then looked around for work. I went to the vicinity of Falls Church and worked a week for a man there and then getting sick I thought I would return to Washington. On my way to Alexandria I was arrested by the pickets and sent to Carroll Prison again. I do not know that there was any charge against me. I am a loyal man and desire to

enlist in the United States army.⁴⁴

It could be that Butler voluntarily enlisted and/or have always intended to. In light of the circumstances, however, his offer to enlist seems predicated on the threat of being imprisoned and forced to labor for an indefinite period of time. As Butler would have witnessed, men like him lingered in prison with dubious convictions or none at all. In Carroll Prison, it is likely that Butler not only met Jerry Spadon but perhaps even worked with him. Another Black southerner, Spadon was thrown in prison in 1862 under the order of General James Wadsworth for allegedly being an “aider” in a rape committed by two soldiers.⁴⁵ The superintendent of the prison was not given any instruction regarding his sentence or the length of his confinement despite multiple inquiries.⁴⁶ Although registered as a prisoner, Spadon “has been employed in and about the prison, ‘driving a cart’ and attending to sanitary work about the yards etc and has been paid a monthly compensation.”⁴⁷ By March 1865, Turner still had not found a record of Spadon’s conviction and sentence; it is highly probable that Wadsworth simply abandoned him there to punish him at his discretion.

Butler and Spadon were never tried by a military commission, as officers bypassed the process that they were due. Still, they were imprisoned. The same institution that “freed” Butler rendered him its captive, becoming a refugee and prisoner in the same facility. Carroll Prison served both as a prison and a detention facility for refugees until the prison superintendent, William Wood, could find work for them.⁴⁸ William Wood was the one who employed Jerry Spadon, and under his

⁴⁴ “Butler, John F.,” Case Files of Investigations by Levi C Turner and Lafayette C Baker, 1861-1866 (hereafter Turner-Baker Files), ID 656620, Case no. 3314, M797, RG 94, NARA.

⁴⁵ The convicted soldiers were not named in the Spadon’s case file. With the great number of cases of rape perpetrated by soldiers and the lack of dates within the document, it is not feasible to ascertain who these soldiers were. “Spadon, Jerry M.,” Turner-Baker Files, ID 656620, Case no. 3369, M797, RG 94, NARA.

⁴⁶ I have yet to find any record that would show that Spadon was tried by a military tribunal.

⁴⁷ Ibid.

⁴⁸ Curtis Carroll Davis, “The ‘Old Capitol’ and Its Keeper: How William P. Wood Ran a Civil War

supervision, he would have encountered the same refugees again and again as the Union military re-arrested them. When Butler tried to look for work outside of prison—to take control of his own labor—he was then arrested, brought in again to Carroll Prison. Butler’s case shows that the line between refugee and prisoner was constantly blurred; with each status, it was his potential as a laborer that spelled his release.

Union officials were aware of the blowback and the consequences that would follow if they let refugees out to fend for themselves in city. They shared the white public’s anxiety that refugees would become idle at the expense of the government. As the founder and president of the Contraband Relief Association, Elizabeth Keckley knew all too well how refugees were viewed. In her autobiography, she directly addresses them: “the great masses of the North learned to look upon your helplessness with indifference, learned to speak of you as an idle, dependent race.”⁴⁹ Keckley was Mary Todd Lincoln’s dressmaker and, as a result of her access to the White House, was highly attuned to the developments during the war. She responded to the presence of refugees with notable prescience; she founded a private relief association in the summer of 1862.⁵⁰ More importantly, she saw the situation as a humanitarian crisis that required charity. In contrast, governmental commissions and the military’s contraband department were all primarily concerned with organizing refugees’ labor and minimizing the burden they posed to the government.

On separate occasions, Danforth B. Nichols publicly reported that there were around 7,000 refugees in Washington and 10,000 by April 1863.⁵¹ At the time, Nichols was supervising a refugee camp in the city, Camp Barker. He assured the public that private contributions have furnished the

Prison" *Records of the Columbia Historical Society, Washington, D.C.* 52 (1989): 212.

⁴⁹ Elizabeth Keckley, *Behind the Scenes, Or, Thirty Years a Slave and Four Years in the White House* (New York: G.W. Carleton & Company, 1868), 112.

⁵⁰ The Contraband Relief Association was founded in the summer of 1862.

⁵¹ “The Freedman’s Relief Association,” *Evening Star*, April 11, 1863, 3.; and “Contrabands in Washington,” *The Liberator*, November 21, 1862, 4.

refugees with their needs, even going as far as claiming that “there is so much demand for their labor that he could furnish homes for ten times as many as he could supply.”⁵² With its enslaved population technically emancipated, Washingtonians did not want any more refugees coming in. Moreover, overcrowding and lack of clean water at Camp Barker were driving up mortality rates. To alleviate the problem and prevent the influx of refugees to the federal city, Nichols and the chief quartermaster of the Department of Washington collaborated to establish the Freedman’s Village in Arlington in 1863 and began transferring refugees there. The village, too, would have its own problems as refugees refused work that would take them away from their families.⁵³ Nichols’s attempts to assuage Washingtonians’ concerns about refugees partly explains why Black individuals’ movement in and around Washington was so highly policed and why refugees were detained in prison until they were hired out.

That free African Americans were caught under the military’s net of surveillance speaks to how Blackness itself—not the condition of previous enslavement—was a marker of potential dependence and vagrancy. Silas Hardman, for example, was but a child when the war broke out. Though born free in Maryland, he was indentured in Virginia at around age ten in 1859, and the next year, he ran away twice only to end up recaptured and forced to work on Confederate fortifications. On his second escape, he managed to reach his uncle in Caroline County, where he stayed until 1863. But Hardman was determined to go home to Maryland, and between December 1863 and October 1864, he tried twice, only to be arrested by the Union military each time. His second

⁵² Ibid.

⁵³ Priya Kandaswami shows how the village supervisors’ reluctance to provide aid and their expectations for mothers and children to work conflicted with refugees’ desire to keep their families intact. To officials, subjecting refugees to wage labor, even when it was exploitative and abusive, was better than keeping them dependent on the government. For a fuller discussion of how the concern about refugees’ dependency shaped policies and interactions between officials and refugees, see Priya Kandaswami, *Domestic Contradictions: Race and Gendered Citizenship from Reconstruction to Welfare Reform* (Durham: Duke University Press, 2021), 105–50.

imprisonment was spent in Carroll Prison, where he was forced to work until he was given a pass to go home. But 16-year-old Hardman's difficulties did not end once he finally reached home: "...I had just commenced working on a farm there when I was arrested at the instigation of a neighbor, who said I had come down there to run the blockade, and again committed to Carroll Prison where I have been nearly four months."⁵⁴ In prison, Hardman noted having met refugees from slavery, such as Albert Bird, who had been granted a pass but arrested anyway on his way to retrieve his wife and children.⁵⁵

Hardman's relentless efforts to escape involuntary servitude and to reach home only led to further imprisonment and forced labor. As the U.S. military policed the Chesapeake region, arresting Black individuals, they thwarted refugees' and free persons' efforts to find their loved ones. Official passes did not guarantee that Black persons could travel without worrying about military arrests, and Albert Bird's and Hartman's cases were not rare. In 1863, Captain C.B. Wilder, the Superintendent of Contrabands in Virginia, complained to the department headquarters that the passes he gave to refugees were being ignored. As refugees made their way across the Potomac, they were captured and imprisoned. Wilder wrote that "To forcibly detain peaceable negroes...would amount almost to making the Government slaveholding, unless military necessity required it."⁵⁶ Many Union officers did not even bother to prove that they were compelled by military necessity to imprison refugees. As the previous chapter has shown, some provost marshals even voided free papers to appease enslavers.

For all the logistical burdens that Union officials complained about, federal troops still threw Black persons in prisons arbitrarily. John C. Scott's case exemplified this practice. Scott encountered

⁵⁴ "Hardman, Silas," Turner-Baker Files, Case no. 3947, M797, RG 94, NARA.

⁵⁵ "Bird, Albert," Turner-Baker Files, Case no. 3310, M797, RG 94, NARA.

⁵⁶ Capt. C. B. Wilder to Lt. Col. Louise H. Pelouze, 8 August 1863, in Berlin et al., in *The Wartime Genesis of Free Labor: The Upper South*, 159-160.

Union soldiers in Loudoun, Virginia, while on an errand for his enslaver. A captain then offered to take him with them, presumably to work. Scott testified that “I told him that if I could do better than I had been doing I would go with them.”⁵⁷ He was subsequently taken to Alexandria and then to Carroll Prison where he was imprisoned for six months until Turner investigated his case and discharged him after he took an oath of allegiance.

Enslaved persons who sought employment for Union soldiers took a gamble. At stake was that fragile thread of kinship, which could so easily be lost in wartime. John C. Scott disappears in the historical record after his imprisonment. However, through the FWP slave narratives, we can get a sense of the consequences of displacements like his. When an FWP employee asked Minnie Fulkes about her father’s experience working for federal troops, she spoke about how they “carried him an’ his brother as far as Washington D.C...his brother was kept, but they sent father back’ home. Uncle Spencer was left in Prince Williams County. All his chillun ar’ still dar. I don’t know de name of Yankee who carried him off. / Lord, Lord, Honey, dem times too over sad ‘cause Yankees took lots of slaves away an’ dey made homes. An’ whole heap of families lost sight of each other.”⁵⁸ Enslaved men and women attached themselves to federal troops with hoping that they could keep their loved ones and help them survive, but in spite of all their efforts, loss still marked their family lives.

As Thavolia Glymph notes, there were between 200,000 and 300,000 noncombatant laborers for the Union, and African Americans received a pittance compared to their white counterparts and being relegated to the dirtiest and most strenuous jobs.⁵⁹ She writes, “Soldiers, guns, and generals won battles but did so on the backs of thousands of noncombatant laborers. Behind the lines, in quartermaster, medical and commissary departments, they built forts, breastworks, and other

⁵⁷ “Scott, John C.,” Turner-Baker Files, Case no. 3368, M797, RG 94, NARA.

⁵⁸ Interview with Mr. Charles Crawley, BS, vol. 17, *Virginia Narratives*, 14.

⁵⁹ Thavolia Glymph, “Noncombatant Military Laborers in the Civil War,” *OAH Magazine of History* 22 (2012): 25-29.

fortifications and destroyed the enemy's.”⁶⁰ But if we turn our attention away from camps and the battlefield, military prisons loom within our view. With the subjugated labor of so-called contrabands, these prisons operated. Within their walls, too, they lingered as prisoners.

Craney Island

Prison and refugee camps were, at times, indistinguishable from one another, and, indeed, in the view of the military, they served the similar purpose of confining burdensome Black refugees and those marked as being a public nuisance. Craney Island, Virginia, was another site used to confine prisoners and hold refugees. After the U.S. military captured the Craney Island, Virginia, in 1862, federal troops transferred hundreds of refugees there without proper provisions. John Oliver, a Black carpenter from Boston who had travelled down South to aid refugees, was horrified by the conditions he encountered upon arriving at Craney Island. Oliver condemned the brigadier general in charge of the island and the “heartless quartermaster Talmadge, who both starved and beat [the refugees] with wagon whips.”⁶¹ Furthermore, Oliver did not see why it would make logistical sense to keep refugees there:

It is a grave injury to these people to put them on this island for this reason: first, it makes them entirely dependent on the Government for support. Secondly, it excludes them from active life and the free use of their limbs, which is necessary to their own health, as evidenced in the fact that they now die from eight to twelve a day. Thirdly, it affords bad men an excuse for bringing forward their old measures of compromise and colonization; of such, the North is full.⁶²

From Oliver’s description, Craney Island functioned as a prison, where Black refugees who had flocked Norfolk and Union camps in Virginia were transferred and confined.

Oliver was mistaken in assuming a contraband camp would be a site of humanitarian aid.

⁶⁰ Ibid.

⁶¹ “Brutal Treatment of Slaves By Gen. Corcoran,” *The Liberator*, December 26, 1862, 4.

⁶² Ibid.

Without being fed, the refugees on the island were not provided for by the government. When two Quaker women from Boston visited the island, they found refugees surviving through their consumption of rats and other small animals they trapped on their own.⁶³ Moreover, perhaps without realizing it, Oliver had pinpointed to the exact intention behind isolating refugees on the island; in the view of Northern politicians and many sectors of the public, the North was indeed “full” and could not take idle contrabands. It was General John A. Dix’s idea to concentrate and contain the refugees on the island. Dix had planned to resettle refugees in Massachusetts, but the state’s abolitionist governor refused, claiming that they would become “a swarm of homeless wanderers.”⁶⁴ It was for this same exact reason that Carroll Prison came to be a detention facility for refugees. That they would become vagrants and vagabonds once emancipated was an overwhelming fear, even among abolitionists.⁶⁵

For the refugees that arrived there in 1862, Craney Island was a prison. It was reminiscent of the carceral landscape created by enslavers by exploiting the “limited capacity of human beings to endure pain,” using distance to isolate the enslaved, surveilling them by way of patrols and animals, and flattening the land to render the enslaved more visible.⁶⁶ The waters that isolated refugees served as spatial control, distancing them from networks of relationships and information. The sickness and hunger that surrounded them rendered them desperate enough to agree to labor further for the military although they have not been paid in months. As Berlin et al. notes, when quartermasters in

⁶³ Adele Logan Alexander, *Homelands and Waterways: The American Journey of the Bond Family, 1846-1926* (New York: Knopf Doubleday, 2007), 140.

⁶⁴ General Dix to John Andrew, November 5, 1862, RG 393, in Berlin et al., *The Wartime Genesis of Freedom: The Upper South*, 131-34

⁶⁵ The governor of Massachusetts, John A. Andrew, who rebuked Dix’s plan was an abolitionist. Many Republican leaders also contested against resettling refugees from the South to the North. See Berlin et al., *The Wartime Genesis of Freedom: The Upper South*, 29.

⁶⁶ Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Cambridge: Belknap Press of Harvard University Press, 2013), 219.

Washington needed more laborers in June 1863, they set out to Virginia, dragooning any Black man they saw, even those with disabilities.⁶⁷ Under duress, refugees on the island boarded ships to be transferred the nation's capital where supposedly their labor was needed.

That Craney Island officially became a military prison was not surprising. It was naturally enclosed, and abuses on the island escaped public attention. As the Union military inched toward victory, occupying cities in Virginia, provost courts were set up to try civilians for petty crimes. Although these courts meant to assure that Black persons were treated fairly, as civil courts preyed upon them, provost courts nevertheless sentenced Black southerners to imprisonment in the island as part of the Union military's efforts to restore order in occupied territories. In May 1864, Nancy Archy was arrested, convicted of vagrancy, and sentenced to three months of hard labor at Craney Island. Her troubles did not end there: when her sentence ended in August 1864, she was accused and charged with prostitution. Confined in an island policed by soldiers, it is likely that she had been raped and then accused of being a prostitute. Her sentence this time around was indefinite imprisonment "until discharged by the Supt. of Negro Affairs."⁶⁸ The records of Archy's case are fragmentary, but they are telling. According to these documents, within two days of her capture, she was tried, found guilty, and imprisoned. Her second arrest and trial only took a whole day. On August 6th, 1864, Archy learned that she could not leave the island.⁶⁹

Earlier that year, there was talk that General Butler was going to build a Magdalene Asylum at Craney Island, where "fallen women" in Norfolk and Portsmouth who "make a living by their shame" would be transported and made to sew for soldiers.⁷⁰ The reformatory was never built, and

⁶⁷ Berlin et al., *The Wartime Genesis of Freedom*, 98.

⁶⁸ "Archy, Nancy," UPM, ID 27519139, M345, RG 109, NARA.

⁶⁹ *Ibid.*

⁷⁰ "Butler has appeared in anew character that of founder of a Magdalene Asylum on Craney Island," *The Evening Bullet*, January 28, 1864, 2.

unsurprisingly, Craney Island already had a navy yard, where labor was always needed. What Nancy Archy's penal servitude exactly looked like is difficult to determine, although it is likely she was forced to do what desperate Black refugee women had been doing there the year before—sew and work on the field. The charges against Nancy Archy and her imprisonment are a stark and disturbing reminder that the Jim Crow customs and laws so commonly associated with the Democrats' takeover of the South at the end of the Civil War were, in fact, already taking form under the Union military's occupation.

With Norfolk under Union control, more women like Nancy Archy, newly emancipated, found themselves captive at Craney Island for crimes of hunger or simply occupying public spaces. On October 27, 1864, the provost court sentenced Georgeanna Mackey to hard labor for an indefinite amount of time for allegedly stealing five bushels of potatoes according to five white male witnesses.⁷¹ There were other places of confinement for Black women who allegedly went outside the bounds of proper behavior and respectability. In the same year, Sarah Ann James was sentenced to three months of hard labor at the city jail for larceny, while Priscilla Banks, convicted of drunk and disorderly conduct, was sentenced to work on a government farm. In the wake of emancipation, Black women did not find the promise of free labor.⁷² Almost all of the Black persons convicted by the provost courts in Norfolk were sentenced to imprisonment with hard labor, except for a very few who were released upon paying a fine. Their arrests and imprisonment were predicated upon assumption of their deviance and inability to assimilate in a free labor market and society.

Vagrancy in Emancipated Richmond

⁷¹ "Mackey, Georgeanna" UPM, ID 213378, M345, RG 109, NARA.

⁷² "James, Sarah Ann," UPM, ID 27511752; and "Banks, Priscilla" UPM, ID 27541368, M345, RG 109, NARA.

By exploring the history of vagrancy and the captivity of Black persons in Craney Island and Carroll Prison, we can gain a clearer understanding of Northerners' assumptions about the meaning of freedom. The number of Black southerners that the U.S. military arrested for vagrancy is difficult to determine. The Union Provost Marshal's Papers and provost court and the military commission records are incomplete, but it is clear from scattered documentations of vagrancy arrests that the U.S. military saw this offense as grave enough to warrant weeks and months of incarceration. Vagrancy policing was not just a post-emancipation practice nor was it something that Union officers invented. Slavery and vagrancy are two deeply entangled technologies of domination. As Sal Nicolazzo writes, vagrancy laws allowed for the policing and exploitation of the poor in England, as vagrants and prostitutes were forced to labor upon being caught. She explains that, "This existing model of penal compulsion to labor and its attendant system of restrictions on mobility formed the legal foundation for slave laws in English colonies in the Caribbean and North America, as pass systems, provisions for summary conviction, and other elements of the 'police law of slavery' were drawn directly from English vagrancy laws."⁷³ Indeed, vagrancy laws were crucial components of a society that relies involuntary servitude, and, as Nicolazzo argues, they were, along with policing, legitimized by racialized tropes.⁷⁴

As Black men and women occupied public places and sought ways to survive, the U.S. military policed their newfound mobility, eventually becoming its captives. The freedom of mobility in the wake of emancipation—so stark a contrast to the condition of enslavement—unnerved Union officers that sought order in occupied South. As Saidiya Hartman explains, "As a practice, moving

⁷³ Sal Nicolazzo, *Vagrant Figures: Law, Literature, and the Origins of the Police* (New Haven; London: Yale University Press, 2020), 209.

⁷⁴ Kate Masur also asserts that the right to maintain a well-regulated society were deeply entrenched in American ideas about community. States asserted these "police powers" to block, arrest, and imprison free African Americans in their jurisdictions. See Kate Masur, *Until Justice Be Done: America's First Civil Rights Movement, from the Revolution to Reconstruction* (New York: W.W. Norton, 2022).

about accumulated nothing and did not affect any reversals of power but indefatigably held onto the unrealizable—being free—by temporarily eluding the restraints of order. Like stealing away, it was more symbolically redolent than materially transformative.”⁷⁵ When confronted by the presence of newly emancipated people seeking subsistence outside of the military’s surveillance, Union officials arrested, imprisoned, and put them work to reinscribe their control. That Black productivity should always be in service of individual whites, the military, or any other institution was the guiding racist principle behind the arrests of Black “vagrants.”

In March 1865, Union forces captured the city of Petersburg, Virginia, a turning point in the war that would subsequently end it. But for many African Americans, the capture of Virginia and Lee’s surrender did not signal that freedom was to be had. Right away, Union troops seized existing military prisons that the Confederates had used. Under Confederate control, Castle Thunder in Richmond was a place of confinement for Unionists, Confederate army deserters, enslaved persons who attempted to flee, and women—both Black and white—suspected of and charged with prostitution and other disorderly behavior.⁷⁶ When Union authorities took over Castle Thunder shortly after Butler’s successful siege of Petersburg, the prison retained much of its function. Now technically “freed,” African Americans filled Castle Thunder as they found themselves charged with unruly behavior.

The political prisoners of Castle Thunder changed; the Unionists were replaced with Confederates and guerrillas, but Black persons still filled its cells. The *Daily Dispatch* diligently reported on Black Virginians imprisoned by the provost court, making a spectacle of their supposed

⁷⁵ Hartman, *Scenes of Subjection*, 128.

⁷⁶ Angela Zombek, “Castle Thunder Prison,” in *Encyclopedia Virginia*, Virginia Humanities, 2020, last modified August 23, 2021, <https://encyclopediavirginia.org/entries/castle-thunder-prison>.

criminality.⁷⁷ These reports, unsurprisingly, began in December 1865 when a former enslaver became the editor and part owner of the paper.⁷⁸ The newspaper, however, omitted the fact that these convictions entailed hard labor sentences. Convicting emancipated persons was part and parcel of the Union military's plan to restore order in the South. Provost judge John McEntee who convicted numerous Black men and women in Norfolk and sentenced them to hard labor was reassigned to Richmond in May 1865.⁷⁹ Just as he did in his previous assignment, McEntee convicted Black persons in Richmond of petty crimes, including vagrancy, disorderly conduct, being a common prostitute (reserved for women), drunkenness, and traveling without a pass. As Angela Zombek writes, whites continued to complain about martial rule and framed it as unjust policing of white persons.⁸⁰ But their outcries obscured a growing trend; by the end of 1865, McEntee and his provost marshals had sent significantly more Black persons to Castle Thunder than white people. The transformation of Castle Thunder's prison population was not unique. Throughout Virginia and elsewhere, Black persons convicted by Union military courts increasingly occupied penitentiaries. The Union military thus maintained civil order by policing the streets and sending "unproductive" Black persons to hard labor prisons.

⁷⁷ The *Daily Dispatch* listed Black persons' convictions as well as place of confinement. These convictions were mostly stealing but also often labeled Black persons as "colored vagrants." For examples, see "Provost Court—Brevet-Colonel McEntee Presiding," *Daily Dispatch*, 30 December 1865. Right; and "Provost Court—Brevet-Colonel McEntee Presiding," *Daily Dispatch*, Richmond, Virginia, 4 January 1866.

⁷⁸ Henry K. Ellyson had enslaved at least four persons prior to the end of the war. Ellison and his children were active in postwar politics as Democrats. Michael B. Chesson, "Henry Keeling Ellyson (1823–1890)," *Dictionary of Virginia Biography*, Library of Virginia, 2022, last modified September 21, 2021, http://www.lva.virginia.gov/public/dvb/bio.asp?b=Ellyson_Henry_Keeling.

⁷⁹ Philip Alexander Bruce and William Glover Stanard eds., *The Virginia Magazine of History and Biography* 72. (Richmond: Virginia Historical Society, 1964): 166.

⁸⁰ Angela Zombek specifies that out of the 77 persons committed to Castle Thunder in December 1865, 44 were Black. See Angela Zombek, *Penitentiaries, Punishment, and Military Prisons: Familiar Responses to an Extraordinary Crisis during the American Civil War* (Kent: Kent State University Press, 2019), 183.

Though the *Daily Dispatch* reported that Isabella Banks was convicted of stealing, her official records only note the crime of vagrancy.⁸¹ The conflation of stealing and vagrancy is telling. To the white gaze, a Black woman moving around on her own accord had stolen her time from an imagined enslaver, for whom she should be laboring for. Within the arrest records of Black women, we find the tropes rooted in slavery that render them reckless, licentious, and in need of a patriarchal overseer, which in turn legitimized their imprisonment. The crime of “being disorderly” was hardly ever elaborated in Black women’s arrest records, indicating that it served as a capacious net with which to trap Black women. Their impugned womanhood further rendered them vulnerable to accusations of prostitution, as in the case of Nancy Archy.

The provost courts in Virginia deemed it only proper that a white individual should take charge of a Black person perceived to be wandering about. Mary Anderson, committed to Castle Thunder for vagrancy, was released to one Dr. Smith, who would be “responsible for her future good conduct.”⁸² When courts reopened in Richmond, the U.S. military let local officials have records of the persons imprisoned under martial law, thus helping local Southern governments to officially and indelibly mark and further ostracize Black persons as chronic criminals. On two separate occasions, the U.S. military imprisoned Robert Ashby for alleged drunkenness and petty larceny for ten days and 30 days of hard labor respectively.⁸³ Months later, local southern authorities captured and charged Ashby for allegedly stealing a hoop skirt and a scarf. Although no longer under the control of the U.S. military, the local civilian court officially took into account Ashby’s military convictions. He was “remanded to answer indictment for felony” given his record of petty larceny.⁸⁴ Military occupation of the South did not just ensure that Black southerners would be

⁸¹ “Banks, Priscilla” UPM, ID 27541368, M345, RG 109, NARA.

⁸² “Anderson, Mary,” UPM, ID 27516556, M345, RG 109, NARA.

⁸³ “Ashby, Robert,” UPM, ID 27521782, M345, RG 109, NARA.

⁸⁴ “Local Matters,” *Richmond Dispatch*, December 4, 1866, 1.

integrated into the free labor market as subjugated wage laborers. It also ensured that local governments would maintain a system of imprisonment for Black southerners who dared transgressed the regulatory and policing power of state. The reconstruction of local courts included transforming its system so that it could discipline and punish free Black persons en masse, a task which, in the past, fell on the hands of individual enslavers but had also been taken up by Union officers.

Claiborne Briggs was also among the many Black Southerners convicted by the provost court in Richmond, but, unlike the others, he was sent to Virginia Penitentiary for three years.⁸⁵ His alleged crime: stealing a horse from a white man.⁸⁶ Briggs's imprisonment at Virginia Penitentiary was a sign of overcrowding in military prisons and that, increasingly, Black southerners convicted by the Union military were being funneled to state penitentiaries. In June 1865, the Union military began sending persons convicted by provost courts to Virginia Penitentiary. By March 1866, when Major General Turner was forced to hand over supervision of the penitentiary to civil authorities, 91 out of the 178 prisoners were Black, the majority of whom were tried and convicted by provost courts and military commissions.⁸⁷ County courts began filling the penitentiary with more Black Virginians. When the state became a military district, the U.S. military took control of the penitentiary again, and Major General James Schofield appointed Burnham Wardwell as its superintendent. Francis Pierpont, the new military governor, and Wardwell immediately contracted out the penitentiary's prisoners to reconstruct the city's war-torn canals, railroads, public squares,

⁸⁵ "Briggs, Claiborne," UPM, ID 27592980, M345, RG 109, NARA.

⁸⁶ "A HORSETHIEF SENT TO THE PENITENTIARY," *Richmond Dispatch*, December 25, 1865, 1.

⁸⁷ My own analysis of the prison register from June 1865 to March 1866 indicates that only 34 prisoners were convicted by county courts in Virginia. Records of the Virginia Penitentiary, Series II, Prisoner Register No. 1, Reel 5989. Accession 41558. State Records Collection, The Library of Virginia, Richmond, Virginia.

and turnpikes. Most of the contracted prisoners were formerly enslaved persons.⁸⁸ Reconstruction looked different for the enslaved-turned-prisoners, who found themselves toiling to rebuild the city that was supposedly destroyed to secure their freedom. The Union's promise of free labor meant nothing to those who had been forced to work for anyone except themselves.

Conclusion

It is tempting to romanticize the alliance between the formerly enslaved and Union soldiers and officials. However, when we turn to the records of the military justice system, increasingly that relationship emerges as one riddled with contradictions. In the fine details of the Civil War's panorama, we find the Union military as the jailor and the refugee as prisoner. Freedmen's Village, Craney Island, and military prisons were labor camps. The few and fragmentary records of arrested and captured Black persons during the war do not fit well within the celebratory stories that, more often than not, focus on the outcome of the war. For the most part, public memory cast slavery as destroyed by one bold strike and portray the state as the main vehicle through which the institution crumbled, eliding the continuing forms of slavery that persisted during and after war. By looking at how the Union military used the lash and chain against refugees and the recently emancipated, this chapter inserts the field of carceral studies into the Civil War and Reconstruction historiography. The war transformed incarceration in the U.S. and widened its net to capture the newly freed whose involuntary servitude proved to be crucial in wartime and in rebuilding the nation. The war and Reconstruction, therefore, did not disrupt the growth of prisons. Instead, the military's coercive and

⁸⁸ In 1868 alone, 85 percent of the penitentiary's population were Black, convicted by county courts. The registers distinguished between those who were formerly enslaved and those who were born free. In the same year, Wardwell's list of contracted prisoners grew, as James River & Kanawha Company Canal, Covington & Ohio Railroad, and various woodcutting companies requested more laborers. See Records of the Virginia Penitentiary, Series II, Prisoner Register No. 2, Reel 5989. Accession 41558. State Records Collection, The Library of Virginia, Richmond, Virginia.

carceral practices helped usher in mass incarceration in post-Reconstruction South.

When it comes to federal policies toward racialized groups, the U.S. government grappled with—and has yet to resolve—the tension between the perceived necessity to contain them and the fear of creating dependency. The U.S. military curbed Black refugees’ mobility, detaining them in prisons and in camps. However, these forms of confinement forced them to be dependent upon the government, a condition which Union officials sought to alleviate by compelling them to work. Throughout the nineteenth and twentieth centuries, we find iterations of this dilemma; Native American reservations and the Japanese internment camps were manifestations of the impulse to block racialized persons from being part of U.S. polity, and in both cases, anxieties about a government-dependent race abounded among policymakers and the public.⁸⁹ Studying Black refugees’ experiences in military prisons and camps allows us to see the role of mass confinement in U.S. policy and to connect seemingly disparate episodes in U.S. history.

⁸⁹ For an insightful discussion of how the government tried to make Japanese Americans independent again after reducing their lives to state-induced dependency through incarceration, see Laura McEnaney, *Postwar: Waging Peace in Chicago* (Philadelphia: University of Pennsylvania Press, 2018).

CHAPTER FOUR

Trials by Military Commission and White Resistance to Racial Justice in Post-Emancipation South

In January 1866, Sambo and Aaron, two formerly enslaved persons, were tried by a military commission for manslaughter in Charleston, South Carolina. The Union military had been holding Aaron and Sambo in prison since September 1865, after the two were accused of shooting at Theodore Dehon and his son. According to Dehon, he and his son went to their plantation, Sterling Plantation, to dismiss Aaron's brother who worked there as a foreman. Upon leaving at sundown, they were shot by someone neither father nor son could identify. There was no concrete evidence presented against the Aaron and Sambo. However, the testimony of U.S. Colored Troops captain James Armstrong carried a lot of weight. He claimed that "Aaron told me that he (Aaron) had hired Sambo to shoot Dr. Dehon and was to pay him in rice. Sambo stated that he was hired to shoot Dr. Dehon, but when about to do so, Aaron snatched the gun from his hands and did it himself."¹ Although legally entitled to speak before the military commission to defend themselves, Sambo and Aaron did not testify. Dehon's and the captain's testimonies were sufficient to convict the two freedmen to ten years of hard labor at Sing Sing Penitentiary in New York. The trial lasted a day.

The Dehon family belonged to Charleston's elite, whose wealth and power were built by slavery.² Dehon clung to that power even as the Union military took control of his hometown and

¹ "Aaron," Court-martial Case Files (from herein CMCF), ID MM-3475, Records of the Office of the Judge Advocate General, 1792-2010, RG 153, NARA.

² Theodore Dehon was a physician, planter, and the son of the Episcopalian Bishop of South Carolina. His own son served in the Confederate army. Prior to the war, the Dehons had enslaved 69 persons ranging from infants to the elderly, Aaron among them. Once the Union military took control of Charleston, Dehon and many others were forced to employ formerly enslaved persons as contracted laborers. See 1850 United States Census, Colleton County, South Carolina, digital image s.v. "Theodore Dehon," *FamilySearch.org*.

imposed a new order. According to Armstrong, when Dehon arrived at his plantation on the day of the shooting, he “commenced ripping and touring around, showing neither sympathy with nor confidence in his freedmen; and expecting the same assiduous homage as in slave times. He changed his foreman; and drawing his revolver, threatened to shoot all indiscriminately who did not crumble to his wishes and opinions.”³ Armstrong was charged with investigating and sorting out the many troubles at Dehon’s plantation. Despite being a known Confederate sympathizer, Dehon constantly turned to Union officials to get his way. After the incident, he did not trust the guard that the Union army had placed on his plantation, so he wrote to his “Dear friend,” a Union general after the shooting incident. Dehon bypassed Armstrong in the chain of command to have the guard replaced, and Armstrong was forced to oblige.⁴ A few weeks later, Dehon alleged that the laborers had stolen his crops and tried to bring them to a military court, but Armstrong reported to his superior that the harvest had been divided fairly and nothing had been stolen. Dehon then refused to give the laborers rations from their share of the crop, and when confronted, he threatened to complain to the Commanding General of the Department of the South, Daniel Sickles. In his letter, Dehon spoke of “the hostility of the freedmen towards me” and that his contract with them put him in physical danger.⁵

³ James Armstrong to Lieutenant Creighton, February 27, 1866, in “Dehon, Theodore,” Union Provost Marshal’s File of Papers Relating to Individual Civilians (hereafter UPM), ID 27704908, M345, RG 109, National Archives and Records Administration (hereafter NARA).

⁴ Theodore Dehon to General Bennett, October 17, 1865, in “Dehon, Theodore,” UPM, ID 27704908, M345, RG 109, NARA.

⁵ Unmistakable in Dehon’s letters to officials was his rage against free Black people, which was exacerbated by Union policies in South Carolina. Following Major General William T. Sherman’s March to the Sea, he issued Field Order No. 15, mandating the settlement of Black refugees on confiscated land. It was a practical solution to provide shelter and subsistence to countless refugees that had followed the troops. The first regiment to enter the Charleston were the 21st USCT Infantry Regiment and the 55th Massachusetts Infantry. Dehon was one of the many white South Carolinians who did not take kindly to this occupation and were enraged that USCT troops “stole” and “despoiled” their estates. He protested and managed to recover his material property. Dehon knew he could demand service from the very institution he stood against and likely despised, and through the Union military justice system, he received the kind of redress he wanted. Theodore Dehon to

No longer able to mete out corporal punishment to the persons he had enslaved, Dehon turned to this system. Aaron had resisted against his enslavement before; in Dehon's words, "I had owned him [Aaron], and in consequence of his being a constant runaway. I compelled him upon one occasion[sic], to do his task in irons upon which occasion[sic] he attempted to cut off his own hand. On his recovery I sold him."⁶ He bore the many scars of his brutal enslavement; Sing Sing Penitentiary's records indicate that Aaron was blind on the right eye, owing to an injury that left a large scar that ran from the said eye down to his nose and lips.⁷ Aaron was also missing an arm. As a "freedman" imprisoned at Sing Sing, Aaron would find himself again in chains. Sambo, on the other hand, disappears from the historical record.

White civilians' fierce fight to regain control after the Civil War did not just play out through guerilla warfare and extrajudicial killings of soldiers and Black southerners. It also took place in the legal arm of the military. The violence against enslaved and formerly enslaved people in the South manifested institutionally and under the surveillance of the Union military. During the war, enslaved persons convicted by military commissions were imprisoned in military prisons or sent to penitentiaries in and beyond the South as overcrowding became a problem in the former. After the war, as military camps and prisons closed, the military increasingly relied on existing penitentiaries. The thread that connected the penitentiary and the plantation was therefore the Union military, and the stories of convicted Black southerners such as Sambo and Aaron trouble the view of the North as a free labor landscape. Aaron was among the many formerly enslaved persons who toiled in prison post-emancipation. The literature on Democrats' takeover of the South and how they

Major General Daniel Sickles, April 12, 1866, in "Dehon, Theodore," UPM, ID 27704908, M345, RG 109, NARA.

⁶ "Aaron," CMCF, ID MM-3475, RG 153, NARA.

⁷ "Sing Sing Prison Admission Registers, 1865–1939," s.v. "Aaron" (admitted May 14, 1866), *Ancestry.com*.

instated a penal system that exclusively preyed on African Americans is rich and vast, but scholars have yet to uncover how the Union army's own justice system facilitated formerly enslaved persons' transition into penal slaves. As this chapter shows, trials by military commission served as the vehicle for this transition.

This chapter examines trials by military commissions or tribunals where Black women, men, and children stood as defendants to illuminate the entanglement of U.S. military power and white supremacy. It also looks at southern whites' early efforts to establish Jim Crow justice with the assistance of Union military. As whites brought charges against formerly enslaved persons, they laid claim to government protection—the right to which Black refugees had been asserting since the war started. Sharon Romeo and Dylan Penningroth have shown how formerly enslaved persons asserted citizenship rights and a different kind of relationship with the federal government by turning to Union officials and bringing their cases before military courts. But southern whites also reconfigured their relationship to the federal government by demanding that the U.S. military punish transgressions against them. Most importantly, this reconfiguration also granted southern whites the opportunity to affirm their racial supremacy against Black southerners whom they believed no longer knew their place. They thus invited military power to police and intervene in what were once private matters within the plantation household.

The consequences for Black southerners convicted by military commissions were dire. Trials by military commissions were reserved for civilians who were charged with more serious offenses such as murder, manslaughter, rape, riot, and so forth.⁸ Military commissions diverted Black southerners to prisons, depriving them of emancipation's possibilities by sentencing them to death or years of hard labor. Those who survived became “slaves of the state,” laboring in prisons

⁸ Less serious crimes such as vagrancy and petty theft were handled by provost courts.

sometimes hundreds of miles from home.⁹ Therefore, in addition to the vigilante violence, the newly emancipated grappled with state-sanctioned confinement and violence.

How Black southerners fared in these trials reveals the radical opportunities that Reconstruction brought *and* the persistent patterns of intense racism that marred its implementation. On the one hand, Black southerners exercised their new privileges under the Union military justice system, such as the right to bring charges and testify against whites, to recruit the help of provost marshals, to demand their wages, and to seek protection and redress.¹⁰ On the other, whites leveled racial accusations that resulted in the incarceration and executions of Black southerners. While martial law offered an avenue for Black southerners to seek justice, it also offered southern whites an opportunity to punish the formerly enslaved when they could no longer wield the whip.

Scholarly treatment of military arrests of civilians and military commissions have focused on how they undermined white citizens' civil liberties. As a crucial part of the Lincoln administration's policing system, trials by military commissions were condemned by Democrats who saw martial law as nothing less than tyranny. Even newspapers that supported the Union depicted these trials as an overreach of the administration's power: "If a Military Commission, created by the mere authority of the President can deprive a citizen of the benefit of the guaranties secured by the fifth amendment, it can deprive him of those secured by the sixth," warned the *Philadelphia Inquirer*.¹¹ Indeed, with the

⁹ Here, I draw from Dennis Child's conception of what it means to be "slaves of the state." Child's text *Slaves of the State* posits that the racist and capitalist logics of slavery animates post-emancipation prison systems. The imprisonment of enslaved persons serves as the main topic of the last chapter of this dissertation. See Dennis Childs, *Slaves of the State: Black Incarceration from the Chain Gang to the Penitentiary* (Minneapolis: University of Minnesota Press, 2015).

¹⁰ The admission of Black testimony in federal courts—including military courts—was bolstered by the Civil Rights Act of 1866, which declared all persons born in the United States as citizens, proposed in legislation for the 14th Amendment. An act in 1864 was passed to admit testimonies from persons of color, but military commissions were already allowing Black southerners to testify even before both acts.

¹¹ "Trial of the Conspirators," *Philadelphia Inquirer*, 20 June 1865, 2.

writ suspended and with military commissions overriding local courts, accused individuals were deprived of the due process of law and the right to a speedy trial. As Neely writes, “the use of military commissions to try civilians proved in the end to be the part of the internal security system that most damaged the reputation of the Lincoln administration.”¹² However, despite whites’ vitriol against martial law, white men and women in the South frequently used military commissions to punish and have enslaved and formerly enslaved persons legally imprisoned—even executed—during and after the war. As this chapter shows, focusing on whites’ public condemnations of the military’s encroachment upon their civil liberties does not fully represent what was happening on the ground. They obscure the ways that southern whites navigated the militarized terrain of the South and sought to determine how the nascent Union justice system should operate.

On the Procedures of Military Commissions

Throughout the war, military generals and civil court judges clashed over the issue of jurisdiction, with each one unwilling to yield to the other’s orders. Unlike courts martial, military commissions had the authority to try civilians during wartime and were not limited to offenses indicated in the Articles of War. Both courts martial and military commissions were distinct from civil court cases and led to several disputes revolving the issue of competing jurisdictions. Organized by a commanding general, a military commission was composed of more than three officers as the detail of the commission and a judge advocate. In some cases, there were counsels—usually an officer with legal training or a civilian lawyer—but they were not required, as it was the judge advocate’s job to both “[present] the prosecution’s case and [safeguard] the rights of the accused,”

¹² Mark Neely, *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (Oxford: Oxford University Press, 1992), 161.

which, as Detlev F. Vagts rightly points out, is “both strange and unfortunate.”¹³ The judge advocate also questioned witnesses and the accused as part of his duty as public prosecutor.¹⁴ Upon the court’s convening, the accused was informed that they could object to the detail of the commission; otherwise, the members of the court would be sworn.¹⁵

The findings of a military commission had to be approved by the major general in command of the department where the trial took place. The major general also directed where sentences would be carried out and had the authority to mitigate or remit sentences. Indeed, some major generals were quite forgiving, depending on the accused’s race and gender. In 1866, a military commission in Raleigh, North Carolina, sentenced Elizabeth Ball, a white woman, to three years of imprisonment for the murder of James Thomas, a Black man. Maj. Gen. James Campbell mitigated the already light sentence to one year.¹⁶ In cases where the Office of the Judge Advocate General (OJAG) discovered irregularities, errors, or indiscretions in the proceeding records, the Judge Advocate General, a position held by Joseph Holt, had the discretion to overturn the military commission’s decision.¹⁷ A small error on the part of the commission could thus lead to the release of the convicted person. For example, after having been found guilty of grand larceny and sentenced to

¹³ Detlev F. Vagts, “Military Commissions: The Forgotten Reconstruction Chapter,” *American University International Law Review* 2, vol. 23 (2007): 264.

¹⁴ The judge advocate’s job was certainly a balancing act, as he was supposed to serve as a public prosecutor and at the same time assure “that the prisoner shall not suffer from a want of knowledge of the law.” Moreover, he could not act as counsel for the accused, but he could assist him/her only to an extent, such as letting the accused know of his/her rights or intervening in the court when the accused’s rights were infringed upon. See Stephen Vincent Benet, *A Treatise on Military Law and the Practice of Courts-Martial* (New York: D. Van Nostad, 1866): 247.

¹⁵ Both steps were important, as failure to follow even a small part of the procedure was grounds to throw out the court’s sentences.

¹⁶ Three years is an unusually light sentence even when the commission could not establish there was “malice aforethought” as in the case of Ball. Several Black southerners were given life sentences when premeditation was not established or simply when they were found complicit in the murder but did not take part of the killing itself. “Ball, Elizabeth,” UPM, ID 27511752, M345, RG 109, NARA.

¹⁷ As Judge Advocate General, Holt reported directly to the Secretary of War.

three years of hard labor, William Siler, a Black man in Tennessee, was ordered to be released, “as the records does not show that the Commission was sworn. Owing to this fatal defect, the sentence in this case is inoperative.”¹⁸ Several records also show that Holt would point out the commissions’ failure to consider extenuating circumstances and, in such cases, recommended clemency. The General-in-Chief (a position held at various points by George McClellan, Henry Halleck, and Ulysses Grant) had the power to contest the Judge Advocate General’s decision.¹⁹

The U.S. president had the final word on the findings of military commissions. He could remit sentences, approve and disapprove the execution of convicted individuals. All death sentences had to pass through the office of the president for approval.²⁰ Andrew Johnson, given his disposition, remitted the sentence of Elizabeth Ball less than a month after her conviction. While military commissions followed procedural regularity, Black southerners could not escape the prejudices of the commission members, while southern whites could not escape their political leanings. At a time of uncertainty when the military and local courts were fighting over jurisdiction, both formerly enslaved persons and southern whites wrangled over and sought to lay claim to this nascent justice system.

The Contested Powers of Military Commissions

Military commissions were hotly debated in the political arena especially when white people were imprisoned. But trials where Black persons stood as the accused were politicized in a different

¹⁸ “Siler, William,” CMFC, ID NN-2328, RG 153, NARA.

¹⁹ Winfield Scott’s tenure as general-in-chief ended less than a year before the position of the Judge Advocate General was created.

²⁰ The most infamous use of military commissions in the nineteenth century involved 300 Sioux, who were sentenced to hang in Minnesota. The Santee Sioux fought back against corrupt and abusive federal agents who were systematically starving them. Lincoln commuted the sentences of most of them but approved the death sentences of 39 Sioux.

way. Whites' criticisms shifted away from federal infringement on civil liberties, to charges that Black persons had obtained too many liberties following emancipation. Cases against Black southerners were reported in newspapers and performed the political work of undermining and condemning the military occupation, the Reconstruction Acts, and the Republicans. In 1866, 11 secessionist states refused to ratify the Fourteenth Amendment, moving Radical Republicans to implement the Reconstruction Acts.²¹ Feeling defeated, outraged, and bitter, southern whites unleashed waves of violence against the formerly enslaved.²² They branded martial law and the Reconstruction Acts as tyranny and pandemonium.²³ As a result, white anxieties over the centralization of power, the alleged overreach of federal authority, and the rise of Black political rights coalesced, manifesting into incredible violence against Black southerners.

There have been many works on the role of violence in the post-Civil War years during Reconstruction. Chief among the scholars who have tackled this topic are George C. Rable and Hannah Rosen. Rable argues that conservative whites relied on violence to subvert Reconstruction policies and reestablish white supremacy.²⁴ Likewise, Hannah Rosen explores the role of rape and other terrorist acts; she argues that southern whites committed sexual violence against formerly enslaved persons in order to reinscribe the old racial caste system of the South.²⁵ This chapter

²¹ Otherwise known as the Act to Provide for the More Efficient Government of the Rebel States, it passed over Andrew Johnson's veto on March 23, 1867. The act divided the South into military districts, thus disempowering southern courts and governments. The reconstruction of the South, as outlined by the act, required the writing of a new constitution, enfranchisement of Black men, and the ratification of the Thirteenth and Fourteenth Amendments.

²² See Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill: University of North Carolina Press, 2009).

²³ As George C. Rable writes, whites who decried the centralization of federal power were not just fanatics but varied across the Democratic political spectrum, from moderates to extremists. See George C. Rable, *But There Was No Peace: The Role of Violence in the Politics of Reconstruction* (Athens: University of Georgia Press, 2007), 82.

²⁴ See Rable, *There Was No Peace*.

²⁵ See Rosen, *Terror in the Heart of Freedom*.

contributes to our understanding of post-war white terrorism by showing that southern whites' fierce fight for control did not just manifest through extrajudicial attacks and killings. They also took place in the legal arm of the Union military. Southern whites, therefore, worked with federal and military policies rather than just violently subvert them.

By 1870, the federal army had completely stopped using military commissions, as troops were increasingly diverted to the West. The number of cases remain difficult to ascertain.²⁶ Throughout their use, Democrat newspapers and pro-Secession civilians consistently condemned them, thus obscuring the ways that southern whites used them to their advantage. There was no clear shift in whites' public views. Indeed, military commissions were aimed at providing an alternative site for formerly enslaved persons to seek and receive justice, as they could not expect any form of justice from local civil courts, and they did so in many cases. However, as early as 1862, less than a year after the federal army started trying pro-Confederate civilians through military commissions, southern whites were already bringing charges against enslaved persons. There were various reasons as to why southern whites turned to federal power to sustain racial supremacy in the South. For one, like Dehon, many of them believed there were Union officials that sympathized with them.

²⁶ Scholars have argued that military commissions' primary purpose was to police the politics in rebel states and regions where pro-Confederacy abounded. However, Black Southerners—who were neither rebels nor insurgents—have largely escaped scholarly attention. Mark Neely estimates that 2771 trials by military commission occurred in Confederate states, and that in approximately 200 of these preserved case files, Black women, men, and children stood as the accused. Almost all the cases involving Black defendants took place in Confederate states with a few in border states. Each case could have one or several defendants, and existing records indicate that around 410 Black persons were tried by military commissions between 1862 and 1870. However, as Detlev Vagts notes, the actual numbers are elusive, and accounting for all cases becomes even more complicated, given that these records emanate from different military districts then compiled by the War Department. The War Department has kept track of how many court-martial and military commission case files have been lost. The list can be found in a bound volume and enumerates the missing records of cases from 1860 to 1870 (List of Missing Court Martial Case Files, 1860 - 1870, ID 595471, RG 153). Overall, while the records are incomplete, the ones that are available serve as a valuable window into the social dynamics between military officers and Black and white civilians. See Neely 168–177; and Vagts, “Military Commissions,” 35–48.

Furthermore, both southern whites and Union officials were invested in maintaining order—be it a racist order—and to get crop production going.²⁷ Conceding to the demands of planters was common, even more so under Andrew Johnson’s administration, who had pardoned so many rebels who were now returning to their homes.

Southern whites used military commissions as civil courts were disempowered. The condemnation of these military commissions in newspapers obscured how southern whites took advantage of them. The conviction of African Americans, at times, only warranted a short celebratory sentence reporting the outcome of the trial. The cases I discuss here show the very mechanics by which Black women, men, and children transitioned from being the chattels of enslavers in plantations to becoming slaves of the state in penitentiaries. In such a transition, military law and power functioned to keep Black persons in a state of artificial death. As Colin Dayan writes, a free person undergoes civil death upon committing a felony.²⁸ The conviction of the formerly enslaved people showed that the set of laws that deprived Black persons of legal personhood was quickly replaced by another legal power that recognized the formerly enslaved’s free status but immediately rendered them civilly dead through criminal conviction. The liminal status of the recently emancipated thus becomes even more apparent in these cases.

²⁷ This assertion is in line with more recent literature that has been rethinking the work of the Freedmen’s Bureau. As Priya Kandaswamy writes, while there is a rich scholarship that tackles how the Bureau compelled freedmen to bind themselves to exploitative contracts, she notes that little has been written about how the Bureau also curbed what they perceived to be Black vagrancy—particularly Black female vagrancy—and sought to establish a social order that emulated slavery by placing Black women within the domestic space, not as mothers, but as subjugated domestic workers. See Priya Kandaswamy, “Domestic Labor and the Politics of Reform,” *Domestic Contradictions: Race and Gendered Citizenship from Reconstruction to Welfare Reform* (Durham: Duke University Press, 2021), 105–150.

²⁸ Colin Dayan, *The Law is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton: Princeton University Press, 2011), 44.

“a lawful and justifiable act”: Black Resistance to Illegal Enslavement

As the previous chapter has shown, imprisonment was a common feature of Black southerners' wartime experiences, as they were incarcerated in various places in their quest for freedom. Union officials took liberties when it came to the imprisonment of refugees. However, the incarceration of Black southerners was also institutional and marked by procedural and bureaucratic regularity. The process whereby the Union military justice system transformed formerly enslaved people into criminals was grounded in racial and gendered domination, which the ritualized and procedural regularity of military commissions could not obscure. The officers who made up the military commissions were prompt to condemn freedmen; however, when it came to death sentences, the ultimate judge was the U.S. president who had to approve all such death sentences. There was, therefore, a small window of refuge within the Union military justice system

In August 1863, eight months after Lincoln issued the Emancipation Proclamation, John Glover and David Lamb crossed the Mississippi River from Tennessee to Arkansas to rescue John Glover's two daughters, whom George Redman, an enslaver and planter, still held in slavery. Redman had sworn to shoot anyone who tried to take them. John Glover and David Lamb managed to get one daughter on the boat by the river but were then pursued by George Redman as they went back for the other daughter. In the midst of the hectic ordeal, Glover's friend, David Lamb, shot and killed Redman.

David and John were bound by deep camaraderie forged by their shared experience of being enslaved by the same family. Prior to the rescue, John had retrieved David's children from George Redman's son, who was also enslaving them. When asked why David chose to help John and even kill for him, “he could offer no excuse but that of friendship, and a wish to extend to the family of

his comrade the benefits of the same freedom which he himself enjoyed.”²⁹ Both men were both found guilty of murder by a military commission in Tennessee and were therefore sentenced to hang. However, death sentences required the approval of commanding generals, the Judge Advocate General (who reviewed all cases), and President Abraham Lincoln.

The generals approved the sentences, but when the case file reached the office of the Judge Advocate General, Joseph Holt, he recommended to Lincoln that the sentences be remitted. Holt couched his argument for the remittance in the language of the law. As Holt writes to Lincoln:

[The] rescue was a lawful and justifiable act on the part of [John Glover], and [David Lamb’s] participation in it must be held to be no less justifiable and lawful. It does not appear that [they] went to Redman’s plantation with a purpose of murder, nay, rather with a single view to the assistance of his friend in the delivery of his children from bondage...It is believed to be a case in which a strong and armed man [George Redman] has rashly thrown away his life in an endeavour to enslave a feeble young woman in defiance of the proclamation of the President which had declared her free.³⁰

As the case of Glover and Lamb show, there was indeed refuge within the Union military justice system. However, this refuge was high up in the apparatus’s internal hierarchy and was therefore unreachable to many. The members of the commission willingly convicted the two men, and pardon only came at Holt’s endorsement. This window of opportunity was also conditional: these cases involved men who died as they stubbornly clung to slavery and purposely flouted Lincoln’s Proclamation. The release of Glover and Lamb thus hinged on their enslavers’ politics and disposition.

Their convictions, on the other hand, show that members of the commission did not legitimate the claims of the formerly enslaved. Union officials’ refusal to consider mitigating factors speaks to their unwillingness to assist the formerly enslaved in their everyday fight for freedom. The

²⁹ Joseph Holt to Abraham Lincoln, June 6, 1864, in “Glover, John,” CMCF, ID 1815802, MM-1072, RG 153, NARA.

³⁰ Ibid.

chances for a convicted enslaved person to have his/her sentence disapproved and gain release were miniscule. For one, convictions with death sentences were more closely examined, and they had to be approved by the U.S. President. Those who were sentenced with long-term imprisonment were less likely to garner the special attention of the Judge Advocate's office especially if the trial had not missed procedural steps.

The case of Lamb and Glover shows how, through the law and Union officials' varying interpretations of it, the status of formerly enslaved people was re-cast: socially dead, civilly dead, condemned, and nominally free. It demonstrates the ways by which "the law resurrects [and] kills."³¹ The powers that be determined the status of Glover and Lamb, and their pleas had to be heard by a different authority in order to be released.

Silences, Absences, and a Disappearance: The Case of Amanda Woods

Gender was crucial to southern whites who used military commissions to sustain white racial superiority in post-war South. Gender also informed Black men's and women's experience in trials. The convictions of Black women speak of the Union military's failure to recognize that freedom for Black southerners, especially women, meant more than just wage labor. Freedom also meant protection for themselves and loved ones, pleasure, bodily integrity, emotional sustenance, and control over their own time. As Tera Hunter argues, "African Americans labored according to their own sense of equity, with the guiding assumption that wage labor should not emulate slavery..."³² And when plantation labor did emulate slavery, Black southerners defied their supposed "employers." The legal consequences of such resistance are what we find in military commissions.

³¹ Dayan, *The Law is a White Dog*, 42.

³² Tera W. Hunter, *Bound in Wedlock: Slave and Free Black Marriage in the Nineteenth Century* (Cambridge: The Belknap Press of Harvard University Press, 2017), 27.

Gender informed Black men and women's experience in trials, as is abundantly clear in the case of Amanda Woods. On December 12, 1865, Amanda Woods finally faced a military commission in South Carolina, for the murder of enslaver John Atkinson. Woods had been lingering in prison since September, after being accused of using a rock to strike Atkinson on the head after some altercation on the sugar cane fields. The odds were stacked against Woods, as the only witnesses called to the court were a white man, Grandison Williams, and Atkinson's wife and daughter, Susan and Sallie. The Atkinsons were a family of enslavers, having held thirteen persons in bondage when the war broke, and perhaps Amanda Woods was one of them. Allegedly, Sallie Atkinson heard a scream from afar, ran toward the fields, and saw her father injured on the head. Sallie admitted that she did not see Amanda Woods, but she claimed that her father, in his dying moments, communicated that it was Woods who struck him. While the record of Woods's case is filled with gaps due to absence of Black testimonies, these absences allow us to speculate what could have happened. The case's documents Woods as the aggressor, but perhaps, she was seeking to protect and free herself.

When Black women stood as the accused in military commissions, few took their side in an effort to mitigate their sentences. That it was entirely possible that Amanda Woods acted in self-defense when she allegedly struck an enslaver was never brought up in her trial. Instead, the commission privileged a dead white man's alleged last words to convict Amanda Woods. The racial and sexual politics that made the rape of Black women a dominant feature of slavery also made Amanda Woods the unquestionable aggressor in her trial. Slavery had been built on the racial and sexual exploitation of enslaved women's bodies and their image as wanton and conniving seducers, undeserving of the protection accorded to white women.³³ The trope of a Black woman unable to

³³ Deborah Gray White is largely credited as the first scholar to comprehensively discuss and analyze how slavery nurtured myths about Black women. She argues that Black women are at the nexus of

control her base instincts undergirded the decisions of Union officers who tried Black women. Amanda Woods thus emerges from the historical record as a perpetrator of senseless violence.

Woods's counsel challenged the veracity of John Atkinson's statement, claiming he could not have been in his right mind as he laid dying; he was, therefore, "in extremis." The commission rejected the challenge. The counsel also asked that the testimony of Atkinson's wife be discounted, arguing that wives could not testify for or against their husbands. The prosecution rejected this, claiming that since John Atkinson was not a party in the case (he being already dead), then the rule did not apply. Ultimately, however, the commission decided that Susan Atkinson, as the deceased's wife, was not a competent witness.

When another witness was asked if he could identify Amanda Woods in the scene of the crime, he answered that he saw some person but don't didn't know that it was her; "From the dress it was a colored woman, and from the distance that was all I could tell about her."³⁴ That was all the commission needed to convict Amanda Woods, and she was sentenced to spend the rest of her life at Albany State Penitentiary, New York, 800 miles away from where she lived. It is within the realm of possibilities that Atkinson tried to either physically or sexually assault Woods, and she fought back. It is also possible that Woods, though technically a free woman, was still being held in bondage. Perhaps, Atkinson was struck by someone else. But these are conclusions that the commission were not open to entertaining.

The cases of Woods, Glover and Lamb differed yet shared many things in common. The three faced unforgiving military commissions that were unwilling to hear extenuating factors. While the two men received reprieve, the many absences and gaps in Woods's records make nearly

ideologies about womanhood and Blackness—two of the most potent myths in America. See Deborah Gray White, *'Ar'n't I a Woman?': Female Slaves in the Plantation South* (New York: Norton, 1985).

³⁴ Ibid.

impossible to ascertain how she was treated. Nevertheless, they also indicate that Union officials were willing to keep her silent and to mute a Black woman's plea. Woods's conviction betrays how white ideology about Black female deviance shaped Union officials' treatment of Black women.³⁵ Indeed, denigrating beliefs about Black women and the dangers of their mobility deeply informed military policies in South Carolina. Major General John G. Foster believed freedwomen in South Carolina to be "generally subversive of moral restraint," and, in 1864, he banned Black women from visiting their soldier husbands in camps. Doubling down, Foster instituted a new gendered policy: "All negro women in future found wandering in this manner will be immediately arrested and compelled to work at some steady employment on the plantations."³⁶ In the South's militarized terrain, Union officials were invested in reestablishing labor and sexual discipline among the recently freed. Hegemonic constructions of race, gender, and sexuality operated to undermine even the heteronormative relations between freedpeople—in this case, the marriage of Black soldiers and women—and rendered Black women who enacted their newfound mobility as vagrant and wayward. Foster's policy criminalized those Black women who resisted the subjugation of their labor and the policing of their mobility. Woods thus confronted an institution that already marked her as deviant even before she faced the commission.

Amanda Woods disappears from the historical record for a good reason. On Christmas Eve, only days after her conviction, she outsmarted the prison guard, escaped, and was not seen again. The *Yorkville Enquirer* reported that "justice have thus far been thwarted" by her escape.³⁷ With her case shrouded with doubt yet her conviction so certain, Woods knew this cardinal truth: she was a free woman, and to be re-enslaved, this time by the state, was *the* injustice. Retelling Woods's story is

³⁵ The works of Jennifer Morgan, Darlene Clark Hines, Brenda Stevenson, Sarah Haley, and many others have expertly analyzed the constructions of Black female deviance across time and space.

³⁶ General Order No. 130, September 6, 1864, in *United States Congressional Serial Set*, vol. 2967, 274.

³⁷ "The Military Courts," February 8, 1866, *Yorkville Enquirer*, 2.

a “task of writing the impossible”—which, as Saidiya Hartman reminds us—“has as its prerequisites the embrace of likely failure and the readiness to accept the ongoing, unfinished and provisional character of this effort, particularly when the arrangements of power occlude the very object we desire to rescue.”³⁸ Indeed, Woods’s existence is made visible to us through the records that silence her and render her a criminal. Her disappearance represents the limits of the archive and of historians’ purported abilities to recover the lives of the enslaved. If Woods ever found freedom, the Union army had not paved that path.

There were hurdles, which for many Black southerners were simply too tremendous. Not all the stories of Black southerners who faced military commissions ended in narrow escapes. The case of Woods allows us to see the fictions of the universalism of the law. While martial law purportedly allowed for white and Black southerners to have equal standing in court, Woods could not escape the laws that deemed her a slave and how it informed the decisions of those of who purportedly upheld a different and more enlightened set of laws that assured her of her rights. Formerly enslaved people such as Amanda Woods easily slid from possessing a civil status to losing it upon allegedly committing a crime.

The Changing Sexual Economy of the South: The Case of Alfred Locke

The records of military commissions also reveal how southern whites came to wield the Union military justice system as a tool to reinscribe myths about Black men and assert what they believed was due to them—the state’s protection. Here, I discuss rape cases taken up by military commissions to show how Union officers upheld the racial and sexual politics of the South. As military occupation signaled that Black Southerners would attain legal racial equality, southern whites

³⁸ Saidiya Hartman, “Venus in Two Acts.” *Small Axe: A Journal of Criticism* 12, no. 2 (2008): 14.

found other ways to mark them as socially, politically, and sexually dangerous. White women figured prominently in these narratives, as it was their perceived inherent virtue and right to protection that was deemed at stake. Sexual liaisons between Black men and white women certainly existed in the South, but they were a reality that Republicans would rather elide, as Democrats often weaponized such relations—by assuming them to be naturally non-consensual—to attack Black political progress. On the Congress floor, Democrats conflated Black political rights, specifically the right to vote, with Black male sexuality, trumpeting the dangers of both as the same.

The politics of Reconstruction was thus sexualized; as Martha Hodes argues, “Because it was the men among the former slave population who gained suffrage rights and a measure of political power—and who therefore had the potential to destroy the racial caste system—whites focused on the taboo of sex between white women and black men with new urgency.”³⁹ The toleration for relationships between Black men and poor white women dissipated at the dawn of Black political progress in the South, as poor white women were included into the fold of virtuous white womanhood. In her study of rape cases in antebellum South, Diane Miller Sommerville notes that wealthier class of southern whites adhered to the ideology that poor white women and girls were inherently licentious because such ideology “put them at odds with poor whites”; white sponsors even testified to the good character of free Black men accused of rape by exploiting the stereotypes of loose poor white women.⁴⁰ Such stereotypes, however, lost their currency in the post-war South, where distinctions between rich and poor whites became much less important than racial lines. Black men’s political power was a much greater threat than poor whites overstepping their bounds.

On October 11th, 1865, Alfred Locke, formerly enslaved, was executed by the Union military, a

³⁹ Martha Hodes, “The Sexualization of Reconstruction Politics: White Women and Black Men in the South after the Civil War,” *Journal of the History of Sexuality* 3, no. 3 (1993): 403.

⁴⁰ Diane Miller Sommerville, *Rape and Race in the Nineteenth-Century South* (Chapel Hill: The University of North Carolina Press, 2004), 111.

few months after a military commission found him guilty of raping Mary Sloan, a white woman. Locke's trial was short, lasting only a day and half. The judge advocate and commanding general seemed eager to execute Locke, and Holt had to remind them they needed Lincoln's approval, which was promptly given. Knowing his fate, Locke escaped in July, until he was captured by Brigadier General Thomas Heath's men in Salisbury, North Carolina.

Once confined, Locke repeatedly asked to speak to Heath. Two and half hours before he was executed, he got his request. Locke professed to Heath that he and Mary Sloan had had a sexual relationship for two years prior to his arrest and that the charge brought against him "was made to shield her from indignations incident to the accidental discovery of their carnal intercourse."⁴¹ There were only two men who knew about the relationship, and the other one, "Esquire Johnson," was responsible for bringing the charge to authorities. Heath related his conversation with Locke to Colonel J. A. Campbell, believing he had just executed an innocent man under the latter's orders. As it turned out, Johnson visited Heath's headquarters two days earlier, asking about the execution as "The neighbors are being anxious to know when you are going to hang that nigger?"⁴² Johnson boldly admitted that "Mary Sloan was known to be a bad character before she was married...she is not considered respectable to the neighbors, but I have not heard any of the neighbors say they could swear that they knew of any criminal intercourse since she married."⁴³ Johnson did not think that Sloan, married for 17 years, had changed her ways, but also admitted that no one could state for certain that she was having an illicit affair.⁴⁴ As Johnson well knew, there was no damning evidence

⁴¹ The Union military executed Alfred Locke at 1 p.m. on October 6, 1865. In his letter to the commanding general, Heath indicated that he spoke to Locke at 8 a.m. in the morning. Bvt. Brig. Gen. Thomas Heath to Col. J. A. Campbell, October 6, 1865. UPM, ID 28053941, M345, RG 109, NARA.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ The North Carolina Marriage Index lists Mary Cowan and John Sloan's marriage date as 1848.

in the case, only his testimony that Mary told him of the rape a day after, Mary's accusation, and circumstantial evidence.⁴⁵ Even the person who allegedly witnessed the encounter in Sloan's home could not identify Locke, only that she heard a "Negro's voice."⁴⁶

Perhaps racked by guilt for following the order to execute Locke, Heath told Campbell that the provost marshal and his officers believed the man to be innocent; "I had not seen the record of the court, had nothing of the trial, seen ultra[high] class of citizens eager for the blood of the negro, and under all the facts as presented, I deemed it my duty to at least attract the attention of the Major General Commanding to the case, laying before him the prayer of the prisoner."⁴⁷ But Heath's pity meant nothing then to the dead who had never even had the chance to leave his enslaver's plantation.⁴⁸ What was left was doubt, which had shrouded Locke's case from the very beginning, but no matter how strong it was, it could not spare Locke from the violent rage of that "ultra class of citizens" who knew how to wield the power of the state to their advantage. Even Holt and Lincoln approved the punishment that southern whites deemed proper for Locke as the price of transgressing their sexual norms.

Locke had committed the unspeakable crime of interracial sex. Just as Union officials expected Black southerners to submit to their contractual obligations as wage laborers, they expected them to show their capability to abide by social customs. Locke, through his relationship with Sloan, had failed to subjugate himself to the South's norms, which were becoming more rigid as the formerly enslaved were gaining some freedom. As Sharon Block has argued in her study of the political meanings of rape in early America, the persuasive strength of a woman's accusation rested upon the

⁴⁵ It is not clear what Johnson's relationship is with Mary Sloan, although it is likely that she worked for him in some capacity.

⁴⁶ "Locke, Alfred," CMCF, MM-2468, RG 153, NARA.

⁴⁷ Bvt. Brig. Gen. Thomas Heath to Col. J. A. Campbell, October 6, 1865. UPM, ID 28053941, M345, RG 109, NARA.

⁴⁸ Alfred Locke was still living in his enslaver Sarah Locke's property at the time.

status of the man they accused.⁴⁹ She further asserts that such cases were viewed as a rebellion against the institution of slavery, a sign that Black men “sought to turned the political order upside down...”;⁵⁰ reports and accusations of rape by enslaved men, in other words, represented the specter of a slave rebellion. However, in the post-war South, that fear was replaced by the specter of Black citizenship. Were Black men to be full citizens, white men’s authority in the political, economic, and social arena and over white and Black women’s bodies would no longer be exclusive.

In Union-occupied South, the manufactured fear of freedmen taking over the political and social arena was prevalent. To southern whites, the formerly enslaved had been given too much freedom. The perceived lack of control over the people the federal government just freed marred the Union’s cause. When *The Daily North Carolinian* reported on an alleged rape of a white woman by two Black men, it noted the “lawlessness of the times” and “justly [ascribed] the fearful increase of crimes in our midst to radical misrule.”⁵¹ White southern newspapers spectacularized rape cases, highlighting them as the result of Republicans’ misled efforts to secure Black civil rights and the failure of military occupation. Tennessee’s *Home Journal* decried the Congress’s preoccupation with seeking redress for Kate Dostie, a Black woman ejected from a D.C. car when “scores of rapes, by negroes, upon white girls and women” were allegedly so rampant they could “fill column upon column” of their paper.⁵² Through these articles, southern whites pushed forth the notion that freedom was a responsibility the formerly enslaved were not prepared for—how could they carry the load of citizenship?

⁴⁹ Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, 2006), 4.

⁵⁰ Block, *Rape and Sexual Power in Early America*, 219

⁵¹ “Criminal Calendar for Edgecombe Superior Court,” *The Daily North Carolinian* (Raleigh, North Carolina), March 8, 1868.

⁵² “All About a Nigger Gal,” *The Home Journal*, March 5, 1888, 2.

Continuities: The Marginalization of Black Women and Girls in Military Courts

How accused Black men and Black women defendants fared in rape cases allows us to see how the Union officials failed to challenge the sexual identities that the institution of slavery imposed upon Black persons. Enslavers deemed Black women and girls to be outside the domains of femininity and virtue to validate rape and the brutal exploitation of their reproduction. Enslavement, as Jennifer Morgan writes, “requires both the moral and social distance from the enslaved.”⁵³ That moral codes should not apply to the enslaved—and the formerly enslaved—allowed white women to benefit from the institution of slavery, to ignore and partake in its terror, and to use its myths to their advantage.⁵⁴ Military commission records also show that Black women were consistently seeking sexual justice, and white women were extending the privilege of legal protection to punish both sexual and non-sexual transgressions against them. Although the Lieber Code “brought [Black women and girls] for the first time under the umbrella of legal protection,” allowing them to bring rapists to court, still, Black women and girls could not expect that their cases would be treated in the same way Union officials treated white women’s cases.⁵⁵ The seriousness of the crime of rape depended heavily on the accuser’s race.

Court-martials and military commissions did not hold the rape of Black women and girls as having the same enormity as that of their white counterparts. As Crystal Feimster notes, “Because so many northerners viewed themselves as liberators of slaves, federal officials certainly did not openly condone the rape of slave women. While no federal soldiers were executed for raping black women,

⁵³ Morgan, *Laboring Women*, 8.

⁵⁴ Stephanie Jones-Rogers explores how the constructions of white women have long shielded them from accusations of being partakers and central actors in the economy of slavery. See *Stephanie E. Jones Rogers, They Were Her Property: White Women as Slave Owners in the American South* (New Haven: Yale University Press, 2019).

⁵⁵ Crystal Nicole Feimster, “Rape and Justice in the Civil War,” *The New York Times*, April 25, 2014, <https://opinionator.blogs.nytimes.com/2013/04/25/rape-and-justice-in-the-civil-war/>

few were court-martialed and convicted.”⁵⁶ The rape of Black women and girls did not challenge the racial hierarchy in the South; rather, it affirmed white male sexual agency. Even as Black men were burdened with denigrating myths about them, Black women and girls’ presumed lasciviousness discouraged commissions from handing down death sentences. In 1864, Prince Chaplin was found guilty of raping Rosina Pinckney, his wife’s cousin. In the trial, Pinckney was questioned repeatedly about her visits to her cousin and Chaplin’s house to cast doubt on her claim. The defense asked if she were in the habit of sleeping in their house and their bed, and Rosina answered that she had only slept there once. Undeterred, the defense then tried to make her admit to having received money from Chaplin, which she denied. It was clear that the defense was trying to intimate on the possibility of a consensual sexual relations between Chaplin and Pinckney. Although the commission found Chaplin guilty, he was only given nine months imprisonment with hard labor. The record of Chaplin’s sentence notes that “the apparent disproportion of the punishment to the heinous crime charged, is justified only by the peculiar circumstances of the case.”⁵⁷ The defense had successfully cast doubt upon Pinckney’s character. The commission’s decision affirmed Chaplin’s guilt and Pinckney’s lack of virtue. The mitigation of the sentence is certainly ambivalent; on one hand, the court decided the encounter was rape but deemed it a crime less than rape that it did not deserve severe punishment.

The sentencing of Black men was thus mitigated when the victim was Black, but accusations by white women certainly spelled a death sentence upon conviction of the accused. Southern whites were aware of this and weaponized military commissions against Black men and boys. In 1865 two white North Carolinian women, Mary and Elizabeth Miller, brought charges against Wilson Dosier,

⁵⁶ Crystal Nicole Feimster, *Southern Horrors: Women and the Politics of Rape and Lynching* (Cambridge: Harvard University Press, 2009), 22.

⁵⁷ “Chaplin, Prince,” CMCF, ID 1831668, LL-2665, RG 153, NARA.

a 16-year-old boy, recently emancipated. The women claimed that Dosier had stolen calico from Mary and tried to rape Elizabeth. Dosier's affidavit painted a different picture:

I did not steal the calico. It was given to me by a colored man named "Pete" who came along and asked me if I wanted a piece of calico and said he would make me a present of it. I took it home and had made a shirt from it. In regard to the witness Elizabeth Miller, I never used such words to her and there was a fence between us at the time we spoke. I did not threaten her. I only blackguarded her a little.

Dosier was cleared of "attempt to rape" as the Millers' charge clearly sounded like a stretch. It is likely they had hoped for a more severe punishment. Their accusation relied heavily upon Black men's presumed base instincts and white women's presumed virtue. Dosier was sentenced to one month of hard labor—a "fence" had saved him. A conviction of an attempt to rape, however, could have had him executed, as other cases prove. The Millers understood they could make further claims to make Dosier's alleged transgression appear even worse. Theft of a piece of calico would have been a charge too small for a military commission and reserved for a provost court.⁵⁸ However, the Millers brought about rape attempt charges to exacerbate the punishment for Dosier. Dosier was found guilty of stealing the calico but cleared of other charges.

Reprieve was nearly impossible for Black men accused of sexual transgressions against white women and girls. In two separate cases in 1863, Clint and Granson, both formerly enslaved, were convicted of an attempt to rape and sentenced to hang. In Clint's case, Holt promptly approved the death sentence, writing, "It is needless to dilate upon the enormity of this crime or to dwell upon the obvious and striking circumstances, which in this case, render its atrocity hellish."⁵⁹ Granson's accuser admitted during the trial that he pinned her down but "He did not accomplish his purpose" after her brothers stopped him.⁶⁰ Lincoln subsequently approved both men's sentences to be

⁵⁸ Provost courts handled disagreements among civilians, less egregious charges, and cases where military personnel were involved in civil crimes.

⁵⁹ "Clint," CMCF, ID 1871275, NN-3848, RG 153, NARA.

⁶⁰ "Granson," CMCF, ID 1850888, KK-520, RG 153, NARA.

hanged, shutting down any possibility of pardon. Granson's case could have been disapproved, in part because the record did not show that the judge advocate in the trial was sworn. Such procedural misstep often caught the attention of Holt, the meticulous Judge Advocate General, but, in this case, he did not. This is especially unusual since Holt disapproved several cases with such small irregularities, as in the case of Green Cummings, convicted of raping a Black woman named Mary. Regarding Cummings's case, Holt noted that "The written record of the trial of Green Cummings fails to show that the Commission and the [Judge] Advocate were sworn 'in the presence of the prisoner.'"⁶¹ Holt ordered Cummings's release from confinement unless the same commission could be reconvened immediately for retrial. Officials could not reconvene, and there is no record indicating that a retrial took place. Black women and girls who brought rape charges against men found that the military's guarantee of "government protection" was heavily tinted with racism.

Scholars have commented on Lincoln's unforgiving responses to Union soldiers convicted of rape, but they have failed to note that his stance toward perpetrators—like that of U.S. military courts—differed according to the race of the victim. Robert Alotta, for instance, notes that Lincoln "provided clemency for all types of military offenders, except rapists."⁶² Susan Krause, likewise, writes that while Lincoln looked for mitigating factors to spare the lives of soldiers sentenced to death, but "he was prompt to punish those who had committed outrages upon women."⁶³ Union officials who made up military commissions and courts martial, however, were more likely to give light sentences to aggressors when the victim was Black. Only 22 Union soldiers were executed for rape during the war, and all of them had committed the act against white women. Without a doubt,

⁶¹ "Cummings, Green," CMCF, ID1847353, MM 2815, RG 153, NARA.

⁶² Robert I. Alotta, *Civil War Justice: Union Army Executions under Lincoln* (Shippensburg: White Mane, 1989), 31.

⁶³ Susan Krause, "Infamous Outrage and Prompt Retribution': The Case of *People v. Delny*" in *In Tender Consideration: Women, Families, and the Law in Abraham Lincoln's Illinois*, ed. Daniel Stowell (Urbana: University of Illinois Press, 2002), 194.

several Black women and girls brought their cases before military courts, but even convictions did not mean justice would be carried out. When Eugene Hannel, a white military steward was convicted by a courts martial of violently raping Rebecca Ann Cradle, a Black woman laundress, he was sentenced to three months in jail and slated to be discharged dishonorably.⁶⁴ Holt thought it too forgiving and recommended two years, still a very light sentence given the enormity of the offense; apart from lacerations and swelling in her private parts, Cradle suffered a mental breakdown.⁶⁵ Hannel was never discharged nor imprisoned for two years, but instead was simply made to work for three months in a brigantine. Even when military courts did hand down death sentences to soldiers who raped Black women and girls, their executions were commuted upon being reviewed by Lincoln.

Military commission trials reveal how southern whites' sexual and political power persisted even under the surveillance of the Union military. However, notions about class and gender were being rethought, and hierarchies were changing. Rather than preserving the old regime that deemed poor whites as undeserving of the privileges their elite counterparts enjoyed, poor white women were being brought into the fold of virtuous womanhood, as southern whites looked for ways to criminalize the newly freed. Under martial law, women in the South were configuring a new social order that would pave the way for Jim Crow. Military commissions therefore became the site where contending sexual powers came head to head. By bringing cases against Black men, white women were determining just how much power they could still wield over the enslaved and formerly enslaved as chattel slavery was crumbling. On the other hand, Black women were asserting their right to what slavery had deprived of them, legal protection and sexual autonomy. It was uncertain

⁶⁴ "Hannel, Eugene," CMCF, ID 1840400, MM-987, RG 153, NARA.

⁶⁵ During the trial, a military surgeon reported that Cradle was still committed to a contraband hospital where she "has continued insane and lucid at intervals to the present time." Ibid.

for all groups how the nascent Union military justice system was going to operate. It was also unclear whether it was going to dispense equal and exact justice.

Conclusion

The punitive decisions of commissions against Black men and women who stood trial speak to the ways that Blackness was constructed as an affliction, marking them as indelibly servile, deviant, punishable, and—to borrow Sarah Haley’s term—hyperimprisonable.⁶⁶ As this chapter has shown, white supremacy seeped into supposedly emancipatory institutions, with fateful consequences for Black southerners. Moreover, enslavers did not acquiesce quietly as the institution of slavery drew its last breath. Instead, they harnessed whatever tool was available to them to reinstate a semblance of the old regime of the South. While the Union justice system, particularly the military courts, was the only institution through which enslaved and formerly enslaved persons could seek justice, it was still a penal institution that relied on rationalizations of slavery. It would be amiss, therefore, to portray the military commissions as a system meant only to police rebellious whites or an institution that Black southerners could consistently lean on to seek justice. With the South’s social and political landscape altered by the war, southern whites adjusted their ways, recognizing the authority of martial law—of the federal government. They turned to the Union military justice system, knowing they still had leverage and that many Union officials, too, believed that freedmen needed to be controlled, their labor subjugated, and their freedom curbed.

⁶⁶ See Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: University of North Carolina Press, 2016).

CONCLUSION

I don't do nobody nothin', Jesus
But they hates me just the same
I don't do nobody nothin', Jesus
But they hates me just the same
- "I don't do nobody nothin'"

In January 1870, eight months after Ulysses S. Grant was inaugurated as President of the United States, he received a letter, perhaps one of the many stacked on his desk. It is apparent that the writer wrote as neatly as he could, careful that the script should all be aligned, but as it went on, the responsible hand grew shaky. The letter was from Thomas Brown, a Black man convicted by a military commission in Virginia five years ago. Brown was pleading for clemency:

I am a colord man who is now confined in the New Hamshire State Prison in this city for life and as I am inosent of the crime which I am now sufring for I thought it would not be wrong in Laying the case before you hoping and kindly asking you to look in to my case and help men if posible I have now bin confined Hear five years come July and I have a wife and mother to mourn my sad faite and mr presedent I am inosent...Mr Presedent I apeal to you for my rights that is all I ask god our Hevenly Farther who sees and knows all he knows that—I am inosent—of the crime aliged against me and shall I sufer for the crimes commited by a nother man because they suspect me of knowing somthing about it not so but Mr Presedent I come to you as I have none other to go to and as a man that is wronged and Imprisoned wholly inosent before my god of that dreatful crime...¹

Brown was convicted of murdering Addison Sorer, a white man in Clark County, Virginia, in May 1865. Alfred Brown, another formerly enslaved man, was implicated in the murder and sentenced to life in prison for being an accessory.² Samuel Butler, whom military authorities deemed as the main perpetrator, was made to testify against the two.³ The records of their cases are unclear; not one witness could confirm that they saw the murder, only that the body was found in a well and that the

¹ Thomas Brown to Ulysses Grant, January 13, 1870, in "Brown, Thomas," Court-martial Case Files (from herein CMCF), ID MM-2094, Records of the Office of the Judge Advocate General, 1792-2010, RG 153, NARA.

² The records do not indicate whether Alfred Brown and Thomas Brown were related.

³ Samuel Butler was also formerly enslaved and was tried by a different commission.

Browns knew the dead man. Butler only testified that they talked about possibly killing Sorer before the murder but did not admit to it. Thomas Brown's case finally caught the attention of the Bureau of Military Justice in 1870, and Judge Advocate General Joseph Holt, upon reviewing the case, deemed the record "meagre and unsatisfactory."⁴ Holt then asked the warden of New Hampshire State Prison to speak about Brown's confinement, so that a case for executive clemency could be made. The warden spoke highly of Brown and enclosed the latter's handwritten letter in his reply.⁵ Just as he did so in his letter, Brown maintained his innocence while in confinement. As the warden noted, "he has frequently alluded to the injustice of his sentence."⁶ Whatever transpired during Brown's imprisonment remain unwritten about.

The experiences of Thomas Brown and many other Black southerners imprisoned after the war represent the network that tied the barracoons, plantation, and penitentiary together.⁷ After all, they were only a generation apart from the last human cargos who were forcibly brought to the Americas. The freedman-turned-prisoner represented the crux of two intertwining currents in the North: penal reform and abolition. The former justified involuntary servitude or prison slavery as rehabilitative, and the latter was premised on the idea that the enslaved would need to be trained and disciplined to be part of civilized society. The Thirteenth Amendment, which abolished slavery and

⁴ As Judge Advocate General and head of the Bureau of Military Justice, Holt was tasked with reviewing all proceedings of courts-martial, military commissions, and courts of inquiry of the armies of the United States. In this case, Holt's office caught the attention of Brown's case, likely because of its sparse and questionable records. Joseph Holt to Ulysses Grant, February 28, 1870, in "Brown, Thomas" CMCF, ID MM-2094, RG 153, NARA.

⁵ The warden also noted that "Likewise the same can be said with equal justice concerning Alfred Brown (colored) alleged to have been implicated in the same crime, and who received the same sentence that Thomas Brown did." Joseph Mayo to Joseph Holt, February 2, 1870, in "Brown, Thomas" CMCF, ID MM-2094, RG 153, NARA.

⁶ Ibid.

⁷ Thorsten Sellin was among the first scholars to articulate the long thread that connected penal slavery in the American South to slavery in the antiquities. Correcting Foucault's assessment of slavery as ahistorical, Sellin points out that Thomas Jefferson as well as other founding fathers had an existing ideological toolkit from which they drew as they thought about and justified slavery in the Americas. See Thorsten Sellin, *Slavery and the Penal System* (New York: Elsevier, 1976).

involuntary servitude, except as punishment for a crime, was not a new technology of racial domination or a concession to the South. Certainly, racial slavery—so suffused in the nation’s history—could not be disentangled from the logics of incarceration. Like the many policies enacted during the war, the Thirteenth Amendment codified what was already happening on the ground; the military, as previous chapters have shown, perpetuated the re-enslavement of Black persons through criminal convictions or, at times, simply through arbitrary captivity. It also drew from Northern abolitionist and reformist impulses, partly explaining why even “carpetbagger” Republicans and military officials in the South accepted penal slavery during Reconstruction. In other words, the Amendment’s provision did not inaugurate new practices, rather it embedded and justified existing ones in the Constitution.

A New Era: Prison Slavery and Profits

How and why the Browns (and many others) ended up in prisons hundreds of miles away is a peculiar story that do not fit neatly within the story of emancipation. Their coerced movement has escaped scholarly attention perhaps because their stories are buried within thousands of files that document the trials of civilian rebels, Confederates, and convicted Union soldiers—remnants of a justice system largely believed to have curbed the rights of whites and upheld those of the enslaved. After the war, as military prisons in the South closed, the military needed more sites of confinement. In February 15, 1865, Lincoln sent an order that would lead to the displacement of thousands more prisoners: “The Penitentiary at Albany, N.Y.; the State prison at Clinton, N.Y.; the Penitentiary at Columbus, Ohio; the Penitentiary at Jefferson City, Missouri; and such other prisons as the Secretary of War may designate for the confinement of prisoners under sentence of Courts Martial shall be deemed and taken to be military prisons.”⁸ By entangling state penitentiaries into the military’s

⁸ Abraham Lincoln, “Order Concerning Prisoners,” February 15, 1865, in Abraham Lincoln, *The*

prison apparatus, Abraham Lincoln's order seemed to have marked the expansion of the federal prison complex, but he was, in fact, following the lead of his Secretary of War, Edwin M. Stanton, who had been sending court-martialed soldiers and convicted Washington, D.C. civilians to Albany Penitentiary as early as 1862. For the first time in U.S. history, the federal government had connected individual penitentiaries throughout the country through one network and under the purview of the War Department. Like the tentacles of an octopus—each seemingly possessing a mind of its own—penitentiaries dealt with military prisoners according to their own rules, but their release and the execution of their sentences ultimately depended on whether Joseph Holt, the Judge Advocate General, found their petitions worthy of the president's attention.

Albany Penitentiary and Clinton State Prison were crucial to the Union's internal security apparatus, as they served as alternative sites of confinement when Old Capitol and other prisons in Washington, D.C. were filling with federal prisoners. This left very little space for civilians convicted by the district's courts. With prisons in New York already woven into the War Department's response to the growing number of court-martialed soldiers and incarcerated population in D.C., it made sense that they would be used when military officials grappled with the problem of imprisoned civilians in the South. Before Lincoln gave his order in February 1865, the federal government was already sending civilians convicted by military commissions to Clinton Prison, known as "Little Siberia" for Dannemora's harsh winters and remoteness.⁹

Many of these transferred prisoners were white male civilians convicted of using seditious language and intercourse with the enemies of the U.S. and Union soldiers imprisoned for desertion, cowardice, and neglect of duty. And in May of the same year, Clinton received Amos Vandross, the

Collected Works of Abraham Lincoln (Rockville: Wildside Press, 2008), 300.

⁹ The records of Clinton Prison show that the federal government started sending civilians to the prison in September 1864. Between September 1864 and March 1866, Clinton Prison received over a hundred federal prisoners, a mix of civilian and enlisted men. New York, U.S., Clinton Prison Admission Ledgers, 1851–1866, *Ancestry.com*

first formerly enslaved civilian from the South to arrive there as a military prisoner.¹⁰ There, federal prisoners worked alongside state prisoners, manufacturing iron, as Clinton Prison was essentially an iron mill, complete with an impressive array of nail-making machines, steam-operated forges, and kilns.¹¹ While the war's demand for steel did not seem to have increased Clinton's total profits, the miscellaneous funds it received from various sources more than doubled in 1865, when it started receiving federal prisoners, suggesting that the federal government paid the prison a considerable sum.¹²

Penitentiaries and reformers in the North embraced penal slavery long before the Civil War, justifying it through Lockean thought, English codes, and Puritan theology. As Adam J. Hirsch writes, reformers and commentators on penal institutions seriously internalized John Locke's view that a man's violation of the social contract warranted the loss of his natural rights.¹³ Hard labor, as reformers saw it, was a necessary punishment for convicted persons to reenter society. While Hirsch underplays the economic incentives of penal slavery in Northern penitentiaries, it was certainly a driving motivation for prison superintendents during wartime. The Prison Association of New York lauded the benefits of receiving prisoners from Washington, D.C. in its 1867 annual report:

Under the pressure of necessity, the U.S. Government entered into an arrangement with the Albany penitentiary, by which the latter engaged to receive all the prisoners sentenced for crimes and misdemeanors in the District of Columbia, on condition of

¹⁰ New York, U.S., Clinton Prison Admission Ledgers, 1851–1866, digital image, s.v. “Amos Vandross” (Received May 17, 1865), *Ancestry.com*

¹¹ David Lewis writes that in 1860, the prison was upgraded with new machinery intended to increase its iron production. The prison was built to be self-sufficient, modeled after the systems at Sing Sing Prison and Auburn Penitentiary. See W. David Lewis, “Fiasco in the Adirondacks: The Early History of Clinton Prison at Dannemora, 1844–1861,” *New York History* 49 no. 3 (1968): 284–305.

¹² Clinton Prison's contract earnings decreased between 1864 and 1865, from 38,355.06 to 21,993 dollars. However, in 1865 and 1866, the prison received “miscellaneous earnings” worth 5,564 and 5,974 dollars respectively, dwarfing the amounts from the year previous (2,371 dollars). Franklin B. Hough, *New York Convention Manual*, Part II Statistics (Albany: Weed, Parsons, & Company, 1867), 279.

¹³ Hirsch, *The Rise of the Penitentiary*, 78.

receiving the avails of their labor and a certain stipulated amount per week for the board of each. This arrangement has been found mutually advantageous. The authorities at Washington are at considerably less expense for their convicts than when their own penitentiary was in operation, and the convicts themselves are under a far better *regime*; while the county of Albany enjoys the benefit of their labor, and has a very considerable money revenue from their board.¹⁴

The superintendent of Albany Penitentiary welcomed the increase of its prison population. At the beginning of the war, the penitentiary faced a financial dilemma. In 1862, it received 574 fewer inmates than the year previous, as able-bodied men with criminal offenses were drafted into the military; the superintendent was therefore left with convict leasing contracts he could not fulfill.¹⁵ Washington, D.C.'s prison overcrowding problem presented an opportunity, and the superintendent applied to receive its prisoners. By the summer of 1862, these prisoners "supplied a requisite number of hands to fulfill the contracts existing" and "enabled the Superintendent to make others, advantageous to the Institution."¹⁶ As the previous chapter recounts, Amanda Woods, a formerly enslaved woman in South Carolina, was sentenced by a military commission to spend the rest of her life performing hard labor at Albany Penitentiary but escaped before she could be transported to New York. Had she ended up in the penitentiary, Woods would have joined several Black men and women from Washington, D.C., transferred there by the military. They were sent there in terrible condition, suffering from typhoid fever and smallpox. Penitentiary and state officials claimed that these diseases were brought by prisoners from D.C.¹⁷ Of the 43 persons that died, 29 were Black.¹⁸

It is clear that officials blatantly ignore the underlying factors that led such a high rate of Black mortality. Military officials routinely neglected illness and death among prisoners of war and

¹⁴ Prison Association of New York, *Twenty-Second Annual Report of the Executive Committee of the Prison Association of New York: Transmitted to the Legislature January 29, 1867* (Albany: C. Van Benthuysen & Sons, 1867), 235–236

¹⁵ David Dyer, *History of the Albany Penitentiary* (Albany: Joel Munsell, 1867), 110.

¹⁶ Dyer 111.

¹⁷ Edward F. Underhill, *Proceedings and Debates of the Constitutional Convention of the State of New York Held in 1867 and 1868, in the City of Albany*, vol.3 (Albany: Weed, Parsons, and Company: 1868), 1772.

¹⁸ Dyer 140.

Black refugees in camps. As Jim Downs writes, military officials' interest in the health conditions of refugees stemmed from their need for healthy labor force, and, for the most part, they believed that racial inferiority rendered persons of African descent vulnerable to diseases.¹⁹ Northerners, too, consistently invoked the racist notion that Black refugees would bring diseases to block any efforts for refugee assistance. Black freedom thus became tied to disease, and confinement provided a solution. When we look at Northern state governors' racist responses to the growing number of enslaved people making their way to Washington, D.C., and the public fears about them swarming the North and juxtapose such responses to penitentiary superintendents' willingness to take in Black prisoners, it becomes clear that Northerners were only willing to accept Black presence in the context of incarceration and coerced labor. The fear of Black dependency and illness were thus resolved through incarceration. States like New York received Black southerners not as refugees but as prison slaves.

Throughout the late 1860s, the War Department had paid thousands of dollars to various state penitentiaries for the subsistence, clothing, and other needs of military prisoners sent there.²⁰ That Northerners were quick to celebrate the revenues produced by penal servitude is not surprising. In New York alone, Sing Sing, Clinton, and Auburn Prisons consistently increased their profits towards the end of war. Between 1864 and 1866, each convict netted the state an earning of

¹⁹ See Jim Downs, *Sick from Freedom: African-American Illness and Suffering During the Civil War and Reconstruction* (Oxford : Oxford University Press, 2012).

²⁰ Ohio State Penitentiary and Missouri State Penitentiary received the greatest amounts, at 5,733.25 and 2,859 dollars respectively. More than half of the military commission trials took place in Missouri, thus producing a large number of U.S. prisoners. The closing of the Union camp and prison Camp Chase in Ohio would account for the large number of prisoners sent to Ohio State Penitentiary. "Letter from the Secretary of War transmitting a statement of expenditures of the appropriation for the contingent expenses of the year 1869," January 24, 1870, in *Executive Documents, House of Representatives During the Second Session of the Forty-First Congress, 1869–70* (Washington: Government Printing Office, 1870), 13.

20 dollars a year.²¹ The state of New York turned a profit of almost 100,000 from its prisons by 1868, a quarter of it came from Albany Penitentiary, which received the great bulk of U.S. prisoners sent to New York.²² Still, the number of Black military prisoners sent to the North remained small. It would take decades for the racial dynamics of northern prisons to shift.²³ In the South, however, the prison population's shift from majority white to Black was swift.

The U.S. military's role in ushering what others have called "slavery by another name" has often been overlooked in the historiography of penal institutions. As the previous chapter argues, trials by military commission also served as the vehicle by which enslaved persons became captives of the state. By following the lives of enslaved persons tried by military courts and imprisoned in penitentiaries, this section concretizes the oft-forgotten link between the Union military's and southern penitentiaries' systems of incarceration. These institutions both relied on forced labor to bolster their resources. During the war, the Union army relied on Black labor for fortifications and other military needs. Likewise, Black persons sent to penitentiaries became resources themselves, as they worked as convicts on public works and leased to individual companies.

As the South was divided into military districts, Union officials oversaw the leasing of prisoners, the vast majority of whom were Black. Francis Pierpont, Virginia's military governor, was not the only one who ushered in the reconstruction of the South through Black convict labor. Winfield Scott Hancock, a Union general who served as the commander of the Fifth Military District, authorized the leasing of Louisiana State Penitentiary's prisoners to John Huger and former

²¹ This amount was calculated by subtracting the cost of the imprisoned person's maintenance from the value paid to the penitentiary for each person's labor. See Underhill, *Proceedings and Debates*, 1772.

²² Ibid.

²³ By 1880, for example, out of 1518 persons incarcerated at Sing Sing, 100 were Black; at Auburn, out of the 897 inmates, 45 were Black; and at Clinton, only 9 out of 247 imprisoned persons were Black. See *Annual Report of the Superintendent of State Prisons for the Year Ending September 30, 1880, Transmitted to the Legislature* (Albany: Weed, Parsons and Company, 1881), 26, 55, 69.

Confederate colonel Charles Jones in 1868.²⁴ By then, the penitentiary's population was more than 70 percent Black.²⁵ Louisiana State Penitentiary had long held enslaved people, but they never exceeded the number of white convicts until after the war. Up until the outbreak of the war, it was a site of sexual and racial terror, as the rape of Black women became a way to enrich the state. As Brett Josef Derbes notes, children born to incarcerated enslaved women in the penitentiary automatically became the property of the Louisiana.²⁶ When the Union army captured Baton Rouge, it freed the penitentiary's prisoners. However, immediately after the war, imprisoned Black persons dwarfed the number of white convicts, and for years to come, they worked on levees and railroads, enriching individual powerful white industrialists and ushering the modernization of a state ravaged by the war and yearly floodings.²⁷ Though southern states could no longer openly enslave and sell Black persons, another racist-capitalist system of incarceration was emerging. Unionists who had opposed slavery embraced convict leasing, expressing little to no concern about how it maintained slavery's racial domination and the South's racial caste. One of the first initiatives that Arkansas governor Isaac Murphy, an anti-slavery Unionist, undertook was the reconstruction of the Little

²⁴ Newspapers refer to Charles Jones as "Colonel Charles Jones," alluding to his military service as lieutenant colonel of 17th Regiment Louisiana Infantry. Compiled Service Records of Confederate Soldiers Who Served in Organizations from the State of Louisiana, Charles Jones, Lieutenant Colonel, 17th Louisiana Infantry, Record Group 109, National Archives, Washington.

²⁵ By the latter half of 1868, Louisiana State Penitentiary held 297 prisoners, 211 of whom were Black. See *Annual Report of the Board of Control of the Louisiana State Penitentiary, January 1, 1868* (New Orleans, 1868), 32.

²⁶ An 1848 law mandated that the children of enslaved women who were confined for life in the penitentiary became the property of the state of Louisiana. Brett Josef Derbes, "'Secret Horrors': Enslaved Women and Children in the Louisiana State Penitentiary, 1833–1862," *The Journal of African American History* 98 no. 2 (2013): 280.

²⁷ Between February 1866 and March 1867, the penitentiary almost exclusively only admitted Black persons. Out of the 405 imprisoned persons, only 85 were white. See Louisiana State Penitentiary Records, 1866–1863, *Ancestry.com.*; In 1870, the prisoners of Louisiana Penitentiary were leased to one man, who owned Angola Plantation. The state of Louisiana purchased the plantation in 1901, and so begins the troubled history of today's Angola Prison. See Nathan Cardon, "'Less than Mayhem': Louisiana's Convict Lease, 1865–1901," 58 no. 4 (2017) 417–441.

Rock Penitentiary by leasing it and its prisoners for a lump sum.²⁸ When the lessees found the contract to be unprofitable, Murphy's successors—Union general Clayton Powell (1868–1871) and Radical Republican Ozra Amander Hadley (1871–1873)—oversaw the passing of legislations that allowed for lessees to have greater control over the prisoners and increase their profits.²⁹ During Reconstruction, Union officials and Republican governors in the South were amenable to the the leasing of Black persons. It was part and parcel of the renegotiation of southern states' reentry into the Union.

As previous chapters have discussed, military courts and county courts diverted formerly enslaved people to southern penitentiaries. By following the lives of such persons, the confluence of chattel slavery practices and the Union military justice's coercion becomes clear. It is none more apparent than in the case of Samuel Ligon and Jefferson Wood. In early 1867, Samuel Ligon and Jefferson Wood, both formerly enslaved, were kidnapped by two white men in Aberdeen, Mississippi. They were then forcibly taken to Vicksburg where the headquarters of the Fourth Military District was located. The white men then brought a charge of stealing a mule against Ligon and Wood. In July 1867, Ligon and Wood faced a military commission, found guilty of larceny, and sentenced to three years of hard labor. It had only been four months since the U.S. Congress put Mississippi and Arkansas under control of the military as a provision of the First Reconstruction

²⁸ Garland Bayliss, "The Arkansas State Penitentiary under Democratic Control, 1874–1896," *The Arkansas Historical Quarterly* 34 no. 3 (1975): 196.

²⁹ In 1869, the lessees of the penitentiary wrote to Powell, breaking their contract, because state had failed to adequately pay the lessees. Arkansas's leasing agreements before 1873 was different from other states, in that the state paid the lessees to maintain the penitentiary and provide for its prisoners. See James Hodges, John Peay, and Charles Ayliff to Clayton Powell, March 8, 1869, in *Journal of the House of Representatives, Arkansas* (Little Rock: Price and Barton, 1870), 614.; In 1873, a new convict leasing law was passed, mandating that the state provide and care for prisoners; in essence, it freed the lessees from the obligation and cost of keeping an imprisoned person alive. See Calvin R. Ledbetter, "The Long Struggle to End Convict Leasing in Arkansas," *The Arkansas Historical Quarterly* 52, no. 1 (1993): 5.

Act.

As of 1869, Samuel Ligon was still imprisoned in the Penitentiary at Little Rock, Arkansas, 300 miles away from where he had been kidnapped. He had been contracted out as a convict laborer, driving a team within the city. It was perhaps through this work that Ligon caught the attention of a retired circuit judge, to whom he must have related his story. The judge, the fittingly named Liberty Bartlett, wrote on behalf of Ligon for an executive clemency and pointed out the specific failures of the military commission in trying him: “That he was hurriedly tried entirely ignorant of the law, and no counsel or friend there. That he was entirely innocent of the crime charge. The evidence adduced against him, as will appear from the record now in the office of the attorney general at Washington, was all hearsay and not admissible neither was it true in fact except that Wood stayed at his house one night with the mule said to be stolen.”³⁰ It is entirely likely that the military commission did not fully inform Ligon of his rights. In the past, Judge Advocate Holt caught detrimental procedural irregularities in countless cases. But the absence of counsel or a lawyer in the vast majority of Black defendants’ cases no doubt meant that many were left to the system’s mercy. Indeed, very few Black defendants were provided with counsel, a right that they possessed and were supposedly informed of.

Ligon’s experience reveals the complicity of the Union military justice system in the emergence of convict leasing in the South. In pleading Ligon’s case, Bartlett noted that his imprisonment only “[benefits] the prison contractors for the value of his labor at the cost to the U.S. of \$0.35 per day and clothing.”³¹ Arkansas, as Matthew J. Mancini notes, had peculiar system in which the state paid businessmen and contractors rather than the other way around.³² However, As

³⁰ Liberty Bartlett to Ulysses Grant, July 30, 1869, in “Ligon, Samuel,” CMCF, ID OO-2428, RG 153, NARA.

³¹ Ibid.

³² Matthew J. Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866-1928* (Columbia: University of South Carolina Press, 1996), 117

a captive of the military and later of the state of Arkansas, Ligon would have witnessed how private contractors turned the penitentiary into a lucrative business that relied on penal slavery. As Alex Lichtenstein argues, convict leasing was not just a replacement for slavery, it was system that was "specific to the birth of southern industrial capitalism."³³ Indeed, convict leasing solved several problems for the state, which businessmen saw as opportunities. The destruction of southern cities demanded large amounts of capital and cheap labor, and most states were too bankrupt to maintain its penitentiaries. For the South's economy to recover, public works construction and manufacturing industries needed to be prioritized. These conditions laid the groundwork for mutually beneficial deals between state officials and businessmen (sometimes they were one and the same). During Ligon's imprisonment, the penitentiary's prisoners were leased to two firms. Asa Hodges, a politician and brick and wagon manufacturer, served as the second contractor, and he immediately industrialized the prison itself, installing machinery with the state's money and leasing out inmates to plantations. Hodges, a former enslaver, had served as a Republican delegate to the Arkansas constitutional convention of 1867 and was a member of the Arkansas House of Representatives before becoming the penitentiary's contractor. His source of profits did not just come from his contract with the state; because the penitentiary held military prisoners, the War Department paid Hodges thousands of dollars for the "clothing, guarding, subsisting, and medicines furnished [to] United States prisoners."³⁴ It was a new industrial era of reconstruction and reenslavement, and both the state and federal government fattened the pockets of contractors. Ligon and many others were at the crux of what Thomas C. Holt calls the "problem of freedom," the irreconcilable need for a

³³ Alexander C. Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996), 113.

³⁴ In 1869, the federal government paid Hodges 633.58 dollars, a paltry sum compared to the 4,149.92 dollars it paid him a year later. See *The Executive Documents Printed by the Order of The House of Representatives, During the Third Session, Forty-First Congress 1870-'71* (Washington: Government Printing Press, 1871), 40; and *The Executive Documents Printed by the Order of The House of Representatives, During the Third Session, 1871-'72* (Washington: Government Printing Press, 1871), 7.

subordinate labor force in an increasingly industrialized free labor market.³⁵ Ligon entered the free market economy as a person enslaved by the state.

The U.S. military thus directly facilitated the displacement and dispossession of Samuel Ligon and the death of Jefferson Wood. Wood, as Bartlett noted, died on the way to Arkansas. Their stories trouble scholars' assumption that convict leasing in the South was mainly a project spearheaded by southern Democrats, and certainly this system was not distinctly southern.³⁶ Ligon had survived what must have been a treacherous journey from one prison to another. Invoking the affective reasonings of family, Bartlett wrote that Ligon's further imprisonment only "operates as a punishment to his innocent helpless wife and three small children, depriving them of bread and their natural and careful protector."³⁷ In becoming a penal slave, Ligon would have found that his enslaver was no longer one human agency but a bureaucracy, leaving little room for negotiations. The disciplinary authority that mete out punishment was no longer an enslaver or overseer; punishing Black persons became a matter for the state.³⁸ It is only when someone with a measure of influence and power took the time to navigate the bureaucratic system of imprisonment on his behalf that he gained a chance to be released.

Rethinking the Civil War and Reconstruction

³⁵ Thomas C. Holt explores the contradictions within a liberal bourgeois ideology and its conceptions of freedom by examining emancipation in Jamaica. In reconstructing Jamaica as a free labor market and in promoting its industrial expansion, officials relied on coercion and repressive measures against Black Jamaicans to impose their vision of "freedom." See Thomas C. Holt, *The Problem of Freedom: Race, Labor, and Politics in Jamaica and Britain, 1832-1938* (Baltimore: John Hopkins University Press, 1992).

³⁶ Mancini, *One Dies, Get Another*.

³⁷ Liberty Bartlett to Ulysses Grant, July 30, 1869, in "Ligon, Samuel," CMCF, ID OO-2428, RG

³⁸ Here, I draw from Diana Paton, who argues that emancipation in Jamaica did not disrupt the modes of punishment tendered against Black Jamaicans, asserting that corporal punishment used against the enslaved coexisted with state formation and the rise of prisons. See Diana Paton, *No Bond But the Law: Punishment, Race, and Gender in Jamaican State Formation 1780-1870* (Durham: Duke University Press, 2004).

Did the war successfully destroy the institution of slavery? This dissertation attempted to answer this question by interrogating the Union military. Specifically, this dissertation asks that we consider how contraband camps and freedmen's villages served as carceral spaces; how Black military labor could be a form of forced servitude; how refugees became prisoners; and how Black military prisoners became leased convicts. Contraband camps served as sites of public violence, sexual humiliation, and domination, where refugees were forced into a constant state of vulnerability. They experienced what Orlando Patterson termed as natal alienation; Enslaved person's egregious separation from loved ones and kinship ties and subjection to various forms of violence were all integral parts of the system of slavery.³⁹ The same technologies of terror persisted as refugees reached Union lines. As Crystal Feimster argues, federal troops' "public acts of sexual violence" as "a demonstration of their power over black women and threat to white women" and "served to mark southern defeat."⁴⁰ Soldiers' acts of violence toward women and children not only served as reminders to refugees that they were without human rights, but also served to deny male refugees' claim to manhood by rendering them unable to protect their families. Soldiers fought to preserve the Union, and, on the ground, they also actively preserved white male supremacy, reproducing forms of racial and gender subordination that the system of slavery required.

Building shanty settlements was a limited alternative for formerly enslaved families, but such settlements provided a tenuous degree of protection, if any at all. When General Christopher Augur abruptly ordered to clear out a village that Black families had built in Arlington, Louisa Jane Barker, an army chaplain's wife, testified that soldiers mercilessly expelled everyone including a dying child.⁴¹

³⁹ Orlando Patterson, *Slavery and Social Death* (Cambridge: Harvard University Press, 1982), 5.

⁴⁰ Crystal Feimster, *Southern Horrors: Women and the Politics of Rape and Lynching* (Cambridge: Harvard University Press, 2009), 22.

⁴¹ "Testimony by a Northern Woman," January 1864, quoted in Ira Berlin, *The Wartime Genesis of Free Labor: The Upper South, Freedom: A Documentary History of Emancipation, 1861-1867*, ser. 1, vol. 2 (New York: Cambridge University Press, 1993), 311.

When the men came back to see their wives and children gone, one allegedly exclaimed, “I never saw hard times till since I called myself a freeman—.”⁴² A piece of paper declaring one free did not shield them from the forms of violence so common in slavery—family separation, unjustified and arbitrary killings, confinement, and corporal punishment—nor did the Emancipation Proclamation end them. Refugees followed the Union army, seeking protection and freedom, but for many, deliverance was not to be had—only the same existential threats they had escaped from in slavery. It is easy, however, to recount the violence refugees faced but less so to reckon with the myths surrounding the U.S. military and how its part in the Civil War is memorialized. It is even more difficult, perhaps, to recognize the military’s ongoing role in perpetuating white supremacy and the legacies of slavery.

Black southerners voluntarily worked for the U.S. army, and doing so helped many to survive the war. Still, the arduous work involved in assisting military operations and the prospect of being separated from one’s family also led enslaved and formerly enslaved people to refuse such work. In such cases, physical violence and confinement proved useful to military officials. It is for this reason that abolitionists who went to the South called contraband labor as government slavery. Enslaved people themselves saw it as nothing more than slavery and resisted against impressment. If government officials thought that enslaved people would automatically embrace the Union cause and put up with unpaid wages, physical abuses, and family separations, they were wrong. To the enslaved, Union victory was a means to an end and not the end itself. They therefore made tenuous allegiances with Union soldiers; the former seeking freedom and the latter the preservation of the Union, neither of which could be attained without military victory. But when military officials failed to uphold their end of the bargain and simply resorted to violence and coercion, formerly enslaved people consistently tried to hold them accountable, reminding them that they would not let military

⁴² Ibid.

labor emulate slavery. When a group of free persons wrote to General Benjamin Butler to lay out their grievances about being forced to work for no compensation, they spoke of their “Entire Willingness to Contribute to the Cause of the union in anyway consistant[sic] with there[sic] cause as Freemen and the Rights of their families.”⁴³ The interactions between Black southerners and the military were marked with tension that stemmed from different notions of being free. Military officials, mostly from the North, assumed that receiving paltry wages—which often never materialized—would be more than enough for Black men, women, and children struggling to survive. But for the formerly enslaved, freedom was never just about being paid or surviving, and the state could not define it for them. Their actions and the demands they made of the Union military speak to how family, subsistence, control over one’s labor, and security from violence were at the heart of what freedom meant during wartime.

Labor was not the only reason for the use of coercion and imprisonment. As this dissertation shows, Black refugees who arrived in D.C. were either contained in freedmen’s camps, detained in prisons, or brought there through impressment to control and curb Black mobility, lest they should “swarm” the North. The Chesapeake region stood as the gateway to Northern states, whose governors did not want to take in Black refugees. In isolating refugees in camps, the military officials rendered them dependent on government aid, which, in turn, incited fears about dependency. The primary purpose of these camps was to redirect refugees into wage labor even if it meant forcing them or separating mothers from children. Just the prospect of Black freedom, therefore, incited racist anxieties. The white supremacist and patriarchal ideology that deemed persons of African descent as in need of discipline to enter civilized society informed the decisions of military officials.

The U.S. military’s desire for Black subjugation—whether they manifested through utter

⁴³ Robert Henry et al. to Maj. Genl. B. F. Butler, 20 Nov. 1863, in Ira Berlin et al., *The Wartime Genesis of Free Labor: The Upper South*, 166.

neglect, arbitrary imprisonment, coercive labor practices, sexual abuses, and so forth—shaped state practices and the formation of a gendered-racialized understanding of citizenship. The Fourteenth Amendment defined Black persons as citizens, which, among other things, meant that they had the right to public services and assistance from state-run institutions. Delving deeper into how Black southerners experienced martial rule, it becomes more apparent that the military's policies served as a blueprint for the post-war and post-Reconstruction order in the South. The ways that the Freedmen's Bureau forced Black women into wage labor and disregarded their desires to tend to their own families and children were reminiscent of what happened in contraband camps and freedmen's villages, where officials constantly justified separating children from their mothers so that they could be forced to work. How the Union military justice system treated sexual transgressions against Black women implied a standard that upheld the patriarchal dictates of slavery. Black women's long fight for sexual justice speaks to how the Union occupation failed to curb the long reign of terror wrought upon their bodies. The very interactions of refugees and newly emancipated people with soldiers and military officials prefigured and informed the kind of second-rate citizenship conceded to African Americans. When we think about the state and federal institutions that illegally denied service to African Americans even after the ratification of the Fourteenth Amendment, prisons emerge as the primary institution that unequivocally received Black persons. We cannot fully understand the shortcomings of the Fourteenth Amendment and the construction of Black citizenship without looking at how the enslaved were treated during the war and how their relationship with the federal government evolved through interactions with the military. Interrogating the role of the Union military justice system and analyzing the policing and imprisonment of Black refugees allows us to see that before the federal government even recognized them as citizens, it already deemed them as criminal and carcerable.

Focusing more on the Union military justice system also allows us to connect the Civil War to

broader histories of empire. The policing of Black southerners under martial law is tied to the experiences of various groups that the U.S. military dealt with throughout the globe.⁴⁴ Once the U.S. occupied the Philippines, the military enacted vagrancy policies that closely resembled the ones used against the enslaved and formerly enslaved people of the South. Moreover, the U.S. military's repressive prostitution policies in its colonies partly drew its logic from the policing of Black women in the South, whose presence in military camps allegedly corrupted the morals of Union soldiers.⁴⁵ As the Union army and the Freedmen's Bureau enacted restrictive vagrancy policies and conceded to the wants and demands of southern whites, formerly enslaved people were confronted with institutional forces that they could not control. The impediments against their ability to move and labor freely brought to question whether equal rights could ever be achieved in the South.

Military commissions are still utilized to this day. They are often used when U.S. legal systems and civil law constrain the U.S. government's ability to prosecute and persecute non-citizens and those inside and outside the boundaries of the nation. In particular, they have been used against Filipino revolutionaries during the Philippine-American War. During World War II, military commissions tried and executed Japanese soldiers in Manila and Nazis in Mathausen, Germany, for war crimes. Their jurisdiction had always been ambiguous, determined by the presence of the U.S. military rather than precise geographical boundaries. This jurisdiction would only grow, as the

⁴⁴ Victor Román Mendoza connects Jim Crow justice to colonial governance in the Philippines. In particular, he notes that vagrancy law in the Philippines was deliberately capacious, enacted to capture anyone who supposedly acted in ways that disrupted public order, thus recalling how such laws had been used against African Americans in the South. See Victor Román Mendoza, *Metroimperial Intimacies: Fantasy, Racial-Sexual Governance, and the Philippines in U.S. Imperialism, 1899-1913* (Durham: Duke University Press, 2015), 36.

⁴⁵ Laura Briggs argues that Puerto Rican women, whose sexuality and reproduction became a discursive site wherein benevolent expansionism and racial difference were debated, contested, and bolstered. Puerto Rico and its working-class women were key to arguments for U.S. imperialism: their supposed helplessness, reckless reproduction, and inferiority rendered the island and its people in need of U.S. governance. For more on military regulations in U.S. colonies such as Puerto Rico, see Laura Briggs, *Reproducing Empire: Race, Sex, Science, and U.S. Imperialism in Puerto Rico* (Berkeley: University of California Press, 2002).

Supreme Court ceded more powers to the military. In 1942, the Supreme Court unanimously ruled that the military, instead of civil courts, could try foreign nationals who entered the United States to commit destructive acts. The jurisdiction of military commissions is therefore vast and expandable, as it is tied to any place or region the American military claims to have occupied. Finally, the Military Commission Act of 2006 gave the president absolute power to decide who counts as an enemy of the country and to imprison them indefinitely without charging them with a crime. It was an egregious overreach, legitimized by racial fears and fantasies about outsiders seeking to destroy the “American way of life.” The military justice system testifies to the incredible power of the U.S. president and military to create enemy subjects as well as rightless subjects.⁴⁶ Like Black refugees, modern-day asylum-seekers would find that the difference between a refugee and a national threat is drawn along racial lines. As Haitians fled to the U.S. in the early 1990s, they were imprisoned in Guantanamo Bay, where U.S. constitutional laws do not apply and where, to this day, 39 Muslim men remain imprisoned without charge or trial. Guantanamo Bay stands today as a resurrection of military prisons in D.C. during the Civil War, where the nation’s enemies—Confederates—were imprisoned along with Black refugees who posed as an imagined racial threat to the North’s white-dominated societies and industries.

⁴⁶ Here, I build upon Naomi Paik’s argument that the U.S. has strategically adapted to changing historical conditions and consistently used the technology of the camp to create rightless subjects. While Paik focuses on the 20th and 21st century, her analysis of the purpose and functions of concentration camps is also useful in understanding the experiences of Black refugees during the Civil War and the spaces in which they were confined. Naomi A. Paik, *Rightlessness: Testimony and Redress in U.S. Prison Camps Since World War II* (Chapel Hill: The University of North Carolina Press, 2016).

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