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## Houses Divided: New Perspectives on Antiwar Dissent in the American Civil War

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HOUSES DIVIDED: NEW PERSPECTIVES ON ANTIWAR DISSENT IN THE AMERICAN  
CIVIL WAR

by

Mark Ciccone

A Dissertation Submitted in  
Partial Fulfillment of the  
Requirements for the Degree of

Doctor of Philosophy

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ABSTRACT  
HOUSES DIVIDED: NEW PERSPECTIVES ON ANTIWAR DISSENT IN THE AMERICAN  
CIVIL WAR

by

Mark Ciccone

The University of Wisconsin-Milwaukee, 2020  
Under the Supervision of Professor Lex Renda

Since the conclusion of the American Civil War, antiwar dissent in the Union and the Confederacy has predominantly been viewed through the lens of political treason alone, with limited exploration of other factors—judicial, social, economic, personal—which motivated its expression. Both explicitly and implicitly, the individuals and movements that advocated peaceful negotiations to end the conflict, or protested what they viewed as illegitimate or unjust war policies enacted by Washington, D.C. or Richmond, or demonstrated their opposition through riots, flight or armed rebellion have been cast as traitors, conspirators and otherwise denigrated or discounted by Northern triumphalist-tinged narratives, and the “Lost Cause” school of history. Furthermore, acts of dissent in both North and South which are not traditionally viewed as antiwar, or as having any noteworthy impact upon either region’s war effort or domestic policy, have also been marginalized, adding to the monolithic perception of Civil War dissent as ineffectual, limited to certain parties and societal elements, and being motivated by political ideologies alone.

In order to comprehend better the scope and nature of antiwar dissent in the American Civil War, and its true effect on the military and legislative efforts of the Union and Confederacy, it is necessary to extend the definition of dissent to new events, personalities and

factions including those previously examined as isolated elements in broader Civil War histories, or as targets of analytically limited case studies. This extension must also include actions and rhetoric not intended as antiwar dissent, yet had similar indirect effects, and which provoked similar repression or reforms from the Lincoln and Davis administrations aimed towards nullifying perceived threats to their war efforts or domestic popular strength. This dissertation makes such an extension, concentrated in the judicial, political and grassroots areas of Civil War studies. Through this new analysis, the varied forms and wider prevalence of antiwar dissent, explicit and implicit, becomes clear, as does its influence on Northern and Southern war policies and on modern debates concerning personal liberties, the legality of dissent in wartime, and the powers of the state in war and peace.

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## **Introduction**

From the start of the American Civil War with the firing on Fort Sumter, a wide range of individuals, groups and regions in both the Union and the Confederacy opposed the conflict. Prewar conceptions of civil rights and federal and state powers, socioeconomic relations and personal concerns for freedom, safety and survival in wartime conditions all shaped the aims and rhetoric of this dissent. Faced with what they viewed as unjust, unconstitutional, or immoral policies enacted by the Lincoln administration in Washington, D.C., or the Davis administration in Richmond, dissenters expressed their resistance to the war or to measures sustaining it through political activism, judicial challenges, and grassroots actions, most often in the form of riots and similar disorder.

In certain instances, such dissent was expressed in tandem with or in close proximity to other, open military threats to the authority of Washington or Richmond. Though not included in the focus of this dissertation, two key examples of such threats are the uprising of the Dakota Sioux in Minnesota during December of 1862, which provoked panic, settler flight and increased Union military presence in the Midwest, and the rampant, internecine violence between armed pro-Confederate and pro-Union civilians in the border states of Kentucky and Missouri, and within the increasingly diminishing Confederacy, which brought more stringent military governance and reprisal. Thus, the pressure of this violence, and of antiwar dissent in regions which often neighbored those affected by it, caused the Lincoln and Davis administrations to either revoke or modify their governments' wartime policies to maintain popular support, and simultaneously required the redirection of vital resources—troops, funding, political capital—to suppress expressions of dissent which, they believed, could threaten the prosecution of the Northern and Southern war efforts. In addition, the questions raised by this dissent concerning



race, personal liberties, and the breadth of federal authority in war and peace remained incompletely addressed by the war's end in 1865 and have continued to emerge from the Reconstruction era into the present day.

Given this, I propose that a full understanding of the immediate and lingering political, legal, and social forms of antiwar sentiment and their impact on the pursuit of the war must include not only a new analysis of traditionally studied intentional actions such as (court rulings, local and state elections, military campaigns), but also actions that, while not conventionally understood as antiwar and undertaken for a variety of different motives, had similar effects on the Union and Confederate war efforts. Certain political figures and groups viewed as treasonous by the majority in the North or South disapproved of specific government policies—*habeas corpus* suspension, conscription, abolition, governance through military authorities, expansion of central government powers at the expense of the states or individual liberties—rather than simply the war itself. Furthermore, judges who ruled such policies illegal or in need of reform to fit constitutional limitations likewise were not uniformly antiwar in their personal or ideological stances toward the conflict. Grassroots dissenters engaging in direct antiwar actions—riots, protests, actual or perceived rebellion—objected primarily to the measures implemented to sustain the war effort, and to the perceived and real demographic, social and economic costs of the conflict. If we apply this distinction between general opposition to the war and specific opposition based on a broader spectrum of motivations to the study of Civil War antiwar dissent, then the scope of this study widens considerably.

Broadening the definition of antiwar dissent in the Civil War and developing new perspectives on traditional examples of such leads to a better understanding of its forms, effects, intent and legacy. This expansion of what constitutes dissent in this period allows for a more

thorough deconstruction of enduring, monolithic, flawed perceptions of dissent: the blanket casting of the Northern “Copperheads” as traitors, or the narrative of the solidly pro-Confederate South first promulgated under the “Lost Cause.” From this deconstruction, the influence of factors which provoked this dissent—social, economic, political, judicial—gains greater importance. In addition, the highlighting of their persistence beyond 1865 shows the inability of Northern victory or Southern defeat to resolve them. What the Union fought for—a unified nation and the end of slavery—was realized, and what the Confederacy lost—its “peculiar institution” and its longtime dominance of the federal government—was lost forever. However, these outcomes, and the Reconstruction period that followed, did not result in meaningful or lasting reforms targeting the causes for dissent. This in turn left serious questions unanswered in the realm of constitutional liberties, social equality and the scope of national government powers, and allowed for the entrenchment of inaccurate or incomplete perspectives on the Civil War and those who opposed it.

Previous studies of dissent during the American Civil War have predominantly examined specific events, personalities, and groups accepted by consensus to be intentional expressions of antiwar and even treasonous sentiment. Among the first definitive works were those of Frank L. Klement, beginning in 1960 with the publication of *The Copperheads in the Middle West*. This work, and subsequent individual case studies, examined Catholicism and the Copperhead movement, the Copperhead leader Clement L. Vallandigham, the myths or exaggerations surrounding Copperhead and pro-CSA secret societies and conspiracies, and state-level Democratic and Copperhead opposition to the war in Indiana, Ohio, Iowa, and Wisconsin. Breaking with contemporary “treasonous” and otherwise “disloyal” perceptions of Democratic activity during the wartime period, Klement highlighted the roots of this opposition in the tenets

of Jeffersonian-Jacksonian democracy, which retained considerable influence in the 1860s: limited central government, states' rights, and emphasis on individual liberties and other rights enumerated in the Constitution, including the rights of property in the form of slaves. To adherents of this political philosophy, Klement argues, Lincoln's and the Republican Party's policies in pursuit of maintaining the Union—conscription, suspension of *habeas corpus*, issuance of paper currency, military tribunals, and emancipation—were unconstitutional and potentially dictatorial measures, threatening American democracy and freedoms, and called out for resistance.

Two of Klement's contemporaries—Emma Lou Thornbrough and Robert H. Abzug—expand upon his arguments on Democratic opposition at the state and regional level. Thornbrough's 1964 article concentrates on the decisions of Indiana Supreme Court during the Civil War, particularly those issued by its chief judge, Samuel E. Perkins. Thornborough points to Perkins as an example of the Jeffersonian and Jacksonian Democrats who supported the Civil War only as a means of preserving “the Union as it was.” They rejected the ideas of a “revolutionary” conflict (as exemplified by the Emancipation Proclamation) which would lead to the entrenchment of Republican power under Lincoln and his party. Thornborough suggests that Perkins supported Democratic resistance to this perceived tyranny in his continual clashes with Republican Governor Oliver Morton over two key elements of the judge's judicial philosophy: “an insistence upon strict construction of constitutional provisions and opposition to restraints upon personal liberty and the use of private property.”<sup>1</sup> These stances challenged *habeas corpus* suspension and military courts in particular—including in the Milligan treason case—and the Republican wartime policy as a whole, and led to accusations of treason and antiwar

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<sup>1</sup> Thornbrough, Emma Lou. “Judge Perkins, the Indiana Supreme Court, and the Civil War.” *Indiana Magazine of History*, vol. 60, no. 1, 1964, pp. 79–96. *JSTOR*, [www.jstor.org/stable/27789129](http://www.jstor.org/stable/27789129).

Copperheadism against Perkins and other Indiana Democrats who supported the Civil War only as a reunion measure.

Robert Abzug adopts a slightly different analytical approach in his 1970 comparative study of “Copperhead” perspectives towards Northern dissent among Civil War historians. In Abzug’s view, similar to Klement’s, the cultural and political biases against the Peace Democrats, “Copperheads” and other dissenters have remained entrenched in academia since the Civil War period. Simultaneously deviating from and expanding upon Klement’s thesis, Abzug concedes that Civil War historians “contributed a certain number of levelheaded answers to the historical literature [...] sensibly assessed the dissenters as being of little immediate danger to the Union cause,” since, in the majority, these dissenters adopted “a common-sense approach to constitutional liberties in time of war by arguing that infringements seemed justifiable in the context of a war for the Union’s existence. Yet, Abzug argues, since Civil War historians do not examine fully the motives and thoughts of these opposition groups, they consider most dissent merely “a product of Democratic partisanship, cowardice, or pro-Southern attitudes.”<sup>2</sup> Since political opposition often did translate into open resistance against Republican wartime policy—draft evasion, collaboration with the CSA, assaults on conscription officials and other actions “outside the law”—Abzug argues that the focus of study “should be shifted from that of political parties to the reasons for and process by which the Democratic party became incapable of satisfying the needs of its natural constituents,” with two particular “roads” to understanding this dissent: assessing “the relationship of antiwar feeling to the Union cause,” and “the question of how dissenters reacted to the Lincoln administration’s concept of the powers and role of Federal government—both the decision in favor of a war to force Union and also by the powers

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<sup>2</sup> Abzug, Robert H. “The Copperheads: Historical Approaches to Civil War Dissent in the Midwest.” *Indiana Magazine of History*, vol. 66, no. 1, 1970, pp. 40–55. *JSTOR*, [www.jstor.org/stable/27789625](http://www.jstor.org/stable/27789625).

developed to prosecute that war.”<sup>3</sup>

Historians extended this deconstructive approach through the first decade of the 2000s, into previously unknown or under-studied sources of dissent such as religious belief and opposition to conscription in encouraging antiwar sentiment. James Lehman and Steven M. Nolt provide an example of the former in their 2007 study *Mennonites, Amish, and the American Civil War*, specifically addressing the issues of conscience, “nonresistant citizenship”, and faith as motivation for draft evasion by Anabaptist sects in both the North and South, and as factors in reshaping their views and identity with the advent of Reconstruction. Timothy Orr extends the deconstruction in his essay “A Viler Enemy in Our Rear”, which assesses “the reverberations of partisan politics in the ranks of the Union army” in the form of the influence on Pennsylvania wartime politics by Northern soldiers who “assumed the Republican vision of the war, denouncing any Democratic Northerner who criticized the war’s prosecution, regardless of whether he was a soldier, a civilian, a War Democrat, or a Copperhead,” and “believed that they possessed the right to dictate governmental policy to the civilian population, maintaining that they wielded the authority to regulate or repress any dissent on the home front.” Taken as a whole, Orr argues, “the resolutions from Pennsylvania regiments suggest a frightening dimension in Northern civil-military relations during the Civil War. Many hinted at legitimating violence toward a treasonous civilian population, which makes the Civil War unique in American military history. In no other case has the American military collectively voiced such an angry and malevolent response aimed at quelling antiwar dissent on the home front.”<sup>4</sup>

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<sup>3</sup> Ibid, 54

<sup>4</sup> Orr, Timothy J. “A Viler Enemy in Our Rear: Pennsylvania Soldiers Confront the North’s Antiwar Movement” *The View from the Ground: Experiences of Civil War Soldiers*, edited by Aaron Sheehan-Dean, University Press of Kentucky, 2006. pp. 171-198 ProQuest Ebook Central, <https://ebookcentral.proquest.com/lib/uwm/detail.action?docID=792188>.

Robert Sandow contributed to the expansion of this study with analysis of staunch antiwar opposition in the Appalachian region of Pennsylvania—one of the largest contributing states to the Union war effort. In further challenging the “treasonous opposition” viewpoint, Sandow argues that “in many ways, the Civil War is an unassailable ‘good war,’ romanticized and celebrated in a manner that parallels the commemoration of World War II. This idealized image of the war masks the troubling divides within each section over its causes, justification, and legacy. In questioning this idealized image, Sandow asserts that the Civil War had much in common with the Vietnam War, during which widespread protest “confounded governing authorities and directly affected the conduct of the war.”<sup>5</sup>

In the Pennsylvania Appalachians, as the author highlights, “violent opposition occurred most among the region’s small farmers in the poorest of rural Democratic districts. In tune with wage-working immigrants, rural Democrats denounced Republican war measures including emancipation and the draft as violations of liberty and republican government. Unlike the arguments of laborers stressing the rights of independent producers, rural Democrats spoke in terms of the independence of property owners. In a similar fashion, residents of the mountains viewed the growth of federal power as an ominous portent of shifting authority. When electoral politics failed to restore personal liberties, Democrats felt justified in the use of violent opposition.”<sup>6</sup> Linking these personal and socioeconomic rationales for antiwar resistance with the constitutionalist base outlined by Klement and other previous scholars, Sandow makes clear, in the 19th century, “Americans were influenced by traditions of republicanism that justified dissent and violence as a moral response to corruption. Unfortunately for the Civil War

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<sup>5</sup> Sandow, Robert M. *Deserter Country: Civil War Opposition in the Pennsylvania Appalachians*. 1st ed., Fordham University Press, 2009. p. 139

<sup>6</sup> *Ibid*, p. 104

generation, ideals of republicanism did little to define abuse of authority or threats to personal liberty. In that regard, two-party politics was crucial in shaping the argument over the nature of loyalty and the duty of citizens in time of civil insurrection. For opponents of the Lincoln administration, elections held the hope of regime change that might address public grievances. Yet many ordinary people, caught in the consequences of Republican war measures, took actions beyond the realm of electoral politics. Often out of desperation or a sense of powerlessness, untold numbers of northerners took up resistance and violence in preservation of self, family, and friends.”<sup>7</sup>

Alongside new assessments of the “Copperheads”, Peace Democrats, and popular antiwar dissent labeled treasonous in the North, historians have recently reexamined the constitutional and judicial fields of this dissent—in particular the forms, legality, and impact of the Lincoln Administration’s methods to counter and suppress it. William Blair’s *With Malice Towards Some* and Mark Neely Jr’s *Lincoln and the Triumph of the Nation: Constitutional Conflict in the American Civil War* (2011) are two examples of this trend.

Blair’s work focuses on the questions of what constituted “reasonable behavior” during the Civil War, and the nature of the actions employed against this intentionally and otherwise by the Lincoln administration—including mass arrests, detentions, beatings, and thefts. In contrast to the analyses by contemporary and modern historians, however, Blair moves past what he labels “triumphalist” (casting the war and the Union’s actions as heroic and in the cause of freedom) and “revisionist” (harshly critiquing the same, with echoes of similar arguments from “Lost Cause” and other early 20<sup>th</sup>-century authorities) narratives, choosing to emphasize historical context as the best means of viewing and understanding the North’s efforts to identify

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<sup>7</sup> *ibid*, p. 115

and punish treason. In the same analysis, Blair highlights how, despite loud and continuous calls for treason to be dealt with all possible harshness, the North often pursued judicial and other legal means of punishment; where such measures failed, it was due to poor administrative control, or popular zeal overwhelming civil authority—including the authorities’ own oaths to the state. The North’s actions against “treasonable behavior”, Blair argues, were not wholly the brainchild of the Lincoln administration, or a timeline of spontaneous activities; rather, they were the result of a mix of popular energy, careful policy development, and the overall burdens—social, economic, and political—imposed by the Civil War.<sup>8</sup>

Neely adopts a similar approach in his study, albeit with a greater emphasis on the broader issues of Civil War nationalism and constitutionalism, in both the North and South. With this focus, he details and examines Lincoln’s constitutional views and struggles, especially regarding the Emancipation Proclamation and suspension of *habeas corpus*; judicial wartime decisions, most of all concerning the legality of military actions; and the role of nationalism in both Constitutions (for example, national fast days and civic holidays) which, though not explicitly permitted or referenced in either, became a valuable tool in their defense, and ultimately aided in cementing the idea of the Union as a single nation rather than a loose alliance of states. Neely disputes the “Copperhead” and Democratic fear of executive tyranny, asserting that “nationalism, though a powerful force in the Civil War, did not prove to be conservative, did not find the Constitution an incumbrance to be shed, and did not lead to one-man rule or even to any long-run strengthening of the executive branch under the Constitution.”<sup>9</sup>

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<sup>8</sup> Blair, William A. *With Malice Toward Some: Treason and Loyalty in the Civil War Era*, University of North Carolina Press, 2014. Introduction

<sup>9</sup> Jr, Mark E Neely. *Lincoln and the Triumph of the Nation: Constitutional Conflict in the American Civil War*, University of North Carolina Press, 2011. p. 109



Southern antiwar opposition shared certain motives and origins with the forms arising in the North: resistance to encroaching central authority, resentment of powerful elites, genuine belief in the preeminence of state and local government and individual liberties above all else, anger towards perceived draconian, confiscatory wartime measures. In contrast to their Northern counterparts, however, Southerners who opposed the war and the Confederacy did not coalesce around existing or newly-formed parties or other organizations. Instead, their opposition was expressed through individual, local, state, and regional actions, from written and public protest of Richmond's policies to armed resistance and de facto counter-secession, particularly in the case of West Virginia, eastern Tennessee and Texas, and the Newton Knight rebellion in Mississippi.

Nor was this opposition entirely antiwar from the start of the conflict. Although a sizable portion of the Southern population opposed secession and preferred compromise in some form even after the 1860 Presidential election and South Carolina's secession, this stance did not begin to evolve into or be associated with antiwar belief and action until roughly the midpoint of the war in 1862-63. At that time, the success of Northern armies and the increasingly chaotic and repressive state of the Confederate home front caused Southern desertion rates to rise dramatically, and encouraged the growth of Unionist or simply anti-Confederate guerrilla movements in regions where such sympathies had been suspected by Confederate authorities since the Secession Crisis. Following the end of the Civil War and the Reconstruction period, these sympathies and their expression (by prewar Southern Unionists or disillusioned ex-Confederates) came to be considered forgettable aberrations or examples of treason and cowardice in the "Lost Cause" perspective, with their adherents labeled and targeted as "scalawags" and similar enemies or traitors to the Confederate cause. As a result of this lingering categorization, Southern antiwar sentiment, and the complex demographic, political, and

socioeconomic foundations which sustained this trend, have only recently begun to be explored, in both specific case studies and broader analyses.

One of the first of these studies is David Crofts' *Old Southampton: Politics and Society in a Virginia County, 1834-1869*, published in 1992. Examining Virginia's Southampton County, Crofts endeavors to look beyond the supposedly monolithic support for succession and slavery in this region—and the South as a whole—to the deep societal, racial and political fault lines that ran between the county's white and black populations. Southampton, Crofts asserts, is a “microcosm” of the Old South, providing vivid examples of how frequently the planter class and the universally enfranchised common (white) citizenry were at odds over questions of secession, slavery and economics. As Croft outlines, the Jacksonian Era saw arguably the most shifts in Southampton society and politics, reflecting the national trends of that period (anti-plantation Whigs vs. status quo Dems); although the Civil War's outbreak brought *military* unity to Southampton's whites, the war's effects destroyed the society the secessionists sought to maintain; the “mass partisan politics” born before the war spread widely amongst newly freed blacks, prompting a similar upsurge in white counter-campaigns that were echoed throughout the postwar South. Thus, Crofts traces “the rise of political parties and suggest[s] how partisan allegiances tied Southampton to a wider world, while at the same time institutionalizing the means through which its citizens could disagree and compete for power. The combination of an increasingly democratic polity with an oligarchical social and economic structure created revealing strains in Southampton and across the Old South.”<sup>10</sup>

Studies of Southern antiwar sentiment later in the 1990s produced similar research into dissent at the community and state levels, and reached into more abstract yet still vital and

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<sup>10</sup> Crofts, Daniel W. *Old Southampton: Politics and Society in a Virginia County, 1834-1869*. University Press of Virginia, 1992. Introduction

relatively unexplored issues as Southern legalism and civil rights in wartime. Wayne Durrill's *War of Another Kind: A Southern Community in the Great Rebellion* (1994), and Mark Neely, Jr.'s *Southern Rights: Political Prisoners and the Myth of Confederate Constitutionalism* (1999) provide notable examples of each, respectively.

Like Crofts' study of Southampton County, Virginia, Durrill's work examines the political, social, economic and racial factors in Washington County, North Carolina, that underlay this region's opposition to secession. Its three-sided internal guerrilla war involving planters, yeomen farmers and landless Unionists and its transformation into a miniature version of the larger Civil War at the county/regional level, made it a unique battleground between Southerners already split by prewar class divisions. The general run of Civil War historians, Durrill argues, do not acknowledge such conflicts in Southern/Confederate society, seeing them as tangential or irrelevant to the national struggle as defined by politicians and generals in Washington and Richmond: "[Historians] have focused on affairs of state, on the words and actions of generals and politicians; theirs are stories of legislation and massive battles, of constitutional difficulties, and of strategy and tactics[.] But such histories frame accounts of the war in terms of the concerns articulated by national politicians and generals. They do not address issues that would be raised in Washington County during the war by slaves and white wage laborers [and yeomen farmers]."<sup>11</sup> Instead, through his focus on this county and its citizens, Durrill asserts that, rather than remaining stalwart Confederates embracing slavery and "home rule" as a uniform bloc, many Southerners—particularly yeomen farmers and landless tenants—sought to defend their rights, lands and political influence against what they perceived as a war

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<sup>11</sup> Durrill, Wayne K. *War of Another Kind: A Southern Community in the Great Rebellion*, Oxford University Press, Incorporated, 1994. p. 4. ProQuest Ebook Central, <https://ebookcentral.proquest.com/lib/uwm/detail.action?docID=4701396>.

sought and waged by the planter “oligarchy” to cement their ever-increasing (since the Revolutionary era) control over state and national power. The resulting internal conflict destroyed antebellum Washington County society and planter power, yet it did not see the full realization of yeomen farmers’—and newly freed slaves’—hopes of a more equal and just community.<sup>12</sup>

Mark Neely’s work also sheds light on a largely unknown/unstudied area of Civil War history: civilian political prisoners in the Confederacy, and the methods, laws, and systems that defined individuals as such. In the author’s view, “Instead of protecting the southern rights and liberty to which politicians had extravagantly pledged their society before the war, the Confederate government curtailed many civil liberties and imprisoned troublesome citizens. Moreover, many white Confederate citizens submitted docilely to being treated as only slaves could have been treated in the antebellum South. Some, here and there, protested the system, but it operated throughout the existence of the Confederacy.” The CSA’s general crackdown on civil liberties—especially through such mechanisms as the passport system—and the overall resignation of its population to these restrictions was, as Neely describes, “typical of modern wars,” and the experience “mirrored that of the northern society with which they were at war.”<sup>13</sup>

Neely argues that, “Because their central focus falls elsewhere, both ‘moderns’ and ‘populists’ tend to accept without question the view that the people of the Confederacy were not about to tolerate circumscription of civil liberty. To this day the subject of civil liberties in the Confederacy rests substantially where Jefferson Davis put it in his memoirs written in retirement—a matter of sharp contrast to the practice of the Lincoln administration. The

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<sup>12</sup> Ibid, pp. 211-228

<sup>13</sup> Neely, Mark E. *Southern Rights: Political Prisoners and the Myth of Confederate Constitutionalism*. University Press of Virginia, 1999. pp. 2, 6

traditional view of civil liberties in the Confederacy remains dangerously untested by documentary research. Focusing on the history of legislation and public executive pronouncements on the writ of habeas corpus, the only well-known part of the story, renders a misleading picture.”<sup>14</sup> The vital evidence, Neely emphasizes, now reveals what really happened—the Confederate government restricted civil liberties as modern democratic nations did in war, “painting over the scenes of arrest and imprisonment to present what seemed to them a prettier picture of a people united in a long history of constitutionalism and uncompromising dedication to southern rights.” With the true, divided picture now in focus, Neely asserts, “the next step should be its full integration into an accurate narrative of Confederate history.”<sup>15</sup>

The expansion of Southern antiwar research continued throughout the first decade of the 2000s, in state and community level studies, and scholars now recognize antiwar dissent as an important issue in gender, religion, urban, and other more specialized research areas in Civil War history. David Pickering and Judith Falls’ *Brush Men & Vigilantes: Civil War Dissent in Texas* (2000) and Robert McKenzie’s *Lincolmites and Rebels: A Divided Town in the American Civil War* (2006) are key examples of the former, while Stephanie Camp’s *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* (2004), and Leeann Whites’ and Alecia Long’s *Occupied Women: Gender, Military Occupation, and the American Civil War* (2009) each explore specialized topics in direct or indirect relation to Southern antiwar dissent.

In their study of anti-Confederate dissent and resistance in northeast Texas during the Civil War—concentrated on fourteen Unionist individuals in five northeastern Texas counties—Falls and Pickering challenge the “Lost Cause”-infused view of the state as ardently and solidly pro-secession, with any dissenters labeled as the titular “brush men and vigilantes” whose

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<sup>14</sup> Neely, p. 9.

<sup>15</sup> Neely, p. 173

expulsion or extermination was lauded by Confederate authorities at the time. The authors find one source of antiwar sentiment in the fact that “while many Texans who fought in the Civil War did so for the Confederacy, a substantial number remained loyal to the old Union.” Some Texans “joined Federal units, but many had no opportunity to do so and stayed at home. There they were joined by those who believed that family or business ties outweighed any national allegiance, by others who had gone to war but returned disillusioned, and by more unscrupulous characters faithful to no one but themselves.” Despite this variety of motives, the imposition of a military draft and resistance to it “made outlaws of all these dissenters, just as elsewhere in the South. The result was a violent backlash in Texas and Southern states against any who were perceived as threats to the new order.” When the war ended, “that which was done could not be undone, and victims denounced as criminals had to remain so in order to justify what happened.” This simplified narrative therefore hides the motives and extent of the dissent in the area.

McKenzie’s work brings to light the relatively-unstudied experiences of Knoxville—his birth and childhood town—during the Civil War. The study highlights how the heavily Unionist town and the region of East Tennessee was virtually ignored by contemporary Confederate politicians who preferred to view the entire state as staunchly pro-CSA, and by later historians who relied upon these same sources when studying the state, or otherwise lacked access to archives and other resources detailing these loyalties. Drawing on the abundance of public and private records available in Knoxville, the author seeks to challenge this monolithic view, and explore the precise nature of the town’s history from 1861-1865.

McKenzie argues that, due to a continuous military presence by both sides throughout the war, the town’s North-South divisions—an anomaly in the otherwise strongly Unionist region—did not manifest themselves in the same forms as in other areas of internal civil wars: “There

were no grizzled mountaineers with long rifles in Knoxville’s civil war, no tyrannical Home Guards terrorizing barefoot women and children. Instead, its chief characters were ordinary townspeople—doctors, lawyers, shopkeepers, clerks, and their families.” Thus, although McKenzie raises questions that touch upon all of these figures—their values, lives, status, influence, racial attitudes—one query rises above the others in his thesis: “How did patterns of allegiance inform the daily routine of a small town caught up in the upheaval of an internal civil war?” In McKenzie’s view, “Despite later claims to the contrary, ‘unconditional Unionists’ were nonexistent during the secession crisis, and ardent secessionists—those favoring dissolution ‘in spite of the world, the flesh, and the devil’—were not much more common. Eschewing extremes, future Confederates and Unionists agreed on a great deal. Most conspicuously, they shared an unquestioning commitment to the preservation of slavery and white supremacy. Beyond this, both groups agreed that southern rights had been violated in the past. Both deplored the election of Abraham Lincoln but saw evidence of irresponsible extremism and political opportunism in both North and South. Neither group tended to assert a constitutional right of secession. Both recognized the natural right of revolution if southern interests could not be protected otherwise. Above all, both groups hoped to keep war from their homes.”<sup>16</sup>

Stephanie Camp centers her study of antiwar sentiment on a still-relatively unexplored—and in her view, poorly explored—area of American history: the role of slave women in Southern plantation life, and the various forms of resistance they employed in such status. This group, Camp argues, created a “rival geography”, a realm in which plantations and southern space were known and used in ways that conflicted with the demands and ideals of the planter class. This demanded both adaptations to the pressures placed upon them by the said elite,

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<sup>16</sup> McKenzie, Robert Tracy. *Lincolntonites and Rebels: A Divided Town in the American Civil War*. Oxford University Press, 2006. pp. 6-9, 226

maintaining their own ambitions and traditions in the face of these pressures, and creating synthesis between these two approaches. The challenge for them, in her words, “was not one of repossession of land in the face of dispossession but of mobility in the face of constraint.”<sup>17</sup> The primary arguments arising from Camp’s study, therefore, hold that slave women were neither wholly passive nor wholly rebellious, but rather a blend of the two as geography and other circumstances warranted; resistance was not solely limited to truancy, escape or armed rebellion; and “the rival geography created by the enslaved over [antebellum] generations offered, in wartime [the Civil War], the literal roads to freedom.”<sup>18</sup>

The primary argument of Whites’ and Long’s collection of essays examining gender and military occupation during the Civil War holds that “women in occupied areas during the Civil War were not simply preoccupied, that is, basically rendered either inert or of little structural consequence by their domestic status in the face of military force. Rather, they were occupied, as in busy and responsive, in the face of an occupying military presence. It is this second form of being occupied—not as the hapless victims or collateral damage of Union occupation or as the occasional and atypical politicized woman but as the critical bottom rail of the war of occupation—that provides the central focus of this collection of essays.” In the authors’ view, “once we approach occupied areas armed with the assumption that war can be driven by the occupied, as well as through the policies of generals on the formal field of battle, we can begin to see these areas as truly occupied, in the sense of being densely populated with historical implications, rather than as postscripts or insignificant locations that are analytically dead. The failure to recognize the agency of women and the critical structural role of gender has created a

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<sup>17</sup> Camp, Stephanie M. H. *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South*. University of North Carolina Press, 2004. p. 7

<sup>18</sup> *Ibid*, p. 138



blind spot that obscures the significance of the war of occupation, particularly the war of the second front, as having legitimate roots in the civilian, female population. In considering women during the war, most historians have seen only violation and victimization. We argue that agency and the structural roots of authentic local resistance to military invasion are also present if one is willing to look.”<sup>19</sup>

In highlighting the importance of slave women to the outcome of the war, White also links the issues of gender and race to new forms of resistance and dissent: “If the history of enslaved women’s wartime occupation seems largely a history of what was done to them, it is also important to remember that it was their resistance that provoked slave owners’ and Confederate surveillance; that it was their flight that contributed to the wartime collapse of slavery even as it confounded Union military authorities; and that it was their determination to be free women and free mothers that fueled their willingness to endure the challenges of survival in contraband camps, during relocation to distant towns and farms, and while performing hard labor on behalf of the Union on plantations and in wood yards.” While these actions were not antiwar in the strictest sense, they remind us that resistance can also take the form of personal actions in the pursuit of a more just and equitable existence.

This combination of broad and specialized research into Southern antiwar elements has continued to break new ground in the past decade. Although lacking substantial discussion of slave women and slave agency, Stephanie McCurry builds upon Camp’s focus on gender and race in her 2010 work *Confederate Reckoning: Power and Politics in the Civil War South*. As McCurry states in the prologue, “This is a book about [...] the bloody trial of the Confederacy’s national vision, and about the significance of the disenfranchised in it.” This change in focus and

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<sup>19</sup> Whites, LeeAnn., and Long, Alecia P. *Occupied Women: Gender, Military Occupation, and the American Civil War*. Louisiana State University Press, 2009. Introduction

methodology “asks not why the South lost the war, the usual approach, but why Southerners seceded when they did, what happened when they did, and what it meant that they failed.” McCurry shifts the focus to “the profound and unpredictable transformation into which the Confederacy was propelled by war.”<sup>20</sup>

In her summary examination of Southern politics and gender and race roles, McCurry holds, “The structural problems faced by the CSA as a slave regime at war, including the lack of access to a significant segment of its adult male population, the need to wage war while protecting slave property and retaining the support of slaveholders, required it to take measures drastic even by the standard of mobilization set in the North.” These measures, she believes, caused significant tension in southern society. “When the CSA adopted a draft of white men, when it enlisted 85 percent of adult white men and stripped the countryside of labor, when it attempted to create a tax base and supply the army by a levy on the ‘surplus’ agricultural production of farms and plantations, it extracted the means of war from a population of women and children staggering under the burden of farm labor and, by 1863, facing starvation.” In their outcry against these measures, these women “insisted that the slaveholders’ nation serve justice and not just power. For a moment the conditions of war and difficulties of waging it in a slave society meant that Confederate politicians and officials answered to soldiers’ wives.”<sup>21</sup>

In the arena of studies regarding specific states, communities and individuals, Victoria Bynum’s *Free State of Jones* (2001/2016), and Jesus De La Teja’s *Lone Star Unionism, Dissent, and Resistance: Other Sides of Civil War Texas*. (2016) stand out as well.

Bynum focuses on a particular example of Southern dissent with her study of

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<sup>20</sup> McCurry, Stephanie. *Confederate Reckoning Power and Politics in the Civil War South*. Harvard University Press, 2010. p. 6

<sup>21</sup> Camp, p. 359

Confederate deserter Newton Knight and the “Free State of Jones” established by him and his extended family in the Piney Woods region of Mississippi. Bynum assesses the factors and motivations behind Knight’s rebellion: the unpopular “Twenty Negroes Law” which allowed slaveowners to avoid front-line military service, while increasing the demands of conscription, and the impressment of crops and supplies on yeomen farmers and poor whites such as Knight’s clan and neighbors. She examines the previously unexplored (and often vilified) interracial nature of Knight’s revolt, in the form of escaped slaves serving as fighting members and Knight’s common-law marriage to Rachel, a former slave woman, providing new insights into the rebellion’s military and social impact in Civil War Mississippi, the Southern war effort in general, and, more importantly for our purposes, the socioeconomic and racial makeup of Southern antiwar dissent. Extending these analyses into the colonial and Reconstruction eras, and linking them with the 1948 miscegenation trial of Newton’s descendant Davis Knight, Bynum deconstructs the “Robin Hood”- and “Lost Cause”-influenced judgements of the “Free State of Jones”—nurtured by opposing branches of the Knight family—and presents a largely balanced, neutral appraisal of Newton Knight and his rebellion.

De La Teja argues that despite growing scholarly investigation and acceptance, the history and nature of Unionist sentiment, dissent and resistance in Civil War Texas is still not fully understood, and often ignored in the popular mind in favor of the idea of a “monolithically pro-Confederate Texas,” with additional perspectives—immigrant, native, black—similarly disregarded or otherwise left unexplored. This lack of attention, De La Teja argues, “is largely the result of the continued emphasis on a military narrative that focuses on the heroic actions of Confederate Texans,” a focus that has been perpetuated by non-scholarly writers of the “updated traditionalist” bent, who “mix two strands whose origins date back to before 1960, the impulse

to preserve and commemorate the revered past, and the top-down perspective common to many earlier historians but made famous by consensus historians in which elite male political, military, and business leaders stood for the entire community.”

In his collection of essays, De La Teja counters this narrative by asserting that Texas and its people “faced many of the same challenges in coming to terms with the violence and destruction that the sectional struggle engendered.”<sup>22</sup> He highlights how Texas was far from united behind secession or slavery, even well before the Civil War; how dissent and rebellion by Unionists was gradually whitewashed or forgotten in the wake of Reconstruction, in some cases through the actions of their descendants; and how the racial and social diversity of the state—immigrant, Tejano, black, Native American, yeoman/landless white—provided the foundation for strong opposition to the Confederacy and for support of “Radical” Reconstruction measures.

One specialized topic in particular—Confederate desertion and its motivations and effects—has begun to receive new attention in the research on Southern antiwar sentiment. John Sacher and Scott King-Owen provide some of the most recent insights in their 2011 articles “The Loyal Draft Dodger?: A Reexamination of Confederate Substitution” and “Conditional Confederates: Absenteeism among Western North Carolina Soldiers, 1861-1865,” respectively, and Victoria Bynum addresses this as a crucial factor in a broader groundbreaking 2013 study of Southern dissent in general.

Sacher analyzes the relatively unstudied area of Confederate draft substitution in the Civil War, focusing on specific trends in Rockingham County, Virginia. In the author’s opinion, “too often, Civil War scholars studying substitution posit loyalty in dichotomous terms. Either southerners served in the Confederate States Army (classified as loyal) or they did not (disloyal),

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<sup>22</sup> Teja, Jesús F. de la. *Lone Star Unionism, Dissent, and Resistance: Other Sides of Civil War Texas*. University of Oklahoma Press, 2016. Introduction

and in this overly simplistic view, principals who did not serve fit into the disloyal category [...]

Substitution must be considered among a range of alternatives available to conscripts—from enrollment in the army to outright resistance. Contrary to the image of principals as disloyal men who shirked their Confederate duty by providing untrustworthy mercenaries in their place, Rockingham County’s principals followed the law and often provided services to the community and the Confederacy.”<sup>23</sup> Sacher thus deconstructs the academic and contemporary perspectives on Confederate substitution, holding that, “An underlying assumption of both contemporaries and historians who criticize principals is that only their ability to pay for substitutes kept them out of the army. Some men, however, provided substitutes even though the law did not require them to do so. In other words, these men could have avoided service by claiming another exemption but instead decided to contribute a body to the Confederate army... This analysis of Rockingham County serves as a necessary corrective to an image of principals as healthy, young, rich men who remained at home taking advantage of loyal Confederates, while sending old, sickly bounty jumpers off to the army in their places. Although substitution elsewhere in the Confederacy might not correspond precisely to substitution in the Shenandoah Valley, all evidence indicates that categorizations of principals as evaders and cowards who should be considered alongside deserters and Unionists are flawed or at least overly simplistic.”<sup>24</sup>

In his study, King-Owen investigates the desertion rates and possible motivations among Confederate soldiers from the western (mountain) regions of North Carolina throughout the Civil War. Rejecting the argument that regional (Unionist) identity was the primary factor behind desertions, the author argues that “most absentee soldiers seemed to have considered loyalty to

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<sup>23</sup> Sacher, John. "The Loyal Draft Dodger? A Reexamination of Confederate Substitution." *Civil War History*, vol. 57 no. 2, 2011, p. 155

<sup>24</sup> Sacher, p. 178

family paramount to their conditional loyalty to the Confederacy.” These deserters believed, according to King-Owen, that they were in an impossible position. “No good could come of a war for southern independence if a man’s family perished from hunger or bushwhacker attacks while he was away defending them from race-war–inciting Yankees. There could be no benefit to his family if, on the other hand, he remained away so long that his absence caused a southern defeat or shamed his familial and personal honor.” If his loyalty rested on the belief that “the state protected him and his family in return for his defense of the state[,] the devastating effects of war in the mountains of western North Carolina, however, frequently called on him to reconsider his conditional pledge of loyalty.”<sup>25</sup> Desertion, in this analysis, seems less an act of resistance to the war than a pragmatic choice.

King-Owen’s statistics on the temporary, absent without leave nature of most desertions in Confederate ranks support this view: “Approximately 13 percent of mountain troops left their comrades without permission. A few soldiers deserted permanently, while others left temporarily to visit their families or escape the drudgery of camp and battle life.” Desertion is a more nuanced issue, and “historians working on it in the mountains of western North Carolina must situate individual behavior within the context of community and family, while noting the differences between various forms of absenteeism and desertion to the enemy. The behavior in both forms might have appeared to be the same to company commanders in the 1860s, but the motivations and loyalties involved differed.” Among the soldiers themselves, desertion could only be considered acceptable in specific circumstances. Leaving the army permanently, in many cases serving with their own kin and friends, would be difficult to justify, but all could accept a temporary return home to help kinfolk in difficulty. Desertion was not the same as absenteeism;

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<sup>25</sup> King-Owen, Scott. "Conditional Confederates: Absenteeism among Western North Carolina Soldiers, 1861–1865." *Civil War History*, vol. 57 no. 4, 2011, p. 351,

indeed, as King-Owen notes, “When furloughs became rare, from 1863 to the end of the war, being absent without leave was the only way for some men to go home.”<sup>26</sup> This more nuanced view of “leaving the army” expands our understanding of apparent acts of resistance to the war in the south.

In *The Long Shadow of the Civil War: Southern Dissent and its Legacies* (2013), Bynum builds upon her earlier studies of the “Free State of Jones”, focusing on the broader Confederate “home front” during the Civil War and the dissent/resistance that emerged in Southern territory and society as the “rich man’s war, poor man’s fight” progressed. The three questions central to this study are: 1) “How prevalent was support for the Union among ordinary Southerners in the war, and how was it expressed? 2) How did Southern Unionists and freedpeople experience the Union’s victory and the emancipation of slaves during the era of Reconstruction and beyond? 3) What were the legacies of the Civil War, Reconstruction, and the South’s white supremacist counterrevolution in regard to race, class and gender relations and New South politics?”<sup>27</sup>

Bynum selects three distinct regions within the South—the North Carolina Piedmont, the Mississippi Piney Woods, and the East Texas Big Thicket—and spotlights the societal, economic, political, racial and cultural elements in these regions that led to the development of dissent and or outright rebellion against the Confederacy. Each chapter deals with a specific aspect of this dissent in the counties which make up the above regions: guerrilla activities, women’s roles, contrasts with neighboring loyalist communities, and the extension of resistance into the Reconstruction era, in the face of mounting Northern apathy and white supremacist attacks. The author also delves deeply into family histories to illuminate the interpersonal nature

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<sup>26</sup> King-Owen, pp. 377-78

<sup>27</sup> Bynum, Victoria E. *The Long Shadow of the Civil War: Southern Dissent and Its Legacies*. University of North Carolina Press, 2010. Introduction.

of anti-CSA dissent, and how the individuals who espoused such beliefs (Newton Knight, Jasper Collins) have been marginalized or rebranded to suit “Lost Cause” and other, similar viewpoints by family members and scholars.

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The studies discussed above explore in detail the makeup and motives of dissent in the Civil War North and South. The effect and actual intent of these dissenters, however, have been less fully explored. Moreover, many of these studies have been limited, intentionally and otherwise, by their narrow research focus, resulting in minimal examination of their subjects’ wider impact on the Civil War, by accepting the presumably the treasonous nature of dissenters, without making the distinction between opposition to the war itself, or to specific policies of the Lincoln and Davis Administrations. This dissertation will widen the definition of dissent to encompass events, ideologies, and personalities which have previously been overlooked or discounted as antiwar, determine whether such dissent was intentionally or indirectly antiwar in its goals and influence, and assess its legacy into the postwar Reconstruction and modern eras.

Chapters 1 and 2 present analyses of perhaps the two most prominent—or notorious—“Copperhead” Democrats in the Union: La Crosse, WI newspaper editor Marcus “Brick” Pomeroy and Ohio Congressman Clement L. Vallandigham. Both men criticized the Northern war effort in similar rhetorical terms, and drew upon the same political traditions and societal views in their opposition to the policies of the Lincoln Administration: Jeffersonian-Jacksonian beliefs in powerful state governments versus weak national government; the belief in white supremacy; and fears of the threat of interracial mixing and economic competition with freed blacks as a result of abolition. Yet whereas Vallandigham embraced an explicitly antiwar stance from the start of the conflict, advocating a negotiated peace on any terms and lambasting the



what he viewed as tyrannical acts by the Republican-controlled national government, Pomeroy was a late, conditional convert to this position, with frequent shifts between the Peace and War wings of the Democratic Party over the course of the conflict. In addition, Pomeroy's opposition to the Union war effort primarily revolved around his personal animosity towards the war policies of the Republicans as a whole, and Lincoln in particular, while maintaining a changing level of support for the war itself—a stance that nonetheless caused him to be grouped under the “Copperhead” banner by his opponents. Vallandigham, in contrast, attacked the war and all measures enacted to prosecute it or define its goals, placing himself firmly in the “Copperhead” camp in Republican eyes for the war's duration, and participated in clandestine efforts to either negotiate its end or encourage resistance to what he viewed as the despotic elements of Republican rule. These differing approaches, and the Lincoln Administration's responses to them, outline the antiwar intent and effect of the old-line, “traditional” Democratic opposition to the Union war effort.

Chapters 3 and 4 present analysis of political antiwar sentiment in the Confederacy, as expressed through the writings and actions of three individuals: Confederate Vice President Alexander Stephens; Nashville, Tennessee editor William “Parson” Brownlow; and North Carolina editor and gubernatorial aspirant William Woods Holden. As with Pomeroy and Vallandigham's arguments, political opposition to the Civil War in the South, or to the edicts imposed to prosecute it, most often centered on the issues of individual and constitutional rights, prewar socioeconomic resentments, Jeffersonian-Jacksonian tenets of the sovereignty and preeminence of state governments, and fears of aggrandized executive power. Each of these notable Southern figures, however, adopted and altered such arguments to suit their respective positions or regions, in markedly different ways.

Alexander Stephens, who joined the Confederate government almost from its inception and even codified slavery as the central motive for the South's secession, had previously opposed his native Georgia's joining the seceded states, seeking to avert war through negotiation, and following Georgia into the Confederacy due to his loyalty to the state and the broader South rather than to the Confederate government or national identity. This conditional allegiance to the Confederacy, based on adherence to personal and states' rights principles, led to constant battles with the Davis Administration concerning conscription, war finance, and *habeas corpus* suspension. This rancor in turn pressured Stephens to pursue peace initiatives on multiple occasions during the war, and advocate revocations or reforms of Southern war policy. Through such activism, Stephens exposed the fundamental weaknesses of the Confederacy's political and military structures, and forced the Richmond government to devote increasing resources to silence his and other, much more ardent calls for peace from the state governments.

Like Stephens, William Brownlow initially strove to avert war through negotiation, and anti-secession activism in both his home region of East Tennessee and the whole of the state. When the pro-secession state government in Nashville voted to join the Confederacy, Brownlow, and his Southern Unionist allies, continued campaigning against the state's break from the Union on constitutional grounds, much as Stephens had done—and with more direct, populist attacks against the planter-dominated secessionist state leadership, which they had long viewed as having ignored or economically subjugated the non-slaveowning, yeoman farmers which made up the bulk of East Tennessee's population. This opposition coalesced into the Unionist East Tennessee Convention—with Brownlow as perhaps its most prominent and vociferous delegate—which sought to prevent their region being drawn into war with the Union, by armed revolt and even secession from the rest of the state, if necessary. The rhetorical and political

pressure of Brownlow and the Convention brought increasing repression from secessionist authorities, in turn provoking violence from more zealous Tennessee Unionists, and bringing about a final crackdown that saw Brownlow's expulsion, and widespread arrests and executions of pro-Union citizens. This punitive action drove the bulk of Tennessee's previously moderate or conservative Unionists and ex-Whigs into the Republican camp—Brownlow in particular to the Radical wing of this party—weakened the Confederacy's control of the crucial state, and established the basis for its military and postwar Reconstruction governments.

William Holden's opposition arose from similar ideological and constitutional concerns as Stephens and was often expressed in similar socioeconomically themed rhetoric as Brownlow's. Yet his activities were channeled more effectively into state and regional politics than either of these men, averting a formal break with the national Confederate government while still seeking an end to the war. Again like Stephens, Holden initially pursued reform of the Southern war effort, protesting the Davis Administration's conscription and *habeas* suspension decrees as encroachments on state powers and personal liberties. The Administration's ignoring or rejection of these efforts, combined with further war policy edicts viewed as authoritarian and the growing depredations of the war—food shortages, inflation, Union raids and Confederate confiscations—brought about Holden's shift to *de facto* antiwar activism. This took the form of calls for a negotiated peace with the North, whether by Richmond or Raleigh, and the election or appointment of state officials who would press for such actions through popular referendum or unilateral action. Although Holden's efforts were coopted by other, more moderate anti-Davis factions within his state, they nonetheless redirected crucial wartime resources in their suppression, made clear the levels of popular support for *any* form of peace as the war progressed, and pressured the Richmond government into moderation or reversal of its more

unpopular wartime measures to maintain allegiances with the North Carolina and other Southern state governments.

Chapters 5 and 6 explore the antiwar effect and intent of judicial activism in both regions. In the North, this form of opposition was most often expressed through petitions to and decisions by multiple courts, challenging the suspension of *habeas corpus* (*Ex parte Merryman*), and the arrest and trial of civilians by military authorities (*In re Kemp, Ex parte Milligan*). Opinions ruling against the Lincoln Administration in these cases primarily intended to challenge such measures on constitutional grounds and seek their modification or moderation, rather than overturn them solely out of partisanship; while certain specific judges—such as Chief Justice Roger Taney and Indiana Supreme Court Justice Samuel Perkins—aligned politically to the Democratic Party, evidence of bias on these grounds is subjective and open to debate. Regardless, these decisions put pressure on the Lincoln Administration to alter its conscription, *habeas*, and military trial laws to sustain popular support, and their codification of restrictions on military authority in civilian areas during wartime, which have remained in place to the modern era.

Similar judicial actions on the questions of *habeas corpus*, conscription and military powers took place in the South, though without the avenue of appeal to a national, Confederate Supreme Court. Much of this opposition centered on the rulings and motivations of Judge Richard M. Pearson, Chief Justice of the North Carolina Supreme Court, arguably the most prominent state court in the South. Like his Northern counterparts, Pearson adhered to strict, legalist considerations of the Confederate draft, *habeas*, and arrest laws, holding them to be partly or wholly incompatible with constitutionally-guaranteed individual or states' rights, and urging their alteration or withdrawal. The level of anti-Davis influence in Pearson's arguments is

debatable, as is the level of explicit antiwar sentiment; yet his opinions nonetheless fanned the flames of controversy concerning the Davis Administration's control of the Southern war effort, and provided another path for peace and antiwar advocates to challenge this dominance.

Chapter 7 presents analysis of the Northern “dark lantern” societies—the Order of American Knights, and the Order of the Sons of Liberty, formed by “Copperhead” Peace Democrats, and believed by Republicans to be subversive, pro-Southern conspiracies. Modern studies of these groups, beginning with Frank Klement's groundbreaking reappraisals in the 1960s, have thoroughly explored their makeup and aims, and largely refuted the claims of pro-Confederate sentiment beyond that expressed by a minority of “dark lantern” members. The contemporary perception of the societies as treasonous organizations, however, persists among present-day analyses, preventing a full understanding of their intent and effect as expressions of antiwar sentiment.

Viewing the societies through the antiwar lens, their stated purposes—as paramilitary groups seeking to defend Democratic voters at the polls, similar to the pro-Republican Union Leagues, or as activists discouraging enlistment and shielding draft deserters—are partly validated, while the Klement-era argument of the groups as exaggerated or imagined threats by ambitious pro-Republican military and civilian officials, and the contemporary fears of planned pro-Confederate uprisings are shown to be unsupported apart from possible aims of individual members. In addition, the societies, despite their claims of organizing solely in defense of constitutional rights such as voting, speech, and protection against arbitrary arrest, demonstrate through their rhetoric and leadership—Clement Vallandigham, Harrison Dodd, and other militant Peace Democrats—their much stronger motivation by traditional fears of white economic competition and interracial mixing with freed slaves, a stance Klement does not explore. The

chapter's focus then shifts to more disparate yet no less significant examples of open, grassroots acts of antiwar defiance towards Union wartime policy, most of all conscription and the Lincoln government's increasing shift towards openly abolitionist rhetoric and measures: The 1861 Baltimore and Camp Jackson Riots; the "Battle of Fort Fizzle", Ohio; the New York City Draft Riots, and the "Fishing Creek Confederacy." Differing greatly in makeup and aims, these two broad forms of Northern direct antiwar action brought about both considerable re-direction of wartime resources and political capital to counter their effects and reveal the scope of the war's unpopularity up to its final months.

Chapter 8 presents analysis of the similarly diverse forms of direct antiwar action in the South. Some, such as the "Republic of Winston" and the Hill Country of Texas, grew from prewar bastions of Southern Unionism, and sought to isolate their regions or populations from Confederate rule, most of all conscription press gangs and military arrests, with armed resistance if necessary. The "contrabands"—slaves who escaped plantation and Confederate army labor—sought to preserve their lives and their families', and seek the freedom believed promised in Union territory, which in turn drained Southern military assets and brought greater pressure on the Lincoln Administration to adopt openly abolitionist war and Reconstruction policies. The Southern Bread Riots of 1863, organized by "soldier's wives" to protest food shortages, inflation and profiteering, had the effect of exposing the pervasive popular resentment of Confederate military and financial policies, and added to the woes of the ailing Southern economy and army through their demands for expanded welfare and their revealing of home front hardships, providing additional impetus for rising desertion rates. Also, "peace societies" such as the Red Strings, based in North Carolina and western Virginia, oversaw what may be described as a type of Underground Railroad for deserters, persecuted Southern Unionists, escaped Union POWs,

runaway slaves, and draft dodgers. Alongside such activities, members and sympathizers also acquired military or political posts in the region, allowing them to obstruct conscription and arrest sweeps in nonviolent forms, compared to the open rebellion of other Unionist or criminal bands. This range of armed and unarmed resistance shows the differing roots of Southern antiwar sentiment—socioeconomic, racial, political, and personal—and the conditional support for secession and the Confederacy that persisted well into the war, and which grew exponentially with its failures.

## Chapter 1

“There is not today half the enthusiasm in the country there was two months since...A chill has already set in...We are willing to fight till death for the common good of a common people, but will not be forced into a fight to free the slaves. The real traitors in the North are the Abolitionists, and they are the ones who will do more to put off the day of peace than all the soldiers of the South.”

--Marcus “Brick” Pomeroy, *La Crosse Democrat*, August 19, 1861

### Loyalist, Opponent, Zealot: Marcus “Brick” Pomeroy

Opposition to the use of military force to resolve the issues of secession and slavery existed in muted forms prior to the outbreak of hostilities. During the party convention and campaign period in the spring and summer of 1860, it rapidly became apparent that the Democratic Party faced a split between its Northern wing, which favored Illinois Senator Stephen Douglas for the Presidential nomination, and the by-now ardently pro-secessionist Southern faction. Appeals for unity by pro-Douglas delegates and others in the party were steeped in rhetoric warning not just of a Republican victory if the split occurred, but of the certainty of civil war with such an outcome. These figures were willing to make further concessions on the slavery issue, and they acknowledged Southern fears regarding the loss of political influence in the face of growing Northern demographic and industrial preeminence.

There were limits to such sympathies, however, in that they viewed secession as illegal, and the preservation of the Union as the party’s paramount goal, through political negotiation and even constitutional amendment. As the conventions and campaigns continued, some delegates also began to argue that, should secession come to pass, the Southern states who chose this option should be allowed to leave peacefully, averting bloodshed and further division. Such arguments would evolve into key elements of later antiwar oratory and action, and their proponents into the staunchest critics of the Lincoln Administration, attacking Union wartime and social policies on the basis of conservative Jacksonian-Jeffersonian democracy and of an



innate, popular belief in white supremacy and aversion to black equality in any form.

One notable individual in the Douglas camp—and one who would also, briefly, flirt with the idea of “peaceful secession”—was Marcus “Brick” Pomeroy, editor of the Wisconsin paper *La Crosse Democrat*. Pomeroy assumed control of the *La Crosse Union and Democrat* in April 1860. Having been a Douglas supporter since meeting the Illinois Senator the previous year rapidly turning the publication into a staunch supporter of the “Little Giant” and lambasting the Buchanan administration for its perceived weak and inept response to the growing crisis—a stance which alienated him from a number of pro-Buchanan colleagues in the Wisconsin state party and his own paper.<sup>28</sup> When the Southern Democrats formally broke with their Northern counterparts during the party’s April 23<sup>rd</sup>-May 3<sup>rd</sup> convention in Charleston, Pomeroy maintained—out of blindness or excessive optimism, according to one view<sup>29</sup>—that the regional rupture would heal once the Republicans’ candidate choice was made clear, and the Southern wing saw the necessity of uniting behind Douglas as the only viable candidate to prevent both a Republican victory and secession. Attending the second Democratic convention in Baltimore that June—composed almost entirely of pro-Douglas delegates—Pomeroy exulted in Douglas’s nomination, declaring “The democracy of the Northwest [Midwest] will present a solid column next November” to elevate Douglas to the White House, and that a victory by Lincoln—nominated by the Republicans on May 18<sup>th</sup>, one of three candidates now opposing Douglas—was “out of the question” in the face of Democratic Party strength even when divided.<sup>30</sup>

This curt dismissal of Lincoln’s chances served as Pomeroy’s first step in the opposition campaign against the Republican Party’s believed or certain aims. Beginning in September 1860,

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<sup>28</sup> Harry F. Bangsberg, *Mark M. Pomeroy: Copperhead Editor—A Study in Transition* (1953), pp. 12-14

<sup>29</sup> *Ibid*, p. 15

<sup>30</sup> *La Crosse Union and Democrat*, June 27, 1860

Pomeroy targeted the wide range of immigrant voting populations in his home state—Irish, German, Dutch, and other Central and East Europeans—and regularly published articles exposing the alleged or proven nativism that permeated Republican ranks due to its absorption of many Know-Nothing adherents, holding that its leaders “speak the real feelings of that party, and all the sham resolves of the Republican Party, in favor of our foreign-born citizens.”<sup>31</sup> Combined with electioneering to regain voters who had drifted to the Southern Democratic candidate John C. Breckinridge, and repeated urgings for all Democrats of any faction, appropriate age, and even ill-health to unite against Lincoln on Election Day, Pomeroy believed the “scheming group” of Republicans would be defeated and that the last opportunity for Democrats to avert further crisis and perhaps war—“crush out fanaticism and sectionalism from our midst”—would be realized.<sup>32</sup>

Between Lincoln’s victory on November 6, 1860 and the formal outbreak of hostilities in April 1861, Pomeroy’s views demonstrated a blend of bitter recrimination, foreboding, optimism, and patriotism. In his first *Union and Democrat* post-election editorial, he labeled the previous day as “election day—that is, for the Republicans and sinners,” declaring with bitter humor that “the wicked have triumphed—all the slaves are to be liberated—rails will be at a premium, slavery is to be abolished on the 5<sup>th</sup> of March—white men will take back seats and the rail-splitter, oh, we forgot—Mr. Lincoln will preside over the destinies of this country. We have met the enemy and we are theirs. Be merciful to us poor sinners. We went in like lions and came out like lambs. Oh, treat us not revengefully.”<sup>33</sup> In this and later articles during this period, Pomeroy avoided direct attacks on Lincoln, instead appearing to agree with prevailing Northern

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<sup>31</sup> *Union and Democrat*, October 31, 1860

<sup>32</sup> *Ibid*, November 4, 1860

<sup>33</sup> *Ibid*, November 7, 1860

opinion regarding secession (“no state has the right to secede—has no right to declare herself free from the laws that govern the Union”) and then to equivocate upon it, stating that the Union should “let her [South Carolina] go and fish for herself,” if the state’s citizens truly sought to leave this body.<sup>34</sup> In a final salvo aimed at the Buchanan wing of his party, Pomeroy also laid the blame for the Democrats’ defeat and collapse at the lame duck president’s feet specifically, going so far as to declare him “a traitor to his country—a traitor to his party—a traitor to his own word,” “despised in the North and despised in the South,” and that “Lincoln...nor the devil can ever harm it [the country]” if the nation survived his tenure as President.<sup>35</sup>

Pomeroy’s criticism of the Lincoln Administration remained muted throughout much of 1861, and his paper—by this point titled simply the *La Crosse Democrat*—even praised the new President’s inaugural address and, in the immediate aftermath of Fort Sumter, went so far as to organize volunteers for a cavalry company, the Wisconsin Tigers, to be led by Pomeroy. This endeavor was scuttled, however, when the War Department, as Pomeroy later claimed in his autobiography, made his commission as an officer conditional upon refraining from “any criticism of the administration” and giving the “indorsement [sic] of a newspaper which did not in any way indorse that which was known as Abolitionism or Republicanism.”<sup>36</sup> These were conditions to which he would not agree, and which arguably increased his antipathy towards the “sectional party” now in power. In July, at an early state convention for Wisconsin Democrats, he laid out what he believed should be the core tenets of the state and national party’s platform: full support for the Union and the war against the Confederacy, yet also for “the principles of Jackson, Jefferson and Douglas; having regard for Constitutional rights and strict compliance

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<sup>34</sup> *Union and Democrat*, Dec. 24, 1860; Jan 11, 1860

<sup>35</sup> *Ibid*, Dec. 28, 1860

<sup>36</sup> Marcus M. Pomeroy, *Journey of Life*, New York, Advance Thought Company, 1890, p. 167

with the decisions of the Supreme Court”, the last as exemplified in the controversial 1857 *Dred Scott* decision—in short, firm adherence to “the Constitution as it is”, a phrase which would become the chief slogan for the Democratic Party as the war progressed.<sup>37</sup>

Also at this stage of the war and for some time after, Pomeroy maintained a measure of distance between his views and those of the nascent “Copperhead” faction within the Democratic Party, which favored peace even without conditions with the Confederacy, and would later be associated with pro-Southern, treasonous actions and agitation. When Edward G. Ryan, a noted Wisconsin lawyer and leader of the “peace-at-any-price” wing, made an address at the state party’s convention exalting the Constitution and criticizing loyalty to an administration which violated it as disloyalty to the Union, Pomeroy replied that “partisan agitation will not subdue the rebellion”—a markedly different attitude from his earlier attacks on his own party and the Republicans. This stance indicates Pomeroy’s conditional backing of the Lincoln Administration in wartime on political grounds alone—i.e., reunion—and his intent to denounce and oppose any acts he perceived as dictatorial or incompetent by this government. Such an intent would be frequently realized over the course of the war, and as the government’s policies shifted with victory or defeat, leading in turn to Pomeroy’s rapid shift to allegiance with the “Copperheads” and his opposition to Lincoln in all respects.<sup>38</sup>

The clearest signs of this shift appeared in the last months of 1862. Up to this point, Pomeroy had continued to make clear his support of Lincoln and the war effort on the basis of reunion alone—he had even outlined his expectations that the President would check the trend towards abolitionism, a drift for which he had periodically assailed members of the Cabinet and

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<sup>37</sup> *Union and Democrat*, July 10, 1861

<sup>38</sup> *Union and Democrat*, Sept. 8, 1862

other elements in the administration.<sup>39</sup> The continuation of this trend, and the controversies arising concurrently over the questions of the draft and of *habeas corpus* suspension by the President, had prompted Pomeroy to issue several editorials during the spring of 1862 charging the abolitionist movement with a government takeover, and Lincoln with unconstitutional exercise of power. The administration's release of the preliminary Emancipation Proclamation on September 22, 1862—five days after the costly drawn battle at Antietam, Maryland—prompted more criticism along these lines from Pomeroy, who labeled it an “indiscreet”, unconstitutional act that “would be powerful in producing evil results.” Even by this stage of the war, however, he had not reached his peak of vitriolic disdain and open hatred for the administration.<sup>40</sup>

In November 1862, and again in January 1863, Pomeroy embarked on tours of the front lines in Missouri and Arkansas, where he was often lodged at army headquarters with *de facto* press credentials, traveled with individual military units, and given the opportunity to interview soldiers and officials of every stripe. During these journeys, he described what he viewed as widespread corruption, fraud, favoritism, and needless suffering of wounded soldiers, as well as the pillaging and destruction that took place during confiscatory raids for cotton, livestock, and other property—much of which was sold by officers and agents with Treasury permits for significant profits. Such actions were anathema to Pomeroy's opinion that the war should be fought solely for Union, and he castigated the soldiers he witnessed and the military authorities in Arkansas for permitting them—most of all General Benjamin Prentiss, commander of the operational area.<sup>41</sup> Mistakenly arrested on charges of participating in the latter schemes, he was

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<sup>39</sup> *Union and Democrat*, Dec. 7, 1861; Jan. 24, 1862,

<sup>40</sup> *Ibid*, Nov. 18, 25, 1862

<sup>41</sup> Pomeroy, *Journey of Life*, p. 194

soon released, but his reports, when published, led to his being expelled by “at the point of a bayonet.”<sup>42</sup> Upon returning to La Crosse, Pomeroy openly declared in the *Democrat* that he no longer supported the administration or the war—labeling it a “murderous crusade for cotton and [negroes]”—and made clear his belief, in vividly “Copperhead” rhetoric, that Lincoln, the Republicans, and the abolitionists were the true threat to the nation and to peace: “The people do not want this war. Taxpayers do not wish it. Widows, orphans and overtaxed working people do not ask or need this waste of men, blood and treasure.” He denied that there was any glory to be won in a civil war, “no more than in a family quarrel,” and insisted that “if politicians would let this matter come before the people, “an honorable peace” would be agreed upon within two months.<sup>43</sup>

Pomeroy’s evolution into a fervent devotee—in some respects an emblem—of “Copperhead” stances and oratory came about at a critical point in the overall war effort. The botched Peninsula Campaign, the narrowly defeated first Confederate invasion of the North at the Battle of Antietam, the costly disaster of the Battle of Fredericksburg, and the seemingly stalled progress on every front had combined to bring Northern morale to one of its lowest points in the war. These failures, the fears of further executive actions along the lines of the *habeas corpus* issue, the shift in war aims in January 1863 with the Emancipation Proclamation and the implementation of new, widely unpopular draft laws drew new levels of criticism and calumny from the Democrats and the “Copperheads,” in which the La Crosse editor soon became one of the loudest voices.

The Emancipation Proclamation and the draft laws were among Pomeroy’s most prominent editorial targets during this period, and his attacks on these reveals both his situational

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<sup>42</sup> Pomeroy, *Journey of Life*, p. 189

<sup>43</sup> *Union and Democrat*, March 17, 1863

alignment with the “Copperheads” and the racial roots of his populist stances in line with this wing of the Democrats. In the wake of the Proclamation’s official implementation on January 1, Pomeroy castigated Lincoln, Secretary of War Edwin Stanton, the Republican Party, and the pro-Republican press as “demagogues, who, after laboring for years to incite evil passions in the North and South, sought to blow the spark of civil war into a flame, and who have gradually perverted that war into a crusade in behalf of the black race against the white, are now exulting in the approaching fruition of their schemes”:<sup>44</sup> armed insurrection by freed blacks against the South, which would in turn lead to similar revolts in the North.

The draft laws drew equally fierce ire from Pomeroy. In March 1863, Congress passed the Conscription Act, building upon the Militia Act of the previous year which had authorized the recruitment of former slaves and free blacks as laborers and eventually front-line soldiers—another point of serious contention among Democrats and even elements of the Republicans. The new law mandated direct national conscription—the first such act to be passed in U.S. history—established recruitment quotas for each congressional district, created enrollment boards headed by district provost marshals to meet this requirement, and provided for substitution or commutation in the form of a \$300 fee to be exempted from the call-up. Intended to rebuild Union army strength after high losses, desertion, and steep declines in volunteers, the law was condemned throughout the North, with substitution and commutation drawing the most hatred, and provoked numerous incidents of fraud, corruption, further desertion, and open violence such as the New York City Draft Riots in July of 1863.

Pomeroy’s attacks on the Enrollment Act and other military measures during this time reflect the popular “rich man’s war, poor man’s fight” attitude towards the draft, yet were also

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<sup>44</sup> *Union and Democrat*, Feb. 24, 1863

expressed in terms that highlighted the political, social and racial roots of his and the “Copperheads” ideology. Likening the Act to an auction block, he implored the federal government to “fall back upon the love of the people, and not make slaves of its defenders,” labeling the New York riots as “a taste of war in the North.”<sup>45</sup> Having also deduced the impact of the Act on the poorer citizens who could not afford substitution or the \$300 commutation fee, he called upon wealthier citizens—in La Crosse, and elsewhere—to pool funds to pay their fees, and the city government to enact a special tax that would pay all commutations for those who could not.<sup>46</sup> Though the former measure was not implemented, and the latter ultimately proved too unwieldy and chaotic, Pomeroy’s populist credentials were now established, as was his now-“Copperhead”-tinged opposition to perceived tyranny and social degradation by the military and the Lincoln Administration. Such opposition was evidenced in particularly vivid form through an open letter published in August 1863, after the costly Union victory at Gettysburg, which Pomeroy had labeled a defeat for the army’s failing to pursue Lee’s defeated army:

We are coming, Abraham Lincoln,  
From mountain, wood and glen,  
We are coming, Abraham Lincoln,  
With the ghosts of murdered men.  
Yes! We’re coming, Abraham Lincoln,  
With curses loud and deep,  
That will haunt you in your waking,  
And disturb you in your sleep.

There is blood upon your garments,  
There’s blood upon your soul,

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<sup>45</sup> *Union and Democrat*, Sept. 10; Dec. 2, 1863

<sup>46</sup> *Ibid*, June 2, 3, 1863



For the lust of ruthless soldiers,  
You let loose without control,  
Your dark and -wicked doings,  
A God of mercy sees.  
And the wail of homeless children,  
Is heard on every breeze.

There's sadness in our dwelling,  
And the cry of -wild despair,  
From broken hearts and ruined homes,  
Breaks on the midnight air:  
While sorrow spreads her funeral pall  
O'er this once happy land,  
For brothers meet, in deadly strife,  
A brother's battle brand.

With desolation all around,  
Our dead lie on the plains.  
You're coming Abraham Lincoln,  
With manacles and chains,  
To subjugate the white man,  
And let the Negro free.  
By the blood of all those murdered men,  
This curse can never be.

You may call your black battalions,  
To aid your stinking cause,  
And substitute your vulgar [sic] jokes,  
For liberty and laws.  
No! By memory of our fathers,

By those green unmarked graves,  
We'll perish on ten thousand fields  
Ere we become your slaves.<sup>47</sup>

Pomeroy's new allegiance was also displayed in his reactions to the arrest of Congressman and ardent "Copperhead" Clement Vallandigham in May of 1863, and to the closure of the Democratic newspaper *Chicago Times* in June by military order. On April 13 of that year, General Ambrose Burnside, commander of the Department of the Ohio, issued General Order Number 38, which specifically targeted criticism of the war by declaring that "all persons found within our lines who commit acts for the benefit of the enemies of our country, will be tried as spies or traitors, and, if convicted, will suffer death," and that "the habit of declaring sympathies for the enemy will no longer be tolerated in the department. Persons committing such offences will be at once arrested, with a view to being tried as above stated, or sent beyond our lines into the lines of their friends."<sup>48</sup> Under this directive, Burnside ordered Vallandigham's arrest and trial by military tribunal for his speeches attacking the order and the war effort, and sent troops to close down the *Chicago Times* for its articles condemning the administration's adoption of abolition as a war tactic—it had labeled the Emancipation Proclamation as "the most wicked, atrocious and revolting deed recorded in the annals of civilization"—and advocating peace with conditions with the Confederacy.<sup>49</sup>

In his defense of the *Times* and Vallandigham, Pomeroy showcased not only his belief in the creeping tyranny these events seemed to showcase, but also a new level of populist-tinged animosity towards Lincoln and the generals and officials such as Burnside whom he perceived as

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<sup>47</sup> *Union and Democrat*, Aug. 22, 1863

<sup>48</sup> *The War of the Rebellion: a compilation of the Official Records of the Union and Confederate Armies*, Govt. Print. Off., Washington, D.C. (1880-1901) Series II, Vol. 5, p. 480

<sup>49</sup> *Chicago Times*, Jan. 3, 1863

its chief agents. Declaring that “great, free, enlightened America is disgraced from the rotten center at Washington to the most distant verges,” he asked, “Has the President no regard for the people? has he determined to declare himself dictator? Are the bayonets of our brothers to be thrust into the hearts of those whose only offense is loving the laws and the Constitution?...Have the people any rights left or must we submit to the shoulder strap dictator with bowed head and closed mouth like dogs?” Vallandigham’s arrest, and his later exile to the Confederacy, then to Canada, brought further condemnation: “It seems indeed singular that a free American citizen should be compelled to seek refuge under the flag this country battled against so many years—under the flag of a monarchy.”<sup>50</sup> Lincoln’s revocation of Burnside’s edict against the *Times* garnered Pomeroy’s praise, but otherwise did little to temper his criticism of the affair.

Even at this stage, Pomeroy at times still conditionally supported Lincoln personally, a stance at odds with his caustic coverage of the Administration, and one that drew charges of hypocrisy from Republican orators and papers. In an October article titled “Who Is The Traitor?”, he declared in response to these, amid a litany of despotism charges: “When he returns to his duty, we will return our allegiance to him. When he wanders away from the Constitution, we refuse to follow. We keep step to no music which has not the spirit of liberty in it.” He proclaimed that “we will not leave ‘Hail Columbia’ for ‘Old John Brown’ if the President and all his worshippers do [...] We stand by the President when he stands by the Constitution and the people. When he seizes a bayonet and rears aloft a fanatic-borned proclamation, we give place and let those who are afraid to live or die like men—let those who for paltry favor or official applause would kiss the foot which kicks them stand by him.”<sup>51</sup> This expression of qualified loyalty may have been, to a certain extent, an appeal to War Democrats and conservative

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<sup>50</sup> *Union and Democrat*, June 4, June 10, 1863

<sup>51</sup> *Ibid*, October 13, 1863

Republicans who opposed Lincoln's abolitionist policies, and whom the Republicans sought to bring under the umbrella "Union" ticket ahead of the November 1863 state, gubernatorial, and national elections. Whether intended as such an appeal or not, these remarks are nonetheless the clearest articulation of Pomeroy's "Copperhead" stance and would remain so for the remainder of the war.

The year 1864 proved to be the apex of Pomeroy's antiwar rhetoric, and of his popularity and notoriety in Wisconsin and nationally. The administration's call in February for 500,000 additional draftees was among the first editorial targets, in which Pomeroy made clear both his earlier disdain and hatred for the draft laws, and pointed to the war-weariness then widespread through the North that had given credence to the idea of a Democratic victory in the November elections: "[F]rom the conception of this war the intent of its managers seems to have been to feed men through the machine—to keep it running by dropping patriots in by handfuls, then to clog it with the bundle." To Pomeroy, the only means of ending the war was the election of a Democrat to the Presidency: "Personages such as Buchanan, Vallandigham, Lincoln, and Greeley are not wanted. A patriot, a statesman, man who loves his country better than Copperheadism, Abolitionism, or miscegenation. A man who believes in the Constitution... a man who will respect and enforce the laws of the land." While this statement might seem to put Pomeroy somewhat at odds with the "Copperhead" wing of his party—some members of which still favored the exiled Vallandigham as a national contender—his antiwar stance shared the same populist and anti-abolitionist roots as this faction, and his rhetoric placed him within its camp, as the Republicans often highlighted.<sup>52</sup>

Nor did this position prevent him, in late August, from extolling the virtues of the "noble

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<sup>52</sup> *Union and Democrat*, Feb. 9, April 23, 1864

patriot and gallant soldier” George McClellan when the former general-in-chief of the Union armies was chosen as the Democratic presidential candidate, heralding his nomination as a sign that “the insurgent’s [Lincoln’s] tyrannical reign is arriving nigh to its close. The dawn has come and in the future we again see peace and happiness restored to this distracted and ruined country.”<sup>53</sup> McClellan favored continuation of the war until victory was achieved, but remained publicly silent on and privately opposed to abolition, and favored “the Union and the Constitution as it was”: a considerably different platform from the “Copperhead” call for peace without terms—demanded through their vice-presidential nominee Congressman George H. Pendleton of Ohio, a longtime ally of Vallandigham—yet very much in line with Pomeroy’s core beliefs.

The most noteworthy aspect of Pomeroy’s antiwar position and oratory at this time is his heightened vilification of Lincoln and the Republican Party. In the April 23<sup>rd</sup>, 1864 issue of the *Democrat*, the editor first labeled Lincoln as the “Widow-Maker,” and this sobriquet would serve as the title for a regular column denouncing the President for the duration of the election campaign. Building on earlier articles with a similar theme, he again lambasted Lincoln as a “body snatcher”, seeking “human sheaves to run through his threshing or mangling machine” with a draft and general war policy that targeted the lower classes, letting the wealthiest pay their way out of danger and taking “the last stay and dependence from many a poor Irish and German family”, who had to “shift for themselves and stand the raking fire of Lincoln’s death-loaded cannon.”<sup>54</sup> Throughout the late summer of 1864, his editorials reached even greater heights of populist- and racially-tinged antiwar denunciation, declaring Lincoln to be “Hell’s vice-regent on earth,” labeling as a traitor anyone who cast a vote for “a traitor and a murderer” who was

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<sup>53</sup> *Union and Democrat*, Aug. 31, 1864

<sup>54</sup> *Ibid*, Aug. 2, 1864

creating a full-fledged abolitionist dictatorship, and that “He who pretending to war for, wars against the Constitution.”<sup>55</sup> At the end of August, as his commentary was daily drawing more censure and spotlight, Pomeroy made the most incendiary—and startlingly prophetic—attack of his career upon Lincoln and the administration, in what would eventually be called the “Dagger Editorial”, just before Sherman’s capture of Atlanta:

“He who calls and allures men to certain butchery, is a murderer, and Lincoln-has done all this. Had any former Democratic president warred on the Constitution or trifled with the destinies of the nation as Lincoln has, he would have been buried to perdition long since. And if he is elected to misgovern another four years, WE TRUST SOME BOLD HAND WILL PIERCE HIS HEART WITH A DAGGER POINT FOR THE PUBLIC GOOD.”<sup>56</sup>

This rhetoric cemented Pomeroy as a militant opponent of the Republican-dominated federal government, and of the President he had previously supported as the Union’s primary defender. The strident tone of his writings distinguished him among editors favoring either party, but the deeply antiwar sentiment they contained did not differ greatly from other forms expressed by many Northerners at this point in the war, when General Grant’s advances in Virginia had produced appalling casualties (66,000 dead or wounded in four months) for no perceptible gain, Sherman appeared stalled north of Atlanta, and no real progress had been made on any other fronts. While still distant from the peace-at-any-price “Copperhead” wing on the basis of his support for McClellan, the fervency of Pomeroy’s criticism, and the populism and racism in which it was based, sufficiently mirrored that of the “Copperheads” for him to be ranked among them by Republicans and other contemporaries, as well as by later historians.

The fall of Mobile Bay, Alabama in August, and Sherman’s capture of Atlanta in September demolished the “peace-at-any-price” stance of the Copperheads and enabled

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<sup>55</sup> *Union and Democrat*, Aug. 22, 25, 1864

<sup>56</sup> *Ibid*, Aug. 25

Lincoln's victory over McClellan by significant electoral and popular majorities. Not only did Pomeroy deplore the results and predict that the war would never end, he asserted that the Midwestern states would soon turn to revolution against the tyranny of the re-elected administration and form a breakaway confederacy of their own, perhaps joined militarily with the South—a conspiracy which Vallandigham and other “Copperheads” in the region had been charged with fomenting.<sup>57</sup> In a final direct threat to Lincoln himself, he also stated that “We’d shoot him quick as any man” if the President ever visited the offices of the *Democrat*.<sup>58</sup> As the war entered its final stages in the winter and early spring of 1865, however, Pomeroy’s articles began to adopt a lower level of antagonism towards the Lincoln Administration. By March and April, he was even praising the President in much the same manner as he had at the start of the war, lauding his apparent success in combatting corruption in the army, and his having at last found a competent general-in-chief in Ulysses S. Grant, whose costly yet successful campaigns, Pomeroy believed, had further purified the troops and officers corps, and would end the war in a matter of weeks.

When word reached La Crosse of Lee’s surrender at Appomattox on April 9, 1865, Pomeroy extended fulsome praise “to the brave warriors of the North—to the immortal Trinity of American Military Genius—Grant, Sherman, Sheridan,” in another example of the conditional, flexible nature of his rhetoric. Traces of the antiwar sentiment he had recently carried to new heights remained, however, in his call for the army’s true purpose in wartime and occupation: “When the energies of the nation are applied to conquering those in rebellion more than to suppressing newspapers, imprisoning editors, stealing cotton, robbing defenceless [sic] women and impoverished orphan children, God smiles approval...The day of peace draweth neigh [sic]

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<sup>57</sup> *Union and Democrat*, Nov. 21, 1864

<sup>58</sup> *Ibid*, Nov. 14, 1864

and the Union will live. Rejoice!”<sup>59</sup>

With the events at Appomattox, and the subsequent surrender of remaining Confederate forces in North Carolina, the Deep South, and Texas, the wartime opposition of Pomeroy and the Democratic Party was discredited, and still viewed as treason by pro-Republican papers, leaders, and citizens in Wisconsin and nationwide. Though the La Crosse editor maintained his acclaim for the army’s successes and outlined his hopes for the postwar era under Lincoln’s second term, denigration continued to come from these quarters. When Lincoln was assassinated on April 14, 1865, Pomeroy expressed regret and fury at the event in the following day’s edition: “We mourn with the people for a great man has fallen...Lincoln was not a Napoleon—was not a Jackson—was not a Webster—was not a Douglas. But we believe he was a man of genius—a lover of his country—an honest man—a statesman. He was too honest for the position if such things can be.”<sup>60</sup> Alongside this fulsome praise for the deceased President, Pomeroy demanded the harshest possible punishment for the assassin, John Wilkes Booth, and voiced concern for the nation’s future with Tennessee Senator and Vice President Andrew Johnson—a Democrat, like himself, though firmly in the War camp—succeeding to Lincoln’s office: “The victors are left with a drunken politician to preside over the destinies of an afflicted people.”<sup>61</sup> These statements completed Pomeroy’s turnabout from the attacks he had leveled against the President, which had even extended to composing his epitaph during the 1864 campaign:

“Beneath this turf the Widow-Maker lies,  
Little in everything, except in size.”

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<sup>59</sup> *Union and Democrat*, April 10, 1865

<sup>60</sup> *Ibid*, April 15, 1865

<sup>61</sup> *Ibid*



Pomeroy's opponents in the state and across the North pointed to this and other, less personal antiwar statements he had made as proof of his treasonous "Copperheadism," leading to greater scorn and condemnation, and even accusations of complicity in Lincoln's death. Pomeroy responded to this criticism in a two-pronged fashion, acknowledging authorship of the "Dagger Editorial" and other incendiary pieces, while denying his editorial hope "that some Brutus would free this unhappy country from its tyrant in the horrible manner President Lincoln was murdered," and that his remarks were merely part of the campaign period, when "criminations and recriminations were fashionable, [and] when certain events caused thousands of men all over the North to tremble for the perpetuity of civil and religious liberty."<sup>62</sup> In a May 1865 article, Pomeroy, defending himself against calls for his arrest and even execution, stated, "We have written forcibly against men of the Democratic Republican Party as in our judgement the urgencies of the case demanded, and shall continue so to do without fear or favor."<sup>63</sup> This argument provides perhaps the nearest example of a capstone to his wartime style, and the summation of his editorial stance throughout the Civil War.

Based upon his editorials, oratory, and personal writings, Pomeroy can best be defined as an example of opportunistic antiwar sentiment, reflecting the changes in popular support for the war as its campaigns failed or succeeded. In terms of political affiliation, his rhetoric and positions most closely align with that of the War Democrats, with minor elements of "Copperheadism." The latter of these stances periodically gained preeminence with the opportunistic or pragmatic rhetorical shifts which the La Crosse editor was prone to before and throughout the wartime period. Yet the explicitly "Copperhead" label applied to Pomeroy by contemporaries, and later

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<sup>62</sup> *Union and Democrat*, April 22, 1865.

<sup>63</sup> *Ibid*, May 2, 1865

scholars such as Frank Klement, is not a valid characterization. Where the Peace Democrats sought, in one form or another, an end to the war by any means that remained silent on or recognized Confederate independence, Pomeroy did not advocate such a course at any point in his journalism or campaigning. Instead, his forms of advocacy point to the malleable nature and universality of certain contemporary views traditionally associated with “Copperhead”-type dissent: racism, opposition to real or verified government tyranny, and negotiations for peace with or without terms.

Pomeroy’s rhetoric emphasized the North’s weariness at the war’s failures and waste, and its uncertainty and muted or open hostility towards “radical” war measures and reformist policies. His criticism of the war centered on its management by Lincoln and the “Black Republicans,” which he viewed as corrupt, incompetent, and horrendous in its human and financial cost, and which he urged should be ended by popular outrage at the ballot box, electing a saner—i.e., Democratic—administration and Congress that would bring about peace and unity. His colorful, often hyperbolic attacks on Lincoln aside, Pomeroy’s adherence to the “Union as it was” shows he nonetheless opposed secession along the same lines as Edward Ryan, George McClellan and other War Democrats, and with arguably the same fervor as the President, albeit from much different motivations and with strong hostility to the abolition and Reconstruction components of Republican policy. This emphasis contributed to the pressure on Lincoln’s administration to hold back or revoke certain racial and military decrees, and also to the demands of maintaining troops, agents, funding, and other resources on the home front. In this way, Pomeroy, despite his episodic support for Lincoln, exerted a clear antiwar effort.

Pomeroy’s attacks on abolitionism and the notion of black equality of civil rights demonstrate the racial elements of his opposition, attitudes which were common at all levels of American

society in the 19<sup>th</sup> century, to varying degrees. These attitudes, however, have been discussed only in passing by Klement, his adherents, and later historians, and without reference to Pomeroy's and other Democrats' antiwar positions, thus casting their opposition as purely political in nature. Like many Northerners, Pomeroy did not look favorably on the institution of slavery, but abolitionism—a distinct form of political and social pressure, one that opponents perceived as endangering both the powers of states to protect property rights, and the economic well-being of white workers—was in his view a cure that would destroy the nation as well as Negro bondage. Thus, Pomeroy praised the Lincoln and the Republicans whenever they refrained from or rejected abolition measures—as with Lincoln's overriding of John C. Fremont's emancipation order in Missouri—and attacked them when they appeared to be capitulating to its demands, as with the Emancipation Proclamation and other wartime legislation intended to aid slaves and freedmen. This conditional criticism indicates the centrality of race to Pomeroy's antiwar dissent, as well as to that of both the War and Peace wings of the Democratic Party, separates Pomeroy from the larger “Copperhead” movement, and clearly identifies his position as a specific policy opponent within the spectrum of antiwar dissent.

In exploring the complexity of Pomeroy's brand of antiwar dissent, and its contribution to the understanding of such dissent in general, analysis makes clearer the effect of the partisan press in wartime, and further indicates how support for specific ideals or leaders shows antiwar dissent to be far less black and white than is commonly perceived. This analysis also highlights the distinction between the War Democracy's criticism of specific Lincoln Administration war policies, including emancipation, and the “peace-at-any-price” mentality of the “Copperhead” Peace Democrats. Both factions originated from similar emphases on Jeffersonian-Jacksonian ideals of government, constitutionalism and individual rights, as well as enmity toward abolition

and black civil rights. However, where the former held to the belief in an indivisible Union—preferably restored by the Democratic Party, through negotiation or military action—the latter, championing the necessity of peace above all else, tacitly accepted the idea of Southern independence as a possible precondition for this outcome, provided the rights of “the people” were kept sacrosanct. This latter position was most clearly expressed in the actions and rhetoric of Clement Vallandigham, arch-“Copperhead” Peace Democrat, and one of the most controversial dissenters of the Civil War.

## Chapter 2

“He closed by warning the people not to be deceived. That ‘an attempt would shortly be made to enforce the conscription act;’ that they should remember that this war was not a war for the preservation of the Union;’ that ‘it was a wicked Abolition war, and that if those in authority were allowed to accomplish their purposes, the people would be deprived of their liberties, and a monarchy established; but that, as for him, he was resolved that he would never be a priest to minister upon the altar upon which his country was being sacrificed.’”

--Witness Testimony, *Ex Parte Vallandigham*, May 6, 1863

### Constitutional Traitor: Clement Vallandigham

On February 20, 1861, Clement Vallandigham, the Congressman for Ohio’s Third District delivered a speech he called “The Great American Revolution” on the floor of the House of Representatives, addressing the growing crisis of Secession, and to propose a political and legal solution that would satisfy North and South on the questions of slavery and the relationship between the state and federal governments. By itself, this was not unusual; proposals seeking to avert war and disintegration of the Union had been made numerous times before, dating from the 1787 Constitutional Convention and stretching through the Missouri Compromise, the Compromise of 1850, and most recently with the Crittenden Compromise, proposed, debated and rejected over the previous two months, and soon to be turned down again in the Peace Conference then taking place. Another proposal, the Corwin Amendment—officially barring amendments or Congressional action interfering with the “domestic institutions” of the states—would be put forward in the following week, approved on March 2, and sent to the states to be ratified, although the outbreak of war on April 14 would negate this process.

Like these past efforts, Vallandigham’s address sought to avert this outbreak, while also identifying and castigating those he believed responsible for bringing the nation to such a point. Tracing the roots of the Secession Crisis to the nation’s founding, he identified the centralizing trend of the federal government as the greatest threat to state power and individual liberty, most of all in the form of increasing executive influence and authority that the framers had not

anticipated: “Your President stands in the place of a king. There is a divinity that doth hedge him in; it is the divinity of PATRONAGE. He carries on war, concludes peace, and makes treaties of every sort [...] His power of appointment and removal at discretion makes him the master of every man who would look to the Executive for honor or emolument; and its tremendous influence is reflected back upon the Senate and this House, on every Senator or Representative who would reward his friends for their support at home, or secure new friends for a re-election. The Constitution forbids titles of nobility; yet your President is the fountain of honor.” This state of affairs, Vallandigham proclaimed, was the complete opposite of what the “founders of the Government” had intended, and an “utter and extraordinary perversion” of the Constitution.<sup>64</sup>

As a result of this trend, and of the sectional competition for control of the territories acquired in westward expansion, Vallandigham argued, “is it at all surprising that the States of the South should be filled with excitement and alarm, or that they should demand, as almost with one voice they have demanded, adequate and complete guarantees for their rights and security against aggression?” The “belligerent” Republican Party, in the Congressman’s view, was directly responsible for this standoff, having sought to exclude the South and its “institutions” from expanding into the western territories and through the spreading of antislavery agitation and sentiment. Therefore, the Southern states had turned to their last option—secession—left to them under the Constitution, and now drastic political measures, rather than illegal military actions, were needed to avert further states breaking away and to possibly entice the newly-formed Confederacy back into the fold of Union.<sup>65</sup>

After delivering further background and pro-Southern arguments, and praising the recent

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<sup>64</sup> Vallandigham, Clement L. “The Great American Revolution of 1861” Delivered in the House of Representatives, February 20, 1861; Henry Polkinhorn (Washington), p. 8

<sup>65</sup> *Ibid*, p. 13

Crittenden Compromise, Vallandigham outlined his proposal, which took the form of a set of constitutional amendments: 1) The division of the United States into four distinct regions—North, South, West, Pacific, each with the power to veto legislation in the Senate. 2) Modification of the Electoral College, and the President and Vice-President both limited to one six-year term except by agreement of two-thirds of the electors. 3) Any state’s secession would only be permitted if approved by the legislatures of the sections. 4) The “equal right of migration” between the sections, and into the territories, without interference from Congress or any territorial legislature, which would also not have the “power to destroy or impair any rights of either person or property in these Territories”—in effect, allowing slaveowners to transport slaves anywhere within U.S. borders, and allowing the institution to be spread and defended by federal law.<sup>66</sup>

Though these amendments, like the other negotiations intended to resolve the crisis, failed to pass, Vallandigham had staked out the positions that defined his opposition to the Northern war effort in the Civil War: ardent support of states’ rights; strong proslavery and anti-abolitionist beliefs; rejection of military force to maintain the Union; firm adherence to believed and real constitutional limits on federal and executive powers. These stances effectively anointed him as the most prominent peace advocate in the Union even prior to the Civil War’s outbreak, as one of the chief “Copperhead” leaders and foremost traitors by Republicans as the war progressed, and as one of the period’s most contentious figures among modern Civil War scholars.

Following the bombardment of Fort Sumter on April 12, and President Lincoln’s call for 75,000 militiamen three days later, Vallandigham undertook his first acts of public and private

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<sup>66</sup> “Great American Revolution of 1861”, pp. 18-19

opposition to the nascent Civil War. When Lincoln issued further appeals for volunteers in early May, the Ohio Congressman issued a memo to Democratic politicians throughout the state, calling for a conference on May 15. This meeting was intended to devise means of raising public awareness of the threat of unrestricted executive authority—which Vallandigham believed this expansion of the army represented—and therefore “rescue the Republic from an impending military despotism.”<sup>67</sup> The conference ultimately fell through due to lack of responses, but the announcement served notice to Vallandigham’s state and district colleagues as to his views on the administration’s wartime policy.

These views were made even clearer in a public letter to his constituents, published on May 13. In it, he quoted a March speech by Democratic Party favorite, Senator and 1860 presidential candidate Stephen Douglas, warning that “the history of the world does not fail to condemn the folly, weakness, and wickedness of that Government which drew its sword upon its own people when they demanded guarantees for their rights,” and that “History does not record an example where any human Government has been strong enough to crush ten millions of people into subjection when they believed their rights and liberties were imperiled, without first converting the government itself into a despotism, and destroying the last vestige of freedom.”<sup>68</sup>

Pointing to these as “the sentiments of the Democratic party, of the Constitutional Union Party, and of a large majority of the Republican presses and party, only six weeks ago,” and his as well, Vallandigham conceded the need to carry out the militia call-up “because *they* [the recruits] had no motive but supposed duty and patriotism to move them.” The additional troop requests, however, he labeled an “audacious usurpation” by Lincoln, declaring, “for which he

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<sup>67</sup> Vallandigham, James Laird, *A Life of Clement L. Vallandigham* Library of American Civilization; Turnbull Brothers, 1872, Oxford University. p. 161

<sup>68</sup> The Congressional Globe, Part 4 *United States Congress* Edited by Francis Preston Blair, John Cook Rives, Franklin Rives, George A. Bailey; Blair & Rives, 1862. p. 79



deserves impeachment, in daring, against the very letter of the Constitution, and without a shadow of law, to ‘raise and support armies,’ and to ‘provide and maintain a navy’ for three or five years, by *mere executive proclamation*, I will not vote to sustain or ratify—NEVER! Millions for defence [sic]; not a dollar or a man for aggressive and offensive civil war...Fortunate shall we be if we escape with our liberties. Indeed, it is no longer so much a question of war with the South as whether we ourselves are to have constitutions and a republican form of government hereafter in the North and West. In brief: I am for the CONSTITUTION first, and at all hazards; for whatever can now be saved of the UNION next; and for PEACE always as essential to the preservation of either.” With this letter, Vallandigham cemented his position as perhaps Lincoln’s strongest critic in the House, and articulated what would become central points and targets of the “Copperhead” Peace Democrats’ platform.<sup>69</sup>

When Congress reconvened in extraordinary session on July 4 to sanction Lincoln’s call-up requests and to authorize additional volunteers, Vallandigham again articulated his opposition to these decisions and to the overall notion of restoring the Union by military force. Lamenting the loss of the Southern states, and of their legendary and contemporary representatives in Congress who “will meet with us no more within these marble halls,” he noted with greatest concern how “in the parks and lawns, and upon the broad avenues of this spacious city, seventy thousand soldiers have supplied their places; and the morning drumbeat from a score of encampments within sight of this beleaguered capital, give melancholy warning to the representatives of the State and of the people, that AMID ARMS LAWS ARE SILENT.” At the time of their delivery, these sentiments were almost the polar opposite of the fervent pro-war positions and rhetoric which dominated the North following the Fort Sumter bombardment, and

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<sup>69</sup> *A Life*, p. 162

of further secessions by Tennessee, Virginia, North Carolina, and Arkansas.<sup>70</sup>

Vallandigham's speech on the House floor drew harsh criticism from much of this body and may have contributed to a brief tempering of his remarks concerning the armed forces in their capacity of defending existing Union territory. His antagonism towards military bills of virtually any kind, however, and his desire for a negotiated peace, remained prominent features of his rhetoric.

In one such debate on the Volunteer Army Bill in mid-July, he proposed an amendment which would appoint a body of seven commissioners, "whose mission shall be to accompany the army on its march, to receive and consider such propositions, if any, as may at any time be submitted from the executive of the so-called Confederate States, or of any one of them, looking to a suspension of hostilities and the return of said States, or any one of them, to the Union, and to obedience to the Federal Constitution and authority." Responding to a challenge from Republican Congressman and staunch abolitionist Owen Lovejoy, he declared: "For my own part, Sir, while I would not in the beginning have given a dollar or a man to commence this war, I am willing—now that we are in the midst of it without any act of ours—to vote just as many men and just as much money as may be necessary to protect and defend the Federal government. It would be both treason and madness now to disarm the Government in the presence of an enemy of two hundred thousand men in the field against it." However, he would not "vote millions of men and money blindly, for bills interpreted by the message and in speeches on this floor to mean bitter and relentless hostility to and subjugation of the South. *It is against an aggressive and invasive warfare that I raise my vote and voice.*" He still sought negotiations to end the conflict, "to try the temper of the South—the Union men, at least, of the South. Since

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<sup>70</sup> The Congressional Globe, Part 2, pp. 52-60

war had begun, “there must be an army in the field; there must be money appropriated to maintain it; but I will give no more of men and no more of money than is necessary to keep that army in the position and ready to strike, until it can be ascertained whether there is a Union sentiment in the South, and whether there be indeed any real and sober and well-founded disposition among the people of those States to return to the Union and to their obedience to the authority of this Government.” This reply demonstrates a minor yet significant shift in Vallandigham’s antiwar stance and established a pattern for his later wartime arguments.<sup>71</sup>

Though Vallandigham rejected the use of the newly expanded Union military as an offensive force, the realization of the war’s inevitability by this time—and perhaps simple political and personal calculation—caused him to modify his objections to demonstrate patriotic support for the army. He continued to warn against the use of the military to carry out the “despotic” actions of the Lincoln Administration, and denounce the actions of specific officials and failures on the battlefield as evidence of the futility of war as a method of reunion. Yet he did not directly criticize the army as a whole and rejected his opponents’ charges to the contrary. Vallandigham’s rhetoric also showcases again the constitutional and state’s rights roots of his antiwar opposition: Congress may appropriate funds and manpower for war, but not *civil* war, and not at the whim of the Executive Branch; individual states may still secede, and the federal government has no authority or right to return them to the Union by force; and all pacifist efforts must be made to resolve crises threatening armed conflict. These would be his primary contentions following Congress’s recess in August and provide the basis for his ascension to leader of the antiwar “Copperhead” Peace Democrats.

This ascension took place throughout the autumn and winter of 1861, and well into spring

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<sup>71</sup> *A Life*, pp. 169-172

of the following year. During this time, Vallandigham continued to oppose war-related legislation in the House—the suspension of *habeas corpus*, the issuance of paper currency to fund the war effort, the release under threat of Confederate negotiators James Mason and John Slidell, the closure of newspapers critical of the government—in whole and in part, with the same constitutional and personal arguments as elucidated in the war’s earliest months.

Such stances generated further charges of disloyalty and treason by Republican and pro-administration papers and political leaders, extending to accusations that he was in direct contact with Southern newspapers and even the Confederate government, providing information and opinions as to, in one quoted alleged letter, published in a Baltimore paper, “how the Yankees might be defeated” by “bleeding Dixie.” When Pennsylvania Congressman John Hickman introduced a formal resolution to investigate such charges in February 1862, Vallandigham, who before had largely ignored these personal attacks, declared this particular accusation to be “false, infamous, scandalous.” In an extended response, he insisted he had never made any disloyal remarks on the House floor or in any published letter or speech, denying that I have been in treasonable, or even suspicious correspondence with any one in that State—loyal though it is to the Union—or in any other State, or have ever uttered one sentiment inconsistent with my duty, not only as a member of this House, but as a citizen of the United States—one who has taken a solemn oath to support the Constitution, and who, thank God, has never tainted that oath in thought, or word, or deed.” With this reply, Vallandigham again defended his beliefs through a combination of appeals to Union and the Constitution, and attacks against what he believed to be spurious accusations of disloyalty by pointing to his record and past conduct—the latter sometimes delivered in language that brought him close to official censure in the House, as

occurred in a response to accusations from Republican Senator Benjamin Wade.<sup>72</sup>

These tactics, and rising controversy in the spring of 1862 regarding the Lincoln administration's handling of the war, and its adoption of confiscation and emancipation, allowed Vallandigham to coalesce a significant portion of the Democratic Party around peace and antiwar positions. Addressing a caucus of this "new conservative movement" on May 8, 1862, he outlined the successful history of past Democratic governance since the start of the 19<sup>th</sup> century, and urged party unity to sustain this legacy into the present: "During all this time wealth increased, business of all kinds multiplied, prosperity smiled on every side, taxes were low, wages were high, the North and the South furnished a market for each other's products at good prices; public liberty was secure, private rights undisturbed; every man's house was his castle; the courts were open to all; no passports for travel, no secret police, no spies, no informers, no bastiles [sic]; the right to assembled peaceably, the right to petition; freedom of religion, freedom of speech, a free ballot, and a free press; and all this time the Constitution maintained and the Union of the State preserved." All of this, Vallandigham insisted, was the result of "Democratic principles and policy, carried out through the whole period during which the Democratic party held the power and administered the Federal Government." Regarding the "present crisis," the only possible remedy was "to maintain the Constitution as it is, and to restore the Union as it was. To maintain the Constitution is to respect the rights of the States and the liberties of the citizen. It is to adhere faithfully to the very principles and policy which the Democratic party has professed for more than half a century." More than any of Vallandigham's prior speeches, this oratory codified the official stance—"The Constitution as it is, and the Union as it was"—and elevated him to leadership of the Peace Democrat wing, by now frequently termed

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<sup>72</sup> *A Life*, pp. 193-203

“Copperheads” by Republican rivals and editors.<sup>73</sup>

Building on this success over the summer of 1862, Vallandigham continued to assail the majority party and the Lincoln Administration for its abuses of civil rights, its disastrous war policy—most of all the failed Peninsula Campaign, and the defeat at Second Manassas—and its use of the military to arrest or intimidate the war’s opponents, which the Congressman was threatened with, or claimed to be, on multiple occasions during speaking tours of his home district and state. These pressures heightened Vallandigham’s zealotry even further, as evidenced by his rhetoric in an August speech in his hometown of Dayton, Ohio: “I, too, have sworn to support that Constitution; and, more than that, I have done it. I demand that all men, from the humblest citizen up to the President, shall be made to obey it likewise. In no other way can we have liberty, order, security. I was born a freeman. I shall die a freeman [...] I defy arbitrary power. I may be imprisoned for opinion's sake—never for crime; never because false to the country of my birth, or disloyal to the Constitution which I worship.” The use of the term “freeman” is well within Vallandigham’s by-then typical oratory regarding preservation of constitutional liberties. However, in light of the passage of the Confiscation Act earlier that year—which provided for the seizure of rebel property, most of all slaves, without compensation, and laid down other severe penalties for both Confederates and sympathetic Union citizens—this particular rhetorical method points to Vallandigham’s and the Democrats’ increasing use of the fear of emancipation’s consequences: the trampling of white rights for those of freed blacks, competition between both groups for jobs and land, miscegenation, and racial war.<sup>74</sup>

While Vallandigham did not yet employ these fears as frequently as other Democrats,

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<sup>73</sup> Ibid, pp. 206-207

<sup>74</sup> Vallandigham, Clement L. *The Record of Hon. C. L. Vallandigham on Abolition, the Union, and the Civil War*. J. Walter & co., 1863., pp. 144-146

events in Washington and on the battlefield combined with his prewar anti-abolitionist stance to bring this tactic to the forefront. On September 17, 1862, Robert E. Lee's first invasion of the North was checked at the tactically drawn Battle of Antietam, in Maryland. Five days later, having held back from doing so until a notable Union victory had been achieved—or simply a successful action—President Lincoln issued the Emancipation Proclamation, declaring all slaves in the rebellious Southern states that did not return to the Union by January 1, 1863, to be “then, thenceforward, and forever free.” This act brought outrage and determination to resist on the part of the Confederacy, and a fresh wave of criticism from the Democrats, particularly in the border states—despite their being specifically exempted from the Proclamation—and the Midwestern states, including Vallandigham's Ohio. The latter translated into significant gains for the Democratic Party in the fall Congressional elections, winning twenty-eight House seats and breaking the Republican's majority in that chamber, forcing them to ally with the Unionist Party (a coalition of delegates from the 1860 Constitutional Union Party) to maintain control.

Vallandigham himself, however, did not benefit from this electoral success. Standing for reelection in November, he ultimately failed to hold his seat due to a combination of a slightly greater Republican vote count and redistricting which appended a pro-Republican county to that of his district—a move that his supporters cast as a maneuver by the ruling party to force him out of Congress. Despite this defeat, he continued to tour and speak on the urgent necessity of a negotiated peace with the Confederacy, and on the dangers of the Lincoln Administration's now-openly emancipationist motives in waging the war.

In December, when word came of the disastrous Battle of Fredericksburg, Vallandigham put forward a series of resolutions that reiterated his positions on these bases, and sought to codify any extension of federal power—Executive *or* Legislative—at the expense of states'

rights as a treasonable offense. Among their clauses were appeals “that the Union as it was must be restored and maintained forever”; that peace should be sought solely on the basis of restoring “the integrity and entirety of the Federal Union, and of the States composing the same as at the beginning of hostilities”; rejecting foreign intervention in the war, as well as the aim of overthrowing or interfering with the rights or established institutions of the States,” including slavery; branding any who sought to do so, or “to attempt to establish a dictatorship in the United States, thereby superseding or suspending the constitutional authorities of the Union, or to clothe the President, or any other officer, civil or military, with dictatorial or arbitrary power...guilty of a flagrant breach of public faith, and of a high crime against the Constitution and the Union”; and insisting on House proposals for “an immediate cessation of hostilities, in order to the speedy settlement of the unhappy controversies which brought about this unnecessary and injurious civil war.” Although the House tabled these resolutions without passage, their scope indicates the level to which the now-lame duck Congressman and ardent Peace Democrat still adhered to the concept of the states as final arbiters of national and constitutional disputes, including and especially slavery and wartime government powers.<sup>75</sup>

When Congress reconvened in January 1863, Vallandigham’s calls for negotiation and warnings against a federal dictatorship intensified, despite his mandated departure on March 4—and, possibly, attracted feelers of support from within Lincoln’s circle of allies. According to the biography published by his brother James, Vallandigham received approaches during this time “by letter and personal interview, on the part of one of the most eminent and influential supporters of the Administration, to ascertain whether some means could not be devised to bring about a cessation of hostilities through foreign mediation, leaving the terms of adjustment to

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<sup>75</sup> *Record*, p. 244



foreign arbitration,” with the end result being “final peaceable separation.” Vallandigham—who does not discuss the affair in the account of his Congressional record—reportedly showed interest in the idea of mediation, but, his brother asserts, turned down this proposal in the end, due to his belief that “the people of the several States here at home must be the final arbitrators of the great quarrel in America, and the people and the States of the Northwest the mediators who should stand like the prophet betwixt the living and the dead, that the plague of disunion might be stayed.”<sup>76</sup>

Whether or not such a significant exchange took place, Vallandigham did not intend to end his peace and antiwar advocacy along with his term in office. On January 14, 1863, he gave a speech on the House floor, “The Constitution-Peace-Reunion”, perhaps the clearest and harshest of his career. Recounting the origins of the war as he perceived them, he declared: “I believed from the first that it was the purpose of some of the apostles of that doctrine to force a collision between the North and the South, either to bring about a separation or to find a vain but bloody pretext for abolishing slavery in the States.” He recounted the claimed reasons for the war, and the folly of pursuing them: “The President, the Senate, the House, and the country, all said that there should be war—war for the Union; a union of consent and goodwill. Our southern brethren were to be whipped back into love and fellowship at the point of the bayonet. The futility of crushing the rebellion, however, had become plain over the past two years: “Rebels certainly they are; but all the persistent and stupendous efforts of the most gigantic warfare of modern times have, through your incompetency and folly, availed nothing to crush them out, cut off though they have been by your blockade from all the world, and dependent only upon their own courage and resources. And yet they were to be utterly conquered and subdued in six weeks,

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<sup>76</sup> *A Life*, p. 224

or three months!” Thanks to this, he claimed, “defeat, debt, taxation, sepulchers” were the only “trophies” to be had.<sup>77</sup>

Vallandigham then laid out what he viewed as the true cause of the war, disdaining Republican claims: “Slavery is only the *subject*, but abolition the *cause*, of this civil war. It was the persistent and determined agitation in the free States of the question of abolishing slavery in the South, because of the alleged “irrepressible conflict” between the forms of labor in the two sections, or in the false and mischievous cant of the day, between freedom and slavery, that forced a collision of arms at last. He also scoffed at the “cry of mingled fanaticism and hypocrisy, about the sin and barbarism of African slavery,” stating baldly that he saw more of barbarism and sin, a thousand times, in the continuance of this war, the dissolution of the Union, the breaking up of this Government, and the enslavement of the white race by debt and taxes and arbitrary power.”

Nor was this course sustainable, given the loss of abolitionist support since the war’s beginning: “[T]here is fifty-fold less of anti-slavery sentiment to-day in the [Mid]West than there was two years ago; and if this war be continued, there will be still less a year hence.” The people of his home region had come to understand “that domestic slavery in the South is a question, not of morals, or religion, or humanity, but a form of labor, perfectly compatible with the dignity of free white labor in the same community, and with national vigor, power, and prosperity, and especially with military strength.” A concurrently rising belief in the region held “in the subordination of the negro race to the white where they both exist together, and that the condition of subordination, as established in the South, is far better every way for the negro than the hard servitude of poverty, degradation, and crime to which he is subjected in the free States.”

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<sup>77</sup> *Record*, pp. 204-228

Such a form of “pro-slaveryism,” Vallandigham claimed, was the best form of “wisdom and good sense”, in the eyes of the Midwestern states: “We will not establish slavery in our own midst; neither will we abolish or interfere with it outside of our own limits.” Nor would the alien, New England-based ideology of abolitionism, and the moneyed interests—“the men of Gotham”, on Wall Street and among all industries—behind this and the war, force the choice on them.<sup>78</sup>

In a sharper warning of possible secession by the Midwestern states, Vallandigham stated baldly that “if you of the East who have found this war against the South and for the negro, gratifying to your hate or profitable to your purse, will continue it till a separation be forced between the slaveholding and your non-slaveholding States, then, believe me, and accept it, as you did not the other solemn warnings of years past, the day which divides the *North from the South, that self-same day decrees eternal divorce between the West and the East.*” He also detailed the need to suppress “abolitionism or anti-slavery,” the true causes of the war, as well as the complete subordination of the spirit of fanaticism and intermeddling which gave it birth.” Acceptance of slavery, in short, was the price of Union: “Whoever hates negro slavery more than he loves the Union, must demand separation at last [...] The sole question to-day is between the Union with slavery, or final disunion, and, I think, anarchy and despotism. I am for the Union.”

Having emphasized this central belief, Vallandigham then outlined in blunt terms the steps for ending the war, and restoring the Union: “[L]et us expel the usurper [Lincoln], and restore the Constitution and laws, the rights of the States, and the liberties of the people. Stop fighting. Make an armistice—no formal treaty. Withdraw your army from the seceded States. Reduce both armies to a fair and sufficient peace establishment [...] Visit the North and West. Visit the South. Exchange newspapers. Migrate. Intermarry. Let slavery alone. Hold elections at

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<sup>78</sup> *Record*, pp. 204-228

the appointed times. Let us choose a new President in sixty-four.” He denied that negotiation meant recognition of the South: “Recognition is absolute disunion; and not between the slave and the free States, but with Delaware and Maryland as part of the North, and Kentucky and Missouri part of the West. But wherever the actual line, every evil and mischief of disunion is implied in it [...] It cost thirty years of desperate and most wicked patience and industry to destroy or impair the magnificent temple of this Union. Let us be content if, within three years, we shall be able to restore it.” He then closed this speech with a final warning, summarizing his fears of further conflict and the urgency of ending such everywhere: “Sir, I repeat it, we are in the midst of the very crisis of this revolution. If, today, we secure peace and begin the work of reunion, we shall yet escape; if not, I see nothing before us but universal political and social revolution, anarchy, and bloodshed,” which would make the Reign of Terror in France pale in comparison.<sup>79</sup>

Through this speech—which received widespread admiration and support in the Democratic press—Vallandigham cemented his claim to the leadership of the “Copperhead” Peace Democrats, despite his electoral defeat. Moreover, his remarks laid out starkly the most powerful element in future Democratic voter appeals and arguments against the Lincoln Administration: that of race, in the form of fears of economic competition with freed slaves, social intermixing, or the “subjugation” of the rights of whites in favor of those of blacks. These appeals, combined with urgings for an armistice—though not with “final separation” as an outcome—and revocation of the civil liberties abuses by Lincoln and the Republicans, were now merged into a unitary message, to be employed by the Peace Democrats throughout the remainder of the war.

The issue of civil rights became Vallandigham’s clarion call in stronger and more

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<sup>79</sup> Congressional Globe, Appendix, p. 53

personal forms following this speech and through the end of his Congressional career. On February 23, during discussion of a new Conscription Act, he delivered his final speech in the House— “It is that the freedom of the negro is to be purchased, under this bill, at the sacrifice of every right of the white men of the United States [...] Give us our rights; give us known and fixed laws; give us the judiciary; arrest us only upon due process of law; give us presentment or indictment by grand juries; speedy and public trial; trial by jury and at home; tell us the nature and cause of the accusation; confront us with witnesses; allow us witnesses in our behalf, and the assistance of counsel for our defense; secure us in our persons, our houses, our papers, and our effects; leave us arms, not for resistance to law or against rightful authority, but to defend ourselves from outrage and violence; give us free speech and a free press; the right peaceably to assemble; and above all, free and undisturbed elections and the ballot.” When the time came, he warned, “we shall eject you from the trusts you have abused, and the seats of power you have dishonored, and other and better men shall reign in your stead.” As before, this admonition put forth many of the Peace Democrat demands Vallandigham would employ in later public addresses.<sup>80</sup>

After several weeks on a speaking tour of the eastern U.S., Vallandigham returned to Ohio in mid-March. By this time, significant changes had been ratified regarding *habeas corpus* restrictions and domestic military authority, creating a muddled and somewhat contradictory system for suppression of dissent while maintaining constitutional rights of citizens. Since May of 1861, all federal troops and authorities in Vallandigham’s home state of Ohio, as well as Indiana, Illinois, and Kentucky, had been grouped under what was known as the Military Department of the Ohio, intended as both a field force and administrative zone. General orders in

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<sup>80</sup> *Record*, pp. 204-228

this zone prohibited open criticism of military or government edicts (Order No. 9), as well as the carrying and stockpiling of firearms by civilians (Order No. 15) to combat real and perceived dissent.

These and later actions were largely in accord with President Lincoln's September 1862 order suspending *habeas corpus* and decreeing discouragement or criticism of enlistment and the draft as "disloyal" practices subject to trial by military commission. Yet the scope of this order was not fully clarified until Congress's passage of retroactive authorization on March 3, 1863, its interpretation and implementation also varied by military district, and the Democrats still strongly contested its legality. On April 13, under the aegis of Lincoln's original proclamation, General Burnside issued General Order No. 38, the full text of which declared "That hereafter all persons found within our lines who commit acts for the benefit of the enemies of our country, will be tried as spies or traitors, and, if convicted, will suffer death [...] The habit of declaring sympathies for the enemy will no longer be tolerated in the department. Persons committing such offences will be at once arrested, with a view to being tried as above stated, or sent beyond our lines into the lines of their friends." Such definitions of treason encompassed such activities and rhetoric as Vallandigham's and his example arguably influenced its drafting.<sup>81</sup>

General Order No. 38 and those like it became Vallandigham's primary target upon returning to Ohio. In his first post-return speech in late March, he attacked the general orders banning and confiscating weapons, pointed to the Second Amendment's guarantees, and declared the Constitution to be "General Order No. 1," adding that "if the men in power undertake in an evil hour to demand them [firearms] of us, we will return the Spartan answer, 'Come and take them.'" The powers of military officials, Vallandigham argued, was limited to

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<sup>81</sup> *OR*, Ser. II, Vol. V, p. 480

soldiers only, and “not the people, the free white American citizens of American descent not in the military service”—a particularly important contention to supporters of republicanism in 19<sup>th</sup>-century America, which maintained strict civil-military divisions.<sup>82</sup> Moreover, in Vallandigham’s view, it was the height of hypocrisy for the Union military to disarm white citizens while arming blacks, and taking little or no action against pro-Republican demonstrations that devolved into mob attacks on Democratic persons and property while punishing criticism of the war with military force. “Try every question of law in your courts, and every question of politics before the people and through the ballot-box; maintain your constitutional rights at all hazards against military usurpation. Let there be no resistance to law, but meet and repel all mobs and mob violence by force and arms on the spot.” This was the “true programme for these times,” he proclaimed to his audience.<sup>83</sup>

Vallandigham’s continuing denunciations provoked a personal confrontation with military authorities in early May 1863. On the first of the month, he delivered another antiwar address in the town of Mt. Vernon, located in strongly pro-Democratic Knox County. Four days later, in the early morning hours of May 5, federal troops arrested Vallandigham at his home in Dayton, on General Burnside’s orders. Brought before a military commission in Cincinnati, he was formally charged with “publicly expressing, in violation of General Orders No. 38, from Headquarters Department of the Ohio, sympathy for those in arms against the Government of the United States, and declaring disloyal sentiments and opinions, with the object and purpose of weakening the power of the Government in its efforts to suppress an unlawful rebellion.” The specifics of the charge outlined Vallandigham’s Mt. Vernon remarks: “declaring the present war ‘a wicked, cruel, and unnecessary war;’ ‘a war not being waged for the preservation of the

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<sup>82</sup> *Record*, pp. 247-248

<sup>83</sup> *Record*, p. 248

Union;’ ‘a war for the purpose of crushing out liberty and erecting a despotism;’ ‘a war for the freedom of the blacks and the enslavement of the whites;’ characterizing General Orders No. 38, from Headquarters Department of the Ohio, as ‘a base usurpation of arbitrary authority,’ inviting his hearers to resist the same, by saying, ‘the sooner the people inform the minions of usurped power that they will not submit to such restrictions upon their liberties, the better;’ declaring ‘that he was at all times, and upon all occasions, resolved to do what he could to defeat the attempts now being made to build up a monarchy upon the ruins of our free government.’” These opinions, the arresting affidavit contended, “he [Vallandigham] well knew did aid, comfort, and encourage those in arms against the Government, and could but induce in his hearers a distrust of their own Government, sympathy for those in arms against it, and a disposition to resist the laws of the land.” With this arrest and charge, Vallandigham became both a declared enemy in the eyes of the Lincoln Administration and the Union military, and a martyr to the cause of peace in the view of the Peace Democrats and other antiwar opponents.<sup>84</sup>

Supporters of the former Congressman gathered to march in protest within hours of the arrest, eventually attacking and burning the offices of the pro-Republican newspaper *Dayton Journal*, and railroad lines and telegraph wires were also destroyed. The rioters dispersed in the face of arriving federal troops and—according to later claims—pleas by Democratic officials to avoid further violence; more than thirty were soon arrested and detained in Cincinnati in the same barracks as Vallandigham.<sup>85</sup> Shortly before his court appearance, Vallandigham made his adherence to the antiwar Democrats clear in a letter smuggled from his cell, stating “to the Democracy of Ohio” that he was “in a military bastile [sic] for no other offense than my political

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<sup>84</sup> Vallandigham, Clement L. *The Trial of Hon. Clement L. Vallandigham: By a Military Commission and the Proceedings Under His Application for a Writ of Habeas Corpus in the Circuit Court of the United States for the Southern District of Ohio*. Cincinnati: Rickey and Carroll, 1863. Internet resource.

<sup>85</sup> *A Life*, p. 259



opinions, and the defense of them, and of the rights of the people, and of your Constitutional liberties.” He urged his followers to “be firm, be true to your principles, to the Constitution, to the Union,” and vowed to adhere to every principle, and will make good, through imprisonment and life itself, every pledge and declaration” made on their behalf.<sup>86</sup>

Vallandigham’s trial itself lasted two days, ending with a verdict of guilty, and sentence of imprisonment “during the continuance of the war” at Fort Warren in Boston Harbor.<sup>87</sup> Despite the Presidential and Congressional suspensions of *habeas corpus*, writs were filed on Vallandigham’s behalf in federal district court by a member of his counsel, former Democratic Senator George E. Pugh. On May 11, the district court rejected the writ, maintaining that Vallandigham’s arrest and trial by military commission was legal under the exercise of presidential war powers. This decision, and the public announcement of Vallandigham’s sentence, provoked further criticism and petitions for his release, including from Democratic politicians such as New York Governor Horatio Seymour charging the Lincoln Administration with the very “military despotism” of which Vallandigham had warned. At a mass rally of Democratic supporters in Albany on May 16, a list of resolutions challenging the legality of Vallandigham’s arrest, and of the administration’s managing of the war, was delivered to Lincoln by prominent New York Democrat Erastus Corning, who had previously served as a delegate to the Peace congress of 1861, and had resigned his seat in protest of the administration’s war policy.<sup>88</sup>

Initially, Lincoln ignored these and other criticisms of Vallandigham’s conviction and of the Union war effort, choosing to stand by General Burnside and the commission’s ruling. The

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<sup>86</sup> *Record*, p. 253

<sup>87</sup> *Trial*, p. 33

<sup>88</sup> *A Life*, pp. 292-293

president eventually made his position clearest in what became known as the “Letter to Erastus Corning Et Al,” released publicly on June 12, stating, famously, that “long experience has shown that armies cannot be maintained unless desertion shall be punished by the severe penalty of death. The case requires, and the law and the Constitution sanction, this punishment. Must I shoot a simple-minded soldier boy who deserts, while I must not touch a hair of a wily agitator who induces him to desert? I think that, in such a case, to silence the agitator and save the boy is not only constitutional, but withal a great mercy.” Vallandigham’s popularity, however, made clear to Lincoln that his detention would only enhance his martyrdom in the eyes of the “Copperhead” Peace Democrats. Therefore, on May 19, the president issued an order commuting the former Congressman’s sentence from imprisonment to exile beyond Union lines to the South—a somewhat novel act, given the Lincoln Administration’s refusal to recognize the Confederacy as a legally distinct territory, and intended to associate Vallandigham and the “Copperheads” with the rebellion.<sup>89</sup>

Shortly after his departure under guard to Confederate-held Tennessee, a letter written by Vallandigham and addressed “To the Democracy of Ohio” affirmed that “No order of banishment, executed by superior force, can release me from my obligations or deprive me of my rights as a citizen of Ohio and of the United States [...] Every sentiment and expression of attachment to the Union and devotion to the Constitution—to my country—which I have ever cherished or uttered, shall abide unchanged and unretracted till my return.” After a brief period of detention as an “enemy alien”, Confederate authorities released Vallandigham in June 1863, and the former Congressman soon departed the country by ship for Canada, settling first in

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<sup>89</sup> Lincoln, Abraham. *Abraham Lincoln papers: Series 1. General Correspondence. -1916: Abraham Lincoln to Erastus Corning and Others, June 1863 Copy No. 2 of Lincoln's reply to resolutions concerning military arrests and suspension of habeas corpus.* June, 1863. Manuscript/Mixed Material. Retrieved from the Library of Congress, <[www.loc.gov/item/mal2404500/](http://www.loc.gov/item/mal2404500/)>.

Niagara Falls by July 15, before moving to Windsor, Ontario, directly across from Detroit, Michigan.<sup>90</sup>

By this time, the Ohio Democratic Party had issued a set of resolutions similar to those of the Albany meeting, requesting that Vallandigham's exile be lifted, and had overwhelmingly nominated him as a candidate for the Ohio governorship in the fall elections, a nomination he accepted in absentia. Still aware of Vallandigham's high support, Lincoln issued a letter asking in turn that the Ohio Democratic leaders agree to three pledges in exchange for revocation of the exile: 1) "That there is now a rebellion in the United States, the object and tendency of which is to destroy the national Union; and that in your opinion, an army and navy are constitutional means for suppressing that rebellion; 2) That no one of you will do anything which in his own judgment, will tend to hinder the increase, or favor the decrease, or lessen the efficiency of the army or navy, while engaged in the effort to suppress that rebellion; and 3) that each of you will, in his sphere, do all he can to have the officers, soldiers, and seamen of the army and navy, while engaged in the effort to suppress the rebellion, paid, fed, clad, and otherwise well provided and supported." The Democrats considered these terms unacceptable—in the responding letter by party chairman Matthew Birchard, they requested the revocation "not as a favor, but as a right due to the people of Ohio"—and so the order remained in force. Hopes of Vallandigham's vindication and return to the state through reelection likewise faded in the wake of the landslide victory of Unionist and War Democrat John Brough in the gubernatorial election. This defeat forecasted the future divisions between the Peace and pro-war factions of the Democratic Party and added to Vallandigham's temporary isolation from political action in the Midwest and the

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<sup>90</sup> *A Life*, pp. 296-297

Union in general.<sup>91</sup>

Although Vallandigham's political career ended with his gubernatorial defeat, he retained his leadership position in the "Copperhead" movement and continued his peace and antiwar advocacy from Canada—and, in time, during brief returns to the Midwest despite his order of exile. Throughout his stay in Windsor, Vallandigham received numerous visitors from Democratic supporters and organizations, and the Democratic press regularly published appeals for his return. These entreaties became louder with the beginning of the Union's Wilderness and Atlanta Campaigns in spring of 1864, and the steady influx of high casualties from both, for little apparent gain. The "Copperhead" Peace Democrats' calls for negotiation—with or without conditions—gained greater support opposite the War Democrats' stance of reunion through continuation of the war, and desertion and anti-draft actions also increased significantly during this period, building on the New York Draft Riots and other demonstrations of opposition that had erupted beginning in the summer of 1863. Vallandigham himself, after several meetings with higher-ranking members, and despite earlier distrust, agreed to be sworn in as "chief officer" of the Order of the Sons of Liberty—a "secret society" of antiwar resistance, renamed from the prewar, pro-Southern Knights of the Golden Circle—in March 1864, in the belief that the organization of groups "for the protection of life, liberty and property, and to guard against any attack upon the ballot box," was essential following his arrest and exile.<sup>92</sup>

In the end, although Vallandigham's association with the Sons of Liberty would be

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<sup>91</sup> Lincoln, Abraham. *Abraham Lincoln papers: Series 1. General Correspondence. 1833 to 1916: Abraham Lincoln to Matthew Birchard, et al., Monday; Response to the resolutions of the Ohio Democratic Convention.* 1863. Manuscript/Mixed Material. Retrieved from the Library of Congress, [www.loc.gov/item/mal2449400/](http://www.loc.gov/item/mal2449400/); Lincoln, Abraham. *Abraham Lincoln papers: Series 1. General Correspondence. 1833 to 1916: Matthew Birchard, et al. to Abraham Lincoln, Wednesday; Response to Lincoln's letter of June 29 regarding Vallandigham.* July 1, 1863. Manuscript/Mixed Material. Retrieved from the Library of Congress, <[www.loc.gov/item/mal2461700/](http://www.loc.gov/item/mal2461700/)>.

<sup>92</sup> *A Life*, p. 372

pointed to as proof of his involvement in the “Northwest Conspiracy”—a planned uprising by “Copperheads” and other Southern sympathizers in the Midwest, aimed at disrupting the war effort and freeing Confederate POWs—he refused to take part in or condone any cooperation with the Confederacy that did not result in reunion. His posthumous biography outlines a conversation with a Confederate agent in which he declared “I will fight for no cause wherein victory itself is dishonor; I will fight for no government by which my State is to be regarded as a foreign land forever [...] Not a hand shall be offered to assist the Southern people nor a shot fired in their favor if I can control the Sons of Liberty, until it is distinctly understood that the idea of permanent disunion is entirely given up and completely abandoned.” He also vowed “that I will myself inform the Lincoln Administration, and see that the authors of a worse than abortive revolution are promptly punished,” should any of the Sons attempt any pro-Southern actions.<sup>93</sup>

Vallandigham’s refusal, as well as a general lack of coordination and resources, abrogated the possibility of a coordinated “Northwest Conspiracy,” and confined the Sons of Liberty and similar “secret” antiwar groups to isolated acts of resistance, such as sheltering draft dodgers and deserters, or publicly discouraging enlistment. Through this opposition to a pro-Southern revolt, Vallandigham refuted the charges of treason leveled by the Republican Party and press, while also demonstrating the enduring appeal among Peace Democrats of reunion through negotiation, and the threat of armed revolt to restore “the Union as it was” if the Lincoln Administration’s constitutional and “despotic” activities continued.

The latter two points arose again in the summer and fall of 1864. On June 15, in defiance of his exile order, Vallandigham appeared before a state Democratic assembly in Dayton, Ohio,

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<sup>93</sup> *A Life*, pp. 375-377

where he was nominated by acclamation as a delegate from the state's Third Congressional District to the Democratic National Convention in Chicago. Although the Supreme Court had *de facto* authorized Vallandigham's arrest, trial and deportation the previous February—on the grounds that it could not hear appeals of military commission rulings except as authorized by Congress—Lincoln did not order his arrest, and refrained from issuing orders for his increased surveillance, allegedly due to fears of “general and violent resistance.” This pragmatic hesitation showcases the strength of Vallandigham's and the Peace Democrats' support in the Midwest, as well as the effect of the war-weariness and antiwar sentiment that permeated the Northern population in the third year of the Civil War.<sup>94</sup>

After a series of meetings and speaking tours in Ohio and New York, Vallandigham arrived in Chicago on August 29, as the Democratic National Convention opened. It was at this stage that the divide between the Peace and War factions of the party, as well as between the moderate and “Copperhead” wings of the Peace Democrats, asserted itself, largely due to Vallandigham's actions. The War faction, with its candidate General George McClellan as the *de facto* party frontrunner, favored restoration of the Union by military action, in tandem with rollbacks of “dictatorial” Republican policies concerning civil liberties, and criticizing or remaining silent on the issues of emancipation and freedman's rights. Among the pro-peace delegates, the moderates favored a negotiated peace with the Confederacy that would result in reunion without further loss and destruction in the Southern states, similar in general outline to the original Democratic call for “The Constitution as it is and the Union as it was.”

The “Copperheads”, in turn—for whom Vallandigham remained chief advocate and ideologue—denounced the war as a failure and demanded an armistice without conditions as a

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<sup>94</sup> Ex Parte Vallandigham, United States Supreme Court Reports, Volume 12: Volumes 46-49, Lawyers Co-operative Publishing Company, 1918; *A Life*, p. 355

key plank in the party platform. Despite failing to gain election as chairman of the Committee of Resolutions that would decide the platform, Vallandigham's influence—and the level of antiwar feeling in the Democratic Party generally—nonetheless itself made clear in the “peace plank” ultimately adopted by the committee:

“*Resolved*, That this convention does explicitly declare, as the sense of the American people, that after four years of failure to restore the Union by the experiment of war, during which, under the pretense of a military necessity of war-power higher than the Constitution, the Constitution itself has been disregarded in every part, and public liberty and private right alike trodden down, and the material prosperity of the country essentially impaired, justice, humanity, liberty, and the public welfare demand that immediate efforts be made for a cessation of hostilities, with a view of an ultimate convention of the States, or other peaceable means, to the end that, at the earliest practicable moment, peace may be restored on the basis of the Federal Union of the States.”<sup>95</sup>

Given the apparent failures of the 1864 military campaigns up to the date of the convention, this plank tapped into genuine popular war fatigue and discontent towards the Lincoln Administration. Its adoption, alongside others in the platform which exalted the rights of the states under the Constitution and condemned the suspension of *habeas corpus*, trial by military commission, and suppression of the press, indicates the zenith of Northern antiwar sentiment, and of the strength of Vallandigham and the “Copperhead” Peace Democrats within their party—a strength increased further with the nomination of Vallandigham's associate, Ohio Congressman George Pendleton, as the party's Vice-Presidential nominee.

The rift between the Peace and War wings, however, nullified the plank from the start. General McClellan, upon his nomination, strongly repudiated it in his acceptance speech and attempted to distance himself further from it on the campaign trail, actions which caused Vallandigham to temporarily suspend his campaigning for McClellan. This awkward alliance—a Peace Democrat platform and Vice-Presidential candidate with a staunch War Democrat

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<sup>95</sup> Democratic National Convention. *Official Proceedings of the Democratic National Convention*. Vol. 1864. Cleveland [Ohio]: Nevins' Print, 1864. Web.

Presidential nominee—became even more politically fatal by Sherman’s capture of Atlanta on September 2, 1864, which thoroughly discredited Vallandigham’s and the “Copperheads” peace-at-any-price stance and provided a substantial boost to Northern civilian and military morale. Alongside astute Republican campaigning and alliance with elements of the War Democrats under the banner of “National Union”, these events and handicaps translated into a decisive Lincoln and Republican electoral victory, and further eroded antiwar sentiment—and Vallandigham’s and the Peace Democrats’ support—throughout the Union.

Vallandigham himself continued to pursue the possibility of a negotiated peace into the spring of 1865, most notably in renewed correspondence with Horace Greeley regarding a formal conference between Richmond and Washington. Vallandigham’s final letter in this exchange declared that “My sole purpose in addressing you now, is to say that while I never have and never will combine with any party in the prosecution of this war, I am yet ready to lay aside all personal griefs, all remembrance of personal wrongs, and unite with any party or set of men in any honorable and patriotic effort, through negotiation and peace, to restore, if possible, the integrity of our common country, and avert the terrible ruin which impends it, and now hastens on every hour.” He concluded with a pledge that “If at any time I can thus be of any service in any capacity, I am ready for the work whenever and however summoned.” This pledge indicates the endurance of the antiwar attitude he had maintained even before the war, while also reflecting a modified desire to aid in the restoration of Union, even through cooperation with prowar opponents.<sup>96</sup>

Such an attempt at negotiations took place at Hampton Roads, Virginia on February 3, 1865, in a conference attended by President Lincoln, Secretary of State William Seward, and a

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<sup>96</sup> *A Life*, p. 403



commission of three Confederate officials: Vice President Alexander Stephens, Assistant Secretary of War John Campbell, and Senator Robert Hunter. This meeting, however, reached an impasse on the issues of reunion and the abolition of slavery—both of which were viewed as unconditional surrender by the Davis Administration in Richmond—and ended without meaningful progress towards any kind of armistice. Vallandigham’s antiwar advocacy waned as the spring of 1865 unfolded, and his fears of a prolonged war would prove unfounded with the capture of Richmond on April 2, and the surrenders of General Robert E. Lee, Joseph E. Johnston, and all other Confederate forces over the following month, bringing the conflict to an end.

Accounts of Vallandigham’s opposition to the war written during his time are, unsurprisingly, diametrically opposed. The majority of these, such as Winslow Ayer’s *The Great Northwestern Conspiracy* published in 1865, are devoted to harsh criticism, casting Vallandigham—a “three-cent, fourth-class lawyer,” in Ayer’s memorable phrase—as the most prominent “Copperhead” traitor in the North, conspiring with the South to weaken the Union war effort, and to foment the “Northwest Conspiracy” among the Midwestern states following his exile.<sup>97</sup> Vallandigham’s own *Record*, and his brother James’ *A Life*, hold to different views, casting the Ohio Congressman as a loyal patriot, seeking to prevent or ameliorate the unconstitutional, dictatorial abuses of the “Black Republicans,” and who was unjustly expelled from the nation, yet still refused to conspire with the Confederates in revenge or to restore the Union. Both versions, however, agree in general outline upon the intent of Vallandigham’s rhetoric and actions: an end

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<sup>97</sup> Ayer, I. Winslow. *The Great Northwestern Conspiracy In All Its Startling Details: The Plot to Plunder And Burn Chicago--release of All Rebel Prisoners--seizure of Arsenals--raids From Canada--plot to Burn New York, Piracy On the Lakes--parts for the Sons of Liberty--trial of Chicago Conspirators--inside Views of the Temples of the Sons of Liberty--names of Prominent Members ...* [3d ed.] Chicago: Rounds & James, Book and Job Printers, 1865. p. 30

to the Civil War, and specifically the policies and goals of the Lincoln Administration which sustained the war.

Vallandigham's actual political effect on the Northern war effort was and remains the subject of stronger debate. To contemporaries such as Ayer, the former Ohio Congressman epitomized the subversive, pro-Confederate nature of the "Copperheads", who sought to undermine public morale and sabotage the Union military at every opportunity. This perception endured into the 20<sup>th</sup> century, and remains present in current academic discussions, albeit to a reduced degree.

In *Limits of Dissent* (1970), Frank Klement, while acknowledging Vallandigham's antiwar intent in his opposing war as a reunion measure, asserts that the Ohio "Copperhead" chose to confine his efforts to highlighting the "centralization of the government and the dissipation of states' rights, recognizing that Lincoln and the war were destroying federalism and transforming the character of government."<sup>98</sup> Therefore, Vallandigham's antiwar effect on the Union war effort, and that of the Copperheads in general, is most evident in the resources poured into the harsh response to both by military authorities and the Lincoln Administration, rather than any actual subversive action on the part of Vallandigham, or the alleged "dark lantern societies" which he was linked to distantly in fact and concretely in the pro-Republican press. In *Copperheads: The Rise and Fall of Lincoln's Opponents in the North* (2006), Jennifer Weber hews to a more traditionalist view, outlining clear-cut efforts by this group to hamper conscription and launch outright rebellion, with Vallandigham, "the most notorious Copperhead in the nation", as the symbolic and at times actual head of these conspiracies. Motivated primarily by fears of social and racial upheaval—an aspect of Copperhead opposition which

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<sup>98</sup> Klement, Frank L. [1970] 1998. *The Limits of Dissent: Clement L. Vallandigham and the Civil War*. New York: Fordham University Press. p. 314

Klement admittedly does not discuss in depth—and a blinkered aim of restoring “the Union as it was,” Vallandigham’s primary effect as a Copperhead, in Weber’s view, was “to erode public confidence” in the Lincoln Administration, with the aim of toppling the President through votes or uprisings.<sup>99</sup>

In his review of Weber’s work, Charles W. Calhoun highlights “two central and intertwined questions” that dominate historiographical analysis of the “Copperheads”: “How real or significant a threat did these Northern dissenters pose to the Union war effort and hence to the nation’s survival? And to what extent and with what justification did the Lincoln administration and other Republican officials violate civil liberties to contain the perceived menace?”<sup>100</sup> The first question can also be applied, more explicitly, to Vallandigham himself. The Ohio Democrat’s impact on the war effort is most clearly seen in his warnings against the measures taken to sustain it, with or without Executive approval—confiscation, conscription, emancipation, censorship, military governance, *habeas corpus* suspension—and in his arrest and exile for making such statements. Vallandigham’s trial by military tribunal shows the weight which the Union military placed in his potential for treasonous action beyond mere rhetoric. President Lincoln’s intervention in the case, altering the sentence to exile, shows a desire to avoid Vallandigham’s political martyrdom, as well as to tie the “Copperheads” more clearly to the South in the Northern public’s view, thus discrediting dissent against the war as wrongheaded at best and subversive at worst. The allegations of a “Northwest Conspiracy” backed by aid from Southern agents or “dark lantern” societies such as the Knights or “Sons of Liberty” (both of which will be explored more fully later in this study), though supported to a

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<sup>99</sup> Weber, Jennifer L. *Copperheads the Rise and Fall of Lincoln's Opponents in the North*. Oxford University Press, 2006. p. 27, 217

<sup>100</sup> Calhoun, Charles W. (Charles William). "The Fire in the Rear." *Reviews in American History*, vol. 35 no. 4, 2007, pp. 530-537. *Project MUSE*, [doi:10.1353/rah.2007.0078](https://doi.org/10.1353/rah.2007.0078), p. 537

degree by Vallandigham's meetings with agents from both parties, are more indicative of military and Executive fears than actual efforts towards inciting rebellion. Nonetheless, confirmed and imagined belief in Vallandigham's complicity elevated suspicion of him in these departments, causing a greater devotion of resources to the monitoring and suppression of alleged subversion.

Vallandigham's early adoption of constitutionalist objections to the North's wartime policies, and his persistent appeals for negotiated peace to restore "the Union as it was" with or without conditions, demonstrates a legal and moral opposition to war as a method of maintaining national unity. As in the case of Marcus Pomeroy, these arguments were frequently expressed in terms of race, challenging abolition as a threat to "natural order" and the rights of white male citizens by elevating blacks to a measure of equality. The use of such rhetoric, however, while reflecting the views of many whites in the nineteenth century, was secondary to Vallandigham's core assertions—and the Peace Democrats' central tenets—of separation of powers, limited Executive authority, and the primacy of states' rights, all under the conservative umbrella of the "the Union as it was."

Thus, the motives for Vallandigham's antiwar beliefs are better found in genuine Unionism—though one with heavily "traditional" ideology—than the "Copperhead" treason as believed by the Republicans, simple racism or then-common beliefs in white supremacy. Furthermore, Pomeroy's views on the Union war effort and its aims frequently vacillated between endorsement of a War Democrat-led effort and ardent hostility to the Lincoln Administration combined with support for peace negotiations even along "Copperhead" lines. Vallandigham's adherence to the possibility of a peace settlement, in contrast, remained constant—even inflexible—from before the war's first shots, and his writings, and the

assessments by his brother, make clear this remained the case well after April 1865. Both men shared hostility towards the idea of blacks becoming full members of American society; however, Vallandigham remained indifferent to the slavery issue sure to arise in any peace negotiations, while Pomeroy followed Northern opinion in its general antipathy for slavery by the 1860s. His rhetoric casts him as a form of Jeffersonian-Jacksonian pacifist, evoking ideals of government and civil liberties from these eras to highlight and criticize the “despotism” of the Lincoln Administration, and paired with fears of social chaos and racial degradation under “Black Republican” governance.

In short, closer analysis of Vallandigham’s career sheds new light on the distinction between bona fide, pro-Southern treason and straightforward antiwar dissent, on constitutional and other grounds. Counter to contemporary and modern assessments, his opposition to the Civil War is best defined as that of a general opponent of war as a reunion measure, by any means. His activities—proven and presumed—in pursuit of an end to the conflict by any means present him as the strongest example of individual political pressure in the North, and demonstrates how the threat of his form of dissent’s expression through the ballot box encouraged his “Copperhead” denigration, and his eventual arrest and exile. By exiling Vallandigham, Lincoln avoided his political martyrdom and aided the split between the War and Peace Democrats. However, his experience nonetheless granted Vallandigham partial martyr status, enough to influence the 1864 Democratic Convention, and thus the outcome of the November presidential election. His exile, furthermore, serves as an example—the first in American history since the attacks on the Federalists during the War of 1812—of the discrediting of a political rival and dissent movement through association with the enemy: a tactic which would be revived against antiwar dissenters

in World War I, suspected Communists during the Red Scare, and above all against the various peace and antiwar movements of the Vietnam era.

The intermingling of constitutionalism and genuine pacifism—with patriotic caveats—employed by Vallandigham similarly defined political antiwar action and rhetoric in the Confederacy. In the absence of defined parties or factions following secession, this form of political dissent centered on individuals: some within the government, others outside, and who came to antiwar positions gradually, though from similar changing viewpoints and motivations.

### **Chapter 3**

“Without liberty, I would not turn upon my heel for independence. I scorn all independence which does not secure liberty [...] [G]ive me liberty as secured in the constitution with all its guarantees, amongst which is the sovereignty of Georgia, or give me death. This is my motto while I am living, and I want no better epitaph when I am dead.”

--Alexander H. Stephens, Address before the General Assembly of Georgia, March 16, 1864

Political antiwar sentiment in the Confederacy was most clearly expressed in dissension against the Confederate government and secession in general, from the beginning of the Civil War or developing as the conflict intensified. This opposition existed even among firm backers of a distinct Southern identity, who had either long opposed secession yet ultimately chose to follow the path of their state or region, or who had advocated some form of Southern independence or greater autonomy within the Union well before 1861. Despite sharing general principles with ardent secessionists, these moderates often opposed specific policies of the Davis Administration as dangerous to individual rights or state sovereignty, and even pressed for peace negotiations that would potentially lead to reunion. One individual who occupied both positions in some form—and thus came to have a *de facto* if not *de jure* antiwar intent and effect on the Southern war effort—was Alexander Stephens, Georgia U.S. Representative before the Secession Crisis, and Vice-President of the Confederacy.

#### **Leader & Opponent: Alexander H. Stephens**

Stephens’s pre-Civil War career provides numerous examples of the conflicting ideals and positions that would dominate his leadership role in the Confederacy. Upon his election to the House in 1843, he served in the Southern faction of the Whig Party. Over the course of his career in the 1840s, Stephens voted largely in accordance with this regional base of support; he opposed the Mexican-American War of 1846-1848 alongside both Northern and Southern Whigs, despite backing the admittance of Texas as a slave state in 1845, breaking with his

party's anti-annexation position. His proslavery credentials became clear with his opposition to the 1846 Wilmot Proviso banning slavery in the territories prospectively to be conquered in the war with Mexico; however, his tabling of the bipartisan 1848 Clayton Compromise—which barred slavery in the Oregon Territory, and left its status in California and New Mexico Territory to Supreme Court decision—brought strong criticism from other Southern legislators, and even physical attack.<sup>101</sup> Nevertheless, the combination of strong support for slavery with a desire to resolve its divisive effects on national union through compromise became a key feature of Stephens's political ideology, and would remain so for the next two decades, influencing his stances and actions even after his joining the Confederacy.

One early example of this seemingly unlikely juxtaposition is demonstrated in Stephens's endorsement of the 1850 Compromise: the settlement of western territorial borders, the admission of California as a free state, the use of "popular sovereignty" to decide slavery's ultimate status in the territories, the suppression of the slave trade in the District of Columbia, and a stronger Fugitive Slave Act mandating cooperation by Northern states and citizens in capturing escaped slaves. Stephens opposed the slave trade and "popular sovereignty" elements of the Compromise, the latter on the grounds that the territories were common national land, and therefore the spread of slavery was permissible. Despite these specific objections, however, he not only championed the Compromise nationally and in his own constituency, but also endeavored to bring together pro-union Southerners to do the same, and to oppose calls for secession by the "Southern Rights" parties then forming in the region.

These efforts resulted in the Georgia Platform of December 1850. Intended to reaffirm the need to protect traditional Southern rights—at the core, to confirm the right of slave

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<sup>101</sup> Schott, Thomas Edwin. *Alexander H. Stephens of Georgia: a Biography*. Louisiana State University Press, 1988 pp. 87-92



ownership—and to cast the Compromise as the final guarantee of union, the Platform held “the American Union” to be “secondary in importance only to the rights and principles it was designed to perpetuate,” with the signatories bound to it “so long as it continues to be the safeguard of those rights and principles”; pledged that the thirty-one states of the Union may well yield somewhat, in the conflict of opinion and policy, to preserve that Union which has extended the sway of republican government over a vast wilderness to another ocean, and proportionally advanced their civilization and national greatness.”; affirmed that Georgia, “whilst she does not wholly approve, will abide by it [the 1850 Compromise] as a permanent adjustment of this sectional controversy,” though retaining the right “to resist even (as a last resort,) to a disruption of every tie which binds her to the Union, any action of Congress” that was incompatible with the safety, domestic tranquility, the rights and honor of the slave-holding States,”; and declared the Convention’s belief that upon the faithful execution of the Fugitive Slave Bill by the proper authorities depends the preservation of our much-loved Union.”<sup>102</sup> With this Platform, Stephens and the other convention delegates made clear their conditional support for national unity, seeking to avoid conflict between the states by guaranteeing specific rights to the South under the Constitution.

This common desire for compromise also led to the formation of the first iteration of the Constitutional Union Party by Stephens and his fellow Whig Representative and political ally Robert Toombs with Georgia Democrat Howell Cobb. In essence a third party organization temporarily uniting Unionist Whigs and Democrats, this party soon separated along such factional lines after the Compromise was enacted, despite Stephens’s efforts, and he chose to hold and campaign for his seat as an effective Constitutional Unionist through the mid-1850s

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<sup>102</sup> Georgia Platform of 1850, Records, Constitutional Convention, Legislature, RG 37-17-31, Georgia Archives

while still retaining a degree of connection to the Whigs, who would likewise all but crumble as a body after the 1852 elections.

Stephens's independence based on Unionism went into temporary abeyance after 1854, with the resurgence of sectionalism over the Kansas-Nebraska Act, which in essence repealed the 1820 Missouri Compromise's strict delineation of slave and free regions by organizing this region's territorial government according to popular sovereignty. Rather than oppose the Act on the sovereignty issue, however, Stephens chose to join the House Democrats in support of it, labeling the Missouri Compromise as null and void given that the southern states were "in no sense a party to this Congressional restriction north of 36-30 except as a vanquished party, being outvoted on the direct question; protesting against it with all her might and power." The only remedy, therefore, was to enact legislation based on the South's original position in the Compromise debate: "that the citizens of every distinct community or State should have the right to govern themselves in their domestic matters as they please, and that they should be free from intermeddling restrictions and arbitrary dictation on such matters."<sup>103</sup> Through such arguments, and his control of the floor debate, Stephens brought the Act to a narrow passage. This effort demonstrated again the contradictory pairing of unionism and proslavery sentiment that had come to define his position on the national stage, and in many ways exemplified the same opposing views among the leaders and supporters of the Constitutional Union Party.

Stephens's Unionist principles adopted a more explicitly antiwar edge as secession gained increasing support in the South. Though he declined to stand for Congress in 1858—due in large part to his failure to pass the proslavery Lecompton Constitution in the Kansas territory—he continued to criticize secession as an extremist and dangerous option, which

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<sup>103</sup> Pendleton, Louis. *Alexander H. Stephens*. G.W. Jacobs & Company, 1908, pp. 135-136

threatened the prosperity and strength Union had brought to North and South. In his speech *The Assertions of a Secessionist*—delivered on November 14, 1860, in the immediate aftermath of Abraham Lincoln’s election as President—Stephens laid out the precise reasonings behind this position, extolling the necessity of Union and imploring Southerners against the fallacies he saw in arguments for secession. Addressing first the question of the South’s departing the Union if Lincoln were elected, he stated, “*frankly, candidly, and earnestly, that I do not think that they ought.*” The election of any one man “constitutionally chosen” was not “sufficient cause for any State to separate from the Union. It ought to stand by still and aid in maintaining the Constitution of the country. To make a point of resistance to the Government, to withdraw from it because a man has been constitutionally elected, puts us in the wrong,” and broke the pledge of all public servants to uphold the Constitution. The President, Stephens insisted, “is no emperor, no dictator—he is clothed with no absolute power. He can do nothing unless he is backed by power in Congress. The House of Representatives is largely in the majority against him [...] In the Senate he will also be powerless.” With such obstacles, he would be unable to form a cabinet with any effective antislavery or anti-South membership, or pass legislation originating from either ideological camp.<sup>104</sup>

Having laid out the constitutional arguments downplaying the need for secession, Stephens reminded his audience of the benefits Union had brought: “Have we not at the South, as well as the North, grown great, prosperous, and happy under its operations? Has any part of the world ever shown such rapid progress in the development of wealth, and all the material resources of national power and greatness, as the Southern States have under the General Government, notwithstanding all its defects?” Looking at “our prosperity in everything,

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<sup>104</sup> Stephens, Alexander H., and Loyal Publication Society of New York. *The Assertions of a Secessionist: from the Speech of A.H. Stephens, of Georgia, November 14, 1860*. Loyal Publication Society, 1864.

agriculture, commerce, art, science, and every department of education, physical and mental, as well as moral advancement, and our colleges,” Stephens declared that, “in the face of such an exhibition, if we can, without the loss of power, or any essential right or interest, remain in the Union, it is our duty to ourselves and to posterity to—let us not too readily yield to this temptation—do so.”

Despite such exhortations, Stephens’s Unionism-themed moderation rapidly became a minority viewpoint in his home state, and throughout the South, as the secession crisis began in December 1860. Nor, by this time, was Stephens wholly unreceptive to the arguments of secession, particularly regarding the perceived unbridgeable North-South gap over slavery. Shortly before Christmas 1860, President-elect Lincoln reached out by letter to Stephens to ascertain whether “the people of the South really entertain fears that a Republican administration would, *directly, or indirectly*, interfere with their slaves, or with them, about their slaves,” and “to assure you, as once a friend, and still, I hope, not an enemy, that there is no cause for such fears.” As Northern political circles still considered Stephens an influential moderate and anti-secessionist, this outreach sought to retain the Georgia senator as a potential ally against secession, if not a likely supporter of antislavery policies.<sup>105</sup>

In his reply one week later, Stephens made clear that regardless of Northern tolerance of slavery in the South, “we at the South do think African slavery, as it exists with us, both morally and politically right. This opinion is founded upon the inferiority of the black race. You, however, and perhaps a majority of the North, think it wrong. Admit the difference of opinion.” He then reaffirmed his Constitutional Unionist views, stating that “Conciliation and harmony, in

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<sup>105</sup> Lincoln, Abraham. *Abraham Lincoln papers: Series 1. General Correspondence. 1833 to 1916: Horace Greeley to Abraham Lincoln, Saturday, Secession*. 1860. Manuscript/Mixed Material. Retrieved from the Library of Congress, <[www.loc.gov/item/mal0525800/](http://www.loc.gov/item/mal0525800/)>.

my judgement, can never be established by force. Nor can the Union under the Constitution be maintained by force.” The Union, he reminded Lincoln, “was formed by the consent of independent sovereign States. Ultimate sovereignty still resides with them separately, which can be resumed, and will be, if their safety, tranquility, and security, in their judgment, require it.” As Stephens saw it, “there is no rightful power in the General Government to coerce a State, in case any one of them should throw herself upon her reserved rights and resume the full exercise of her sovereign powers. Force may perpetuate a Union [...] But such a Union would not be the Union of the Constitution. It would be nothing short of a consolidated despotism.” In this way, Stephens showcased his personal, regional loyalty, pointed to perhaps the most intractable “difference of opinion” between the two men and their regions, and reiterated his devotion to the Constitution as the final arbiter of sectional disputes.<sup>106</sup>

This personal conflict of anti-secessionism and staunch proslavery belief arose again—and reached a degree of resolution—during the first several months of 1861. In January, Stephens appeared as a delegate to Georgia’s Secession Convention. As in his earlier *Assertions*, Stephens chastised the rising secessionist fervor, reminding the delegates of the long history of Southern success and dominance in the national Union: “We have had a majority of the Presidents chosen from the South, as well as the control and management of most of those chosen from the North. We have had sixty years of Southern Presidents to their twenty-four, thus controlling the executive department. So of the judges of the Supreme Court, we have had eighteen from the South, and but eleven from the North.” With such advantages, Stephens made clear, the South had guarded against any interpretation of the Constitution unfavorable to us,” and could continue

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<sup>106</sup> Stephens, Alexander Hamilton. *Alexander Hamilton Stephens Papers: General Correspondence, -1886; 1860, Dec. 7-1861, Jan. 9. 1860.* Manuscript/Mixed Material. Box 12, Reel 6. Retrieved from the Library of Congress, <[www.loc.gov/item/mss413350012/](http://www.loc.gov/item/mss413350012/)>.

to shield itself against Northern and antislavery excesses even if that influence appeared to be waning with Lincoln's election.<sup>107</sup>

Along with emphasizing this history, and the importance of trade and economic ties with the North that would be destroyed with secession, he also gave what would become prophetic warnings of secession's ultimate effects on the South: "This step (of secession) once taken, can never be recalled; and all the baleful and withering consequences that must follow, will rest on the convention for all coming time." Having made this warning, he asked the assembled delegates to "contemplate carefully and candidly" the true motivations for their actions: whether these were intended "for the overthrow of the American government, established by our common ancestry, cemented and built up by their sweat and blood, and founded on the broad principles of right, justice, and humanity?" After pressing this point, he concluded with a declaration that any attempt at secession was "the height of *madness, folly, and wickedness*, to which I can neither lend my sanction nor my vote." With such remarks, Stephens displayed a clear anticipation of the costs—political, social, and economic—that secession would bring to the South, and his home state, a knowledge that would inform his later wartime opposition.<sup>108</sup>

Stephens made good on his remarks by voting against secession during the Convention. At the same time, though, he echoed the sentiments expressed in his letter to Lincoln, affirming the right of states to secede if the federal government became abusive towards state laws and constitutional rights—such as, specifically, if it permitted Northern "personal liberty laws" regarding escaped slaves to remain in effect, thus invalidating the Fugitive Slave Act. Among the Georgia delegates elected to the first Confederate Congress, at this body's opening on February

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<sup>107</sup> Candler, Allen D. (Allen Daniel), 1834-1910, and Georgia. General Assembly. *The Confederate Records of the State of Georgia*. Atlanta, Ga.: C. P. Byrd, state printer, 1909. V. 1 pp.183-205

<sup>108</sup> *Ibid*

4, 1861, Stephens rose to the position provisional Confederate Vice President one week after on February 11, though official confirmation would wait until February of 1862. His delivery of the “Cornerstone Speech” on March 21, 1861 cemented Stephens’ rapid shift to the secessionist camp. In this speech, he denied the core principle of “all men are created equal,” and outlining precisely what foundation the Confederacy rested on: “Our new government is founded upon exactly the opposite ideas; its foundations are laid, its cornerstone rests, upon the great truth that the negro is not equal to the white man; that slavery, subordination to the superior race, is his natural and normal condition. This, our new government, is the first, in the history of the world, based upon this great physical, philosophical, and moral truth.” Such unequivocal remarks on the morality and necessity of slavery—the true motivation for secession, under the aegis of “property rights”—shows that Stephens’s allegiance to the South and to Georgia outweighed his Unionist disapproval of secession. With such allegiances, following his home state into the Confederacy was the logical choice, and reveals how Stephens served as both a follower and a leading light of the secessionist movement.<sup>109</sup>

This same allegiance, however, alongside growing disillusionment with the course of the Confederate war effort, would pressure Stephens to embrace what would become, in effect, antiwar sentiments and actions. The first examples of Stephens’ tilt towards a *de facto* antiwar stance can be found in his positions regarding conscription and *habeas corpus* in the Confederacy. In February 1862, within days of his formal inauguration as Confederate President, Jefferson Davis presented a bill to the Confederate Congress providing for suspension of the writ of *habeas corpus* throughout the Confederacy. This suspension passed the Congress on February 27 without significant fanfare or dissent, and Stephens did not voice any objections himself

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<sup>109</sup> Cleveland, Henry. *Alexander H. Stephens in Public and Private: With Letters and Speeches, Before, During, and Since the War*. Philadelphia: National Publishing Company, 1866, p. 721

while presiding over the Senate during the bill's consideration. In a letter to his half-brother Linton, written just prior to the bill's passage, Stephens reacted to the measure as "not such a paper as I or the country expected," yet "we have to bear what we cannot mend."<sup>110</sup> One scholar's assessment of this silence holds that Stephens, despite private fears of the suspension's effect on personal liberty—a principle he esteemed above all others—at that time believed the bill to be essential for the short-term safety of the country.<sup>111</sup>

Stephens found even greater fault with other Davis policies, above all the steady aggregation of war and appointment powers to the Executive Branch. This is most evident in his response to the first Confederate conscription act, proposed by Davis on March 28, 1862 and passed on April 16, mandating that all healthy white males in the South between eighteen and thirty-five be subject to three years of military service. As with the *habeas corpus* suspension, advocates viewed the conscription act as a vital, temporary measure by its proponents in the face of Union manpower and resources—demonstrated most recently in the Peninsular Campaign—and due to a precipitous decline in both volunteers and reenlistments. To its detractors, however, the act represented a first step towards military dictatorship, trampling on constitutional liberties and state powers, including those related to fielding militia and other units that had or might be called to national service. In Stephens's home state of Georgia, Governor Joseph E. Brown openly refused on this basis to allow Confederate conscription authorities to operate within the state, and, even after relenting on the matter following correspondence with Davis, exploited the draft's exemption of state employees by increasing the number of such personnel.<sup>112</sup>

Although publicly aloof from the conscription debate for much of the spring of 1862,

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<sup>110</sup> Pendleton, Louis. *Alexander H. Stephens*. G.W. Jacobs & Company, 1908. P. 292

<sup>111</sup> Schott, p. 351

<sup>112</sup> Brown-Davis correspondence Candler, Allen D. (Allen Daniel), 1834-1910, and Georgia. General Assembly. *The Confederate Records of the State of Georgia*. Atlanta, Ga.: C. P. Byrd, state printer, 1909. pp. 193-302



Stephens shared Brown's disagreement with the conscription law, on the—incorrect—grounds that further calls for volunteers would produce more than sufficient military manpower, and that the draft only dissuaded patriotic citizens from service. His opposition became more open and pointed over the course of a four-month stay in Georgia in summer 1862: news of the Confederacy's military setbacks during this time (most of all the loss of the crucial port of New Orleans) and frequent discussions and correspondence with family, friends, constituents and political colleagues led him to bemoan that "the day for a vigorous policy is past," and even to express a level of defeatism: "It is too late for anything. I fear we are ruined irretrievably."<sup>113</sup> By his return to Richmond in August, this antagonism towards Davis's suspension, conscription, impressment, and taxation measures—and towards Congress's apparent submissiveness in ratifying these—had become the Confederate Vice-President's main political focus, and would remain so for the duration of the war.

The central principles of Stephens's opposition followed the same lines as those that had decided his allegiance to the South over Union in 1861: the principles of personal liberty for whites and individual state sovereignty. These, he believed, represented the preeminent, constitutionally based motivations for the secession of the states that now made up the Confederacy, rather than solely the desire for independence from a potentially oppressive, Northern-controlled abolitionist government in Washington. The Davis government's imposing of conscription, suspension, and edicts expanding Executive powers, in Stephens's view, directly contradicted such principles.

Stephens's first public remarks on these issues came in the form of two letters to the *Augusta Constitutionalist*, published on September 7 and 17, 1862. In both, the Vice-President

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<sup>113</sup> Schott, p. 355; Johnston, Richard Malcolm. *Autobiography of Col. Richard Malcolm Johnston*. The Neale Company, 1901, pp. 159-61

fully endorsed his state's resistance to the national conscription acts, challenging the acts as unconstitutional overreach by Richmond, and castigated Confederate generals for imposing martial law in their administrative zones (including Stephens's Georgia) under the fig leaf of *habeas corpus* suspension: "The citizen of the state owes no allegiance to the Confederate States Government...and can owe no 'military service' to it except as required by his own state. His allegiance is due his State." More than any prior statement, this declaration reveals Stephens's unshakeable devotion to the state sovereignty principle, to the point of advocating resistance to national wartime policy.<sup>114</sup>

Such a stance, however, enjoyed only temporary success. Revocations of martial law edicts swiftly went out across the South, accompanied by mandates from the Confederate War Department to uphold civil liberties in all operational areas. However, new *habeas corpus* suspension and conscription acts were passed by the Confederate Congress within a month of Stephen's letters, further entrenching both measures in Southern policy. The draft act in particular included provisions that would only increase popular resentment: the raising of the conscription age limit to 45, and the adoption of what came to be called the "Twenty Negro Law", which exempted from military service one slaveowner or overseer for every twenty slaves on a plantation, as well as one for every aggregate total of twenty slaves on two or more plantations less than five miles apart with less than twenty slaves each.<sup>115</sup>

Stephens made no public comment on this specific controversial measure, and remained largely silent during the furor that arose in his home state over the new conscription and suspension policies—likely, as one biographer asserts, due to his stances being common

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<sup>114</sup> Augusta *Constitutionalist*, September 7, 17, 1862.

<sup>115</sup> The Statutes at Large of the Confederate States of America, Passed at the Second Session of the First Congress; Richmond: R.M. Smith, 1862.; p. 79

knowledge among the Confederate leadership by this time.<sup>116</sup> This does not, however, indicate a withdrawal from the conscription question, or from the broader constitutional concerns which Stephens sought to address while continuing to extol the necessity and virtues of Southern independence.

Stephens addressed both issues most notably—if somewhat obliquely—during this period at Crawfordville, Georgia, on November 1, 1862. Seeking primarily to solicit contributions of money and goods for the war effort, and to urge greater utilization of cotton as a tool to gain European recognition, the Vice President also extolled the virtues of the South’s bid for independence, while reminding his audience of this effort’s vitally important tenets and goals: “Liberty with them [the North] is but a name and a mockery. In separating from them, we quit the Union, but we rescued the constitution. This was the Ark of the Covenant of our fathers. It is our high duty to keep it, and hold it, and preserve it forever [...] Let both independence and constitutional liberty be kept constantly in view. Away with the idea of getting independence first, and looking after liberty afterward. Our liberties once lost, may be lost forever.” The widespread, erroneous impression of the speech’s main body as a call for cotton weaponization—like the earlier “cotton famine” measures, a tactic that would prove wholly ineffective in overseas diplomacy—earned Stephens criticism for supposedly prioritizing the cash crop over vital foodstuffs, leaving nearly unnoticed the subtler constitutional concerns he raises.<sup>117</sup> As in prior instances, Stephens’s focus on abstract ideals prevented his acceptance of pragmatic actions which threatened these ideals, even temporarily. This caused him to question

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<sup>116</sup> Schott, p. 363

<sup>117</sup> Cleveland, p. 760

further the nature and success of the Southern war effort, even while adhering to the ideal of Confederate independence and national identity.

Stephens's statements and actions during 1863 provide additional evidence of the difficulty in maintaining his balance between loyalty to Southern independence and more realist stances concerning the efforts to achieve this goal. Absent from Richmond for much of the winter and spring months of this year, he maintained his disapproval of conscription and *habeas corpus* suspension on the same state sovereignty and personal liberty grounds as before, while continuing to exhort his home state and the South at large to remain steadfast. The success of the Confederate war effort during this time (the apparent tactical draw at Murfreesboro, Tennessee, the stalled Union Vicksburg campaign, and Lee's decisive victory at Chancellorsville), as well as the Northern Democrats' gains in the fall 1862 elections, led Stephens to become guardedly optimistic as to the Confederacy's hopes of independence, and thus briefly lessen his public attacks on these policies.

Stephens's next—and final—swing towards a *de facto* antiwar stance can be traced to the early summer of 1863, and a diplomatic mission concerning an increasingly critical element of Union and Confederate military policy: prisoner exchanges. Northern and Southern field commanders had negotiated such exchanges of soldiers and civilians between individual armies or departments from the start of the war, but a formal agreement between Washington and Richmond—the Dix-Hill Cartel—was not signed until July 1862, after considerable pressure by the Northern public and from prisoner petitions. This agreement had broken down in early 1863, however, due largely to the Davis government's refusal to include black Union soldiers in the exchanges: many were subjected to either re-enslavement or execution, bringing threats of retaliation against Confederate soldiers in Northern prison camps.

Seeking to avoid this outcome—and sensing an opportune moment, in light of Chancellorsville and a perceived decline in Union morale—Stephens approached Davis offering to travel to Washington to negotiate a resurrection of the exchange cartel—and more. In his offer letter, dated June 12, 1863, he outlined the possibility of a meeting “with the authorities at Washington” which would “turn attention to a general adjustment, upon such a basis as might ultimately be acceptable to both parties”: in short, feelers for a conference based on “recognition of the Sovereignty of the States.”<sup>118</sup> In this proposal, Stephens returned to the moderate platform of negotiated peace and aversion of bloodshed he had adhered to at the height of the Secession crisis.

Davis appeared to accept Stephens’s recommendation, and requested the Vice-President’s return to Richmond to finalize the terms of the mission. When Stephens arrived in the capital on June 26, however, the military situation had changed dramatically: the Confederate garrison at Vicksburg was on the verge of surrender to Union forces, and Lee’s second Northern campaign had entered Maryland. These speedy developments caused Stephens to waver again on the chances of a negotiated peace, and reject Davis’s request that he accompany Lee’s army while traveling to Washington, which he believed would destroy any chance of being received on the exchange issue, let alone a sincere peace offer. Following a week of pressure from Davis and the rest of the Confederate Cabinet, Stephens finally agreed to make the attempt, and departed Richmond by ship on July 3, making contact with the Union Navy the following day—an arrival which coincided with reports of the Union’s Gettysburg victory and the surrender of Vicksburg.

On July 6, after two days at anchor under flag of truce at Newport News, Stephens

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<sup>118</sup> Stephens, Alexander H. (Alexander Hamilton), 1812-1883. *A Constitutional View of the Late War Between the States: Its Causes, Character, Conduct And Results. Presented In a Series of Colloquies At Liberty Hall*. Philadelphia [etc.]: National Publishing Company, 1868-70.; Vol. II, pp. 558-60

received a succinct reply that his request for passage through Union lines for negotiation of any kind was “inadmissible”, and that “The customary agents and channels are adequate for all needful military communications and conferences between the United States and the insurgents.” Though Stephens had not expected the mission to succeed—whether on the prisoner exchange or the more far-fetched offer of peace—and made this clear to Davis on his return to Richmond, the dual defeats in Pennsylvania and Mississippi destroyed his earlier sanguinity as to the Confederacy’s chances of independence. On one hand, he made constant appeals for resistance to Northern aggression and support for the Davis administration, despite the personal coolness that had begun to develop between himself and the Confederate President. On the other hand, he continued to oppose any proposed measures that shifted the South towards military dictatorship, even temporarily, and even if rejecting such proposals might accelerate the loss of Confederate independence. In effect, Stephens, while supporting the ends of the war effort, no longer supported the means.<sup>119</sup>

This entrenchment on constitutional principle, and the conflict it caused, surfaced again in a late summer 1863 exchange between Stephens and fellow Georgian Brig. General Howell Cobb, a former U.S. Treasury Secretary, and like Stephens, a former Unionist. Cobb had been appointed to command the Georgia State Guard, a force of local militia under Richmond’s authority—in essence, conscripted units created after official volunteer and draft measures had failed due to resistance by state authorities—and intended as an emergency defense in the face of Union advances to the Tennessee-Georgia border. Although Cobb received this post on Stephens’s own recommendation to Davis, the Confederate Vice President strongly disagreed with Cobb’s views on conscription, impressment and other such measures of centralized

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<sup>119</sup> *Official Records*, Ser. II, Vol. VI, 74-76, 79-80, 94-95

government. This conflict reached a vehement level when Cobb, in a series of letters between himself and Stephens, made clear his belief in the “vast importance” of a dictator to direct the Southern war effort, having come to this extreme strategy “after the most mature reflection.” In his response, Stephens declared that “No language at my command could give utterance to my inexpressible repugnance of such a lamentable catastrophe! [...] Nothing could be more unwise than for a free people, at any time, under any circumstances, to give up their rights under the vain hope and miserable delusion that they might thereby be enabled to defend them.” These remarks make clear once again Stephens’s devotion to constitutional liberties and limits on government authority above all else, his belief in the war’s primary aim of safeguarding these ideals, and hints of his disillusionment with the Confederate cause should it adopt additional dictatorial elements.<sup>120</sup>

The decline of Stephens’s belief in Confederate victory at this time—and in his rapport with Davis—coincided with the deterioration of Southern home front support for the war, and the military fortunes of the Confederate cause. By late November 1863, following a temporary victory at Chickamauga, Georgia, Confederate forces had been decisively defeated at Chattanooga, Tennessee and driven back towards Atlanta. This defeat, as well as the mounting overall losses, the worsening national economy, and the progressively harsher policies of impressment alongside new calls for costly resistance, soon led to greater heights of antiwar sentiment in Georgia, and in portions of other Southern states previously unaffected by the war. The Davis Administration faced constant charges of incompetence and tyranny; Stephens’s brother Linton, serving as a front-line officer and one of the President’s harshest critics, even

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<sup>120</sup> Stephens, Alexander Hamilton. *Alexander Hamilton Stephens Papers: General Correspondence, -1886; 1863, July 18-Oct. 31*. 1863. Manuscript/Mixed Material. Retrieved from the Library of Congress, <[www.loc.gov/item/mss413350033/](http://www.loc.gov/item/mss413350033/)>.

suggested to the elder Stephens that “the case calls loudly for a Brutus” to resolve the crisis, though he conceded in the end that it “may render the confusion more confounded.”<sup>121</sup> Stephens did not yet share such harsh views of the Confederate president, but had fewer and fewer illusions of the Confederacy’s chances for independence with or without Davis at the helm.

The cause for Stephens’s final break with Davis came about over the winter of 1863-64, culminating in what amounted to a political insurrection within the Confederacy, centered on Georgia and Stephens in particular. Due to family and personal illness, as well as a desire to remain aloof from the now-constant infighting between pro- and anti-Davis factions, Stephens did not attend the reopening of the Confederate Congress on December 7, or its most critical debates in January and February of 1864. This mostly self-imposed distance did not mean total isolation: by telegram and letter, Stephens closely followed Congressional debates of bills expanding conscription, further limiting exemptions, and renewing *habeas corpus* suspension, all of which would be passed. True to his ingrained distrust of centralized government authority, he condemned the latter legislation in particular as “the worst that can befall us,” declaring its passage would mean that “constitutional liberty will go down, never to rise again on this continent, I fear.” In the same period, however, Stephens urged more ardently anti-administration correspondents to refrain from open expressions of defiance to these new edicts, which might fatally fracture the nation, while also appealing to Davis loyalists to restore Congressional control of war-making and domestic policy.<sup>122</sup>

On January 22, Stephens composed a personal letter to Davis, directly addressing each of the bills then under consideration in Richmond, proposing other avenues in the area of

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<sup>121</sup> Letter from Linton Stephens, Alexander H. Stephens family papers, ms 3823, Hargrett Rare Book and Manuscript Library, The University of Georgia Libraries. Oct. 14, 1863.

<sup>122</sup> Schott, p. 388



impressment and finances, and pleading for a reversal in war policy prior to their passage. The conscription and *habeas corpus* measures drew the strongest criticism, as their earlier iterations had. In Stephens's view, the "willing hearts" of the people were the key to maintaining the Southern nation's hope of survival: "They have looked upon [the war] from the beginning as a struggle for constitutional liberty", which the suspension bill would destroy if passed, and with the national morale. Nor was conscription a viable method in countering Northern manpower, given that "no people can keep all of its arms bearing population in the field for a long time," and that Confederate armies had likely already reached their highest sustainable numbers "in view of the probable continuance of the war"—which, at the time, Stephens believed would be well into the future. This, though, would not be fatal to the Confederate cause, no matter how much of the South was occupied by Union forces; "if the hearts of the people are kept right," as Stephens saw it, a prolonged war with minimal open conflict between armies would exhaust Northern resources and public support, causing them to withdraw and concede Southern independence.<sup>123</sup>

Though the ideas Stephens proposed lacked any connection with the reality of the war by 1864, his assessment of the popular attitudes towards these—and those of an increasing number in the Southern political leadership—showed a greater understanding of public morale than the near-quixotic impressions Davis held of the sacrifices both average citizens and elites would be willing to endure for Confederate independence. Whatever the citizenry's personal loyalty to their states or to Richmond, the burdens and failures of the effort needed to sustain that independence had raised their criticism of Davis and Confederate war policies to new heights—with rhetoric that was *de facto* antiwar in its rejection of both. Appalled by the new acts, Stephens still refrained from the type of vitriolic hostility employed by other anti-Davis

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<sup>123</sup> Schott, pp. 395-96; Stephens-Davis Letter, Jan. 22, 1864, Alexander H. Stephens Papers, David M. Rubenstein Rare Book & Manuscript Library <https://idn.duke.edu/ark:/87924/r3k931g2z>

figures—such as Governor Brown, who balked at further decrees from Richmond, and had already gone so far as to discuss with North Carolina Governor Zebulon B. Vance the possibility of their respective states negotiating a separate peace with the North. His brother Linton, also expressed ever-increasing anger towards Davis, declaring that he “would strike a thousand blows to pull down this infamous government than one to sustain it,” and showing little faith in the hope of Congress rejecting the acts.<sup>124</sup>

To formulate a clear plan of protest—and, in Stephens’s case, to prevent more serious repercussions from an immediate display of political defiance—the Confederate Vice President met with Linton and Brown in Sparta, Georgia over the period February 25-27, 1864. Upon leaving the meeting, Brown issued a call for a special convention of the Georgia legislature, to open on March 10. When the convention opened, Linton Stephens would put forward two resolutions: one denouncing the *habeas corpus* suspension—the intended main focus, in his brother’s view—and one proposing immediate peace talks with the North. Alexander Stephens, meanwhile, would sound out Georgia’s two Senators—Herschel Johnson and Benjamin Hill, both longtime friends who were moderate Davis backers—about the possibility of endorsement and other lawful assistance to the proposals. This plan combined the views and ambitions of the three men, while also demonstrating Stephens’s mounting antiwar disenchantment as well as his desire to force conscription reform and, if possible, peace negotiations upon Richmond through legitimate channels—the courts, popular and state petition—rather than open rebellion.

Stephens’s dialogue with Johnson and Hill, however, proved fruitless, and galvanized the Vice-President in many respects for his later remarks. On March 10, Brown opened the special session with an address fully supporting the Confederate cause, while also critiquing the Davis

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<sup>124</sup> Schott, p. 400; Linton-Alexander Letter, Feb. 9, 1864

administration's handling of the war in somewhat more measured and loyal language than the Governor had previously expressed. Linton's resolutions—now expanded to seven, with five aimed specifically at the suspension act—were also delivered as planned, with caveats against popular disobedience while repeal was being sought in the Confederate Congress, and assertions that such would even inspire the Northern population “to end the war against our liberty, and as truly, but more covertly, against their own.” Although nearly as romantic and impractical as Davis's calls for further resistance at any cost, these claims point to the shared North-South ennoblement of personal liberty, and the crucial need for constitutional protections against Executive overreach and abuses.<sup>125</sup>

On March 16, Stephens took the podium before the Georgia Legislature in Milledgeville: the first speech he had made in his home state for many months. Stephens opened with an emotional outlining of the threats to Confederate independence, casting the North's advances and the dissension in Southern ranks as “Scylla on the one side and Charybdis on the other.” Without too much hyperbole, he held that “Everything dear to us as freemen is at stake. An error in judgment, though springing from the most patriotic motives, whether in councils of war or councils of state, may be fatal.” Anyone, Stephens admitted, “who rises under such circumstances to offer words of advice, not only assumes a position of great responsibility, but stands on dangerous ground. Impressed profoundly with such feelings and convictions, I should shrink from the undertaking you have called me to, but for the strong consciousness that where duty leads no one should ever fear to tread.”<sup>126</sup>

With similarly impassioned rhetoric, the Confederate Vice President detailed the

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<sup>125</sup> Schott, p. 406; Johnston, Richard Malcolm, and Browne, William Hand. *Life of Alexander H. Stephens*. J.B. Lippincott, 1878., pp. 455-59

<sup>126</sup> Stephens 3/16/1864 <https://docsouth.unc.edu/imls/stephens/stephens.html>

hardships endured by the South since the opening of the conflict. “Cities have been taken, towns have been sacked, vast amounts of property have been burned, fields have been laid waste, records have been destroyed, churches have been desecrated, women and children have been driven from their homes, unarmed men have been put to death, States have been overrun and whole populations made to groan under the heel of despotism.” After again extolling the virtues, fortitude, and resources of the Southern cause, Stephens turned to the central focus of his speech—the funding, conscription, and *habeas corpus* acts recently passed in Richmond. He couched his disagreement in nonpartisan terms: “Honest differences of opinion should never beget ill feelings, or personal alienations. The expressions of differences of opinion do no harm when truth alone is the object on both sides. Our opinions in all such discussions of public affairs should be given as from friends to friends, as from brothers to brothers, in a common cause. We are all launched upon the same boat, and must ride the storm or go down together.”

Recommending the legislators adopt proposals from Governor Brown regarding Richmond’s financial decrees—“neither proper, wise or just”, in Stephens’s opinion—the Vice President addressed the “much graver question” of the Conscription Act: “This whole system of conscription I have looked upon from the beginning as wrong, radically wrong in principle and policy. It is most clearly unconstitutional.” For the Confederate war effort to succeed, Stephens held, “men at home are as necessary as men in the field. Those in the field must be provided for, and their families at home must be provided for. In my judgment, no people can successfully carry on a long war, with more than a third of its arms-bearing population kept constantly in the field, especially if cut off by blockade, they are thrown upon their own internal resources for all necessary supplies, subsistence and munitions of war.” As numerical parity with the enemy was impossible, the South “should not rely for success by playing into his hand [...] brains must do

something as well as muskets,” to counter this advantage. Furthermore, Stephens warned, were the Act to be sustained, “we will most assuredly, sooner or later, do what the enemy never could do, conquer ourselves. And if such be not the object of the Act—if it is only intended to conscript men not intended for service, not with a view to fill the army, but for the officials to take charge of the general labor of the country and the various necessary avocations and pursuits of life,” then the Act was dangerous in terms of both principle and bent.

Having disposed of the Conscription Act, Stephens then turned to *habeas* suspension. “In my judgement,” he held, “this act is not only unwise, impolitic and unconstitutional, but exceedingly dangerous to public liberty. Its unconstitutionality does not rest upon the idea that Congress has not got the power to suspend the privilege of this writ, nor upon the idea that the power to suspend it, is an implied one, or that clearly implied powers are weaker as a class and subordinate to others positively and directly delegated.” Conceding the implied “public safety” power of the Executive—Davis—to suspend *habeas corpus* “in cases of rebellion or invasion,” Stephens nonetheless emphasized this as an implication, without specific backing in the Confederate Constitution. Alongside “rebellion or invasion,” moreover, other restrictions on suspension were clear in this document, as in the original United States Constitution: that “no person shall be deprived of life, liberty or property without due process of law” and “The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized”—all of which the suspension blatantly flouted.

What was more, Stephens charged, “[I]t attempts to change and transform the distribution of powers in our system of government. It attempts to deprive the Judiciary Department of its

appropriate and legitimate functions, and to confer them upon the President [...] This, by the Constitution, never can be done. Ours is not only a government of limited powers, but each department, the legislative, executive and judicial, are separate and distinct.” The Act thus attempted to “clothe him with judicial functions, and in a judicial character to do what no judge, under the Constitution, can do: issue orders or warrants for arrests, by which persons are to be deprived of their liberty, imprisoned, immured in dungeons, it may be without any oath or affirmation, even as to the probable guilt of the party accused or charged with any of the offences or acts stated.” This Act, in short, was meant “to institute this new order of things so odious to our ancestors, and so inconsistent with constitutional liberty,” thereby posing a potentially greater threat to Southern liberty than the war with the North.

Thus, the suspension was unconstitutional, “not because Congress has not power to suspend the privileges of the writ of habeas corpus, but because they have no power to do the thing aimed at in this attempted exercise of it.” Stephens accepted the “public safety” justification, yet made clear that “I am not prepared to say that the public safety may not require it now. I am not informed of the reasons which induced the President to ask the suspension of the privilege of the writ at this time, or Congress to undertake its suspension as provided in this Act. I, however, know of no reasons that require it, and have heard of none.” This was a generous reading of the military situation in 1864—verging on naivete, according to one scholar<sup>127</sup>—that perhaps reflects Stephens’s growing isolation in idealism and legal-philosophical resistance to Confederate wartime policy.

While making this open criticism of Davis’s policy, Stephens also distanced his remarks and position from the more open anti-Richmond agitation being espoused by others—

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<sup>127</sup> Schott, pp. 413-415

specifically, the Holden peace faction in North Carolina—while at the same time defending their legality: “If there be traitors there, let them be constitutionally arrested, tried and punished. No fears need be indulged of bare error there, or anywhere else, if reason is left free to combat it [...] If her people were really so inclined, however, we could not prevent it by force—we could not, under the Constitution, if we would, and we ought not if we could. Ours is a government founded upon the consent of sovereign States, and will be itself destroyed by the very act whenever it attempts to maintain or perpetuate its existence by force over its respective members.” If the state’s population still preferred “despotism to liberty,” the Vice President urged the need to let them leave the cause, for he did not want to see “Maryland this side of the Potomac,” and the further divisions and violence this situation would bring.

Stephens then returned to practical arguments against conscription and suspension, weaving them into further warnings of potential abuse: “Conscription has been extended to embrace all between seventeen and fifty years of age. The effect and object of this measure, therefore, was not to raise armies or procure soldiers, but to put all the population of the country between those ages under military law. Whatever the object was, the effect is to put much the larger portion of the labor of the country, both white and slave, under the complete control of the President.” With such a measure in place, Stephens held, “almost all the useful and necessary occupations of life will be completely under the control of one man. No one between the ages of seventeen and fifty can tan your leather, make your shoes, grind your grain, shoe your horse, lay your plough, make your wagon, repair your harness, superintend your farm, procure your salt, or perform any other of the necessary vocations of life, (except teachers, preachers and physicians, and a very few others) without permission from the President. This is certainly an extraordinary and a dangerous power.”

When connected to the habeas corpus suspension act, “by which it has been shown the attempt is made to confer upon him the power to order the arrest and imprisonment of any man, woman or child in the Confederacy,” Stephens asked, “Could the whole country be more completely under the power and control of one man, except as to life and limb? Could dictatorial power be more complete?” To those who defended the possible temporary need for a dictator given the South’s current fortunes, and whether he “would not or cannot trust him with these high powers not conferred by the constitution,” Stephens declared: “[M]y answer is the same that I gave to one who submitted a plan for a dictatorship to me some months ago: ‘I am utterly opposed to everything looking to or tending towards a dictatorship in this country. Language would fail to give utterance to my inexpressible repugnance at the bare suggestion of such a lamentable catastrophe. There is no man living, and not one of the illustrious dead, whom, if now living, I would so trust.’”

To charges that “those who oppose this act are for a counter-revolution”—as had been hurled at Governor Brown and the Holdenites—Stephens again proclaimed his loyalty to the Confederate cause, while exalting the sacrosanct powers of the states and the individuals which had embraced it: “I am for no counter-revolution. The object is to keep the present one, great in its aims and grand in its purposes, upon the right tract—the one on which it was started, and that on which alone it can attain noble objects and majestic achievements. The surest way to prevent a counter-revolution, is for the State to speak out and declare her opinions upon this subject. For as certain as day succeeds night, the people of this Confederacy will never live long in peace and quiet under any government with the principles of this act settled as its established policy, and held to be in conformity with the provisions of its fundamental law.” He urged his listeners to not be deterred “by the cry of counter-revolution, nor by the cry that it is the duty of all, in this hour



of peril, to support the government [...] He most truly and faithfully supports the government who supports and defends the Constitution. Be not misled by this cry, or that you must not say anything against the administration, or you will injure the cause. This is the argument of the preacher, who doubted that his derelictions should not be exposed, because if they were, it would injure his usefulness as a minister. Derelict ministers are not the cause. Listen to no such cry. And let no one be influenced by that other cry, of the bad effect of such discussions and such action will have upon our gallant citizen soldiers in the field.”

Stephens concluded his speech with a final warning to the Legislature, and a pledge of devotion to Southern independence: “[A]s a parting remembrance, a lasting memento, to be engraven on your memories and your hearts, I warn you against that most insidious enemy which approaches with her siren [sic] song—‘Independence first and liberty afterwards.’ It is a false delusion. Liberty is the animating spirit, the soul of our system of government, and like the soul of man, when once lost, it is lost forever. There is for it no redemption except through blood. Never for a moment permit yourselves to look upon liberty, that constitutional liberty which you inherited as a birthright, as subordinate to independence. The one was resorted to to save the other. Let them ever be held and cherished as objects co-ordinate, co-existent, co-equal, co-eval and forever inseparable.” He then closed with a reminder to the Georgia legislators that “the honor, the rights, the dignity, the glory of Georgia is in your hands,” and that, “as faithful sentinels upon the watchtower,” their highest duty was to prevent any “harm or detriment” to these trusts.

Although Stephens’s address drew fervent applause in the Legislature, this did not translate into a similar level of support for his brother’s resolutions. On March 19, the final day of the session, the Legislature passed the resolutions opposing the *habeas* suspension: 71-68 in

the House, and 20-12 in the Senate. Brown's threat to recall the delegates if they failed to act; pro-Davis delegates' attachment of statements protesting the resolutions, as a display of support to Richmond; and the passage of another resolution affirming the body's loyalty to the President, thereby avoiding charges of hostility or treason, also tempered this narrow success.

Above all, the speech made Stephens the *de facto* if not *de jure* main anti-Davis figure in the Confederacy. This new—or at least more visible—position brought praise and calumny from colleagues and newspapers across the South; Benjamin Hill professed conditional admiration for his having encouraged Georgia towards peace, while Herschel Johnson declared himself appalled at Stephens' having become drawn into a movement “originated in a mad purpose to make war on Davis & the Congress.”<sup>128</sup> Stephens denied this intent, as he had in his speech, and reiterated that he felt no contempt for Davis specifically—an assertion that is difficult to discern in the March 16 address's criticisms of the President's policies. Whatever the final result of the Confederacy's war for independence—even defeat—his intent was to preserve its institutions and freedoms. In the view of Stephens's biographer Thomas Schott, the Milledgeville address reveals that the Vice-President's belief in principle above all else—and his personal dislike of Davis, despite public statements denying or amending this—prevented his understanding the practical, morally ambiguous demands of war. Viewing the rhetoric and examples employed, it is likelier that Stephens was not in fact blind to the war's demands and effects, but rather, as previously discussed, focused on its constitutional and philosophical foundations, and the threats to such—a stance which brought him to an effectively antiwar position by 1864.<sup>129</sup>

This stance provoked an escalating level of controversy in the wake of the March 16 speech. Alabama, Mississippi, and North Carolina rapidly aligned with Georgia as late spring

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<sup>128</sup> Stephens-Johnson-Hill Letters, April 6, 7, 1864 (Schott, DU)

<sup>129</sup> Schott, pp. 414-15

and summer approached, passing similarly-framed resolutions condemning the suspension act. In addition, Governor Brown arranged for his message and Stephens's address to be copied and disseminated throughout the Southern states, among Georgian units in the Confederate field armies, and to newspapers in the North and in Europe. Although Stephens had no role in this effort, the backlash to it that resulted from pro-Davis leaders—and even from such supposed colleagues as Benjamin Hill—encompassed him as well, leading to his issuing a series of letters to the Confederate Cabinet and President Davis denying any “hostility or bitterness, to say nothing of malignancy, toward a single mortal who disagrees with me.”<sup>130</sup> Stephens also arranged to return to Richmond for the opening of the next Congressional session on May 2, to both defend his position and argue against *habeas* suspension in person. Political affairs closer to home, however, postponed his departure for over a week, and poor weather and rail accidents along the route through the Carolinas and Virginia stymied the journey even further. By the time of his final departure, the Confederate Congress had decided to withdraw its challenge to suspension, removing the reason for the trip.

Stephens' disappointment and resentment at failing to counter *habeas* suspension was intensified in June by revelations from North Carolina regarding Davis's aims for the war. Seeking to gain higher ground in the gubernatorial election of that year against the more militant pro-peace Holden campaign, incumbent Zebulon Vance had released correspondence between himself and the Confederate President, discussing the possibility of negotiated peace with the North. In his response, Davis denied this option—and, further, cast Stephens as an opponent of the July 1863 peace plan, rather than a dubious supporter. In so doing, the President intended to show the futility of any negotiation with the North, pledge to refrain from seeking terms in any

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<sup>130</sup> Cleveland, p. 761

way, and bolster his call for cementing Confederate independence by war. In a furious undelivered letter to his brother Linton, Stephens denounced Davis's reply to Vance as "in bad tone and temper and shows his utter want of statesmanship." Believing that the Confederate President had "but one idea and that is to fight it out," Stephens labeled his entire tenure as "consistent with the course of a weak, timid, sly, unprincipled arch aspirant after absolute power by usurpation." In the Vice President's view, by pressing the fight while insincerely proffering negotiation, Davis had destroyed any chance of employing the Northern peace movement to the Confederacy's advantage, let alone coming to any real terms that recognized Southern independence.<sup>131</sup>

By the end of summer 1864, Stephens became even more entrenched in the futile belief that short-term civil and military success in the South, coupled with the nomination and victory of a peace candidate in the Union presidential elections, would end the war. He held to this position even as Sherman's army drew steadily closer to Atlanta, and even after the War Democrats succeeded in nominating General George McClellan as the party's candidate, albeit with a platform which included Peace Democrat calls for an armistice without conditions.<sup>132</sup> To Stephens, the armistice plank was "a ray of light" that showed the still-potent strength of the Northern peace party, even after the fall of Atlanta on September 2. A true peace—and Confederate independence—could be achieved only through national talks, which the Vice President believed Davis was blocking by his refusal to meet with and back the Peace Democrats, out of fear that reunion would be the ultimate result.<sup>133</sup>

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<sup>131</sup> Stephens, Alexander Hamilton, 1812-1883, James Zachary Raburn, and Linton Stephens. *A Letter for Posterity: Alex Stephens to His Brother Linton, June 3, 1864*. Atlanta: Library, Emory University, 1954.

<sup>132</sup> Democratic National Convention. *Official Proceedings of the Democratic National Convention*. Vol. 1864, Nevins' Print, 1864. pp. 27-29

<sup>133</sup> Schott, p. 425; Stephens-Johnson Sept 5 Letter

As fall 1864 began, Stephens embraced a particular option that might lead to negotiations. On September 22, the Vice President received a letter from James Scott, a resident of Macon, Georgia, and two associates, sounding out his and Senator Johnson's opinions on the feasibility of a convention of the states—North and South—to discuss terms, with the two men as leaders of the Southern peace contingent. In his reply, Stephens reiterated his support for state sovereignty as the basis for any negotiations—as outlined in the resolutions of the Georgia special convention—and for establishing stronger connections with the Northern peace movement. However, he argued, the question of peace in the end could only be decided by the Washington and Richmond governments, who must be persuaded to follow this course by state pressure—perhaps ratification of a specific peace program. As for any leadership role in this process, he rejected the possibility, and initially indicated to the petitioners of the “Macon Exchange” that their correspondence be kept private. He would reverse this decision at the start of October, out of a belief that public knowledge of potential talks would encourage the chances of peace—and, as he asserted in a subsequent letter to Johnson, that the “entire press of the country is now completely *subsidized* by the administration,” entrenching nationwide Davis's indifference and hostility to negotiation.<sup>134</sup>

The “Macon Exchange” was not the only overture on separate state action that Stephens received in this period. Shortly after the Union's capture of Atlanta, General Sherman, investigating the likelihood of a separate peace with the Georgia state government, dispatched emissaries under flag of truce to Governor Brown and the Confederate Vice President, requesting a conference in the occupied capital. Although the recent defeat had severely demoralized the state government and population, both leaders chose to decline the offer, on the same grounds:

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<sup>134</sup> *Ibid*, p. 427; Stephen-Johnson October 2 Letter

that individual states could not lawfully enter peace talks, and that the ultimate responsibility for such negotiations rested with the national governments. Stephens was somewhat more open to the prospect of discussing “terms of adjustment to be submitted to our respective Governments,” so long as both he and Sherman had “the consent of our authorities” to do so.<sup>135</sup> Lincoln had strongly backed Sherman’s approach to Brown and Stephens, but the chances were remote at best that Davis would agree to such a proposal, and thus the discussion petered out by mid-October. Stephens’s statements in this attempted back-channel demonstrated again the constitutional and personal limits of his antiwar efforts—a stark contrast to the sentiments expressed by his brother Linton at this time—while also showing the steady growth in his belief that the war should be ended, rapidly, by political means.<sup>136</sup>

The public disclosure of this dialogue and the “Macon Exchange” brought additional criticism on Stephens over the final months of 1864, and widened his estrangement from Davis and the Richmond government. This distance grew even wider following Lincoln’s landslide victory in the November presidential election—as Stephens had repeatedly warned of, if the South failed to establish strong links with the Northern peace movement—and subsequent speeches and actions by Davis. On November 16, the day after Sherman’s March to the Sea began in Georgia, the President asked the Confederate Congress to renew executive *habeas* suspension powers, alongside legislation ending draft exemptions and conscripting state militia across the South. Although Congress held high anti-Davis feelings by this time, bills authorizing each of these requests nonetheless moved through both houses without initial serious opposition.

During this process, Congressmen Arthur Colyar and John Atkins of Tennessee approached Stephens regarding the introduction of resolutions authorizing either the President or

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<sup>135</sup> *Official Records*, Ser. I, Vol. XXXIX, Pt. 2, 381, 396

<sup>136</sup> Schott, pp. 429-431

the Congress to begin peace talks with the North. Stephens did not follow this course through to completion, but it served to encourage him to press his case with Davis for a concrete peace plan—in an increasingly tense correspondence lasting into January—and to push him further towards taking another formal, public stand against the Executive Branch’s war policy. On December 20, the Confederate Senate met to vote on the *habeas* suspension authorization, passed in the House nearly two weeks prior. Upon its arrival on the floor, the measure soon deadlocked, 10-10, leaving Stephens, as presiding Senate officer, to cast the tie-breaking “Nay” vote. Before this momentous decision could be made, however, the Vice President sought to detail his reasons for it—an appeal the Senate rejected, and which led to considerable acrimonious debate ending in a rules change that negated the need for Stephens’s deciding vote. Following this humiliating anticlimax, Stephens seriously considered resignation—“I am satisfied I can do no good here”, he stated plainly in a letter to Linton—and, despite eventually abandoning the idea, remained demoralized and bitter through the new year.<sup>137</sup>

The failure of his anti-suspension speech did not end of Stephens’s peace efforts, however. On January 11, President Davis received an emissary from the Union: Francis P. Blair, a former Jacksonian Democrat-turned-Republican who served as a frequent advisor to Lincoln, and whose son Montgomery had held the Cabinet post of Postmaster General until the previous November. Declaring slavery to be a dead issue, thereby nullifying the core rationale for Confederate independence, Blair proposed that North and South open talks to both end the war and to join forces to oust the puppet monarchy recently established in Mexico by French Emperor Napoleon III. Though Davis saw this proposal as impossible, he nonetheless agreed to discuss the option of a peace conference “between our two countries”—phrasing that was

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<sup>137</sup> Schott, p.432; Stephens-Linton 12/23 Letter

sharply at odds with Lincoln's desire to achieve peace for "the people of our common country", the clearest indicator of his central demand—reunion—in any peace talks.<sup>138</sup>

On January 29, after two days of periodically tense meetings, a three-man delegation of peace commissioners departed Richmond for negotiations: Virginia Senator R.M.T Hunter, Assistant Secretary of War and former U.S. Supreme Court Justice John A. Campbell—and Alexander Stephens. The Vice President had initially refused the role due to concerns that Davis would sabotage any discussions through insistence on unreasonable terms as a means of demolishing support for peace in the Confederate Congress and populace.<sup>139</sup> In the end, however, Stephens agreed to participate, and the three commissioners passed through Union lines outside Petersburg on January 31, accompanied by cheers and calls of "Peace! Peace!" from both Union and Rebel soldiers in the trenches. Three days later, President Lincoln and Secretary of State William Seward greeted the Confederate delegation aboard the steamboat *River Queen* outside Hampton Roads, and after some early polite conversation, the informal yet weighty discussions opened.

From the beginning, Stephens's pressing for a definite, lasting armistice—along the lines of Blair's proposal, or otherwise—encountered serious roadblocks and sticking points. Any peace, Lincoln insisted, must include North-South reunion, and the disbanding of Confederate armies; a nonstarter even for Stephens, who continued to maintain belief in the right of Southern independence, though not with Davis's near-obsessive passion. The Mexican expedition was dismissed almost at once; Lincoln had little to no support for the idea from the start of Blair's proposal efforts, and the suggestion of joint Union-Confederate military administration of certain

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<sup>138</sup> Confederate States of America. President, and James D. (James Daniel) Richardson. *A Compilation of the Messages And Papers of the Confederacy: Including the Diplomatic Correspondence, 1861-1865*. Nashville: United States Publishing Company, 1906. pp. 521-30

<sup>139</sup> Schott, p. 441



key regions—the Mississippi Valley, for example—during the pursuit of this operation was likewise rejected.

On the question of slavery, Lincoln and Seward proved somewhat more open to discussion, despite disapproval from the Radical and moderate wings of the Republican Party. Owners whose slaves had been confiscated as “contraband” or otherwise liberated during the war would have the possibility of compensation through the courts. Emancipation as a war measure would be halted until a more definite, constitutionally valid program could be established—a suggestion that demonstrated Lincoln’s adherence to constitutional methods of ending slavery, despite his moral opposition which had grown considerably over the course of the war. Seward even suggested postponing the ratification of the Thirteenth Amendment formally outlawing slavery, should the Southern states rejoin the Union—a proposal that would be strongly opposed by the Radicals, and perhaps by other Republican factions. Compensated emancipation was also floated, amounting to \$400 million to liberate all slaves and possibly paid for by special taxation in the North, which Lincoln conceded to be equally culpable on the slavery issue. Building on Seward’s proposal, Lincoln went so far as to ask Stephens to persuade Governor Brown to withdraw Georgia and its forces from the war, elect new representatives to the U.S. Congress, and convene the state legislature to discuss implementing Reconstruction measures—including the Thirteenth Amendment, which would be deferred for a set period in exchange for these actions.<sup>140</sup>

Such terms and proposals, as out of the question to the Southern delegates as reunion, brought the discussions, while still cordial, to an end without any agreement on the issue of peace, although Stephens himself did make some headway as to reopening prisoner exchanges,

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<sup>140</sup> Schott, p. 447

and gained a personal pledge from Lincoln for the release of his nephew John A. Stephens, a captive since the fall of Port Hudson in 1863.<sup>141</sup> The three Southern negotiators returned to Hampton Roads that evening, and then to Richmond, where word of the failed conference sparked a brief but intense revival of support for Davis and the now-desperate continued resistance he advocated.

The outcome of the Hampton Roads peace conference affirmed Stephens' skepticism, and his suspicion of a political trap by Davis. Yet he still pursued the conference in the hope of gaining some form of armistice, whatever the underlying reason, rather than due to any blindness or naivete. Ultimately, the terms offered by Lincoln at Hampton Roads—reunion, potential compensated emancipation—and Davis's machination and unyielding position proved the final nails in the coffin of hopes for a negotiated peace, rather than Stephens's lack of realism or any "disloyal" action on his part, as charged by some contemporary and modern assessments. Upon his return from Hampton Roads, Stephens abandoned the push for peace, and virtually all governmental duties by mid-February. Returning to Georgia in March, he made further remarks to colleagues and family against separate state peace efforts, yet remained out of public view, for which he garnered additional criticism. He remained at the Stephens family home through April—the final month of the Confederacy's existence—and up to his arrest by Union forces on May 11, remaining in custody until October when President Andrew Johnson authorized his release.

Stephens's *de facto* antiwar views were, at their core, based upon constitutionalist objections to centralized government's abuse—real or threatened—of fundamental state and individual liberties. Unlike his allegiance to secession, which came about gradually, emerged from state and

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<sup>141</sup> Ibid

regional loyalty, and continued to evolve and shift with the success or failure of the Southern war effort, his adherence to the concepts of personal, civil, and state rights remained a fixed element of his political worldview. This element permeated his actions and rhetoric challenging specific Confederate policies he perceived as threatening to these rights—conscription and *habeas* suspension most of all—and the broader concept of an Executive Branch with accumulated and expanded wartime powers. While he maintained a firm loyalty to the Confederate cause based on his state and regional origins, this loyalty was to a large extent conditional due to his firm constitutionalism and was often overshadowed by such. The purity of the position he maintained precluded his acceptance of any measures that might aid Southern victory at the cost of the values which underlay the South's bid for independence. When paired with his earlier, diminished yet still extant Unionism, this conditional stance led him to pursue and advocate negotiation with the North and alterations to Confederate policy—in effect, becoming the most prominent antiwar dissenter in the Confederacy.

Stephen's conditional loyalty and "Constitution above Country" position led to his collaboration and open alliance with other, often more zealous advocates of states' rights versus the Richmond government, such as his brother Linton and Governors Brown and Vance. These advocates, however—most of all Linton—had come to such positions more from personal disillusionment and anger towards the Davis Administration's management of the war than from earlier antiwar stances or wartime conversion to support for peace negotiations. Although Stephens privately shared in this animosity, which finally drove him to virtual abdication from the Vice Presidency, his sparring with Davis was primarily rooted in more impersonal, principled objection, and did not prevent his acting on behalf of the South in the 1863 peace mission or the Hampton Roads Conference. Brown and Vance favored separate negotiations with the North on

behalf of their states, taking the position of states' rights as preeminent over national authority to its farthest extent. Stephens, on the other hand, while he understood the reforming pressure that calls for such action could exert on Davis's government, in the end favored negotiation between Richmond and Washington—which in his view added to this pressure—rather than between the individual Southern states and the North. This distanced him further from the peace and antiwar efforts motivated mainly by state sovereignty and personal antipathy to Davis, while still ensuring his support for the broader trend towards a negotiated settlement, with or without Southern independence.

An example of this is evident in one of Stephens's final public addresses. On January 6, 1865, with opposition to Davis growing by the day in the Confederate Congress, the Senate invited the Vice President to address it following the days adjournment, in a closed-door session. Speaking for two hours, Stephens outlined a series of what he considered to be vital political and military reforms: an end to the draft in all its forms; inducements to draw deserters and would-be draftees to the armed forces of their own free will; and formal alliance with the Democrats in the Union, despite that party's losses in the recent elections. Adopting such measures, Stephens insisted, would revitalize the Southern war effort, force a stalemate in the wider conflict, and increase Northern fatigue to the point of that nation's accepting negotiations recognizing Confederate independence. These plans were unrealistic at best, considering Lincoln's reelection, and the casualties and devastation wrought by Sherman in Georgia and Grant in Virginia. Nevertheless, Stephens' rhetoric encouraged congressional calls for peace, and gave new impetus to the convention and separate state armistice plans in Georgia and elsewhere in the

South. Stephens remained opposed to the factionalism these plans threatened, yet could do little to dissuade Governor Brown and other proponents.<sup>142</sup>

Analysis of Stephens's efforts toward peaceful reunion, and against the policies of the Davis Administration, thus reveals the heavily personalized nature of Confederate antiwar dissent within the Richmond government and national Confederate political circles, exacerbated by individual and state government feuds with Davis, and focused on principle to the exclusion of pragmatism. Stephens himself is an example of this, in his being both generally antiwar and specifically opposed to the idea of Confederate independence being achieved at the cost of civil liberties and state autonomy. His regional loyalty to Georgia and the South prevented him from pursuing the first goal to realization, on his terms or the North's, and both proved unachievable due to the political, social and military realities in North and South post-1860. Such stubborn positions against wartime policy, grounded in principle, thus became antiwar dissent in the Confederacy, and served as a model for later, regional political dissent in the South against Reconstruction, and civil rights legislation in the modern era.

Stephens's actions towards peace and against Davis's policies also provided indirect and direct support to more vehement advocates of a negotiated peace, thereby increasing the pressure upon Richmond to revoke or reform its wartime measures and causing drastic fluctuations in Southern morale. Certain of these other peace proponents—some Constitutional Unionists like Stephens, or strongly pro-Union both prewar and resulting from the Confederacy's decline—followed his example. These figures combined constitutional objections to secession with regional popular

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<sup>142</sup> Schott, pp. 437-39

resentment of the pro-secession, slave-owning upper classes, presenting a much greater threat to Richmond in terms of political antiwar activism.

## Chapter 4

“I shall go to jail—as John Rodgers went to the stake—for my *principles*. I shall go, because I have failed to recognize the hand of God in the work of breaking up the American Government, and the inauguration of the most wicked, cruel, unnatural, and uncalled-for war, ever recorded in history.”

--William G. Brownlow's Farewell Address, *Knoxville Whig*, Oct. 24, 1861

### Radicals & Conservatives: Appalachian Unionism

Political antiwar opponents in the Confederacy expressed their sentiments in starker ways than those of conditional converts such as Alexander Stephens, or ardent secessionists whose resistance resulted primarily from anti-Davis antagonism. As the Secession Crisis unfolded on the heels of the November 1860 election, many Southern Unionists who failed to prevent their states' convention votes to leave the Union created separate political organizations centered on regions of pro-Union sentiment within various Southern states. These regions, often mountainous or other semi-isolated areas—concentrated particularly in the Appalachian region—were populated by yeoman farmers often resentful of the Southern planter elite's political, social and economic preeminence. This resentment led to frequent clashes with Confederate state governments and neighboring pro-secessionist territories from the start of the war and formed the basis for later pro-Union state administrations.

One such group, the East Tennessee Convention, formed in late spring 1861, centered on the city of Knoxville. Composed at its beginning of Unionists who resisted the state's joining the Confederacy primarily on the principle of secession's illegality, the Convention's membership also came to include ardent supporters of the Emancipation Proclamation and other “radical” policies pursued by the Lincoln Administration, and served as the basis for Tennessee's post-Civil War Reconstruction government. William G. “Parson” Brownlow, former Methodist circuit preacher and editor of the *Knoxville Whig*, served as one of the most prominent members of this body. Originally a staunch Conservative Unionist like many others in the Convention, Brownlow

came to adapt his prewar anti-secessionism to political antiwar ends during the Civil War. In the process, he shifted to the extreme end of the Convention's "radical" wing, while maintaining cordial relations and tactical allegiances with his original Conservative colleagues. Through this combination of conservatism and radicalism, the Convention, and most of all Brownlow, became the primary agents for antiwar opposition in Civil War Tennessee, and are among the most visible examples of Southern Unionist political resistance in the Confederacy.

The beginning of Brownlow's antiwar efforts, and that of the wider East Tennessee Convention, came about during the height of 1860 presidential election, with their campaigning for the Constitutional Unionists under Tennessee Senator and ex-Whig John Bell. This recently-created third party, drawn from former Whig Party members and moderate voters across the country, had declared its opposition to both secession and abolition, a stance that drew considerable support in Tennessee and the other border states of the South. In East Tennessee, a majority of ex-Whigs such as Brownlow endorsed this position due to both strong local anti-abolitionism and considerable antagonism towards the Middle and West regions of the state, where the plantation economy was strongest, and which East Tennessee residents believed controlled the bulk of state funds, resources, and political influence. Brownlow in particular at this time embodied this somewhat paradoxical combination of opinions, attacking secessionists in editorials steeped in religious rhetoric "as traitors, political gamblers, and selfish demagogues who are seeking to build up a miserable Southern Confederacy, and under it to inaugurate a new reading of the Ten Commandments, so as to teach that the chief end of Man is Nigger!"<sup>143</sup> Yet he also shared the plantation aristocracy's fear and contempt of abolition and had declared as recently as 1858 that

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<sup>143</sup> Knoxville *Whig*, Jan 1860; Brownlow, William Gannaway, 1805-1877. *Sketches of the Rise, Progress, And Decline of Secession: With a Narrative of Personal Adventures Among the Rebels*. Philadelphia: G.W. Childs, 1862. p. 29



he believed “slavery is an established and inevitable condition to human society [...] that God always intended the relation of master and slave to exist [...] that slavery having existed ever since the first organization of society, it will exist to the end of time.”<sup>144</sup> To Brownlow, therefore, and numerous other newly-minted Constitutional Unionists in Tennessee, Northern abolitionists and pro-secession Southerners were equally responsible for the burgeoning crisis, driving their respective regions to greater heights of inflammatory action and rhetoric until the nation’s two greatest institutions—Union and slavery—could only be cemented or destroyed by war.

Defense of the Union and ever-more vitriolic denunciations of secession were the two foremost tactics employed by Brownlow and the Tennessee Constitutional Unionists during the 1860 campaign. Echoing similar rhetoric by the North’s Marcus “Brick” Pomeroy, Brownlow labeled the Democratic Party, and most of all its Southern wing, as the primary movers behind the drive for secession, on the basis of their having broken up the party at its Charleston convention and nominating pro-secessionist John C. Breckinridge. Through such acts, Brownlow asserted in an October 1860 speech, “many of the leading men who supported Breckinridge, in different States, openly avow that they were in favor of Disunion in the event of the election of Lincoln, though he might be legally and constitutionally elected by a majority of the American voters.”<sup>145</sup> He did not shy from armed and political resistance, as he wrote to a secessionist critic; should Lincoln’s administration, Congress, and the Supreme Court enact and sustain antislavery measures, “I would take the ground that *the time for Revolution has come*—that all the Southern States should go into it; and I WOULD GO WITH THEM! Here is where I stand, and where all Union-loving and law-abiding men are bound to stand, whether they were born North or South.”

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<sup>144</sup> *Ought American slavery to be perpetuated? A debate between Rev. W.G. Brownlow and Rev. A. Pryne. Held at Philadelphia, September, 1858*, Volume 3, pp. 18-19

<sup>145</sup> Brownlow, *Sketches*, Oct. 1860 Speech, p. 200

Yet, he warned in the same letter, secession was at bottom illegal according to the Constitution, and would not be the nonviolent process its advocates and supporters believed: “The man who calculates upon *peaceable* dissolution of the Union is either a madman or a fool. I am among those who believe that the Union is not going to be dissolved, because the Disunionists have no right to do that thing; they have no power, if the right existed; and there is no *cause* for a dissolution” even after Lincoln’s election.<sup>146</sup>

In Brownlow’s view, the Constitutional Unionist candidate John Bell—a slaveholding, pro-Union Senator—held the greatest chance of preventing the Union’s dissolution in November 1860; neither Vice President Breckinridge—a proslavery candidate with no slaves of his own—nor Illinois Senator Stephen Douglas—a Northerner who, despite his support for deciding slavery’s fate on popular sovereignty grounds, likewise had no stake in the institution—could claim this political and social pedigree. Should Bell fail to defeat Lincoln, as he conceded was likely, and the Southern Democrats made good on their threat to leave the Union, Brownlow declared: “If I am living—and I hope I may be—I shall stand by the Union as long as there are five States that adhere to it. I will say more: I will go out of the Confederacy if the rebellious party sustain itself.” Though he insisted that he was “no Abolitionist, but a Southern man,” he expected to stand by this Union, and battle to sustain it, though Whiggery and Democracy, Slavery and Abolitionism, Southern rights and Northern wrongs, are all blown to the devil!” Though he might “stand alone in the South,” he held that “thousands and tens of thousands will stand by me, and, if need be, perish with me in the same cause.”<sup>147</sup> These sentiments made clear how Brownlow’s allegiances would shift toward more definitive anti-secession and antiwar stances.

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<sup>146</sup> Brownlow, *Sketches*, Oct. 12 Letter, p. 68

<sup>147</sup> *Ibid*, pp. 205-206

Brownlow's position, and that of East Tennessee Unionism more broadly, became both more blatant in its anti-secessionism and more supportive of negotiation in the wake of Lincoln's election. During the period between South Carolina's December 1860 declaration of secession and the firing on Fort Sumter on April 15, 1861, Brownlow's *Whig* became the effective mouthpiece of the region's Unionists, continuing to attack the Southern and abolitionist sectionalism which Brown believed to be at the root of the secessionist drive while insisting that Lincoln, for all the Southern fears of him as a "Black Republican" abolitionist tyrant, would be required by his office and the Constitution to rein in this element of his party.

One November editorial in particular—distinguishable by its more measured tone in comparison to Brownlow's typical rhetoric—provides a cogent summary of this dual argument, and the Unionist editor's positions. Admitting that conservative Unionists and ex-Whigs like himself were "not so vain as to suppose that what we can say will stay the tide of passion in certain quarters in the South," Brownlow urged such "Reasonable Men of the South" to undertake this task. He pointed to President-elect Lincoln's origins as "an Old Clay Whig", which pointed to a greater moderation on the slavery issue than the "partisans" who supported him in the North, and that having been legally elected by a majority of voters, the South had no grounds for opposing his inauguration on this basis.

Unless Lincoln acted to "execute the purposes of abolitionism"—which, Brownlow insisted, he could not, in accordance with his inaugural oath—any attempt at disunion, "before awaiting a single overt act, or even the manifestation of the purpose of the President-elect, would be wicked, treacherous, unjustifiable, unprecedented and without the shadow of an excuse." Calling upon the South to simply "pause!" in its mulling of secession, he urged "the entire South, united with the thousands of conservative men North, [to] bury their feuds, make common

cause,” and create such an alliance that in 1864 “will overthrow the Sectionalists and restore the Government to a better condition than it has been in for a quarter of a century.” Lincoln, he emphasized again, “is President, but he is nothing more. We trust that he contemplates no mischief, but if he does, he can do none.” Through this stance, Brownlow believed, “time and reflection will, anon, inspire a sober second thought in quarters where, at the moment, the blind impulses of passion bear sway.”<sup>148</sup> This final call for patience and unity indicates the “Parson’s” fervent desire to avoid war, while chiding those who saw such as the only resolution to the nation’s divisions.

In other articles and speeches, Brownlow took a far less conciliatory line. When South Carolina’s state convention voted for secession on December 22, the *Whig* lambasted this state’s government and those of the other “Cotton States” for announcing “they are going rashly and headlong out of the Union, and that these border States may either follow them or remain where they are. They allege our unity of *interests*, but refuse us harmony of *action*.” Harkening again to the social and economic divide between his home region and the rest of Tennessee and the plantation South, Brownlow warned the “honest yeomanry of these border states” that “we are, in fact, ‘in the midst of a revolution,’ in which they would be drafted and “forced to leave their wives and children to toil and suffer, while they fight for the purse-proud aristocrats of the Cotton States, whose pecuniary abilities will enable them to hire substitutes!” With a referendum on whether to call a Tennessee secession convention soon to be set for February 9, 1861, he urged, “Let those who dare to favor disunion become candidates, and show their hands. They will not be allowed to dodge the issue: they must declare either *for* or *against* secession [...] If time were given to the North, she would do the South justice: therefore let these border states be

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<sup>148</sup> *Whig*, 11/24/1860

guided by moderation. Let us, Tennesseans, stand by the Union; let us hope on, and when hope is gone—so far as we are concerned—life will have lost its value for us!”<sup>149</sup> With the threat of war now literally at his state’s doorstep through the referendum, Brownlow’s rhetoric was both a call to—electoral—arms against this, and, paradoxically, a polarizing challenge to all citizens who leaned towards or otherwise favored secession to choose sides.

The February referendum rejected a secession convention by a clear majority (69,675-57,798), due in considerable part to the tallies from pro-Union East Tennessee.<sup>150</sup> This period represents the height of Brownlow’s and Unionism’s appeal in the region and state prior to the war; the *Whig*, for example, listed over 12,000 subscribers by the start of 1861, a fact which led to attacks by state and regional secessionists for its “deluding and poisoning the public mind.”<sup>151</sup> Brownlow responded with belligerent, often taunting editorials against these critics, and expanded his canvassing efforts in Knoxville and across East Tennessee. Throughout the early spring, he campaigned in favor of the Union and against secession alongside notable Tennessee Unionists such as Senator Andrew Johnson, Congressmen Horace Maynard and Thomas A.R. Nelson, and Knoxville attorney Oliver Temple—all of whom would later form the leadership of the East Tennessee Convention.

The firing on Fort Sumter in April brought about a near about-face in popular support for secession in Tennessee. Upon receiving Lincoln’s request for 75,000 volunteers, Governor Isham Harris replied on April 17 that “Tennessee will furnish not a single man for the purpose of coercion, but 50,000 if necessary for the defense of our rights and those of our Southern brothers.” Eight days later, the Tennessee legislature granted Harris powers to align the state

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<sup>149</sup> *Whig*, 12/22/60; Brownlow, *Sketches*, p. 50; *Ibid*, 48, 52

<sup>150</sup> Humphrey, p. 203

<sup>151</sup> McKenzie, Robert Tracy. “Contesting Secession: Parson Brownlow and the Rhetoric of Proslavery Unionism, 1860–1861.” *Civil War History*, vol. 48, no. 4, 2002, pp. 62-63

with the Confederacy. The first such measures, an official ordinance of secession—labeled as a “Declaration of Independence” from the Union—and a Tennessee-Confederate military alliance were passed by the first week of May, and a second referendum on secession was scheduled for June 8.

In response to these policies, Brownlow, Nelson, Johnson, Maynard, and other East Tennessee Unionists issued calls for a formal gathering of their party’s leadership. On May 30, 1861, the first session of the East Tennessee Convention officially opened in Knoxville, attended by 469 delegates selected from 28 counties, with Congressman Thomas Nelson voted president of the Convention, and Brownlow as representative of Knox County. On the first day, a 26-member “business” committee formed at Nelson’s direction, with each delegate representing one county, to craft a series of resolutions concerning Harris’s and the Legislature’s recent measures. These laid the blame for the effects of “the ruinous and heretical doctrine of Secession” at the feet of the secessionist Legislature; pointed to the February referendum as proof of the people’s preference for Union and their denial “that they had been oppressed by the General Government in any of its acts—legislative, executive or judicial”; rejected the Legislature’s claimed authority to enter into “Military League” with the Confederate States against the clear will of the people; and appealed “with an anxious desire to avoid the waste of the blood and the treasure of our State, [to] the people of Tennessee, while it is yet in their power, to come up in the majesty of their strength and restore Tennessee to her true position.” With these resolutions in hand, the Convention adjourned, and its members returned to the canvass against the secession referendum. Brownlow became one of the most energetic speakers in this effort, advocating

Union and denouncing secession on the trail and in the *Whig*.<sup>152</sup>

In the tally released on June 8, a considerable majority (104,913 to 47,238) approved the secession ordinance, with the “nay” votes, as anticipated by the Convention’s members and opponents, heavily concentrated in the eastern third of the state. Charging the pro-Confederate state government with fraud and intimidation, Brownlow stated baldly that “there was the show—an empty show—of a popular vote,” with troops who were “stationed at important points, intimidated timid men, and, themselves voted, in and out of the state, in violation of the Constitution.” He concluded this editorial with a reiteration of his and the Convention’s loyalty to Union above all else, “We are opposed to a Northern Republic, a Southern Confederacy, a Central Government and a Northwestern Empire. We are not for *thirty-four* nations, but only one nation [...] Hence we shall die in opposition to Secession, and in favor of the Union, and even a war intended to perpetuate it inviolate.”<sup>153</sup> This language indicates Brownlow had come to accept the inevitability of war in Tennessee and the Border States, while still holding back—though only just—from calls for Unionist revolt against the state government, favoring demonstrations of the strength of pro-Union political sentiment in the eastern counties.

In similar style to his earlier arguments against secession, Brownlow also refrained from linking the cause of the Tennessee Unionists with that of abolition. As recently as mid-May, the Unionist editor warned “that if we [Tennessee Unionists] were once convinced in the border slave States that the Administration at Washington, and the people of the North who are backing up the Administration with men and money, contemplated the *subjugation* of the South or the

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<sup>152</sup> *Proceedings of the E.T. Convention, Held At Knoxville, May 30th and 31st, 1861, And At Greeneville, on the 17th day of June, 1861, and following days.* Knoxville: Printed at H. Barry's Book and Job Office, Corner of Main and Prince Streets. [Knoxville, TN]. 1861. C.M. McClung Historical Collection, Knox County Public Library

<sup>153</sup> *Whig*, 6/15/61

*abolishing* of slavery, there would not be a Union man among us in twenty-four hours.”<sup>154</sup> When the Convention met again in Greeneville, Tennessee (chosen over Knoxville due to pro-Confederate threats) on June 17, the “Declaration of Grievances” and the resolutions adopted by this body likewise did not mention abolition or any alliance with the Lincoln administration, beyond that of shared loyalty to the Union and the Constitution. Instead, these documents (after much debate and revision at the request of moderate delegates), denounced the illegality of the state government’s “military league” with the Confederate States, and formed a delegation to the legislature “asking its consent that the counties composing East Tennessee, and such other counties in Middle Tennessee as desire to cooperate with them, may form and erect a separate State” (which Brownlow named the “State of Frankland” in earlier *Whig* editorials debating this prospect) with a convention to this effect to be held in the city of Kingston.<sup>155</sup> Although more radical delegates such as Brownlow and Nelson supported the initial, “revolutionary” resolutions (warning of armed resistance to any Confederate troops being stationed in East Tennessee, retaliation for any attacks on Unionist persons or communities, the formation of self-defense militias by Unionist counties) which were voted or watered down by the Convention, these too were intended not as an expression of support for abolition, but a demonstration of theirs and their region’s rejection of secession.

The Convention’s measured attempt to distance East Tennessee from the Secession Crisis was delivered to the state legislature on June 28. The following day, without outright rejecting the resolutions, the legislature pledged that it would not act on the matter until its next session after the state’s off-year elections in August (during which the electorate would also vote on whether to adopt a new, Confederate state constitution), and raised doubts as to the true level of

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<sup>154</sup> *Whig*, 5/18/61

<sup>155</sup> *Proceedings*, p. 24-28; *Whig*, 4/27/1861



support amid the Convention's constituents, while also encouraging the delegates to abide by the second referendum. Over the month of July, tensions continued to escalate, with numerous clashes between individual Unionists and secessionists, and pro-Union newspapers such as Brownlow's *Whig* were frequently intercepted and destroyed. Pro-secessionist newspapers (most notably the *Knoxville Register*, the chief rival to the *Whig*) attacked the Convention led by "a few [T]ory leaders of Knoxville and King Nelson". Brownlow and other more ardent Unionists responded by urging the "Home Guards" being formed in East Tennessee to "drill regularly, keep up their organizations, and hold themselves in readiness to strike for their independence, and to defend their right whenever called upon, and driven to that dread alternative!"<sup>156</sup> Thus the "Parson" showed his evolving belief that while armed conflict was certain to break out, it must only be in self-defense on the part of East Tennesseans—essentially, a demonstration of political antiwar noncompliance through armed means.

The standoff reached boiling point on July 10, when Thomas Nelson called for the Kingston convention to gather on August 31, beginning the process for East Tennessee's separation from the rest of the state. In response, on July 26 Governor Harris ordered 4,000 pro-Confederate state troops to the region and appointed former Whig Congressman and newly-created Confederate brigadier general Felix Zollicoffer as commander of the Military District of East Tennessee. Per the Governor's initial lenient intent, Zollicoffer issued a proclamation (published in the *Whig*, to achieve the widest possible Unionist readership) stating, "The military authorities are not here to offend or injure the people, but to insure peace to their homes, by repelling invasion and preventing the introduction of the horrors of civil war. Treason to the State cannot, will not be tolerated. But perfect freedom of the ballot-box has and will be

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<sup>156</sup> *Register*, 7/9/1861; *Whig*, 7/13/1861

accorded, and no man's rights, property, or privileges shall be disturbed."<sup>157</sup> This statement temporarily alleviated the situation in East Tennessee; Brownlow himself, adopting a level of moderation in light of the occupation, penned an amicable editorial towards the state authorities, lauding Zollicoffer in particular as "a man of fine sense, of great cast," while continuing to attack the pro-secessionists in the region, claiming that abuses from the leadership in Knoxville had provoked the crisis.<sup>158</sup>

Other threats to Brownlow and Southern Unionists as a body nonetheless arose during this brief calm. On August 14, three days after its passage by the Confederate Congress, Confederate President Jefferson Davis announced the Alien Enemies Act, which ordered all "natives, citizens, denizens, or subjects" of any hostile nation—in essence, the Union—to leave the South in forty days, and made all those who failed to do so "liable to be apprehended, restrained or secured and removed as alien enemies" unless they swore allegiance to and became citizens of the Confederacy.<sup>159</sup> Four days later, Governor Harris—reelected by a substantial majority on August 1—ordered Zollicoffer to carry out arrests of East Tennessee Unionists, beginning with the Convention's leadership and members. Virginian authorities detained Thomas Nelson, who had been elected to Congress in the August election, releasing him only after he pledged to refrain from further opposition activities. Oliver Temple successfully escaped, returning to Knoxville several weeks later after giving a similar pledge of neutrality in the conflict.

Brownlow himself avoided arrest in this *de facto* crackdown, but secessionist editorial and stump attacks against him escalated even further throughout late summer and early fall of

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<sup>157</sup> *Whig* 8/10/1861

<sup>158</sup> Humphrey, p. 222 (*Whig*, 8/17/1861)

<sup>159</sup> McKenzie, p. 93; Evans, Clement A. (Clement Anselm), 1833-1911. *Confederate Military History: a Library of Confederate States History*. Atlanta, Ga.: Confederate Pub. Co., 1899., p. 423

1861. The *Whig*—by now the last Unionist publication in the South—also continued to decline in the face of lower revenues and increasing interference by pro-Confederate officials, soon being reduced from weekly to tri-weekly publication. Further pressure from Richmond came at the end of August in the form of the Sequestration Act, which made all property of “alien enemies” subject to confiscation, thus putting the *Whig* at greater risk, as well as Brownlow’s family in Knoxville, who had been subjected to taunts and threats since before the June 8 referendum.<sup>160</sup>

In light of these factors, Brownlow shifted tactics in September, turning to republication of articles and letters from Southern papers that expressed criticism of the Richmond government, cautiously expressing his own support for these sentiments while avoiding open denunciations that might lead to arrest.<sup>161</sup> Alongside this circumspection, Brownlow focused his journalistic attacks on the rival *Register* and other local pro-Confederate officials and institutions in East Tennessee. The most notable of these attacks—one also aimed at Richmond and the South in general—was delivered in the October 12 issue, mockingly titled “To Arms, To Arms, Ye Braves!”: “Come Tennesseans, ye who are the advocates of Southern Rights, for Seperation [sic], and for Disunion—ye who have lost your rights and feel willing to uphold the glorious flag of the South, in opposition to the Hessians arrayed under the Despot Lincoln, come to your country’s rescue!”<sup>162</sup> Brownlow drove his point home in a second editorial the following week, entitled “Who Will Volunteer?”, attacking the planter class’s ability to avoid military service: “They are in comfortable circumstances, and could leave their families enough to live on. Not so with the poor laborers and mechanics they are urging to turn out—Their wives and children,

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<sup>160</sup> Coulter, E. Merton, and Ash, Stephen V. *William G. Brownlow: Fighting Parson of the Southern Highlands*. Appalachian echoes ed., Knoxville, Tenn.: Newfound Press, University of Tennessee Libraries, 2009. p. 159.

<sup>161</sup> McKenzie, p. 99

<sup>162</sup> *Whig*, 10/12/61

during a hard winter, would be obliged to suffer.”<sup>163</sup> These pieces were, in effect, an antiwar screed on Brownlow’s part cutting to the heart of the South’s greatest social and military quandary: raising sufficient troops in the face of declining volunteerism, and a growing perception of the war as a “rich man’s war, poor man’s fight” among yeoman and lower-class Southerners.

These articles provided the final excuse for Confederate authorities to order Brownlow’s arrest and indictment on charges of treason. Warned of this by a colleague in Nashville, Brownlow, after a failed attempt to cross into Kentucky, departed Knoxville on November 4 for the Great Smoky Mountains along the Tennessee-North Carolina border, lodging with staunchly Unionist friends, families and towns in the region. This refuge would be brief, however: On the night of November 8, a group of East Tennessee Unionists, acting with monetary support from President Lincoln and expecting military aid from Union forces in Kentucky, attacked nine railroad bridges in the region, intending to cut the main Confederate supply lines through the Appalachians. Though five of the bridges were successfully burned, the promised invasion by federal troops did not take place, and the attacks produced a “wild and unreasonable panic”—in Oliver Perry Temple’s words—among the Confederate civil and military leaderships, provoking a second, harsher occupation of the region.<sup>164</sup> Additional troops were assigned to Zollicoffer’s command, martial law was declared in Knoxville, and sweeping arrests of East Tennessee Unionists were made: Over one hundred and fifty would be detained on suspicion of involvement in the bridge attacks, and five would later be found guilty and hanged.

Although Brownlow did not take part in the bridge conspiracy, Confederate authorities considered him a key figure, a suspicion bolstered by his flight from Knoxville shortly before the

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<sup>163</sup> *Whig*, 10/19/61

<sup>164</sup> Temple, pp. 399-406

attacks, and by his comments in a May issue of the *Whig*, demanding, “Let the railroad on which Union citizens of East Tennessee are conveyed to Montgomery in irons [Nelson, Maynard, Temple, and others] be eternally and hopelessly destroyed.”<sup>165</sup> In a November 22 letter to Confederate general William H. Carroll, commander of the Knoxville garrison, Brownlow denied any complicity, pointed to his previous efforts with Zollicoffer at maintaining peace in the region despite constant threats to himself and his family, and stated that he was “ready and willing at any time to stand a trial upon these or other points before any civil tribunal,” yet he protested against “being turned over to *any infuriated mob of armed men* filled with prejudice by my bitterest enemies.”<sup>166</sup> Carroll’s reply promised Brownlow safe passage to Knoxville, and after consultations with his impending replacement, Major General George Crittenden, and Confederate Secretary of War Judah P. Benjamin—who, like the majority of Tennessee Confederates, was well aware of Brownlow’s notoriety and the volatile situation in East Tennessee—it was decided to permit Brownlow to leave the state for Union-controlled territory in Kentucky.

On the night of December 6, however, this process halted with Brownlow’s arrest in Knoxville on a warrant issued by Knox County Commissioner Robert B. Reynolds, whom—according to one historical opinion—may have acted with tacit consent from Crittenden.<sup>167</sup> The warrant—carried out by District Attorney John Crozier Ramsey, whose family Brownlow had frequently attacked and derided in the *Whig*—charged the editor with treason against the Confederate States and giving aid and comfort to the United States through his editorials.<sup>168</sup> Brownlow’s arrest may have been primarily intended as a form of revenge by enemies in

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<sup>165</sup> Brownlow, *Sketches*, pp. 271-285, 297-313

<sup>166</sup> *Ibid*, p. 283

<sup>167</sup> Humphrey, p. 238

<sup>168</sup> *O.R.* II, p. 922

Knoxville such as Ramsey and Reynolds, taking advantage of his stated willingness to stand trial for his supposed role in the bridge attacks. Demands for his punishment from other Southern leaders provide a second possible motive for the incident, although Secretary of War Benjamin, despite having insisted on captured bridge-burners being hanged and hung on display alongside the routes they attempted to sabotage, made clear his personal dismay at the editor's arrest, and insisted on his release.

Whatever the intent of the arrest, it removed Brownlow from his editorial pulpit—the *Whig* presses had in fact been seized and retooled to produce rifle parts by this time—and ended his career as the most visible and scathing critic of Tennessee and Southern secession. While incarcerated, he witnessed the five executions carried out against the bridge conspirators, as well as the deportations of hundreds of other prisoners to Alabama—where a number would later die in prison—and was himself threatened with death by lynch mobs when removed to house arrest at the end of December due to illness. Despite these pressures, he continued to argue against any charges of involvement in the bridge conspiracy, and refused an offer of freedom in exchange for swearing an oath of allegiance to the Confederacy.<sup>169</sup>

On March 3, 1862, Brownlow's release to Union lines went into effect, and armed guards escorted him to Nashville by March 15, where he reunited with Maynard, Johnson (now military governor of Union-occupied Tennessee), and other members of the East Tennessee Convention. Brownlow's experiences in Confederate-controlled East Tennessee—thanks to both the Nashville and Richmond governments, and the Union's half-hearted support for the bridge burnings—had recast him from one of the most ardent proslavery, Constitutional Unionists in

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<sup>169</sup> Humphrey, pp. 241-247

Tennessee to a staunch anti-Confederate, with his anti-secession rhetoric turned to antiwar ends, leading to his expulsion and further radicalization.

While the political antiwar Unionism of Brownlow and the East Tennessee Convention was suppressed and then incorporated into the Union's military rule of the entire state, this sentiment experienced considerable growth in neighboring North Carolina, predominantly in its western and central regions. As the war reached deeper into the Confederacy from 1863 on, a cohesive peace movement was gradually formed which sought to push Richmond towards a negotiated settlement ending the war—and failing this, considering a separate armistice with the North. The most visible figure of this movement was William Woods Holden, onetime proslavery Democrat, and soon one of the strongest *de jure* Unionist opponents of the Davis administration.

By the second year of the war, William Holden, though still Confederate in name, had become *de facto* Unionist in rhetoric and action, eventually to the point of openly seeking a political settlement to end the war, with or without Southern independence and slavery assured. The motives and shifts behind this evolution, according to current consensus, are not easily determinable, rendering Holden difficult to classify from multiple historical perspectives: “Lost Cause”, revisionist, Marxist, and others. Instead, as historian William Harris argues, it is best to view Holden as a product of “the diverse interplay of political rivalries and events” which dominated wartime North Carolina—particularly the mountainous western regions that were Holden's base of support—and as being “shaped by the common political culture of all classes and the trauma of the Civil War ordeal.”<sup>170</sup> Taking this assessment into account, alongside recorded statements and actions by all parties, it is clear that Holden backed his state's and

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<sup>170</sup> Harris, William C. *William Woods Holden: Firebrand of North Carolina Politics*. Louisiana State University Press, 1987.

region's secession out of loyalty to both, as did many other Southerners who held differing levels of uncertainty and ambivalence towards this event. However, this same loyalty, combined with prewar conservative Unionism, as well as the depredations of the Confederacy's failing war effort and antipathy to increasing control from Richmond, drove Holden's shift to peace activism, and to seeking state office on this basis. As a result, and when linked with the steadily harsher reactions and opinions towards the Confederate peace movement after 1863, Holden's activities thus became antiwar in effect and intent.

Holden's views and positions at the prewar start of his political career provide numerous hints of this development. His first entry into state and national politics came in 1840, during his work as a typesetter for the pro-Whig Raleigh newspaper *Star*, in which he was periodically allowed to print his first articles endorsing western expansion and states' rights. Initially favoring the Whigs on this basis, and even stumping for William Henry Harrison in the 1840 presidential election, Holden came to view this party as overly devoted to centralized government, causing him to drift to the Democrats. This switch was completed in 1843, with his purchase of the *North Carolina Standard* newspaper and its transformation into a pro-Democrat publication.

Although his newfound allegiance to this party was solid, and would remain so into the 1860s, he advocated many progressive reforms along lines similar to those of the Whig platform: internal improvements such as expanded railroads and canals, education, and the abolition of property requirements for suffrage. These reforms favored the South, and aimed, in Holden's view, to both end the perception of the region—and North Carolina in particular—as backward and uncultivated, and to “establish equality in political rights among free white men.”<sup>171</sup> This reformist position drew fire from conservative Democrats in the eastern portion of the state, who

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<sup>171</sup> *NC Standard*, 6/21/1848



charged Holden with promoting demagoguery and the destruction of property rights. While Holden rejected these charges, he—like many other citizens across the social strata—disliked what he termed “pretensions of aristocracy”, believing that excessive and misused wealth promoted indolence and corruption.<sup>172</sup> The modernizing projects Holden favored would indeed most benefit the yeoman and working-class population from which he originated and claimed the greatest support, even after achieving wealthier status, and this political aspect would form one element of his later populist appeals for peace and Republicanism. This did not mean, however, that Holden sought “to ‘level down’ the landed interests” that dominated the state, as his intraparty attackers claimed, or that resentment of the slave- and property-owning elite contributed to the often differing, shifting positions throughout his career.<sup>173</sup>

Another example of Holden’s “conditional Democracy” can be seen in his position and statements during the crisis which led to the Compromise of 1850. Although supportive of the Nashville Convention of that year—organized by the noteworthy “Fire-Eater” John Calhoun of South Carolina, in defense of “southern rights”—Holden favored negotiation and compromise to end the North-South standoff, and soon dissociated himself and the *Standard* from Calhoun, arguing firmly against against sectionalism: “The people of the South have always contended for the Constitution as it is fairly, equitably, and honestly administered. They shall not abandon this ground.”<sup>174</sup> Such proto-Unionism was demonstrated further with Holden’s adoption of Andrew Jackson’s famous slogan—“The Constitution and the Union of the States; they must be preserved”—as the *Standard’s* masthead, to counter Whig claims of Democratic treason and secessionist plots. Though growing division between the Northern and Southern, moderate and

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<sup>172</sup> Harris, *Firebrand*, p. 17

<sup>173</sup> *Standard*, 6/14/1848

<sup>174</sup> *Ibid*, 3/13/1850

“Fire-Eater” wings of the Democrats presaged this party’s collapse, Holden still considered it the sole viable guarantor of the “rights”—including slavery—that the South held as sacrosanct, and the best means of maintaining Union.

This temporizing placed Holden in a more and more tenuous middle ground through the tension-filled 1850s. Like the majority of Southern Democrats in this period, Holden viewed abolition as the primary threat to the region’s social and political stability, demanding that the North—meaning the antislavery movement, and its nascent political ally in the Republican Party—must “leave this question of Slavery alone” unless they desired war with an otherwise loyal South.<sup>175</sup> He also championed the right of secession, but did so in the theoretical and historical sense, citing the American Revolution and the powers reserved to the states under the Constitution, while warning against its application as he had with the 1850 Compromise. Such stances—firm on slavery and states’ rights, and equally supportive of national unity—caused Holden to gravitate even more to the moderate wing of his party. The collapse of the Whig Party during this decade brought a temporary atmosphere of triumph in Democratic-controlled North Carolina, while at the same time increasing Holden’s personal and political rivalries with conservative Democrats. By the time of his defeat for the 1858 gubernatorial nomination—won by John W. Ellis, who expressed greater support for slavery and states rights, though held a similarly moderate stance on secession—he had lost much of his leadership capital and standing in this party, and had become convinced even further of the equivalent dangers of secession and abolition.<sup>176</sup>

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<sup>175</sup> *Standard*, 11/13/1850

<sup>176</sup> Harris, pp. 60-87

The four-way 1860 presidential election brought a temporary resurgence in Holden's political influence. At the April 1860 Democratic convention in Charleston, Holden witnessed the sectional split between the party's Northern and Southern wings over the secession issue, though his warnings against offers to join the secessionists should the Republicans win the election kept North Carolina in this body. Holden at first maintained his opposition to Stephen Douglas as the Democratic candidate, voting against him fifty-seven times during balloting at Charleston. When the convention met again in June at Baltimore, he temporarily switched tack, believing "the choice is now between Douglas and defeat and vertual dissolution [sic]," and had even pledged all possible electoral support from North Carolina to Douglas "to save the party and the country."<sup>177</sup> In the aftermath of the again-divided convention vote—leading to Douglas' selection as the Northern Democratic candidate, and the Southern Democratic ticket of John Breckinridge and Joseph Lane—Holden again straddled the fence, arguing that "both tickets are more or less sectional; whatever of regularity exists belongs to the Douglas convention." This continuous shifting shows Holden's growing difficulty—and that of Southern moderates generally—in maintaining not only the Democratic Party, but the still-potent hope of averting war through negotiation at this stage of the crisis.

Conceding that his state favored the Breckinridge ticket—"The Democratic people, whose is above all committees, conventions, and caucuses, have commanded us to raise the names of Breckinridge and Lane, and we obey"—Holden insisted on the paramount importance of party unity against secession and abolition, in North Carolina and the South: "While Douglas battles with black Republicanism in its strongholds in the North, let us endeavor to save the Southern vote, so as to render available all the Democratic strength in the hour of need. But

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<sup>177</sup> Holden, W. W., and North Carolina. Governor. *The Papers of William Woods Holden*. Division of Archives and History, N.C. Dept. of Cultural Resources, 2000., May 19, June 1, 1860

while we do this, we are not unmindful of the patriotism and lofty integrity of Judge Douglas, or of the fidelity with which the great body of his friends in the non-slaveholding States have stood by the rights of the South.”<sup>178</sup> These appeals to the Democratic leadership proved futile, and the continued infighting between the Breckinridge and Douglas camps began to sour his views on both. The most ardent pro-secessionists in the Democratic Party, meanwhile, by now heavily concentrated among Breckinridge’s supporters, also began to attack him for supposed disloyalty by refraining from criticism of Douglas.<sup>179</sup>

Holden still refrained from breaking with the Breckinridge faction; as late as mid-September, he continued to deny the Southern Democrat’s tilt towards secession, and maintained that as “the advocate of the Constitutional Union” he was “not afraid to trust Breckinridge and Lane to the fullest extent.”<sup>180</sup> Nonetheless, his Unionist attitudes grew stronger over the remaining weeks prior to the Presidential election. By November 7—the day before Election Day—he had come to embrace the belief that “if so great a calamity as his [Lincoln’s] election should befall the South, it will be the part of wisdom to wait and see what he will recommend in his Inaugural, and what he will attempt to do.” Only the use of military force to end the sectional crisis, Holden argued, could justify North Carolina’s joining the secessionists—an unlikely outcome, as he believed that Lincoln “has enough common sense to know...that it would be a most daring and dangerous act in him, or in any President, to touch in the slightest respect the vital interests of the slaveholding States.” This argument reiterated those of Brownlow and other

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<sup>178</sup> *Standard*, 7/18/1860

<sup>179</sup> Harris, p. 93

<sup>180</sup> *Standard*, 9/19/1860

Southern Unionists, though couched in less constitutional and more practical, shrewdly political terms indicative of the conservative moderation of Holden's western North Carolina base.<sup>181</sup>

After the election returns confirmed Lincoln's victory, South Carolina opened the Secession Crisis in December with its state convention declaring separation from the Union. In the same month, the North Carolina legislature, at Governor Ellis's urging, called for a similar convention on the question of allying with the secessionist movement. Holden's vocal opposition to this proposal and to the pro-secessionist control of the Democratic Party and state government led to his ouster as state printer for Ellis ally John Spelman, prompting his rhetorical and *de facto* organizational transition to the Constitutional Union Party. This party, with Tennessee Senator John Bell as its candidate, had performed well among moderate Democrats and former Whigs in the border and Upper South States; in North Carolina in particular, the Breckinridge Democrats' victory had been notably narrow—48,533 to 44,039, with Douglas gaining only 2,690—and indicative of the polarization between moderates and “fire-eaters.”

While Holden did not formally join the Constitutional Union Party, he employed its title and ideals in his calls for a coalition of Unionists from both sides of the old Whig-Democrat dichotomy, to maintain the “watch-and-wait” stance regarding the new Republican administration, and to resist what he viewed as a campaign by “oligarchical” secessionists that “would end in civil war, in military despotism, and in the destruction of slave property.”<sup>182</sup> These efforts on behalf of North Carolina moderates and Unionists led to Holden's selection as a delegate for Wake County to the state convention on secession. When the convention opened on February 28, 1861, “Union” delegates numbered 81 of the 120 representatives chosen: an

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<sup>181</sup> *Ibid*, 10/17, 11/7

<sup>182</sup> *Standard*, 1/23/1861

indication of this stance's statewide popularity, demonstrated again the following week—much more narrowly—by the final tally against secession: a majority of 651, out of 93,000.<sup>183</sup> Holden praised the outcome, reminding the state of Lincoln's clear intent to compromise—while warning that union along “sectional or black Republican principles” was a clear impossibility for southern Unionists—and prophesying that “the Confederate experiment will end either in anarchy or despotism.” This success, however, and an increase in anti-Lincoln sentiment following his inaugural—which secessionists and even some moderates perceived as tantamount to a call to war—led to further attacks on Holden, with the added charges of his being secretly pro-abolition and pro-Lincoln as well as a “submissionist” Unionist.

Holden denied these claims with particular fury, declaring in the *Standard* that “The oligarchs who instruct their minions when and at whom to groan hate Lincoln, not because he is a black Republican, but because he split rails for his daily bread when a young man; they hate Douglas because he worked at the cabinet-maker's trade for his daily bread when a young man; they hate Andrew Johnson because he worked at the tailor's trade for his daily bread when a young man; and they hate Holden because, being only a printer, he dared” to seek the governor's office.<sup>184</sup> This denunciation makes clear the most notable shift in Holden's rhetoric and position, from moderate Unionist to Southern populist, and eventually to peace advocate. Attacking his opponents in such a manner called up both his own modest, working-class background, and that of the majority of western North Carolinians whom he had represented at the convention—from whom much of the state's Unionist support was drawn. As in Brownlow's warnings against the machinations of the Nashville secessionists, such anti-elitist references and appeals later became commonplace in Holden's post-secession political and editorial career, reinforcing his dissident

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<sup>183</sup> Harris, p. 101; Long, E.B.. *Civil War Day by Day*. United States, Knopf Doubleday Publishing Group, 2012., p. 120

<sup>184</sup> *Standard*, 3/20/1861

status even when maintaining loyalty to his state and the Confederacy, while encouraging the antiwar sentiment that underlay his and his supporters' earlier Unionist moderation.

Holden's "watch-and-wait" position finally collapsed with the firing on Fort Sumter, and President Lincoln's call for 75,000 volunteers. Concluding that "no alternative but resistance or unconditional submission" remained in the face of this call, Holden pledged to vote for secession in a second state convention called for May 20, asserting, "The old federal Union is dissolved. The President of the late United states is attempting to coerce and subjugate the people of the South. I need only say that I am with North Carolina and the South, and for resisting to the last extremity the usurpations and aggressions of the federal government."<sup>185</sup> This reversal demonstrated Holden's continuing adherence to the Democratic ideals of states' rights and limited centralized government, and reflected his and the moderates' desire to wait for an appropriate pretext—the volunteer call-up—which threatened these principles, before aligning with the secessionists. At the same time, Holden's antagonism toward and rivalries with the "oligarchic" secessionist state leadership remained a potent factor in his positions on the Southern war effort and domestic policy.

Holden's resistance to the Confederacy on this "anti-oligarch" basis is evident within weeks of Fort Sumter. Even before North Carolina's formal departure from the Union on May 20, 1861, Holden entered into a new feud with John Spelman's *State Journal*—now the mouthpiece of the pro-secession state government—when this paper once again labeled him and other previously Unionist citizens as "submissionists." The months-long war of words that ensued reached near to the point of a duel between the two men, and on November 27, Holden assaulted the *Journal's* assistant editor, William Robinson, with a cane in Raleigh after the latter

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<sup>185</sup> *Standard*, 4/24/61, 5/4/61

had insulted him in print as a “poltroon”, or utter coward. Though motivated by notions of pride and honor more than any clear defense of Unionism, this incident makes clear the level of sensitivity and outrage he expressed towards charges of disloyalty in any form.<sup>186</sup>

Alongside defending against attacks on his reputation and politics, Holden also quickly came to spar with the secessionists over war policy. From the start of North Carolina’s membership in the Confederacy, he and much of the Unionist faction insisted on the raising of troops for coastal defense, criticizing the Ellis government—and its successor under Henry Clark, following Ellis’s death in July—as having diverted its resources to the national Confederate effort at the expense of state security. Additional censure came in Holden’s revelations that Unionists were being deliberately barred from officer ranks in North Carolina units. The local progress of the war gave further credence and support to these condemnations. After a long lull following the capture of Cape Hatteras in August 1861, Union forces overran much of the North Carolina coastline in the first months of 1862, including the key forts at Roanoke Island—where the troops captured included Holden’s son Joseph—and the city of New Bern, the largest in the state.

These failures, as Holden saw it, “can be chargeable to nothing so much as the imbecility and inefficiency of the State and National [Confederate] authorities,” with the leadership more concerned with the distribution of “the offices of the government among pets and favorites, than in the security of our defences and the procurement of men and means to resist the invader.” Later, again in keeping with the latent anti-elite element of his stance, he would come to label these officials and other secessionist appointees as “Destructives”, and “Stall-federates”, leaders who “have been stall-fed until they have grown fat at the expense of the people” while the state’s

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<sup>186</sup> Harris, pp. 107-111



infrastructure and defense had been left to decay.<sup>187</sup>

Holden's first open expression of defiance to the Confederate national government came about during this same period of contention with Raleigh. The passage of the first *habeas corpus* suspension authorization in February 1862, and its enactment alongside that of the first national draft bill in April, brought the strongest criticism. Holden warned that "the heel of a domestic despot would bear as heavily on us as a foreign one," and insisted that the conflict was the "people's war", which had no need for "forced levies"; if there were not enough volunteers among the people to "carry it on, and to repel the invader, then let them bear the consequences." In this manner, Holden affirmed again his commitment to the principles of personal and states' rights, appropriating this stance from the secessionists to express resistance to Confederate wartime policy.<sup>188</sup>

Holden's expressed this new combination of ideological loyalty and political defiance on again during the gubernatorial election of fall 1862. Although distinct political parties did not exist in the Confederacy, two factions had come to resemble such organizations by this time in North Carolina. Holden had assumed effective control of the old Unionist-Whig-moderate Democrat faction in the state, generally viewed as "conservatives," in contrast to the pro-secession "Confederates" which dominated the state government under Ellis and Clark, and under their 1862 nominee William Johnston. In a move intended to demonstrate commitment to the war, challenge its management by Davis and the "Destructives" in Raleigh, appeal to a broader swath of ex-Whig voters and silence claims of his own ambition for the office, Holden and the "Conservatives" settled on Zebulon B. Vance. A colonel of the 26<sup>th</sup> North Carolina Regiment and a prewar Whig Congressman, Vance, like Holden, held strongly to the ideals of

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<sup>187</sup> *Standard*, 2/12, 3/5, 6/4/1862

<sup>188</sup> *Ibid*, 4/9/1862

state and individual rights, and opposed conscription and *habeas* suspension, though he avoided the growing vitriol with which Holden assailed these practices. Despite a deluge of denunciation aimed at Holden's supposed disloyalty in the pro-"Confederate" press, and fears that Holden's rhetoric would alienate "Conservative"-leaning voters, Vance gained the governorship on these positions by a commanding margin—55,282 to 20,813—and the "Conservatives" swept the elections for the state General Assembly. With this victory, as historian William C. Harris argues, the two-party system was temporarily revived in North Carolina, and the "Holdenites"—as the "Conservatives" were now more often referred to—both reached their apex of political influence, and moved further towards explicit antiwar advocacy.<sup>189</sup>

This trend became more pronounced on Holden's part with the political and military developments of 1863. In March of this year, the Davis administration signed legislation providing for the suspension of *habeas corpus* with regards to desertion and other apparent or confirmed defiance of the conscription laws. Holden, through the *Standard*, denounced this measure as an unconstitutional, "gross usurpation" of civilian governance. Though he and Governor Vance still refrained from encouraging resistance to the draft while seeking its repeal in Congress or the courts, Holden's editorials on arrests and mistreatment of draft violators, as well as Richmond's seeming military neglect of North Carolina, increased tensions between the North Carolina and national governments over the spring and summer of 1863. Most alarming to Richmond, and even Vance and others among Holden's supporters, these articles included Holden's first hints that some movement towards peace—by North Carolina alone if necessary, and even by force—might be the sole means of securing the natural rights of its citizens: "North Carolina will withdraw from the Confederacy rather than permit a Davis Dictatorship...North

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<sup>189</sup> Harris, p. 120

Carolina will never hew wood and draw water for those who slight and underrate her. She must be the equal of the other States of the Confederacy, or she will leave it and endeavor to take care of herself.”<sup>190</sup> Such remarks, however, did not constitute literal calls for insurrection or any form of negotiated peace with the North, a point Holden insisted on when charged with defeatism and even treason by critics.

Meanwhile, the effects of the war on North Carolina—ever-rising inflation and profiteering, shortages of foodstuffs and essential goods, refugees flooding in from the Union-occupied coastal areas, destructive raids and confiscations by Unionist guerrillas, criminals, and Confederate impressment units—encouraged the formation and growth of anti-Richmond “Conservative” groups across the state. In contrast to other war-weary Southerners who favored peace by this stage of the war, a significant element among these groups favored their state’s direct negotiation with the Union, with Lincoln’s recognition of Confederate independence as a precondition for any talks. In this way, the North Carolina peace movements sought to make clear their continued devotion to the cause, and that they sought only to bypass a corrupt, incompetent, national government under Jefferson Davis, which made its dictatorial tendencies clearest through conscription and abuses of state and civil rights. Holden’s critiques of this mistreatment, appealing to all classes and political factions—though eschewing calls for outright revolution—thus found frequent use by the peace movements in support of their grievances and aims.

Holden maintained a degree of distance from the North Carolina peace movement for much of early 1863, though his anger at the management and progress of the war paralleled and inspired its own during this period. His shift to favoring a negotiated peace can be traced to his

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<sup>190</sup> *Standard*, 5/6, 6/3/1863

editorials during the summer of 1863. In June, he declared that in order “to arrest this awful evil” that the war had become, talks should be opened with the Northern Democrats who similarly favored negotiation. In his view, “the people of both sections are tired of war and desire peace. We desire it on terms honorable to our section, and we cannot expect on terms dishonorable to the other section.” Above all, he rejected any peace “which will not preserve the rights of the sovereign States and the institutions of the South” in a reunified nation.<sup>191</sup>

As Holden elaborated this position, his language and proposals, reflecting and pushing the peace movement’s evolution, edged closer to advocating a separate peace. By July, many agreed with his view that “what the great mass of our people desire is a cessation of hostilities, and negotiations.” Both encouraged and disheartened by the South’s defeats in this period—Vicksburg, Gettysburg, Port Hudson—he and his supporters maintained that “*Whipped* we have never been, and never will be, but we may be overcome by physical force.” Should this defeat come to pass, Holden warned, the outcome “would be the condition of provincial dependence on the federal government, each State being ruled by a military Governor as Tennessee is, and the emancipation and arming of our slaves in our midst.”<sup>192</sup> Should the effort be made, “by mental and moral means to close the war,” Holden insisted, the South would be spared the depredations he outlined—and, even if the price was reunion, be able to maintain its pride, dignity and autonomy within a restored United States.

As Holden saw it, “it is time to consult reason and common sense, and to discard prejudice and passion. Our people must look at and act upon things as they are, and not as they would have them.” The crucial first step in this process—one that might well lead to confrontation with Richmond, in spite of Holden’s emphasis otherwise—was the people’s

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<sup>191</sup> *Standard*, 6/17, 6/24/1863

<sup>192</sup> *Standard*, 7/17/1863

remembering “*that they are sovereign*—that they are the masters of those who administer the government—that the government was established by *them*, for *their* benefit, and they must not be afraid to utter their opinions freely and boldly. If they want continued, wasting, bloody war, let them say so; if they want peace, let them say so, and let them state the terms on which they would have it.” He laid out the possibility of electing representatives in the next Congressional elections who favored creating a group of commissioners, who would meet with a like body appointed by Lincoln, to at least explore the chances for peace. He conceded that this entreaty would likely fail, and the war continue: “If an honorable peace were tendered by the South and rejected by the North, desperation would then nerve every Southern man, and our people would share a common fate and fill a common grave.” Yet “this awful result, it seems to us, may be averted. It may do much good, and do no harm to talk—to negotiate, or to pave the way to negotiations” while the fighting continued.<sup>193</sup>

These comments brought a new storm of attacks from the “Confederate” faction and pro-Richmond papers and figures across the South. Although Holden still disavowed any leadership role in the peace movement, he now became routinely associated with this element, which was charged with spreading demoralization and treason among the civilian population and North Carolina units at the front. The fears of public disillusionment resulted in partial or full breaks between Holden and some members of his “Conservative” circle—including Governor Vance.

The latter came about in late July, following Vance’s correspondence with President Davis regarding an anonymous letter from, Davis asserted, “one of the most distinguished citizens of your State” warning that “the Union or Reconstruction Party”—by now an umbrella term used to describe “Conservatives” and others whose loyalty was considered dubious—

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<sup>193</sup> *Standard*, 7/17/1863

intended to hold meetings across North Carolina, with the intent of sparking “open resistance to the Government, under the leadership of that reckless politician, Holden, editor of the Standard.” Vance, a frequent critic of Davis for his decrees regarding state affairs and civil liberties—including freedom of the press—rejected this possibility, stating firmly that he did not believe “there is any reconstruction party in North Carolina, or that there exists any reason whatever to fear that this state will put herself in opposition to the Confederate Government.” Nor, the governor asserted, did “there exist any reason for taking steps against Holden, the editor of the Standard. On the contrary, it would be impolitic in the very highest degree to interfere with him or his paper. I regard public sentiment and the known patriotism of our people as amply sufficient as heretofore to dispose of him should he undertake the course indicated by your informant.”<sup>194</sup> As a result of this discussion, Davis agreed to relax *habeas* restrictions in North Carolina, and grant the state wider autonomy in war policy. In exchange, Vance agreed to take a firmer line against Holden’s criticisms, causing Holden to break with the governor and shift farther into the peace movement’s camp.

On September 9, 1863, a force of Georgia troops en route to the Virginia front through Raleigh, having been encouraged by the anti-“Holdenite” meetings, chose to carry out the meetings’ calls for suppression and attacked the *Standard’s* offices. A speedy appearance by and plea from Vance to return to camp narrowly prevented the destruction of the paper’s presses and equipment, though fears of future violence against the paper and Holden himself remained strong. The next day, in retaliation, a mob of pro-Holden readers attacked John Spelman’s *State Journal* in a similar fashion, succeeding in wrecking the *Journal’s* printing apparatus before another call from Vance—with Holden lending support—caused the rioters to disperse.<sup>195</sup>

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<sup>194</sup> *Official Records*, Vance-Davis Letters, 7/24-7/26/1863

<sup>195</sup> *Ibid*

When the *Standard* resumed printing, Holden issued an editorial lambasting the Richmond and North Carolina papers which he believed “had repeatedly called for mob law against the Standard,” and thus led to the *Journal* attack as well. He had been “assailed in a cowardly manner,” he asserted, “my property injured, and my Constitutional rights trampled down, *on account of my opinions*.” This was done “because I had boldly and uniformly defended the rights and the honor of my native State,” “had labored to reform the administration at Richmond, so as to save the cause [,] had vindicated the rights of the soldiers against oppression in the army, and their families against the injustice and cold charity of certain characters at home.” Censure and attacks had also been made against him because he had sought “to maintain civil law against military power,” and “insisted that whilst the war should be pressed with the utmost vigor, and desertion and resistance to law discountenanced and repressed, statesmen and people at home should cast about anxiously for some means to initiate negotiations that might end in an honorable peace.” While Holden avoiding attributing the attacks to official encouragement from the Davis administration, his remarks made clear whose policies he believed were responsible.<sup>196</sup>

In the same editorial, Holden offered conditional praise and support for the popular wartime governor, stating his principles clearly: “As long as he is true to the principles on which he was elected, and as long as he demands and obtains justice for his State and sees to it that military despotism does not override the civil law, I will give to his administration a steady, straightforward, manly support.” He also affirmed his belief in Vance’s good intentions and his loyalty to the Southern cause, declaring again, “as I have frequently done, that I am a sincere and steadfast friend of the Confederate government; and that...I will be among the last to desert it.”

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<sup>196</sup> Holden, *Papers*, 10/2/1863

He emphasized that he had only “striven in my feeble way to reform its administration, so as to give more efficiency to it, and thus ensure its success.” This conciliatory, if again somewhat self-aggrandizing, editorial cast Holden as both a potential martyr for the South if the war continued despite his best efforts, and a possible savior if these efforts succeeded in bringing North and South to the peace table.<sup>197</sup>

Circumstances would encourage the antiwar sentiment in North Carolina and Holden’s own pro-South/antiwar stance to move beyond this temporary cordiality with Raleigh and Richmond. After pro-peace “Conservative” candidates gained six of the state’s ten seats in the November Congressional elections, to the pro-secessionists’ one, Holden saw an opportunity: press for negotiations for a state convention along the lines of that which had taken North Carolina out of the United States.<sup>198</sup> In a letter to an associate, Thomas Settle Jr., Holden made clear that he believed that “It is now apparent that North Carolina must soon look to herself, and returned to a key foundation of Southern antiwar sentiment—states’ rights: “The power that made the war can alone close it—the power of the sovereign States. Our next election [the 1864 gubernatorial election] will turn on the question of a State Convention.” Shortly after the New Year, Holden met with pro-peace Congressman James T. Leach, to discuss and craft an outright call for peace through a state convention that would be published at meetings in Leach’s district.<sup>199</sup> Vance viewed this as an attempt “to call a convention in May to take N.C. back to the United States.” To counter it, and Holden’s all-but-certain candidacy for the gubernatorial election in August, Vance openly aligned his wing of the “Conservatives” with the pro-secessionist “Destructives,” who possessed no viable candidate of their own.

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<sup>197</sup> Ibid

<sup>198</sup> Harris, p. 140

<sup>199</sup> Holden, *Papers*, 12/22/1863; Harris, pp. 141-42



Richmond also weighed into the infighting with a new, nationwide suspension of *habeas corpus* alongside stricter conscription acts—a move which, as Davis made plain, intended to force Holden’s hand and bring North Carolina in line with the rest of the Confederacy. Vance, following the suspension’s advancement through Congress, had attempted to dissuade the President from this course, urging him to refrain from making arrests of any kind, and insisting that no majority of support existed for a state convention.<sup>200</sup> Holden, in contrast, viewed the February edicts as the strongest evidence of the “military despotism” he had warned against since 1862. Fearing arrest by Confederate troops in the state, and believing, as he wrote later, “that if I could not continue to print as a free man I would not print at all,” he closed down the *Standard*, and on March 3, formally announced his candidacy for governor.<sup>201</sup> He reaffirmed that any decision on North Carolina’s continued participation in the war would be based on his abiding principle of self-determination: Let the people go calmly and firmly to the polls and vote for the men of their choice. I will cheerfully abide their decision, whatever it may be. If elected I will do everything in my power to promote the interests, the honor and the glory of North Carolina, and to secure an honorable peace.” With this announcement, Holden formally reentered state and national politics as an antiwar political candidate and brought the North Carolina peace movement to its high-water mark.<sup>202</sup>

This success would be short-lived. Vance played to fears of the state’s invasion by both Union and Confederate troops, and internecine violence between its citizens, should a peace convention be formed and vote to remove North Carolina from the conflict and the Confederacy. Claims of Holden’s ties to the Red Strings—an organization of Appalachian Unionists

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<sup>200</sup> *OR*, p. 818

<sup>201</sup> Holden, *Papers*, 3/18/1864

<sup>202</sup> *Ibid*, 3/3/1864

encouraging and sheltering deserters, draft evaders, and escaped Federal prisoners—provided additional ammunition for pro-Vance advocates, tarring the peace movement with alleged anti-Southern activity. Combined with the lack of a pro-secessionist candidate (with or without backing from Richmond), a paucity of support in other Southern states for a separate peace convention (even from staunchly anti-Davis groups and individuals such as Linton Stephens and Joseph Brown), a clear pro-Vance majority among early votes from North Carolina soldiers (13,209 out of 15,033), and apparent stalemate in the war paired with perceptions of escalating Union war-weariness, Vance gained a landslide victory (58,065 to 14,489) in the August 4 election.

This defeat ended Holden's wartime political career, yet his antiwar advocacy continued through the war's final months. In November 1864, at the first post-election meeting of the legislature, he issued an editorial calling for the appointment of North Carolina peace commissioners, to seek negotiations with the Union alongside similarly chosen officials from the other Confederate states—though he denied that such an approach constituted “separate state” or “hasty action.” This proposal was rejected by a close vote, which saw “Destructive” delegates join with pro-Vance “Conservatives” to bring about its defeat. In January 1865, Holden made another attempt to resuscitate the idea of a state convention for peace talks, which was likewise blocked by the Assembly, and prevented from being submitted in popular referendum. During the same month, he made vain, almost desperate appeals for North Carolina and the South to accept Reconstruction as outlined by Lincoln: “If there is a strong probability that, in the end, we will be overrun and subjugated, and held down by our enemy at his mercy, would it not be wise to avoid that unspeakable evil by compromising our difficulties at once, on the best terms that

can be obtained?”<sup>203</sup> In this way, Holden promised, though slavery would be ended, the rights and other property of Southerners would be preserved, and mass punishment avoided—a pledge that completed his editorial evolution as a peace advocate, and reinforced his contemporary and postwar opportunist reputation.

By February, Holden abandoned hopes of negotiation, isolating himself from Confederate politics and antiwar activism. As the final campaigns of the war were waged in Virginia and the Deep South, the *Standard* editor continued to attack the Davis administration for prolonging futile resistance, most of all in its desperate consideration of enrolling slaves into the Confederate army. Holden lambasted the idea of continuing the war in defense of slavery, yet also labeled the slave recruiting proposal as “a confession of subjugation” and “not merely an abolition measure,” which abandoned “the great point upon which the two sections went to war.”<sup>204</sup> This outwardly contradictory role of antiwar activist and Southern loyalist remained Holden’s stance through the Civil War’s last major battles in North Carolina, and up to the state’s formal occupation by Union forces in mid-April 1865.

Holden, like Alexander Stephens, sought to avoid secession for his state until April 1861, and to protect *habeas corpus* and other basic rights from restriction by Richmond during the war, while avoiding the open Unionism of Brownlow and the East Tennessee Convention. However, where Stephens had effectively sought to mitigate the effects and abuses of secession from within, and stepped aside from all public duties when this failed, Holden maintained his outsider status, espousing peace and potential reunion from the start of his opposition to Richmond. This opposition was based on many of the same antiwar grounds as Stephens’: prewar political

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<sup>203</sup> *Standard*, 1/18/65

<sup>204</sup> *Standard*, 2/1, 2/8, 2/15, 3/1/1865

moderation, real and potential civil liberties abuses by the central government, and personal animosity towards Davis and the “Destructives” supporting him in North Carolina. Yet a significant portion grew out of similar rancor between himself and onetime ally Vance, the profiteering by secessionists that he perceived as rampant in his home state and region, and the neglect and violence inflicted on the largely non-slaveholding, yeoman farmer citizenry he claimed to represent.

Southern political antiwar sentiment failed to achieve the overarching goal of its various expressions—peace between North and South, with or without recognition of the latter’s independence—due to three preeminent factors: physical isolation, cooptation by outside individuals, groups or circumstances, and the lack of definite, organized party structures and ideologies. The first factor came about from the geographical concentration of antiwar support in the Appalachian South. The yeoman farmer economy held to be the ideal in Jefferson-Jacksonian Democracy predominated in East Tennessee and western North Carolina—both less developed and less dependent on slavery than the bulk of their respective neighboring state regions—while still embracing the inviolability of Union and remaining open to internal improvements such as roads, railroads and canals. Distant from and often marginalized or ignored by the planter aristocracy dominant in Nashville and Raleigh, the inhabitants of these regions over time formed a suspicious, hostile view of this elite, due to its general aversion to modernizing technologies and the competition with slave labor required in the plantation economy. This hostility did not mean a complete disengagement with the planter-controlled politics of the South, yet it did result in many of the communities and individuals who held this view to concentrate in the mountainous, less economically valuable regions of the Appalachian South. This had the effect of centralizing Unionist and later antiwar sentiments in the Appalachian regions of Tennessee

and North Carolina, while simultaneously walling them off from wider diffusion in these states prior to and during the Civil War.

Following the start of the war, cooptation became another threat to Southern political antiwar sentiment. In East Tennessee, this manifested in two opposing ways: the bridge-burnings of November 1861, and the Union occupation of Tennessee in spring 1862. The bridge incidents, while not organized or ordered by Brownlow and the Unionist East Tennessee Convention, nonetheless drew inspiration from the calls by both to resist and impede the secessionist Nashville government by any means. This same connection provoked the subsequent harsh crackdowns by Confederate military authorities, and reinforced the image of East Tennessee as a haven for Southern traitors, abolitionists, and other pro-Union sympathizers, rather than a homegrown center of political antiwar sentiment and effort that predated the Civil War. When the Union military established a new state government the following year under Andrew Johnson, the antiwar positions and advocates from this region became part of the new administration, removing their motivations for agitation and action. In this way, Brownlow's and the Convention's actions brought repression from the South and support from the North to East Tennessee, thus directly influencing the war aims and resource usage of both blocs.

Cooptation in North Carolina came about through more traditional methods of deal-making and coalition-building or -breaking. During the first two years of the war, Holden and his base in the smallholding communities in the western counties banded together under the "Conservative" banner, pressing their case against the "Destructives" and "Stall-federates" of the secessionist leadership. When Holden established an alliance with the more moderate Vance, however, this faction steadily altered its *de facto* antiwar position and rhetoric to suit Vance's independent-minded yet still pro-Confederate style of governance, drawing away moderates of

similar states' rights-based loyalty and casting Holden and his core supporters as disloyal demagogues. Holden's eventual break with Vance due to these events led to his standing for governor as an allegedly pro-peace candidate of dubious character, against the perceivably more competent and heroic Vance who had shown his loyalty to North Carolina and the South while still challenging the excesses of the Davis Administration and seeking peace in less divisive ways. Vance's landslide victory represented the final success of this cooptation, indicating how the drive for peace was being kept alive while effectively silencing its most vocal followers.

The Whig Party's demise and the divisions—sectional and internal—among the Democrats over the period 1850-1860 serve as the third crucial factor in the development and collapse of antiwar sentiment as expressed in the Appalachian South, by either William Brownlow and the East Tennessee Convention, or William Holden. Historian Michael F. Holt has observed that the end of the “Second Party System,” which for three decades had kept the antagonism between the North and the South within the realm of political compromise, “replaced the national competition between the Whigs and Democrats with a sectional competition between the Northern Republican party and a predominantly Southern Democracy,” and thus “was a major factor in the disruption of the Union...[T]he collapse of the old framework of two-party rivalry aggravated and in part reflected a loss of popular faith in the normal party political process to meet the needs of voters, to redress personal, group, and sectional grievances.”<sup>205</sup>

The post-1861 election events in North Carolina and eastern Tennessee, the inability of Stephens and other anti-Davis figures and factions to coalesce into a clear-cut party, and the outcomes of Holden's wartime political antiwar activism, all validate Holt's argument. The “Confederate”-“Conservative” contest that resulted in Zebulon Vance's election partially

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<sup>205</sup> Holt, Michael F. *The Political Crisis of the 1850s*. W.W. Norton & Co., 1983; 1978. p. 9

restored this two-party system, with its memberships drawn from similar ranks as those of the prewar period. However, this alignment was far more nebulous and ill-defined, and revolved more around the rivalries and agendas of individual figures—particularly the pro-peace Holden and the pro-war moderate Vance—than any clear ideological platform. Without a coherent, lasting party structure from which to advocate moderation and compromise, and to avert war—the Constitutional Union Party being the nearest example of such—Southerners like Brownlow and Holden who favored these approaches were marginalized or silenced by secessionists. These limitations, and the outright repression employed to enforce them, pushed Brownlow, Holden and significant portions of the Appalachian South to *de facto* and *de jure* antiwar positions, from the beginning of the war and as the war’s demands and defeats multiplied.

The clearest effects of this shift are evident in the burdens of the additional severe measures enacted by Richmond to enforce Confederate war policy—suppression of publications that printed antiwar rhetoric or editorials; military arrests; hangings of dissidents—and in its influence on the Reconstruction-era careers and views of its chief proponents. The transformation of Brownlow into a “Radical Republican” editor and governor of Tennessee, and of Holden into Republican governor of North Carolina represents the apex of their vindication as political antiwar dissenters, although their successes would be dogged by the resurgence of former Confederates under the “Redeemer” banner. Neither man achieved the core goals of his political antiwar dissent: a negotiated peace between North and South, or the distancing of their home states or regions from the depredations of civil war. Yet analysis shows that their efforts inspired additional expressions of dissent, prompting further crackdowns from the Confederate national government and further swelling of support for peace in the Middle South. This further breaks down the “Lost Cause”-tinged narrative of a South entirely behind secession and shows

the crucial roles of populism and factional politics—even absent a coherent party system—in the spread of antiwar dissent.

The sanctity of personal liberties in Stephens', Brownlow's, and Holden's political antiwar arguments is far from coincidental. From the beginning of the Civil War, this view served as a fundamental element of Confederate and Union political and legal discourse. Edicts considered militarily necessary—suspension of *habeas corpus*, conscription, impressment of citizens and goods—came under suspicion at best by constituents and leaders, and they came to be viewed as exercises in tyranny at worst, prompting frequent challenges in the political arena. When these efforts failed or were stymied by the Executive Branch or the military of either region, antiwar sentiments found expression in another, near-sacrosanct venue: the judiciary. The constant legal challenges raised in Northern and Southern courts—to *habeas* suspension, military arrests and trials, and conscription laws—and the responses of the Lincoln and Davis governments to these challenges, produced landmark rulings and new law concerning civil rights and antiwar opposition, and pressured both administrations to alter wartime policies to avert further popular and legal backlash.



## Chapter 5

“A citizen not connected with the military service and resident in a State where the courts are open and in the proper exercise of their jurisdiction cannot, even when the privilege of the writ of *habeas corpus* is suspended, be tried, convicted, or sentenced otherwise than by the ordinary courts of law.”

--*Ex Parte Milligan*, April 3, 1866

### Dissenting Opinions: Judicial Opposition to Union War Policy

From the start of the Civil War, numerous challenges arose within Northern state and federal courts against the Lincoln Administration, targeting new edicts, policies and laws intended to advance the Union war effort. The two most frequent targets of these challenges were the successive conscription and *habeas corpus* suspension measures, which Democrats and other antiwar opponents perceived as unconstitutional executive or legislative overreach. The arguments and decisions produced in the Union’s legal battles between the federal government and the various courts defined the legality and limits of these measures, forced their reform or alteration to avert further dissent, and established clear precedents for future debates of executive powers and the rights of the individual in wartime.

The first, arguably most controversial case concerning *habeas corpus* in the Civil War—*Ex parte Merryman*—took place during the war’s first two months, as the effective boundaries between Northern and Southern territorial control were still being defined, and the powers of their respective central governments to suppress dissent. In mid-April 1861, the slave-owning border state of Maryland had not yet decided whether to secede from the Union, an outcome that would isolate the federal capital in Washington, D.C. by all land and water routes. The tensions between pro-secessionists and the Lincoln Administration on this issue became especially clear on April 19, when mobs of Southern sympathizers attacked federal troops transiting through

Baltimore to Washington, in what became known as the Pratt Street Riot.<sup>206</sup> In the aftermath of the riot, Baltimore Mayor George Brown and Maryland Governor Thomas Hicks attempted to persuade President Lincoln to cease troop transports through the state, to defuse further riots. Lincoln rejected this proposal, replying that “I *must* have troops for the defense of the Capital...Our men are not moles, and can't dig under the earth; they are not birds, and can't fly through the air. There is no way but to march across, and that they must do.” Nonetheless, later D.C.-bound transports shifted their routes to pass through Annapolis, rather than strongly pro-secession Baltimore, which was still experiencing recurrent disorder and violence.<sup>207</sup>

During this same period of negotiation, Governor Hicks called for a special session of the Maryland Legislature on April 26, to decide the secession issue in the state. The governor, however—in orders whose actual intent is still debated—also assented to entreaties from Mayor Brown and other Baltimore officials, and authorized militia to sever all telegraph links and destroy the key railroad bridges to the north and northeast of Baltimore, cementing the state’s barring of Union troop passage. The soldiers detailed to this action included militia cavalry lieutenant and Maryland landowner John Merryman, who participated directly in several bridge burnings at the Bush and Gunpowder Rivers further north, acts which drew increased federal attention to himself and his unit.

The riot and communications destruction in Baltimore provided a foretaste of the capital’s full isolation, and led Lincoln to consider *habeas corpus* suspension, under Article I, Section 9 of the Constitution. On April 27, after discussion with Attorney General Edward Bates,

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<sup>206</sup> *OR*, Vol. II, pp. 7-10

<sup>207</sup> <https://quod.lib.umich.edu/l/lincoln/lincoln4/1:550?rgn=div1;view=fulltext>

Lincoln took the first step in this direction with a message to General Winfield Scott, head of the Union armed forces:

“If at any point on or in the vicinity of the [any] military line, which is now [or which shall be] used between the City of Philadelphia and the City of Washington, via Perryville, Annapolis City, and Annapolis Junction, you find resistance which renders it necessary to suspend the writ of Habeas Corpus for the public safety, you, personally or through the officer in command at the point where the [at which] resistance occurs, are authorized to suspend that writ.”<sup>208</sup>

Two days later, on April 29, the special session of the Maryland Legislature voted 53-13 against secession. This outcome was tempered, however, by the legislators’ uncertainty as to their power to secede from the Union—even among pro-secession delegates—and by the session’s concurrent vote to continue the railroad closure, indicating the Legislature’s basic desire to remain neutral in the war given Maryland’s close economic and social ties with the South. Moreover, federal troops continued to pass through Annapolis and other points in the state, ignoring additional removal requests from the Legislature. On May 13, after effecting repairs to the destroyed Baltimore bridges, General Benjamin F. Butler, Union commander in Annapolis—and architect of the troop route bypassing these severed links—deployed forces into Baltimore under declaration of martial law. Although this operation was swiftly ended by Winfield Scott, the process of *habeas* suspension in Maryland was now underway.

At two in the morning on May 25, a Union detachment arrested John Merryman at his home in Cockeysville, Maryland. Initially, the treason charges against Merryman were somewhat nebulous, and centered not on the destruction of bridges and telegraph wire, but on his membership in the state militia, identified in later court documents as “a company having in their possession arms belonging to the United States,” and demonstrating “armed hostility against the

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<sup>208</sup> <https://quod.lib.umich.edu/l/lincoln/lincoln4/1:563?rgn=div1;view=fulltext>, Vol. IV, p. 347

government.”<sup>209</sup> Upon his confinement at Fort McHenry, the garrison commander, General George Cadwalader, elaborated on these charges, stating Merryman had “made open and unreserved declarations of his association with this organized force as being in avowed hostility to the Government and in readiness to cooperate with those engaged in the present rebellion against the Government.”<sup>210</sup> Allowed access to counsel while imprisoned, Merryman issued a petition for *habeas corpus* to Supreme Court Chief Justice Roger B. Taney, who also served as circuit court judge in Baltimore. Taney responded to the writ the next day, ordering Cadwalader to produce Merryman in Baltimore on the 27th.

At this point, the first questions of executive *habeas* suspension authority, and of the extent of judicial decree power in challenging this, came to the fore. Cadwalader, with limited time to prepare a defense for his actions, dispatched his aide-de-camp, Colonel R. M. Lee, to the circuit court with a letter detailing that, under the terms of the April 27 orders given to General Scott, he was “duly authorized by the president of the United States, in such cases, to suspend the writ of habeas corpus, for the public safety.” This was in some ways an expansive reading of Lincoln’s authorization, which had concentrated specifically on “any point on or in the vicinity of the military line” running from Philadelphia to Washington, and was not intended as a blanket suspension of *habeas corpus* throughout Maryland—a power Lincoln was not yet certain he possessed under the Constitution. Despite the order’s vagueness, Cadwalader maintained “that in times of civil strife, errors, if any, should be on the side of the safety of the country,” and requested an extension of the judge’s deadline, “until [I] can receive instructions from the president of the United States, when you shall hear further from him.”<sup>211</sup> Instead, Taney declared

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<sup>209</sup> <https://archive.org/details/gov.uscourts.fedcases.17/page/n147/mode/2up> p. 145

<sup>210</sup> *Ibid*, p. 146

<sup>211</sup> *Ibid*, p. 146

Cadwalader to be in contempt of court for failing to bring Merryman to Baltimore, and ordered his arrest by U.S. Marshal and appearance in Taney's court the next day.

When the Marshal failed to gain entry to Fort McHenry, Taney acknowledged the powerlessness of the official to serve the arrest order—short of mobilizing the *posse comitatus* in support, which might spark further violence between civilians and the military—and issued a bench opinion on Merryman's arrest that “[T]he detention of the prisoner was unlawful, upon the grounds: 1. That the president, under the Constitution of the United States, cannot suspend the privilege of the writ of habeas corpus, nor authorize a military officer to do it. 2. A military officer has no right to arrest and detain a person not subject to the rules and articles of war, for an offence against the laws of the United States, except in aid of the judicial authority, and subject to its control; and if the party be arrested by the military, it is the duty of the officer to deliver him over immediately to the civil authority, to be dealt with according to law.” Given these determinations, the opinion held Merryman to be entitled to immediate discharge.<sup>212</sup>

Although Taney makes clear his own opinion on the need to release Merryman, he did not explicitly order Cadwalader or the Lincoln Administration to do so. The Chief Justice also pledged to provide a lengthier opinion addressing the *habeas corpus* suspension, which he ordered sent directly to Lincoln within the week “in order that he might perform his constitutional duty, to enforce the laws, by securing obedience to the process of the United States.” In this extended argument, Taney cited *habeas corpus* rights as defined under English law, and quoted earlier Supreme Court opinion outlined in *Ex parte Bollman*, concerning the definition of treason and the legality of military arrests for such: “If at any time the public safety should require the suspension of the powers vested by this act in the courts of the United States,

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<sup>212</sup> *Ex Parte Merryman*, April 1861 Term Case No. 9,487, 17 F. Cas. 145

it is for the Legislature to say so. That question depends on political considerations, on which the Legislature is to decide. Until the legislative will be expressed, this court can only see its duty, and must obey the laws.”<sup>213</sup> Taney also harkened to the Bill of Rights, most of all the tenets of due process, protection against unreasonable search and seizure, and the right to speedy trial. As exemplified by Merryman’s arrest, the Chief Justice held, “These great and fundamental laws, which Congress itself could not suspend, have been disregarded and suspended, like the writ of *habeas corpus*, by a military order, supported by force of arms. Such is the case now before me, and I can only say that if the authority which the Constitution has confided to the judiciary department and judicial officers, may thus, upon any pretext or under any circumstances, be usurped by the military power, at its discretion, the people of the United States are no longer living under a government of laws, but every citizen holds life, liberty and property at the will and pleasure of the army officer in whose military district he may happen to be found.” This opinion served as the clearest warning yet issued by a Supreme Court justice concerning military arrests, making clear Taney’s abhorrence for such practices and raising again the concerns of civil-military relations in the American form of republican government.<sup>214</sup>

The final intent and result of Taney’s *Merryman* arguments remains debatable. Neither the Lincoln Administration nor the military authorities in Maryland complied with the tenets espoused in the Chief Justice’s opinion; yet, as there was no actual demand for compliance in this opinion, the question remains as to whether the Executive Branch failed to perform its duties in accordance with legal principle. On July 4, addressing a special of session of Congress, Lincoln expressly embraced the “public safety” argument for suspension, asserting: “The whole of the laws which were required to be faithfully executed were being resisted and failing of

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<sup>213</sup> *Ex Parte Merryman*, p. 154

<sup>214</sup> *Ibid.*

execution in nearly one-third of the States. Must they be allowed to finally fail of execution, even had it been perfectly clear that by the use of the means necessary to their execution some single law, made in such extreme tenderness of the citizen's liberty that practically it relieves more of the guilty than of the innocent, should to a very limited extent be violated?" The "public safety" provision for suspension had been met, Lincoln argued, since "it was decided that we have a case of rebellion and that the public safety does require the qualified suspension of the privilege of the writ which was authorized to be made. As to whether Congress, not the Executive, held this power, "the Constitution itself is silent as to which or who is to exercise the power; and as the provision was plainly made for a dangerous emergency, it cannot be believed the framers of the instrument intended that in every case the danger should run its course until Congress could be called together, the very assembling of which might be prevented, as was intended in this case, by the rebellion." Thus Lincoln made the claim for temporary Executive suspension powers, basing this on a literal and legalist reading of the Constitution.<sup>215</sup>

Congress ultimately rejected this argument in the short term, failing to pass a bill authorizing future *habeas* suspensions and approving those already enacted. During these debates, a Baltimore grand jury formally indicted John Merryman on charges of treason, with additional, unambiguous charges of bridge and telegraph destruction intended to disrupt military communications and troop movements. After Merryman's release on bail on July 13, Taney refused to schedule any hearings in the case, delaying its process up to his death in October 1864. Following an additional three years of waiting, Taney's Republican successor as Chief Justice, Salmon P. Chase, formally dropped the case against Merryman in April 1867.

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<sup>215</sup> Lincoln, Abraham. *Abraham Lincoln papers: Series 1. General Correspondence. -1916: Abraham Lincoln, May-June 1861 Message to Congress, July 4, 1861, Second Printed Draft, with Changes in Lincoln's Hand*. May, 1861. Manuscript/Mixed Material. Retrieved from the Library of Congress, <[www.loc.gov/item/mal1057200/](http://www.loc.gov/item/mal1057200/)>. pp. 13-14

Meanwhile, military arrests continued in Maryland, beginning with a wave of such actions in Baltimore in September. The detentions in this sweep included Mayor Brown and other city officials, and twenty-seven members of the Legislature—forcing a cancellation of the session and its intended debates on secession—and Democratic Congressman Henry May, who would later push legislation requiring indictment or release of individuals held under *habeas* suspension, a key provision of the 1863 Habeas Corpus Suspension Act.<sup>216</sup> This Act, brought to the House in final form in mid-February 1863, explicitly authorized the President, “whenever in his judgment the public safety may require it...to suspend the privilege of the writ of habeas corpus in any case throughout the United States or any part thereof.” Should any *habeas* writs be filed on behalf of a prisoner, the Act held that “no military or other officer” could be compelled to answer the writ, as the prisoner was detained “by authority of the President,” and could not be convicted in suits for false arrest and imprisonment if acting in an official capacity.

Even with May’s amendments, the Act met strong resistance in the House; a portion of the membership left the chamber to prevent a quorum, until brought back by the Sergeant-at-Arms. On March 2, the day before the scheduled adjournment of the Thirty-Seventh Congress, a majority of the House (99-44) voted to send the bill to the Senate. Confirmation by voice vote in the Senate (33-7) followed early the next morning, after Democratic filibusters throughout the night, and President Lincoln signed the act into law immediately upon receiving it that same day. With this legislation, the Lincoln Administration formally codified its “public safety” rationale for *habeas* suspension, and the aggregation of executive powers in wartime.

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<sup>216</sup> White, Jonathan W. *Abraham Lincoln and Treason in the Civil War: The Trials of John Merryman*. Louisiana State University Press, 2011. p. 106



Although Taney's decision in *Ex parte Merryman* lacked an explicit release order, his opinions and actions in this case can be viewed as a legalist antiwar attempt to check Presidential war-making powers. Whether this action was intended as a strictly constitutionalist interpretation of limits on executive authority, or as judicial antiwar activism by a partisan Democratic judge, it nonetheless raised vital questions on the issue of *habeas corpus* in wartime, and forced Lincoln and the Republican-dominated Congress to take express steps to codify and legitimize the powers and scope of suspension. Furthermore, while later cases would extend the debate of executive *habeas* suspension powers, no determination was made during the Civil War as to whether the President has independent authority to suspend *habeas corpus*, a state of limbo that continues into the present day.

The next judicial challenge to *habeas* suspension, and the next stage of policy systemization, came on the heels of *Merryman* in fall 1861, in the case of *Ex rel Murphy v. Porter*. Although originating from much different disputes than that of Merryman's arrest, this case, and its precedent and results, had far-reaching consequences for *habeas* suspension and Union military policy, and produced a seismic alteration in the often-adversarial relationship between the Executive and Judicial Branches of the American government.

The case of *Ex rel Murphy v. Porter* concerned a by-then familiar yet still contentious issue in *habeas corpus* and general constitutional jurisprudence: The legal status of underage soldiers. Prior to the Civil War, established law held that no volunteers under eighteen years of age could enlist without parental consent, though enforcement remained spotty at best given inadequate and sometimes forged records. Drawing on examples from British and immediate post-Revolution law, American courts had formed a rough consensus that while minors could not legally enter contracts—such as volunteering for military service—they were still bound to them

in this instance, as departure without permission was desertion. At the same time, some arguments held, if an underage soldier deserted, court-martial and other punishments for this act did not apply, given that the soldier could not, legally, enter the service. Additionally, as historian Mark Neely has argued, there existed numerous precedents from the War of 1812, during which state judges—often Federalists opposed to the Democratic-Republican Madison administration that had opened hostilities—frequently issued writs of *habeas corpus* to release underage soldiers from the national army, on the grounds of contractual voidability in the case of minors, and supported by the near-sacred concept of personal liberty.<sup>217</sup>

These decisions would have important influence in the *Murphy* case. Following the official outbreak of hostilities in April 1861, hundreds of thousands of Northern male citizens responded to Lincoln's and their home states' calls for volunteers to the Union army. Yet even before the war's onset, underage volunteers had begun seeking writs of *habeas corpus* to escape military service in actual wartime. One of the judges repeatedly approached on this basis, William Matthew Merrick, sat on the federal circuit court in Washington, D.C. By October of 1861, Judge Merrick had issued nearly twenty *habeas corpus* writs releasing minors from the army, basing his arguments on the legitimate precedent of required parental consent.<sup>218</sup> The original petition in the *Murphy* case arose from one such issue, wherein John Murphy had asked the court to issue a *habeas* writ for his underage son James. Merrick responded to the writ on October 19, issuing it to Murphy's lawyer, Washington attorney D.D. Foley. Foley in turn chose to deliver the writ personally to the District of Columbia Provost Marshal, Brig. General Andrew Porter, rather than enlist the District Deputy Marshal, as was typical practice.

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<sup>217</sup> Neely, Mark E. *Lincoln and the Triumph of the Nation: Constitutional Conflict in the American Civil War*. University of North Carolina Press, 2011. p. 167-171

<sup>218</sup> White, Jonathan W. "'Sweltering with Treason': The Civil War Trials of William Matthew Merrick." *Prologue*, vol. 39, no. 2, 2007, pp. 26–36.

Although military authorities had respected previous *habeas* writs for underage soldiers from Judge Merrick, the Murphy petition brought new resistance, and confrontation with the Executive Branch. Considerable suspicion and animosity existed in the Republican-controlled Congress and the party itself towards the majority of federal judges in this period, tenured officials and appointees of past Democratic administrations. Confusion and uncertainty also reigned as to the authority of the courts and whether martial law was formally in place, given the recent suspension of *habeas corpus* in the District of Columbia at the time of Murphy's petition. Nevertheless, Merrick continued with the normal writ process. When D.D. Foley attempted to serve the writ on October 21, General Porter ordered his arrest and confinement, and then informed Secretary of State William Seward of his actions, requesting instructions. Seward replied that Porter should "establish a strict military guard over the residence of William M. Merrick": not a formal house arrest, in the Secretary's view, but an act of continuous surveillance that "may be sufficient to make him understand that at a juncture like this when the public enemy is as it were at the gates of the capital the public safety is deemed to require that his correspondence and proceedings should be observed." In addition to this effective confinement, Seward, at President Lincoln's order, suspended Merrick's judicial salary—a move violating Article III of the Constitution, guaranteeing both life tenure for federal judicial appointees, and "a Compensation, which shall not be diminished," during their term of office.<sup>219</sup>

These moves provoked sharp criticism from Merrick's colleagues on the circuit bench, Judges James Sewall Morsell and James Dunlop. On October 22, after Merrick issued a letter to the court informing them of his inability to appear, both judges decried what they saw as obstruction of due process on General Porter's part, with Morsell in particular demanding that

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<sup>219</sup> *U.S. Constitution*. Art. III, Sec. 1.

the Provost Marshal “appear before the Court and show cause why an attachment for contempt should not issue against him,” as well as explain the reasons for the armed guard on Merrick’s home. In Morsell’s view, “the Court has its duty to do, a duty the Judges are sworn to do, and that duty is the administration of justice according to law.” Furthermore, Morsell asked, “What is the real state of things? If martial law is to be our guide, we look to the President of the United States to say so.” The court concluded with a statement affirming that it did not “pretend to controvert the right of the President to proclaim martial law, but let him issue his proclamation. The Judges have their duty to do under the law,” and were liable for punishment if they did not carry it out.<sup>220</sup>

On October 26, the day of Porter’s appearance, Deputy U.S. Marshal George Philips submitted an affidavit to the court stating his inability to serve the writ of appearance to Porter, “because he was ordered by the President of the United States not to serve the same, and to report to your honorable Court that the privilege of the writ of *habeas corpus* has been suspended for the present, by order of the President of the United States, in regard to soldiers in the Army of the United States within said District, and that he respectfully disclaims all intention to disobey or treat with disrespect the orders of this honorable Court.” In the court’s final hearing on the matter on October 30, Dunlap and Morsell acknowledged that “The existing condition of the country makes it plain that [the] officer is powerless against the vast military force of the Executive, subject to his will and order as Commander-in-Chief.” Nonetheless, the judges denounced Lincoln’s move to “arrest the process of this Court, and to forbid the Deputy Marshal to execute it,” upholding Merrick’s attempt to serve the original writ as valid and lawful.

The key concerns, they argued, were that the Executive Branch had never formally

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<sup>220</sup> United States. Circuit Court, et al. *Reports of Cases, Civil and Criminal, Argued and Adjudged in the Circuit Court of the District of Columbia for the County of Washington. [1840-1863]*. W.H. Lowdermilk & Co., 1892. pp. 396-98

declared the suspension of *habeas corpus* in Washington—a power they did not concede to this arm of the government—and that such a suspension did not apply to the court’s previous actions in the Murphy case. Therefore, Dunlop argued, the President “assumes the responsibility of the acts of General Porter, set forth in the rule, and sanctions them by his orders to Deputy Marshal Philips not to serve the process on the Provost Marshal.” Judge Morsell, in his own opinion, protested “against the right claimed to interrupt the proceedings in this case,” and made clear his belief that “the law in this county knows no superior; That the supremacy of the civil authority over the military cannot be denied; that it has been established by the ablest jurists, and, I believe, recognized and respected by the great Father of the country during the Revolutionary War. That this Court ought to be respected by everyone as the guardian of the personal liberty of the citizen, in giving ready and effectual aid by that most valuable means, the writ of *habeas corpus*.” As Taney had in *Ex parte Merryman*, Dunlop and Morsell drew on stringent readings of the separation of powers for the basis of their arguments, and of the sanctity and “supremacy” of individual rights even in wartime.<sup>221</sup>

Ultimately, however, the judges conceded that “the issue ought to be and is with the President, and we have no physical power to enforce the lawful process of this Court on his military subordinates against the President's prohibition.” With this protest filed, the District Court ceased pursuing the writs against Porter, letting the Murphy matter lapse. Judge Merrick returned to the court in mid-November, after the removal of the military guard at his home, though arguments continued in the press as to his actual status, and disputes lingered over his withheld salary with the Treasury Department. In one especially harsh exchange in 1862, the Treasurer, Francis E. Spinner, unleashed new controversy with his remark that “while I would

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<sup>221</sup> *Reports of Cases*, p. 401

not discuss with him the question whether Congress had, or had not, the constitutional right to tax the salaries of United States judges, I would suggest to him, that it certainly had the right to abolish his damned rebel court.” Although Secretary of the Treasury Chase rebuked Spinner for these comments, and issued a formal apology to Merrick, Republicans in Congress—who remained strongly opposed to Merrick’s remaining on the bench—seized on the disagreement as an opportunity to carry out Spinner’s hinted option of abolishing the District of Columbia circuit, district, and criminal courts.<sup>222</sup>

On March 3, 1863, after considerable debate, Congress passed legislation declaring “That there shall be established in the District of Columbia a court to be called the Supreme Court of the District of Columbia.” This act consolidated the three above courts into a single body, removed the sitting judges—including Merrick—and led to their replacement with nominees handpicked by Lincoln for their Republican loyalties and national rather than local focus. Republican supporters of the bill had made little secret of their motives during debate. Massachusetts Senator Henry Wilson best encapsulated this sentiment in his remarks on the floor: “I have not, I say, the greatest faith in these courts. As to one of their judges, I mean Judge Merrick, I believe his heart is sweltering with treason. He has been under arrest since this rebellion broke out. I believe that during this session of Congress his home has been the resort where sympathizers with disloyal men have held councils, and secret councils, and I have good reason to believe this to be true.” Despite the constitutional validity of the new court’s establishment, given Congress’s authority under Article III to “ordain and establish” inferior courts helmed by approved presidential nominees, Democratic opponents of this move labeled it

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<sup>222</sup> White, p. 33

as an effort to merely unseat the circuit judges as punishment for their opposition—a view that, in light of Wilson’s statements, holds a measure of validity.<sup>223</sup>

The case and controversy of *Ex rel Murphy v. Porter*, as with Merryman, served as a judicial challenge to the Lincoln Administration’s *habeas* and military policy. Despite its affirmed lack of power to pursue the Murphy case, and to contest the actions against Judge Merrick, the District Court’s denunciations of executive overreach in both matters raised further questions in Congress and the public concerning *habeas* suspension and military authority over civilians. The intent behind the administration’s response to this controversy, in turn, can be viewed as both a clarification and streamlining of the D.C. court system’s in response to wartime demands. Taney and Merrick’s appointments by Democratic administrations (Andrew Jackson and Franklin Pierce, respectively) and Taney’s by-then infamous *Dred Scott* opinion also contributed to the suspicion with which they were viewed by the Republicans, and this party’s perception of their pro-Southern leanings. Thus, the creation of the Supreme Court of the District of Columbia was a partisan restructuring measure intended to prevent future opposition from the Judicial branch on *habeas* suspension and other wartime edicts that would have antiwar effect or intent.

In the second year of the Civil War, challenges to military detention and *habeas corpus* suspension in the North began to be paired with challenges to federal draft policy. One of the first cases epitomizing this combined form of antiwar opposition was that of *In re Kemp*, argued before the Wisconsin Supreme Court in the winter of 1862-63. Originally addressing the arrest power of military authorities in the aftermath of antidraft rioting, this case served as another judicial contest to the Executive Branch’s wartime powers, and it laid the groundwork for future

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<sup>223</sup> *Congressional Globe*, Thirty-Seventh Congress, Third Session (1862–63), p. 1139.

landmark decisions in *habeas corpus* law.

On July 1, 1862, President Lincoln issued a message to the governors of all Northern states, calling for 300,000 additional three-year volunteers to the Union Army. Though the rate of volunteers had sustained Northern forces to that point, battlefield defeats and indecisive campaigns throughout the summer of that year had caused these numbers to drop, prompting Lincoln's direct appeal. The President bolstered this call with his signing of the Militia Act of 1862 on July 17. Most notable for its core focus—authorizing recruitment of African-Americans as soldiers and war laborers—this legislation also established a quota of volunteers for each Northern state, and authorized Lincoln to call a draft of state militia to make up any quota shortfalls.<sup>224</sup> Initially, the July 1 call proved a success, netting 421,000 three-year recruits; volunteering as a whole, however, continued to decrease. On August 4, Lincoln published General Order No. 94, a second appeal for 300,000 recruits between the ages of eighteen to forty-five, to serve for nine months, and be mobilized through a special draft if the state proved unable to meet its quota.<sup>225</sup>

In the case of Wisconsin, the state quota of 11,804 recruits required mobilization in fifteen days—a task beyond the capability of the processing system for volunteers, and equally unlikely to be filled by draft measures. Nonetheless, Governor Edward Salomon ordered enrollments to begin immediately, which found and listed 127,894 eligible men. Each Wisconsin county then formed a draft commission, and the state draft itself prepared to open on November 10, 1862. During this process, popular and Democratic objection to the prospect of the draft grew

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<sup>224</sup> U.S., *Statutes at Large, Treaties, and Proclamations of the United States of America*, vol. 12 (Boston, 1863), pp. 597–600.

<sup>225</sup> *OR*, Ser. 3, Vol 2, pp. 291-92



steadily nationwide, prompting the Lincoln Administration to issue what became known as General Order No. 141 on September 24, 1862:

“Whereas it has become necessary to call into service not only Volunteers but also portions of the Militia of the States by draft, in order to suppress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the ordinary processes of law from hindering this measure and from giving aid and comfort in various ways to the insurrection:

“Now, therefore, be it ordered —

“First. That during the existing insurrection, and as a necessary measure for suppressing the same, all rebels and insurgents, their aiders and abettors, within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to rebels against the authority of the United States, shall be subject to martial law, and liable to trial and punishment by courts-martial or military commission.

“Second. That the writ of habeas corpus is suspended 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 the sentence of any court-martial or military commission.”<sup>226</sup>

One of the first tests of this new suspension order—and the administration’s wartime policy in general—came in the aftermath of the opening of the Wisconsin draft. On the morning of November 10, as the draft commissioner prepared to open the Ozaukee County drawing in the town of Port Washington, over a thousand antidraft demonstrators marched on the courthouse to protest this action. The demonstration rapidly devolved into violence, with some in the crowd seizing and beating the commissioner, while others set fire to the draft records on the courthouse steps; still more sacked and destroyed the commissioner’s residence and those of seven other pro-draft officials. Although the rioters dispersed by the day’s end, Governor Salomon ordered eight companies of troops to Port Washington, with the authority to arrest any citizens positively identified as taking part in the riot. Military officials detained over 130 men under this authority and brought them to Camp Randall, outside the state capital at Madison.<sup>227</sup>

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<sup>226</sup> *OR*, Series 3, Vol. 2, p. 587

<sup>227</sup> *Wisconsin Magazine of History* March 1919; v. 2, no. 3; p. 335

This group of detainees included Nicholas Kemp, a German immigrant and blacksmith, considered one of the leaders of the rioting demonstrators. While in the army's custody, Kemp managed to obtain the services of Edward G. Ryan, a prominent attorney and staunch Democrat who had emerged as one of the harshest critics of the *habeas* and war powers being accorded to the Lincoln Administration. Ryan submitted a *habeas* petition to the Wisconsin Supreme Court in early December, which was granted and forwarded in writ form to General W.L. Elliot, military commander of the Northwest Department encompassing Wisconsin. In its writ, the justices asserted that Kemp's actions violated state law, rather than federal or military, and thus fell under civil or criminal purview. Declaring his military arrest illegal, the Court ordered Kemp to be produced before it on December 16, 1862. General Elliott replied that the arrest had been carried out under Presidential mandate to suppress draft resistance, as formalized in Order No. 141, and received confirmation of this from Attorney General Bates, thus putting the state and Washington at legal loggerheads.<sup>228</sup>

When the Wisconsin Supreme Court convened in the case of *In re Kemp*, it considered three key points: the legality of Presidential *habeas corpus* suspension, whether martial law was declared in Wisconsin (therefore legalizing Kemp's arrest), and Presidential authority to alter law. The first—and weightiest—question was assessed by Chief Justice Luther S. Dixon, who centered his opinion on the “Public Safety” requirement for suspension outlined in Article I, Section 9 of the Constitution. Since Kemp's actions were no threat to “public safety” in this sense, suspension of *habeas corpus*—under Order No. 141, or other presidential decree—was illegal, nationwide or in Wisconsin.

Justice Orsamus Cole, focusing on the second question, contested the administration's

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<sup>228</sup> *In re Kemp*, 16 Wis. 382 (1863)

assertion that “the act of discouraging enlistments or resisting militia draft” fell under martial law. In Cole’s view, “all the guarantees of personal rights secured by the Constitution” would be nullified by allowing *habeas* suspension and military jurisdiction. While Cole affirmed that state militias could be drafted by presidential order, he joined his colleagues in a unanimous opinion that the state was not under martial law due to stable civil government and Wisconsin’s distance from the “theater of war”; thus, military authorities could not legally arrest and detain Nicholas Kemp.

Justice Byron Paine, addressing the third issue, declared Order No. 141 an unconstitutional change in law; only Congress had the power to make such changes, with the President intended only as executor even during times of war or other conflict. Paine also rejected Bates’ argument that Lincoln held the authority to “arrest those whom he believes to be friends of and accomplices in the insurrection”, and that the judiciary lacked the “political power” to “take cognizance of the political acts of the president, or undertake to reverse his ‘political decisions.’”: “On the contrary, that matter [the writ of habeas corpus] was deemed of such vital importance that the people regulated it in the fundamental law of their politics, and provided that ‘no person shall be deprived of his life, liberty or property without due process of law.’ The Constitution knows no ‘political’ process, no political cause of imprisonment.” This opinion pointed again to the unanswered concerns surrounding Executive wartime arrest powers raised in Taney’s *Merryman* decision. In Paine’s view, and that of the broader Wisconsin Supreme Court, in any and all arrests “[t]here must be ‘a process of law,’ a legal cause of restraint. And the power to determine what is a legal imprisonment, and to discharge from any that is illegal, is, except when the writ is suspended, a power conferred on the judicial department.” Through this highlighting of the sacrosanct division of powers among the branches

of American government, Paine issued a direct challenge to the war powers assumed by the Lincoln Administration.<sup>229</sup>

The Wisconsin Supreme Court's opinion refuted the Lincoln Administration's *habeas* suspension powers and challenged its authority to counter antiwar dissent. However, aware of the potential contest this would bring in the national Supreme Court—which Lincoln also dreaded, making him reluctant to appeal to this body—the justices made clear they did not issue their ruling with the intent of overturning these powers; nor did they order Kemp's release. In Cole's words, the court hoped that upon receiving the Wisconsin opinion, "They [the federal government] will undoubtedly review their action, or take such steps in the premises as may be consistent with justice," and would maintain public order.<sup>230</sup> The political affiliations of the justices at this period in the war suggest a possible bias in favor of the administration: Both Paine and Cole were staunch Republicans, while Dixon had lost Republican support prior to 1860, leading to his re-election on an independent ticket, though he maintained good relations with the party and his colleagues. Yet the justices' remarks, individually and collectively, indicate more conclusively that the Wisconsin Supreme Court aimed, in the Kemp case, to force a reconsideration of federal war policy, regardless of party loyalty. Rather than defer to Washington, or strike down suspension authority altogether, this body opted to press for modifications in the Union war effort, clarifying its constitutional limits while still enabling the Lincoln Administration to act against domestic threats.

The intent of the *In re Kemp* decision, therefore, was not explicitly antiwar in its analysis and recommendations on *habeas* suspension and military arrest policy. Its effect, nonetheless, challenged the Northern war effort in its efforts to establish legal protections for criticism of or

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<sup>229</sup> *In re Kemp*

<sup>230</sup> *Ibid*

resistance to the draft, barring their prosecution and punishment by military courts—a precedent that would be reaffirmed in the later *Ex parte Milligan* decision. The opinion’s stated need for appeal was averted with Congress’s passage of the Habeas Corpus Suspension Act of March 1863. This legislation authorized the Executive Branch to suspend *habeas* for the duration of the war, released all prisoners arrested in the initial 1861 sweeps, adopted Congressman Henry May’s proposed requirement of indictment or release of all future arrestees, and required lists of all such prisoners to be provided to judges where district and circuit courts remained functional.<sup>231</sup>

Challenges to *habeas* suspension and military arrest powers developed even after the presumed definitive authorization of these edicts in the March 1863 Act. Two such cases—*Skeen v. Monkheimer*, and *Griffin v. Wilcox*—appeared before the Indiana Supreme Court in 1863-64, at the height of Democratic, “Copperhead” and popular antipathy towards the war effort, and during the tenure of Justice and ardent Democrat Samuel E. Perkins.

In 1863, Samuel Perkins had held two terms as a Justice in the Indiana Supreme Court, and nearly seventeen years as a whole on the state supreme bench. According to the Justice’s biographer, Emma Lou Thornborough, Perkins demonstrated two core philosophical stances throughout his tenure: “an insistence upon strict construction of constitutional provisions and opposition to restraints upon personal liberty and the use of personal property.”<sup>232</sup> These positions lent themselves to a strong anti-abolitionist and anti-Republican viewpoint on Perkins’ part, as both movements gained prominence and electoral strength in the period 1830-1860. During the 1860 presidential campaign, Perkins denounced Republican aims—gradual or

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<sup>231</sup> *Habeas Corpus Suspension Act*, 12 Stat. 755 (1863).

<sup>232</sup> Thornborough, Emma Lou. “Judge Perkins, the Indiana Supreme Court, and the Civil War.” *Indiana Magazine of History*, vol. 60, no. 1, 1964, pp. 79–96. *JSTOR*, [www.jstor.org/stable/27789129](http://www.jstor.org/stable/27789129). Accessed 20 July 2020., p. 81

immediate emancipation, opposition to slavery's expansion in the western territories, protective tariffs, internal improvements, support for industrial growth—as unconstitutional, adhering firmly to the Jeffersonian-Jacksonian concepts of small central government, and entrenched state and individual rights. When conflict erupted in April 1861, he espoused negotiation and compromise as the sole means of avoiding war, placing himself on the Peace wing of the Democratic Party. His aversion to restoring the Union by military action also led Perkins to warn against what he believed would result from it: “a great consolidated military and enormously costly government, which will necessarily deprive us of many of the liberties we have enjoyed in the past.” This warning had a sharper edge with a promise that while “the ever Union-loving Democracy of the North” would stand by the war effort, this would only be the case “so long as the Administration determines to prosecute it constitutionally and for a constitutional object.”<sup>233</sup>

By 1863, in Perkins' view, the Lincoln Administration's prosecution of the war no longer had any “constitutional object.” Along with many Democratic colleagues at this time, he considered the Emancipation Proclamation blatantly unconstitutional, and a vindication of his prewar warnings of Republican illegality. The war effort appeared to be likewise floundering, leading to the Justice's renewed call for an armistice—a key plank of the Peace Democrats. Yet although Perkins often espoused Peace rhetoric at this stage, he would also periodically urge for a rapid end to the war through the defeat of the South, so that the people might “turn their attention to the question of reclaiming their lost liberties, and reestablishing the plain economical republican government which our fathers left us.”<sup>234</sup> From these examples, it is evident that Perkins, while firmly in the Democratic camp, did not ally himself entirely with either the Peace or War wing of this party. Instead, he chose to criticize and resist what he perceived as

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<sup>233</sup> Thornborough, pp. 82-83

<sup>234</sup> *Ibid*, 83

authoritarian actions by the Republican majority—at both the national level and that of his adopted home state of Indiana—from the traditional Democratic stance of inviolate constitutionalism and individual liberty. This position employed by-then familiar challenges to federal wartime powers being adopted by both Democratic factions and the “Copperhead” movement: constitutional limits on legislative and executive war-making policy, the illegality of military arrests of civilians, and the at best questionable suspension of *habeas corpus*.

Perkins’ strongest opposition at the state level arose over the issue of military arrests. Initially deriving authority from President Lincoln’s Order No. 141, the Union Army by 1863 now carried out arrests under the aegis of the Habeas Corpus Suspension Act, which allowed military officers considerable freedom to exercise arrest powers, to ignore *habeas* writs, and granted officers immunity from lawsuits or prosecution for these actions. To Indiana and national Democrats—including Perkins—military arrests of civilians served as the clearest example of tyranny from the Lincoln Administration. During its 1863 session, the Indiana Legislature passed resolutions demanding an end to these arrests, castigating them as “a flagrant violation of the rights of the people, as unwarranted by the laws of the Constitution.” When a special committee examined cases of arrest, the final report of this Democratic-controlled body determined that “those who spoke boldly, as freemen ought to do, were seized, deprived of liberty, and refused a trial, under the pretext that they had been guilty of disloyal practices.” Republican legislators countered that those “who are constantly talking of the habeas corpus, and are very much alarmed for fear its great liberty features will be violated—they need more patriotism,” and asserted the arrests were critical to the war effort.<sup>235</sup>

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<sup>235</sup> Thornborough, pp. 9-10; Indiana, House Journal (1863), 26; *Report and Evidence of the Committee on Arbitrary Arrests in the State of Indiana, Authorized by Resolution of the House of Representatives, January 9, 1868* (Indianapolis, 1863), 6, 8.; *Ibid*

Perkins' first judicial foray into this controversy came about in the arrest case of *Skeen v. Monkheimer*. In this matter, Jeremiah D. Skeen, a deputy provost marshal, had arrested Dederick Monkheimer, a civilian, for allegedly stealing a Union Army horse. When the warden of the local jail refused to hold Monkheimer on this charge, Skeen detained Monkheimer personally. Monkheimer subsequently obtained a *habeas* writ from the county judge, which Skeen promptly appealed to the state supreme court, on the grounds that his capacity as a deputy provost marshal negated any requirement respond to such writs from state or county judges. In the court's opinion, Perkins rejected this assertion, denying that civilians could be arrested with or without charge "at the mere pleasure of these military policemen." In addition, he argued, state and federal courts still operated without disruption in the state, and "Indiana has never been in a condition to justify, according to any established principle of law, the superseding of the judicial by the military power" concerning arrest and prosecution authority.<sup>236</sup>

A second arrest case in the fall and winter of 1864, *Griffin v. Wilcox*, produced a similar rebuke to military arrests, and another judicial challenge to the Executive Branch. Acting on superiors' orders, the provost marshal of Indianapolis, Captain Frank Wilcox, had enacted a ban on liquor sales to soldiers, which had led to the arrest of saloonkeeper Joseph Griffin for violation of the ban. Upon his release, Griffin filed suit for false arrest, claiming that he had not been under the jurisdiction of the military given the lack of Rebel presence or activity in Indiana. As in the *Skeen* case, Wilcox claimed he had acted under the chief provost marshal's orders. Also, he argued that the "summary police powers" of this official empowered him to make arrests that maintained order in the ranks, and prevent ill effects from "all persons interfering therewith," no matter their connection to the military.<sup>237</sup>

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<sup>236</sup> Thornborough, p. 10; *Skeen v. Monkheimer*, 21 Indiana Reports 1 (1863).

<sup>237</sup> *Ibid*, p. 11; *Griffin v. Wilcox*, 21 Indiana Reports 370 (1864).



In his rejection of Wilcox's argument on appeal, Perkins extended the opinions made in his decision in *Skeen*. The March 1863 Suspension Act granting immunity to military personnel, he stated, was unconstitutional, as Congress could not pass laws which prevented citizens from filing Fourth and Fifth Amendment violation suits. Military men were subject to orders, including bans on liquor; yet Griffin was not a soldier or other military-affiliated individual, and his actions and charges had not fallen under the definition of criminal in state or federal law. When force subjugated civil authority, Perkins allowed, Presidents had the power to govern through martial law and authorities. However, "in all parts of the country, where the Courts are open, and the civil power is not expelled by force," he declared, "the Constitution and laws rule, the President is but President, and no citizen not connected with the army, can be punished by the military power of the United States, nor is he amenable to military orders." Labeling military arrests and punishments of civilians as "a mode of applying lynch law; in short, mob violence," Perkins emphasized that "the Courts have at all times been open, and there are a sufficiency of them here, including those of the city, State, and United States, to meet the public necessities." In the capstone to his argument, the justice concluded that state court writs of *habeas corpus* could not be suspended by either the President or Congress, and further proclaimed that "Resistance to illegal arrests and mob violence is not necessarily resistance to the Government," and thus not punishable by military authorities.<sup>238</sup>

The Republican Party and press in Indiana swiftly condemned Perkins' comments, labeling them in one instance as "brilliantly copper plated sentiments," and "a monstrosity, a skeleton of treason clothed in judicial arguments."<sup>239</sup> In the landslide Republican victories in the October 1864 state elections, Perkins was ousted from the state Supreme Court along with his

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<sup>238</sup> *Griffin v. Wilcox*, (1864).

<sup>239</sup> Thornborough, p. 13; *Indianapolis Daily Journal*, February 3, 1864.

Democratic colleagues, bringing this body under Republican control; nonetheless, Perkins' opinions in *Skeen* and *Griffin* remained in place. By emphasizing the illegality of military arrests in peaceful regions, and the right of resistance to such arrests by civilians and state courts, these opinions drew directly from Democratic arguments for state sovereignty and against unconstitutional Executive and military action, thus challenging the Northern war effort on the home front.

Perkins' opinions also served as stepping-stones to more definitive *habeas* suspension and military commission decisions. The case in which several key commission and *habeas* opinions were delivered—*Ex parte Milligan*—arose in Indiana alongside *Skeen* and *Griffin*, yet the final decision was not handed down by the Supreme Court until April 1866, nearly a year after the Confederacy's defeat.

On October 21, 1864, four individuals—Lambdin P. Milligan, William A. Bowles, Stephen Horsey, and Andrew Humphreys—appeared before a military commission convened in Indianapolis, overseen by the commander of the Indiana Military District, General Alvin Hovey: the last defendants remaining in the wake of a sweeping campaign of arrests aimed at suppressing conspiracies by Midwestern “Copperheads” and others opposed to the Union war effort. All four, longtime Democrats, firmly supported the party's Peace wing, and had frequently criticized the Lincoln Administration and the war from its beginning, as well as Indiana's Republican governor Oliver Morton; Milligan, a lawyer, had even served as a defense counsel in previous military commission trials.<sup>240</sup>

The five charges read at the opening of the commission's trial encompassed: Conspiracy

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<sup>240</sup> Klement, Frank L. *Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War*. Louisiana State University Press, 1984. pp. 178-182

against the Government of the United States; affording aid and comfort to rebels against the authority of the United States; inciting insurrection; disloyal practices; and violation of the laws of war.” These actions, as alleged by the prosecution, aimed at “overthrowing the Government and duly constituted authorities of the United States; holding communication with the enemy; conspiring to seize munitions of war stored in the arsenals; to liberate prisoners of war; resisting the draft; . . . at a period of war and armed rebellion against the authority of the United States, at or near Indianapolis [and various other places specified] in Indiana, a State within the military lines of the army of the United States and the theatre of military operations, and which had been and was constantly threatened to be invaded by the enemy.”<sup>241</sup> On December 10, the commission sentenced Milligan, Horsey and Bowles to hang on May 19, 1865. Humphreys, against whom the prosecution’s evidence was less ironclad, received a sentence of hard labor for the war’s duration, eventually commuted to a form of internal exile within his home region of Greene County, Indiana, and prohibition against any further demonstrations of antiwar opposition.

The other three defendants remained in custody pending execution through the spring of 1865, while defense counsel filed *habeas* briefs in circuit court. Milligan’s petition in particular held that as a federal grand jury had convened in his case in January 1865 and adjourned without returning an indictment of treason or other charges, his arrest and continuing detention were unlawful under the 1863 Habeas Corpus Suspension Act. On May 16, Milligan and Bowles’ execution dates received postponements to June, and Horsey received a commutation to life imprisonment. Milligan and Bowles gained similar commutations from President Andrew Johnson on May 30. Following these modifications, Supreme Court Justice David Davis, who also sat on the circuit court encompassing Indiana, considered Milligan’s petition, in tandem

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<sup>241</sup> *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866), p. 7

with his circuit colleague Judge Thomas Drummond. To resolve the key question raised by the petition—whether civilians were constitutionally protected from trial by military commission—Davis and Drummond issued opposing opinions, thereby shifting the case to *en banc* consideration by the U.S. Supreme Court. This deliberation, which began nearly ten months later on March 5, 1866, considered three issues: whether the *habeas* writ requested by Milligan’s petition should be granted; whether Milligan himself should be released; and whether the Indiana military commission had jurisdiction to try and prosecute Milligan.<sup>242</sup>

The Court’s unanimous decision in *Ex parte Milligan* came down on April 3, with the majority opinion delivered in December by Justice Davis. Addressing the cases of Bowles and Horsey along with Milligan, Chief Justice Salmon P. Chase ordered that “a writ of *habeas corpus* ought to be issued, according to the prayer of the said petitioner,” that Milligan was eligible for discharge under the Suspension Act, and that “the military commission mentioned therein had no jurisdiction legally to try and sentence said Milligan in the manner and form as in said petition and exhibits are stated.” The decision also clearly outlined the three forms of permissible military jurisdiction: “One to be exercised both in peace and war,” designated as “Military Law” by the justices; “another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states or districts occupied by rebels treated as belligerents,” known as “Military Government”; “and a third to be exercised in time of invasion or insurrection within the limits of the US, or during rebellion within the limits of states maintaining adhesion to the National Government, when the public danger requires its exercise,” which was identified as “Martial Law Proper.” In short, these rulings prohibited military commission trials and executions of civilians where civilian courts

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<sup>242</sup> *Ex parte Milligan*, p. 8

remained open and functioning—as had been the case in Indiana—while still permitting detention under legally authorized *habeas* suspension, and barred the Executive Branch or Congress from authorizing such commissions.<sup>243</sup>

Chief Justice Chase and four other justices issued a concurrence to the majority opinion that nonetheless argued against the denial of Congressional authorization power. Under this view, Chase and his concurring colleagues argued, “the power of Congress, in such times and in such localities, to authorize trials for crimes against the security and safety of the national forces, may be derived from its constitutional authority to raise and support armies and to declare war, if not from its constitutional authority to provide for governing the national forces.” They conceded that the Indiana courts had still been “open and undisturbed in the execution of their functions” at the time of Milligan’s arrest, yet evidence of planned antidraft “Copperhead” uprisings and Confederate invasion during this period indicated these courts would be “wholly incompetent to avert threatened danger, or to punish, with adequate promptitude and certainty, the guilty conspirators.” Davis disagreed on this point, holding that the federal court system in Indiana “needed no bayonets to protect it, and required no military aid to execute its judgements.” Apart from this dispute, however, the Court’s decision reprimanded—albeit well after the fact—Executive efforts to curtail antiwar dissent in the Civil War and became bedrock jurisprudence concerning limits on military arrest and trial powers in wartime.<sup>244</sup>

The Northern judicial system provided an organized arena for antiwar sentiment to be expressed, through grassroots filings and bench opinions that sought to establish legal constraints on federal and military authority in peace and war. These constraints came down from both pro-Republican

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<sup>243</sup> *Ex parte Milligan*, p. 142

<sup>244</sup> *Ibid*, p. 142; 122

and pro-Democratic judges, indicating a general, nonpartisan desire in the judiciary to clarify executive versus legislative powers, and the scope of central government authority in wartime. Antiwar dissent in Union courts concentrated on wartime policy, rather than the war itself, and was not explicitly intended as such dissent, yet had this effect in its political and constitutional pressure on the Lincoln Administration.

Pro-Southern sentiment or ideological antipathy to Republicanism may have been a factor in certain decisions unfavorable to the Lincoln Administration, as in the case of Chief Justice Taney's *Merryman* opinion. Yet the ambiguity or lack of judicial orders to release individuals detained by the Union military or to revoke *habeas* suspension and other war-related policies argues against this being the preeminent motivation. Unlike the judges in the *Merryman*, *Murphy*, and *Kemp* cases, Indiana Supreme Court judge Perkins did aim at a more open challenge to *habeas* suspension in *Skeen* and *Griffin*, and to military powers over civilians during wartime in general. His rhetoric and rulings in these acts of judicial antiwar opposition, however, are not indicative of "Copperhead" sentiments, as maintained in contemporary or modern assessments. Rather, Perkins' opposition to the government's and army's arguments, and to the war, grew out of Jeffersonian-Jacksonian fears of unrestricted Executive and military authority, in line with that of both mainstream Peace and War Democrats. This basis is further supported by Perkins' acknowledgement of Presidential wartime powers regarding *habeas corpus* and other civil institutions, provided Congress had approved of such powers, and no impediments to civil courts and authority existed. Combined with the rulings in *Merryman*, *Murphy*, and *Kemp*, these positions became vital arguments in Northern *habeas* jurisprudence, and aided in the contemporary formalization of individual liberties and civil wartime authority as defined in *Ex parte Milligan*.

Analysis thus shows that by raising the issue of the constitutionality of Executive draft and *habeas* measures, as well as that of federal powers during an internal rebellion more broadly, the judicial debates in the North concerning these measures, intentionally or otherwise, brought antiwar pressure on the Lincoln Administration alongside the political dissent of the “Copperhead” and mainstream Democrats, and of the populace through antidraft riots and other grassroots actions. Even when not intended as an explicit challenge to war policy on antiwar or partisan grounds, these debates and their opinions influenced the war’s course and outcome by forcing Lincoln to modify such policy to assuage discontent, and prevent political and grassroots dissent from gaining additional legitimacy through the courts, thus posing even greater threats to the continuation and effectiveness of his administration and the management of the Northern war effort. Furthermore, the challenges and rulings relating to *habeas* and conscription measures—most of all through the cases of *Ex parte Merryman*, *In re Kemp*, and *Ex parte Milligan*—established clear limits and precedent with regards to military tribunal tribunals, executive suspension powers, and the sanctity of civil liberties in wartime. The judicial form of dissent, therefore, pursued by both judges and plaintiffs, cemented the judiciary as a forum for antiwar dissent in the United States and established precedent for protections against and limits on government suppression of this dissent.

In the seceded South, a pattern of litigation similar to that in the North took place, with plaintiffs often arguing for the same ideals as those in Union cases: state sovereignty, *habeas corpus*, and limited government and army arrest powers. The broad support among Southern state judges for sustaining the Confederate war effort by any means, as well as the patchwork nature of the Confederate judicial system, prevented the bulk of such antiwar opposition from achieving the same national notice or effect as in the North. One state court, however—the North Carolina

Supreme Court, headed by Chief Justice Richard M. Pearson—issued multiple rulings against the Confederate military and the Davis Administration on these points, thereby posing a significant antiwar judicial challenge to Southern wartime policy.



## Chapter 6

“[T]he Court is bound to exercise the jurisdiction, which has been confided to it ‘*as a sacred trust*,’ and has no discretion and no right to be influenced by considerations growing out of the condition of our country, but must act with a single eye to the due administration of the law, according to the proper construction of the acts of Congress.”

--NC Chief Justice Richard M Pearson, *In re Bryan*, June 1, 1863

### Supreme State Court: Richmond M. Pearson

In contrast to the Union, the Confederacy at its creation in 1861 had no established Supreme Court or separate judicial branch of government. Nor did it take meaningful steps to create such a branch during its existence, due to acrimonious debates between Richmond and the state governments as well as between President Davis and the Confederate Congress. As a result, the supreme courts of the seceded states retained considerable authority and sovereignty, with limited appeal or overrule power on the part of the national government. The state judges’ and courts’ virtually uniform support for Richmond’s wartime measures, however, particularly on the questions of conscription and *habeas corpus* suspension, prevented the majority of suits filed on such grounds from gaining national attention, and minimized the potential for confrontation with the Davis Administration.

The Chief Justice of the North Carolina Supreme Court, Richmond M. Pearson, is a notable exception to this near-*en banc* endorsement. His decisions regarding both matters created a serious challenge to Confederate war policy. In historian Mark Neely’s view, Pearson was not openly opposed to the Richmond government, yet his opinions were often politicized by Davis and other opponents, making him a “peculiar” rarity among Southern judges of the time, and notable primarily for that reason.<sup>245</sup> When viewed in the context of Pearson’s past views on secession, however, and his firm adherence to concepts of state and civil rights throughout the

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<sup>245</sup> Neely, Mark E. *Southern Rights: Political Prisoners and the Myth of Confederate Constitutionalism*. University Press of Virginia, 1999. pp. 64-79

Civil War and into Reconstruction, a different conclusion becomes evident: Pearson's opinions on *habeas corpus* and conscription were not only legalist defenses of the personal liberty esteemed by Southerners, but also his means of expressing anti-secession—and thus *de facto* antiwar—sentiments in his capacity as a Confederate judge. His redefining of resistance to Confederate wartime policy in terms of constitutional and individual liberties provided politically and legally acceptable means for Southern antiwar opposition to be expressed through the judicial system and maintained pressure on the Davis Administration regarding its increasingly unpopular wartime measures.

From the start of his career, Richmond Pearson demonstrated a varying level of contrast with the judicial and political norms of his state and region. Elected first to the North Carolina House of Commons in 1829, he was elevated to the state circuit court in 1836 and served as a founding faculty member of what would be known by the 1840s as Richmond Hill Law School. During this time, he became a strong adherent of the modernizing Whig Party—the heirs to the Federalists which his family had supported—and maintained this devotion well after the party's decline in North Carolina, most prominently in his opposition to the Nullification ideology of the early 1830s. His abilities as a judge and legal scholar led to his election to the Supreme Court in 1848 by the then-Democrat-controlled General Assembly, and to the post of Chief Justice ten years later. At the start of the Secession Crisis in December 1860, Pearson likewise opposed this movement, joining the bulk of North Carolina's voting population in rejecting secession in the state's February 28<sup>th</sup> referendum. When the state at last voted to secede in May 1861, the Chief Justice maintained his Whig-based opposition; however, there is no evidence he openly or subtly supported the peace movements that arose later in the war under William Holden, or open rebellion against the Confederate government. Like many other anti-secession Southern

conservatives, Pearson ultimately chose to remain in his position out of loyalty to his home state, and to legal and constitutional principle, rather than to the national government or any concrete form of Confederate nationalism.

One of Pearson's most strongly held beliefs—that of personal liberty, above all other rights and protections—found expression in one of the Chief Justice's first wartime cases: *In re Graham*, decided in August 1861. Much like the Northern case of *Ex rel Murphy v. Porter*, this matter concerned a soldier—Hamilton C. Graham—under the legal adult age of twenty-one, who had enlisted in a call-up of state troops in May of that year, and been arrested pending court-martial for violating orders. While in confinement, he appealed for discharge by writ of *habeas corpus*, on the grounds of his “infant” status and his being an orphan who had enlisted without the consent of his legal guardian.

In deciding the case, Pearson determined first that Graham was not legally an adult, and therefore the “contract” he had signed by enlisting in the army was invalid from its start, like any other signed by those under twenty-one. However, as Graham's recruiting officer had merely sought to fulfill the state's enlistment quota of “ten thousand soldiers or troops,” without indication as to the “men” needed for this purpose, Graham's recruitment contract could not “be treated as a nullity.” In addition, Pearson ruled, “[T]he contract, not being void but merely voidable, had the legal effect of establishing the relation of officer and soldier which existed at the time [Graham] was guilty of disobedience of orders.” Consequently, the judge held, “his act was unlawful, and his arrest and imprisonment lawful, and he cannot avoid the consequences by going behind his act and be allowed to impeach the validity of his enlistment until he has been discharged by the court-martial.” Otherwise, the difference between a void and a voidable contract—Pearson's paramount focus in the case—would be rendered meaningless. Would it be

tolerated, he asked rhetorically, “that one should insinuate himself into the condition of a soldier, and when by the disobedience of orders or other violation of duty the safety of the whole army has been endangered, evade the military jurisdiction by being heard to impeach the validity of his enlistment?” Should this happen, Pearson stated, “all order and discipline in the army would be subverted.” As such, in Pearson’s view, Graham could not gain a discharge on *habeas* grounds, and neither he nor his guardian could contest issue while Graham was in custody and willing to face a military tribunal.<sup>246</sup>

The narrow yet weighty points made by Pearson in the case—the difference between void and voidable contracts; the circumstances when military law outweighed civilian, and vice versa—demonstrate the Chief Justice’s highly literal and legalist emphasis when deciding constitutional questions. While Graham’s *habeas* suit was rejected, Pearson’s remarks in the case indicate his devotion to *habeas corpus* in cases pertaining to Confederate wartime policy and established the framework for many of his later decisions in cases concerning this constitutional right.

The core elements of these cases were the issues of conscription and *habeas corpus* suspension in the Confederacy—issues as divisive as in the Union. The Confederate Congress passed the first act in this vein after prolonged debate and resistance on February 27, 1862, granting President Davis authority to suspend the writ “in such cities, towns, and military districts as shall, in his judgment, be in such danger of attack by the enemy.” Limitations to this legislation included a two-month period restricting the suspension to Confederate authorities “or for offences against the same”, as well as a sunset clause mandating expiration of the suspension

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<sup>246</sup> *In re Graham* 53 N.C. 416 (N.C. 1861)

by thirty days after the next Congressional meeting.<sup>247</sup> On April 16, the Congress passed the first Conscription Act, which declared all males between the ages of 18 and 35 as soldiers for three-year terms, under officers and within units raised in their home states. Those under 18 and over 35 could provide substitutions, and the Act exempted those in critical occupations such as industry, agriculture, clergy, communication and logistics.

In September 1862, a second Conscription Act expanded the age of liable conscripts to between 35 and 45, and provided for additional exemptions—most notoriously in the form of the “Twenty Negro Law.” Popular outcry against this last provision—seen by average Southern citizens as transforming the conflict to a “rich man’s war, poor man’s fight”—would lead to its continuous amendment over the course of the Civil War. Despite several attempts at reform, however, the draft system remained a serious point of contention between the Confederate state and national governments. *Habeas* suspensions during the war’s first two years—reauthorized by Congress in October 1862—did not appreciably assist in bolstering conscription quotas and were often employed to identify and arrest Unionists as well as otherwise loyal citizens dissenting against this system. Furthermore, the number of court challenges to suspension and conscription increased dramatically, filed by individuals who had been selected for the draft despite obtaining exemptions, or who had been arrested by military officials for draft evasion or being absent without leave, due to their or their substitutes being reclassified as conscripts.

The bulk of such cases arose in early 1863, as the nature and infrastructure of the Conscription Acts became entrenched. Of these, twenty-seven came before the North Carolina Supreme Court during its June 1863 term, with Chief Justice Pearson often delivering opinions

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<sup>247</sup> Confederate States of America, and James M. (James Muscoe) Matthews. *The Statutes At Large of the Confederate States of America Commencing With the First Session of the First Congress, 1862: Carefully Collated With the Originals At Richmond*. Richmond: R.M. Smith, Printer to Congress, 1862. p. 11

on behalf of the entire three-person body due to the logistical and financial difficulty of seating the court *en banc* for all but the most crucial petitions.<sup>248</sup> From this term emerged Pearson's first decisions openly asserting the power of state courts vis-a-vis the Richmond government, tightly focused legalist arguments concerning conscription and substitution that articulated effectively antiwar views.

In the case of *In re Irvin*, the issue concerned the *habeas* writ of John N. Irvin, who had avoided service under the April 1862 Conscription Act by providing a substitute "36 years of age, and in all respects a fit and sufficient substitute for the war" in July of that year, thus gaining "an absolute discharge" from service. However, the September 1862 Act made all male citizens between 35 and 45 liable for service; therefore, the military and national government argued, Irvin's substitute was made into a conscript, and Irvin's discharge was thus no longer valid, making him also subject to conscription and arrest when he failed to comply.

Pearson rejected this argument, stating that "the act of September 1862, by its proper construction, does not embrace men who were before bound, as substitutes, to serve during the war." Calling attention to the exact wording and intent of the act, he declared that "It is true, the act in general words gives the President power to call into military service all white men, residents, etc., between the ages of 35 and 45; but this manifestly does not include men who are already in military service for the war, for this plain reason: there was no occasion to include them — they were bound before; and the true meaning and intent of the act is to increase the army by calling into service men who were not before liable." Citing "a decent respect for our lawmakers," Pearson stated that the courts should not come to the conclusion "that it was the intention, by the use of general words, to include within the operation of the act substitutes who

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<sup>248</sup> Neely, *Southern Rights*, pp. 65-66

were already bound for the war not for the purpose of affecting them, but for the indirect purpose of reaching parties who had furnished substitutes”—thereby “asserting a power which is at least doubtful, and certainly involves repudiation and a want of good faith.” This admonition has an element of disingenuousness, yet in fact better reflects the strict division of judicial and legislative powers espoused by legalists of Pearson’s type.<sup>249</sup>

Through the *Irvin* opinion, Pearson placed explicit limits on Confederate conscription, and chastised Congress for revoking its pledges to the citizenry who had legally avoided the draft. At the same time, however, Pearson declined to consider assertions by Irvin’s counsel challenging the Conscription Acts as unconstitutional: “It is not necessary for the purpose of this case to decide the question [...] Whether Congress has power to pass an act expressly making liable to conscription persons who have heretofore furnished substitutes and received an absolute discharge, is a question not now presented, and one which, I trust, public necessity never will cause to be presented, as it would violate natural justice and shock the moral sense.”<sup>250</sup> In this adroit legalist manner, Pearson stressed the need to clarify control of war powers by either the Confederate Congress or the President, while also constraining such powers on the basis of recognized and popular civil liberties.

This decision was not intended as an antiwar challenge to the Davis Administration, yet the reforms and restrictions it demanded were viewed as such by Richmond. Viewing *Irvin* as a nonbinding judicial intrusion into military affairs, Davis’s Secretary of War James Seddon pressured the North Carolina state government to dissuade its supreme court against future similar decisions. This in turn bolstered efforts by Governor Vance to prevent arrests of state residents, bringing the state into conflict with the national Confederate government and further

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<sup>249</sup> *In re Irvin* (1863), 60 N.C.

<sup>250</sup> *Ibid.*

hampering the enforcement of suspension and conscription edicts.<sup>251</sup>

Pressure against judicial review—and the national perception of Pearson as intransigent and perhaps disloyal—increased with the North Carolina Supreme Court’s *In re Bryan* decision, delivered shortly after *Irvin*. Like the petitioner in the previous case, J.C. Bryan, then between the required ages of 18 and 35 under the April 1862 Act, had provided a draft substitute then 39 years old, and gained a discharge in July 1862. In June of 1863, however, with the age extensions of the September 1862 Act in place, Confederate military authorities arrested Bryan as a conscript due to his substitute’s reclassification as a liable conscript; he then filed a *habeas* petition for release from military custody. On this occasion, Pearson presided over the case with his colleague Justice William H. Battle; the third member of the court, Matthias Manly, did not participate due to illness, though he would indicate his disagreement with the concurring opinions of the court.

Three key decisions emerged from the *Bryan* debate, with Pearson delivering the bulk of opinion and debate in each. First, the justices addressed the question of whether the North Carolina Supreme Court had jurisdiction to hear Bryan’s petition. Pointing to numerous prewar precedents, the Chief Justice asserted that the state courts possessed concurrent jurisdiction with national Confederate courts in issuing *habeas* writs and inquiring into military detentions. In a shot across the bow to the Davis Administration—particularly Confederate Secretary of War Seddon, by now one of his foremost critics—Pearson wrote that: “Congress has no power to make the Secretary of War a judge, or to authorize him to invest his subordinate officers with judicial power.” As Pearson saw it, “the circumstances growing out of the subject now under consideration demonstrate the wisdom of the framers of the Constitution in adopting the

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<sup>251</sup> Van Zant, Jennifer. “Confederate Conscription and the North Carolina Supreme Court.” *The North Carolina Historical Review*, vol. 72, no. 1, 1995, p. 58



principle by which Congress has no authority to exercise judicial power or to confer judicial power upon a department of the executive branch of the Government.” Military conscription officers were “naturally prompted to increase the numerical force of the army, and for this purpose so to construe the acts as to embrace as many persons as possible.” Given this demand, “as a protection to those citizens who are not embraced by the conscription acts, the Constitution provides a third branch of the Government in which is confided the trust of expounding the law and putting a construction” on Congressional acts.<sup>252</sup>

The second *Bryan* decision concerned the power of state courts to issue *habeas* writs. Pearson based his response to this in common and state law, extending back to colonial and English statutes: “Our Constitution vests the legislative power in a General Assembly; the executive power in a Governor, and the supreme judicial power in a Supreme Court; so that the establishment of a Supreme Court, without any words to that effect, necessarily and as an incident to its existence, by force of the Bill of Rights, of the Constitution, and the principles of the common law, invests it with power to inquire by means of this great Writ of Right into the lawfulness of any restraint upon the liberty of a free man, and if in establishing a Supreme Court the Legislature had in express terms denied the Court the power to issue this writ and prohibited it from so doing, such prohibition would have been void and of no effect.” Under this logic, Pearson concluded, the Court had the power to issue *habeas corpus* writs, and to investigate and determine the legality of “any restraint” on a citizen’s liberty. The third decision, given by Pearson alone—and drawing heavily from *Irvin*, which was delivered in tandem with the *Bryan* rulings—considered the question of liable persons being subject to conscription under the September 1862 Act. As in the prior case, Pearson held that Bryan was exempt from conscription

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<sup>252</sup> *In re Bryan* 60 N.C. 1 (N.C. 1863), p. 9

due to having provided a substitute required by the April 1862 Act, and therefore could not be enrolled under the terms of the September Act.<sup>253</sup>

Pearson evidently did not seek to express antiwar views or otherwise provoke direct confrontation with the Confederate Congress or the Executive Branch. His rulings stated that “there is no apparent intention of Congress to confer judicial power on the Secretary of War, and authorize him to establish inferior and superior courts, with the right of appeal to himself.” Were such really the case, he believed, “it would have been expressed in plain and direct terms, and the simple fact that the Secretary of War is authorized ‘to prescribe rules and regulations to carry the acts of Congress into effect,’ which power he would have had almost by necessary implication, surely cannot, when considered calmly and uninfluenced by collateral disturbing causes, be considered sufficient to confer a power on the Secretary of War totally at variance” with the principles of the Confederate government. This aggregation of judicial power would in turn, Pearson held, “exclude the jurisdiction of the State courts,” and “for the very same reason it would exclude the jurisdiction of the courts and judges of the Confederate States.” All cases would then be tried in “*military judicial tribunals*,” and “consequently the judicial department of the Government, both State and Confederate, is set aside, and the liberty of the citizen depends solely on the action of the War Department and its subordinate officers. Can this be so? Surely not.” Despite this disclaimer, however, the opinions delivered in *Bryan* provided concrete rationales for individuals to petition for *habeas corpus* in military arrest cases, and for state courts to reject both the reclassification of exempt individuals and the granting of arrest powers over citizens to executive or military officials.

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<sup>253</sup> *In re Bryan* 60 N.C. 1 (N.C. 1863)

The court's interpretations and issuance of writs on exemption grounds expanded considerably following *Irvin* and *Bryan*. In one of the first cases of this extension—*In re Ritter*, also decided in the June 1863 term—Pearson again considered the issue of substitution and the precise timing and circumstances of its applicability. The petitioner, Elias Ritter, had received a draft notice in February 1862, and soon acquired a three-year substitute, who was accepted in exchange for Ritter's discharge. Being between 35 and 45 when the April 1862 Conscription Act went into effect, Ritter was exempted from this decree, yet had been drafted under the September Act, and confined in camp by military authorities. Pearson, however, in delivering the Court's opinion, ruled that a draftee who had provided a substitute that had had been accepted was not liable for conscription under the terms of this Act. Additionally, "by a liberal construction" of the regulations issued by the Confederate War Department in October of 1861, substitutes could join companies still being formed as well as those already in active service.<sup>254</sup>

Broad exemption interpretation became Pearson's primary tool in granting *habeas corpus* writs, with only rare exceptions. One example of the latter—*In re Curtis*, decided in November 1863—demonstrates another instance of the Chief Justice's narrow legalism at work. In considering this case, Pearson denied the discharge of Samuel Curtis, a Baptist minister, who had qualified for exemption under this category, yet had agreed to serve as a substitute, and filed for *habeas corpus* after being labeled a conscript and arrested. The Chief Justice held that as Curtis had become a substitute and carried out the agreement by traveling to the military camp where he was arrested, he was no longer entitled to exemption. Pearson's opinion also declared, in language that would be adopted in later decisions opposing suspension, that: "A perusal of the exemption act will satisfy anyone that the exemption of editors of newspapers, ministers of

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<sup>254</sup> *In re Ritter* 60 N.C. 76 (N.C. 1863)

religion, physicians, shoemakers, blacksmiths, etc., was made, not for the purpose of conferring a special privilege on individuals, but for the benefit of the people at home, who required the services of physicians, shoemakers, blacksmiths, millers, etc., to enable them to live, and the services of editors and ministers of religion” to provide moral and intellectual support.

The intent of exemption, Pearson highlighted, “was to keep an army in the field, and at the same time enable the people at home to support themselves; for this purpose a man is left out of the army to discharge ministerial duties for the people, another to attend them in sickness, another to make shoes, and another to sharpen their plows.” He also pointed to the danger and absurdities inherent in unregulated exemption policy: “Suppose the men left out of the army for these purposes are tempted by large sums of money to quit their vocations and go into the army as substitutes: the army gets a man and loses one; the people lose the services of one, without any equivalent. The army gains nothing, the people worse, and the individual pockets \$5,000 or \$10,000! The law would not be true to itself if it did not *proprio vigore* prevent such a perversion of its policy,” and provide for tightly controlled application of substitution.<sup>255</sup>

Despite such favorable exceptions, the rulings of Pearson and the North Carolina judiciary in general continued to clash with the war policies of the Richmond government. Governor Zebulon Vance, like Pearson a fervent supporter of state autonomy and individual liberties, attempted to defuse a possible confrontation—as well as potential uprisings by state citizens angered by conscription—with an appeal to President Davis for peace negotiations with the North. Instead, on December 28, 1863, on Davis’s urging, the Confederate Congress formally revoked substitution; the following January, individuals who had provided substitutes were declared liable for service. On February 17, 1864, with manpower shortages now seen as critical,

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<sup>255</sup> *In re Curtis* 60 N.C. 180 (N.C. 1863), p. 106

all past conscription laws were repealed, and replaced with decrees requiring all white males from 17 to 50 to serve, keeping those under 18 and over 45 in-state as home guard militia; restricting exemptions to specific critical government and local occupations; and allowing for the impressment of free blacks and slaves for military labor, with slaveowners to be compensated. Additionally, Davis's powers of *habeas corpus* suspension were re-authorized, with expiration set for August 1864, and expanded language explicitly targeting avoidance of military service.<sup>256</sup>

The passage of these new edicts did not halt or appreciably reduce filings for *habeas* writs by liable citizens. The case of *Ex parte Walton*, decided by Pearson alone "in vacation" in February 1864, serves as an example of this, and simultaneously as the chief Justice's most blatant defiance of Richmond on the issue of conscription. Similar to previous filings in the wake of the September 1862 Act, the petitioner, Edward S. Walton, had obtained a discharge after providing a substitute, yet was still considered a conscript under the 1864 Act, and arrested. Returning to the "contract" argument outlined in *Graham*, Pearson found that the Confederate Congress created a contract with the principal when accepting a substitute and lacked the authority to revoke its own agreement even under wartime powers. The Chief Justice ruled that should it gain this authority, the Congress "may repudiate its bonds and notes now outstanding, a renovated currency being necessary to support the army, or it may conscript all white women between the ages of 16 and 60 to cook and bake for the soldiers, nurse at the hospitals, or serve in the ranks as soldiers, thus uprooting the foundations of society; or it may conscript the Governor, judges, and legislatures of the several States, put an end to 'State Rights, and erect on the ruins a 'consolidated military despotism.'" On this basis, Pearson ordered Walton's release, and ruled the 1864 law requiring principals to serve after obtaining discharges unconstitutional,

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<sup>256</sup> Van Zant, pp. 68-69

directly challenging the entire Confederate draft system.<sup>257</sup>

The looming standoff produced by this decision was temporarily defused when the Richmond government agreed to adhere to the *Walton* decision pending its appeal to the full North Carolina Supreme Court. During the June 1864 term, Justice Manly and Battle, ruling for the majority in *Gatlin v. Walton*, overturned Pearson's decision, ruling the February 1864 acts to be constitutional under the "enumerated powers" and unlimited war powers believed delegated to the central government in both the United States and Confederate Constitutions. Battle separately ruled that acquiring substitutes did not entail a contract between the principal and the Confederate government, and that Richmond had the power to revoke the agreement, whatever its nature, given its powers of eminent domain.<sup>258</sup>

Pearson, the lone dissent, reissued his *Ex parte* opinion, with an additional warning against the sacrificing of principle for wartime expediency: "My brothers Battle and Manly have put the decision on the only ground which is unanswerable, 'necessity knows no law'; for if the courts assume that the Government may act on that principle, there is no longer room for argument. We may put aside the 'books' and indulge the hope that when peace again smiles on our country law will resume its sway. '*Inter arma silent leges.*'" Critics pointed to this as further evidence of Pearson's Unionist or disloyal sentiment. As with his prior opinions, however, Pearson's warning makes clear his primary intent of raising serious constitutional questions concerning Confederate war policy, regardless of their effect on the war's ultimate outcome.<sup>259</sup>

Pearson's judicial dissent had the indirect effect of increasing in tensions between North Carolina and Richmond over the February acts. While the *Walton* opinions remained on appeal,

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<sup>257</sup> North Carolina. Supreme Court. *North Carolina Reports: Cases Argued And Determined In the Supreme Court of North Carolina*. Raleigh, N.C.: Reprinted by the state, 1901. v. 60, p. 222

<sup>258</sup> *Gatlin v. Walton*, pp. 212-213

<sup>259</sup> *Ibid*, 222

the Davis Administration informed Governor Vance that the conscription acts would continue to be enforced in North Carolina and all Confederate states, regardless of judicial opposition. Acting in accord with the February laws, Davis also again declared *habeas corpus* suspended, with the revocation in place until late August 1864. Like the new conscription acts, this suspension was intended to curb exemptions and avoidance by liable citizens, and explicitly targeted suspected disloyal judges such as Pearson by narrowing the possibility of achieving discharge on *habeas* grounds. Vance, though not a peace advocate to the level of William Holden—now his chief rival for the governorship—nonetheless held strong antipathy towards Davis concerning conscription and *habeas* suspension, and he replied that Pearson’s decisions would be supported by state troops if necessary. In this way, the Chief Justice’s opinions widened the rifts between the Confederate state and national governments, raising the specter of domestic political and perhaps even armed conflict which would fatally undermine the Southern war effort.<sup>260</sup>

Pearson’s decisions in the second half of 1864—the court’s final wartime sessions—again show a principled intransigence on the *habeas* and conscription debates, with rare exceptions as before. In the Chief Justice’s view in *In re Roseman*, *habeas* suspension merely excused the military from responding to writs provided they had certified under oath that the petitioner was a prisoner, and did not prevent their issuance. Thus, as the act targeted those “attempting to avoid military service”, petitioners—who, as Pearson stated, were not doing so by “keeping out of the way, taking to the woods”—were still entitled to file for *habeas* writs, and state courts were empowered to issue them.<sup>261</sup> Pearson expressed this strict interpretation of the 1864 Acts again in the June 1864 term, with his detailing of two recognizable forms of *habeas*

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<sup>260</sup> Van Zant, pp. 68-69

<sup>261</sup> *In re Roseman* 60 N.C. 368 (N.C. 1864)

writs: civil (in which petitioners were held on non-criminal charges) and criminal (those accused of an explicit crime). Pearson applied this logic in *In re Cain*, holding that the petitioner’s application for exemption on the grounds of substitution was a civil claim. Congress, under the Constitution, could not suspend *habeas* except in the event of “rebellion or invasion, when the public safety may require it”, phrasing which Pearson attributed to criminal matters; therefore, Cain was entitled to discharge.

Another challenge to Richmond came about in the case of *Johnson v. Mallett*. In a rare show of unanimity, Pearson joined with Battle and Manly in ruling that under the February 1864 Acts, state officers could not be conscripted by the Confederate government as they “were exempted in the following terms: ‘The members of the several State Legislatures and such other State officers as the Governors of the respective States may certify to be necessary for the proper administration of the State Government.’”<sup>262</sup> According to the Tenth Amendment, the court held, all non-delegated powers—in this instance, the power to issue exemptions—devolved to the state governments: “It is clear beyond all question that, within the limits of the written Constitution which the people of the State have imposed on the Government, the legislative power is the supreme power in the State. Among its vast powers of legislation, which are unlimited and unrestricted except by the Constitution, is that of ascertaining what officers, in addition to those specified in the Constitution, are necessary for the efficient management of the affairs of the State, and then of appointing the officers and prescribing their duties.”<sup>263</sup> Under this argument, therefore, the state governments were empowered to add as many draft-liable citizens as possible to state payrolls—such as the petitioner William D. Johnson, a Raleigh police officer—without interference from the Confederate Congress. This ruling stirred even greater controversy than

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<sup>262</sup> *Johnson v. Mallett*, 60 N.C. 410 (N.C. 1864), 264

<sup>263</sup> *Ibid*



those of the *Walton* case, and, as Jennifer Van Zant has determined, led to speculation that the North Carolina government carried out a slew of enrollments to exempt between 5,000 and 10,000 state citizens.<sup>264</sup>

Pearson and the North Carolina Supreme Court continued to hear cases through December of 1864, yet the disputes sparked by *Mallett* and other previous opinions did not recur. One notable instance of deference to Richmond was the December case of *Casey v. Robards*, in which a free black man, James Casey, had claimed exemption from conscription due to signing a 99-year deed of service to a white man, making him a *de facto* slave. Manly, writing for the court and with Pearson's concurrence, ruled that a person—black or white—could not enter slavery through pledge of service for any length of time—and, furthermore, if Casey were in fact a slave, he had no right to file suit for *habeas corpus*. No further cases were argued after this period: The Union Army's advance into the Carolinas after the "March to the Sea" in Georgia prevented the justices from sitting, *en banc* or "in vacation." Nonetheless, Chief Justice Pearson, with rare concurrences from his colleagues, had adeptly articulated his opposition on principle to executive wartime overreach, and his deep commitment to the ideals of state and individual rights which had propelled him to remain on the bench in the face of secession and denunciation. In his assessment of Pearson—included as an essay in his 1999 compilation study *Southern Rights: Political Prisoners and the Myth of Confederate Constitutionalism*—Mark Neely concurs with many of Jennifer Van Zant's conclusions, with one noteworthy exception. Pointing to the near-uniform support for Richmond's *habeas*, conscription, and other war policies from other southern state courts, Neely views the North Carolina Supreme Court as an anomaly, all the more so given the significantly greater number of decisions (46 in the period of June 1863 to

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<sup>264</sup> Van Zant, p. 73

December 1864) issued by this body compared to its neighbors (two cases each in 1863 and 1864, to use Neely's example of the Mississippi High Court of Errors and Appeals). Though Neely concedes the mounting difficulties these bodies faced over the course of the war—lack of infrastructure and Union occupation of judicial districts being the most prominent—he appears to view the lack of decisions challenging Richmond as evidence that these courts, and by extension Southerners as a whole, “did not bridle more than normally at restrictive measures taken by the government to fight a war for national existence.” Even more than liberty, Neely argues, Southerners in the majority desired order, and were willing to set aside the former if the latter could be preserved—hence the deference to Richmond by state courts on questions of wartime policy.<sup>265</sup>

While the Southern desire for order is apparent in the controls established regarding slavery and planter dominance of the region's economy and political hierarchy, there is less concrete evidence for this overriding desire concerning the civil rights of white, non-elite Southerners. The *habeas* and conscription cases argued before Pearson's court were not brought only out of simple self-interest by average citizens such as in *Graham* or *Irvin*, or the desire by state officials for political advantage such as in *Johnson v. Mallett*. As in the North, the concepts of individual liberty and of protection from perceived or real unjust government actions were considered fundamental elements of democracy, with the judiciary an essential arena of defense for these rights. In the absence of a Confederate Supreme Court, the state courts served as the highest judicial bodies in the South, and their decisions—particularly Pearson's, as the war ground on—were thus accorded greater significance, nearly to the national level. When legislation passed establishing conscription or restricting *habeas corpus*, citizens and affirmed

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<sup>265</sup> Neely, p. 79

peace or merely anti-Davis factions opposed to these laws sought recourse with the judiciary, even at the latest stages of the war, and employed Pearson's rulings for political gain, allowing *de facto* and *de jure* antiwar dissent to gain wider appeal and influence throughout the South. Whether motivated by personal or principled opposition, these petitions indicate a strong popular desire to see white Southern civil liberties preserved, rather than the overriding inclination towards order that Neely suggests.

Van Zant's analysis, by comparison, considers the broader context in which Pearson's opinions were issued, and dispels the notion of their having significant impact upon Confederate war policy. In her view, the inefficiencies and failures of the Confederate conscription system created crippling troop shortages, more than any rulings by the North Carolina Supreme Court could possibly have achieved. Also, with the lack of a Confederate Supreme Court, there existed no definitive rulings on the Conscription Acts, or the precise powers of draft officials. Thus, Van Zant argues, Pearson felt a personal need to remain on the Court despite his anti-secessionism, in order to protect an independent judiciary that would in turn preserve states' rights and individual liberties. While any personal motivations behind his opinions, and their effect upon actual conscription quotas and efforts, is debatable, Pearson's rulings on *habeas corpus* and Confederate conscription concretely reflected both a strong bias in favor of states' and personal rights, and a devotion to stringent interpretation of legal statute and precedent. Viewing Pearson's opinions, it is still somewhat unclear how much these were influenced by his prior anti-secessionism. Yet it is strongly evident, as Van Zant has indicated, that he placed his home state and legal principle above allegiance to the Confederate government, and to any broader ideal of Southern nationalism.

In short, analysis shows that Pearson's decisions, based on his constitutionalism and strict

legal conservatism—rather than treason or dyed-in-the-wool Unionism, as asserted by his contemporary critics—provided judicial legitimacy and support to antiwar sentiment in both North Carolina and on the Confederate national political stage. This combination produced a *de facto* antiwar stance in his decisions on the issues of *habeas* and conscription, despite little verifiable connection to William Holden’s peace movement in North Carolina or any other such groups in the nation, and cast him as a dissenter in the eyes of the Davis Administration. Pearson’s emphasis on principle and personal freedoms reflects the primary Achilles’ heel of the Confederacy’s bid for independence: Any measures that even appeared to infringe on the powers of the states or the rights of the individual, no matter how necessary or pragmatic, faced serious unpopularity and challenges, thereby hobbling Richmond and the Confederate war effort politically, judicially, militarily and socially.

Due to the enlarged authority of the Southern state courts in the absence of a Confederate Supreme Court, their decisions had an outsized effect on the Southern war effort, encouraging citizens and state officials to challenge Davis’s war policies in both the judicial and political arena. This opposition, to the point of effectively state government-sanctioned draft evasion through payroll enlargement, and the threat of armed resistance if Pearson or his opinions were targeted by Richmond, cost significant political capital to address, weakening the Davis Administration further and widening rifts between the Confederate state and national governments as the war approached its end. Though the judicial debates and standoffs resulting from Pearson’s decisions ended with the Confederacy’s defeat in 1865, his arguments on the limits of government power in wartime are additional examples of the critical role of the American judiciary in expressing, defending and codifying antiwar dissent.

The decisions reached in Union and Confederate courts regarding *habeas corpus*, individual rights, and civil-military relations resulted from actions taken by both governments against supposed treasonous actions or speech by citizens. In numerous circumstances, such actions were undertaken out of fear of larger conspiracies, threatening the war effort or the stability and even existence of the national government in Washington or Richmond. In the Union, this fear most often took shape in the form of so-called “dark lantern” societies, allegedly or verifiably seeking to impede the draft and other government and military edicts on moral or political grounds, or to launch uprisings in favor of the Confederacy and even the independence of particular regions, in order to escape what such groups saw as despotism on the part of the Lincoln Administration. Episodes of localized, frequently community-based obstruction and violence, seeking to prevent the enforcement of conscription or to express rising discontent with Republican-controlled state and federal war measures, similarly provoked often draconian actions by military leadership, and exacerbated prewar social, racial, and economic tensions and divisions within these locales. Such incidents and organizations—however distorted or exaggerated by contemporary officials and citizens, and later historians—demonstrate the level and types of organized and diffuse direct resistance to Union wartime policy.

## **Chapter 7**

“Judea produced but one Judas Iscariot, and Rome, from the sinks of her demoralization, produced but one Cataline, and yet, as events prove, there has arisen together in our land an entire brood of such traitors, all animated by the same parricidal spirit, and all struggling with the same relentless malignity for the dismemberment of our Union.”

--Judge Advocate General Joseph Holt, October 8, 1864

In comparison to the border regions and within the Confederacy itself, organized demonstrations of antiwar dissent were relatively sparse in the Northern states. The clearest examples of such direct action came about through the rhetoric and actions of what contemporaries and modern historians have termed “dark lantern societies”: secretive groups composed mainly of “Copperhead” Peace Democrats, which actively campaigned for peace with the South, or defied the Lincoln Administration and military authority, with stockpiled arms and alleged Confederate assistance. The most prominent such groups were the Order of American Knights, and the Order of the Sons of Liberty, formed at the midpoint of the war and drawing inspiration and membership from the prewar, heavily pro-Southern Knights of the Golden Circle.

### **Patriots & Traitors: “Dark Lantern” Societies**

The foundations for the “dark lantern societies” existed prior to Fort Sumter and the first North-South military engagements. The first, most organized predecessor was the Knights of the Golden Circle, founded in 1854 by Virginian doctor George W.L. Bickley. This “secret” society sought to promote slavery’s expansion—through military filibustering expeditions—into Mexico and the Caribbean, thus creating a “golden circle” of slave-holding territories that would safeguard the “peculiar institution.” Branches, or “castles”, of the K.G.C. developed across the South during this period, and extended into the western territories as well, though its Northern presence did not extend significantly beyond southern Missouri and the Ohio Valley. By 1860, the escalating secession crisis led many members to turn away from the “golden circle” strategy

to one centered on defending slavery within the Southern states, under the Confederacy's banner.

As the war's first months unfolded, rumors and speculation regarding the K.G.C's support among the nation's military and political leadership proliferated in the North, implicating members of President Buchanan's cabinet, and even former President Franklin Pierce, whose denial of any association would be vindicated during the war. Other reports alleged eighteen thousand members in California preparing for revolt under General Albert Sidney Johnston, then commander of the Pacific Department and soon to join the Confederate Army. Bickley himself, by now virtually ostracized from the group and leaning towards service in the Confederate medical corps, added to the controversy with an open letter calling for volunteers to a pro-Southern force in Kentucky, and claiming a state membership of eight thousand. These claims led to the publication of K.G.C. "exposes" by Kentucky and Ohio newspapers, based on membership materials acquired by Unionists posing as interested citizens. Although more the product of suspicion and hyperbole by their authors, and Bickley's penchant for self-aggrandizement, than any serious investigation or estimate, these details provoked further fears of potential treason and uprising in the border and Midwestern states, and would play an important role in later military probes and "revelations" concerning the by-now dwindling K.G.C. and later suspected conspiracies.<sup>266</sup>

Though the K.G.C. incited more paranoia than actual rebellion, its existence and goals inspired the formation of other, ostensibly more paramilitary "dark lantern societies" in the Midwest. The Organization of American Knights had the closest links to the Knights, even inheriting a portion of its membership. Officially founded in 1856 by New Orleans lawyer Phineas Wright, the O.A.K existed solely on paper for the next seven years, intended as a

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<sup>266</sup> Klement, Frank L. *Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War*. Louisiana State University Press, 1984. pp. 13-18

combined “secret” Masonic-like society with elaborate handshakes, passwords and degrees, and, like the K.G.C, as a colonizing or filibustering outfit with goals of expanding and defending slavery within and beyond the South. In February 1863, having become a vocal Democratic critic of the Lincoln Administration—leading federal authorities in St. Louis to compel him to swear an oath of allegiance to the Union—Wright revived the O.A.K. with the help of a handful of associates in Missouri. Largely shorn of its prewar filibustering ideals, this new form of the party cast itself as a counter to the multiplying pro-Republican Union leagues and as a defensive armed wing of the Democratic Party, seeking to safeguard voting and other civil rights from military or Republican encroachment.<sup>267</sup> Wright’s recruitments to the O.A.K. during this period included Harrison H. Dodd, an Indiana Democrat and leader of the party’s Indianapolis membership who had also clashed with military authorities over the previous two years, and had come to believe in the same threats to freedom of speech, voting, and other civil rights as the O.A.K. founder. In September 1863, Wright awarded Dodd the title of “grand commander” of the O.A.K.’s Indiana state council, while Marion County Peace Democrat William M. Harrison received the mantle of “grand secretary” and Peace Democrats Lambdin Milligan, David T. Yeakel, and William A. Bowles—the last of whom was a vehement defender of slavery, with presumed ties to the defunct K.G.C.—were also inducted as members.

This apparent solidifying of the O.A.K.’s upper echelon belied its continuing problems with membership, funding and skepticism or outright hostility from the Democratic Party. By the time of its next “convention” in Chicago, in December 1863, infighting and accusations of dishonesty and fraud against Wright severely weakened the organization, prompting Wright to issue what he called an “Occasional Address of Supreme Commander,” under the pseudonym of

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<sup>267</sup> Ibid



“P. Caius Urbanus.” Part call to arms, part anti-Republican screed, and part exaltation of Jeffersonian democracy, this “Address” to the “brothers” of the O.A.K. described in florid detail the “extraordinary condition of our beloved country” under Lincoln’s “unprincipled and desperate faction”; urged them to stand fast against the military authorities and the Union Leagues; and to spread the “gospel” of states’ rights and Democratic ideals to all members. Above all, Wright implored, the Order’s ranks must swear the following oath<sup>268</sup>:

“That I will at all times, if need be, take up arms in the cause of the oppressed, in my own country first of all, against any monarch, prince, potentate, power, or government usurped, which may be found in arms and waging war against a people or peoples who are endeavoring to establish, or have inaugurated, a government for themselves, of their own free choice, in accordance with and founded upon the eternal principles of truth! This I do promise, without regard to the name, station, or designation of the invading power, whether it shall arise within or come from without [...] That I will never take up arms in behalf of any monarch, prince, or government which does not recognize the sole authority of power to be the will of the governed, expressly and distinctly declared, nor in any cause or service as a mercenary.”

This appeal, like much of Wright’s past rhetoric, fell far short of encouraging O.A.K. unity, recruitment, or direct action against the draft and the Union government. Effectively disbanded by the December 1863 meeting, Dodd and others of the organization’s few remaining official members convened in New York City on February 22, 1864, as part of a larger gathering of Peace Democrats, who sought to develop strategies that might prevent the all-but-assured War Democrats’ anointment of General McClellan as the party’s Presidential candidate. By the end of this meeting, these last adherents abandoned the Order of American Knights, making its dissolution permanent, and inaugurated its successor, under Dodd’s leadership: the Order of the Sons of Liberty.

In the first years of the war, Dodd had discounted the rumored strength and influence of the K.G.C. and other “dark lantern” societies, labeling these claims as Republican propaganda.

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<sup>268</sup> *OR*, Ser. 2, Vol. VII, 284

At the same time, he had conceded that in the face of any attacks or pressure on Democratic voters to support the war effort, “there might be an order [,] not for any treasonable purposes, but to keep the powers that be within their constitutional limits,” and to protect the constitutional right to vote as they wished.<sup>269</sup> To Dodd and other Peace Democrats, the passage of the Enrollment and Habeas Corpus Suspension Acts in March 1863, the issuance of General Order No. 38 in April banning all criticism of the war effort, the military’s actions against Vallandigham and the *Chicago Times*, and outbreaks of violence against Democratic rallies by pro-Republican citizens and soldiers provided ample evidence of the need for such an order. The disastrous Union defeat at Chancellorsville and growing white anger at the Lincoln Administration’s recruitment of black soldiers and support for emancipation, reinforced this attitude, shifted Dodd, Bowles, and other Midwestern Democrats to the “Copperhead” Peace faction, and had made easier their recruitment to the O.A.K. in August of 1863.

Given the nebulous state of the O.A.K., Dodd, Bowles and their Democratic colleagues who favored some form of self-defense body to protect supporters—and possibly more open acts of defiance against Union war policy—had operated at first as effectively free agents, undertaking separate courses of action up to the O.A.K.’s demise. Dodd at first confined his actions to the political arena, making regular speeches denouncing military interference with state elections and Democratic events, and assailing Indiana Governor Oliver Morton for condoning and even encouraging these violations of civil rights. His arrest for making “treasonous” remarks in his speech in Rensselaer further encouraged his belief in what he came to call “mutual protection societies”, which in turn boosted his promotion efforts on behalf of the O.A.K, alongside budding plans for his own such group. Bowles, in turn, had already gone

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<sup>269</sup> Klement, p. 95; *Indianapolis State Sentinel*, January 28, 1863

further than many “Copperheads”, having met with Confederate officer and agent Thomas Hines in June 1863 to discuss providing men and arms in support of an impending raid into Indiana by Confederate cavalry under John Hunt Morgan. Although no formal collaboration was arranged, the panic engendered by “Morgan’s Raid”—whose troops crossed much of southern Indiana and reached into northern Ohio, before being captured en masse—prompted Governor Morton and Department of the Ohio commander General Burnside to raise and divert tens of thousands of state militia to confront the raiders, and to view the region’s more vocal antiwar citizens with greater suspicion.

Like the O.A.K., the Sons of Liberty’s goals centered on defense of civil rights—voting, *habeas corpus*, assembly and speech—believed to be threatened by Republican-passed conscription, censorship, and *habeas* suspension measures. Discreet negotiations with Clement Vallandigham—by then settled into Canadian exile—led to the former congressman being named as “Supreme Commander” of the movement. Organization of the group, however—including the drafting of the OSL’s resolutions and main charter, *The Constitution and Laws of the Supreme Grand Council*—as well as all propaganda campaigns, fell under the purview of Dodd and his closest associates, who did not often coordinate or even agree with Vallandigham or each other as to the O.S.L.’s aims. The paramilitary element of this group now had greater emphasis and support than in its previous iterations in the K.G.C. and O.A.K., yet this proclaimed “self-defense” arm was still centered on political and physical protection of citizens—especially Democrats—affected by the draft, military arrests and suspected voter suppression, rather than armed revolt in favor of ending such policies.

Like the mainstream Peace and War Democrats, the O.S.L. opposed all Republican policies enacted during the war. In an address to the “Grand Council of the State of Indiana” at

its formation in February 1864, Dodd laid down the core resolutions of the new organization: “resistance to usurpation” of the people’s right “to alter or abolish their Government whenever it fails to secure the blessings of liberty”; the centrality of civil liberties in the Constitution, as well as the voluntary nature of the Union, with war to restore it being “disunion, final, irretrievable”; the rejection of the “peace at any price” charge leveled against the “true Democracy”, alongside protest “against the brutal doctrine of war for revenge, for plunder, or the debasement of our race to the level of a negro”, with a concurrent pledge to seek a peaceful settlement whose terms “will look only to the peace and welfare of our race”; and the strict limitation and interpretation of government powers in war and peace.<sup>270</sup>

The resolutions further denounced war to restore the Union as “a delusion, involving a fearful waste of human life, hopeless bankruptcy, and the speedy downfall of the Republic,” recommending “a cessation of hostilities upon existing facts, and a convention of the sovereign States to adjust the terms of the a peace with a view to the restoration of the Union, entire if possible, if not, so much and such parts as the affinities of interest and civilization may attract.” Any effort by military authorities “to abridge the elective franchise, whether by introduction of illegal votes [,] or the attempt by Federal officers to intimidate the citizen by threats of oppression” would be met with resistance. Dodd’s address concluded with a pledge by all Sons of Liberty to “support and maintain the Constitution of the United States, and of the State of Indiana,” and a vow that the O.S.L. “will maintain, peaceable if we can, but forcibly if we must, the freedom of speech, the freedom of the press, the freedom of the person from arbitrary and unlawful arrest, and the freedom of the ballot box, from the aggression and violence of every

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<sup>270</sup> Pitman, Benn. *The trials for treason at Indianapolis, disclosing the plans for establishing a North-western confederacy. Being the official record of the trials before the Military commission ... containing the testimony, arguments, finding and sentence.* Cincinnati, Moore, Wilstach & Baldwin, 1865. Web. Retrieved from the Library of Congress, <[lccn.loc.gov/09032208](http://lccn.loc.gov/09032208)>, p. 319

person or authority whatsoever.” With these resolutions, Dodd echoed much of the rhetoric and fears of Republican overreach and tyranny invoked by mainstream Democrats. Yet his printed exhortations did not translate into active resistance, and was further hampered by the Democratic Party leadership, which still rejected the O.S.L. as a fantasy at best, and a “Copperhead” Peace spoke in the wheel of Democratic chances in 1864 at worst.<sup>271</sup>

The rebuff by the national party, little to no success in attracting new members, and the internal disunity and lack of clear political agenda—beyond Dodd’s resolutions—that hamstrung the O.S.L. did not prevent widespread rumors, fears and exaggerations of the group’s numbers and aims. Efforts by the Union military to expose alleged “Copperhead” conspiracies had been ongoing since the first year of the war, beginning with the Knights of the Golden Circle. By 1864, reports from informants and infiltrators had combined with rumors and other questionable evidence to produce what became known as the “Northwest Conspiracy”, chiefly authored by General William Rosecrans, commander of the Department of the Missouri, and Colonel John P. Sanderson, Provost Marshal General of the same region.

When correspondence with Lincoln—who remained highly dubious of any organized “Copperhead” plots—failed to produce a serious federal response to the alleged conspiracy, Sanderson released, in July 1864, a 22-page expose later titled “Conspiracy to Establish a Northwestern Confederacy”. In this document, Sanderson attributed the formation of the O.A.K.—by then already disbanded—as well as its “Occasional Address” to Clement Vallandigham, and alleged direct links between the group and the Confederate military in the war’s western theater. His account alleged direct links between the group and the Confederate military in the western theater, and claimed gross membership overestimates of half a million—

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<sup>271</sup> Pitman, p. 320

spread across Ohio, Indiana, and Illinois—with special symbols, passwords and hand signals used to identify fellow members. The Lincoln Administration largely dismissed Sanderson’s expose as fantasy, and the Democratic press ridiculed it as a “cry wolf” scare.<sup>272</sup> Republican papers, however, reprinted the expose in detail, and Sanderson arranged for copies to be forwarded to political allies, including Governors Yates of Illinois and Curtin of Pennsylvania. Through this effort, the “Copperhead Northwest Conspiracy” fears became entrenched in the Northern public and many Republican political circles, and the “dark lantern” societies came under even greater scrutiny and suspicion.

Alongside investigation and speculation concerning the defunct O.A.K., military authorities in the Midwest continued to observe, infiltrate and at points imagine the threat posed by the successor Sons of Liberty. On June 30, 1864, Indianapolis *Journal* published a report by Brigadier General Henry B Carrington, commander the District of Indiana in the Department of the Ohio, detailing the results of these efforts. Drawing on documents and testimony from soldiers and spies infiltrating the group—most of all Felix Grundy Stidger, who had risen to the post of “Grand Secretary of Kentucky”, as described in his later account, *Treason History of the Order of the Sons of Liberty*—this report reiterated and applied many of Sanderson’s O.A.K. claims to the O.S.L., reviving rumors of a pro-Southern “Northwest Conspiracy” headed by Vallandigham, then seeking influence and possibly redemption at the Democratic National Convention due to convene in August. While still exaggerating and in many instances imagining the scope of the O.S.L.’s support and ambitions, Carrington and Stidger’s expose discredited Dodd’s organization, and further diminished the “peace-at-any-price” Democratic faction in Indiana and the Midwest.

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<sup>272</sup> Klement, pp. 89-90; *Illinois State Register*, August 4, 1864

Even reduced to paper and hearsay, the O.S.L., its proclaimed or suspected members, and the broader “dark lantern society” fear, remained a primary focus among the Midwestern military and Republican leaderships. On August 20, 1864, while Dodd attended the Democratic National Convention in Chicago, a party of soldiers raided his Indianapolis office, and a search of the premises uncovered a cache of ammunition and four hundred revolvers, purchased by Dodd and fellow Indiana Peace Democrat John C. Walker. Military authorities believed these arms were intended for an uprising by “Copperheads”, with the specific goal of freeing Confederate POWs held at Camp Morton; Dodd and Walker asserted at trial that these were private purchases, meant solely for self-defense—perhaps a reference to their resolution to defend Democratic votes at the ballot box, as Klement has argued.<sup>273</sup> Shortly after his return from the Convention on September 3<sup>rd</sup>, military leadership arrested Dodd. Ten other prominent Democrats alleged as O.S.L. members—including Lambdin Milligan, William Bowles, Stephen Horsey and Andrew Humphreys—were also arrested, and brought to trial by military commission on September 19<sup>th</sup>, 1864, on charges of conspiracy, providing aid and comfort to the enemy, inciting insurrection, “disloyal practices”, and violation of the laws of war.<sup>274</sup> The trial, and the extensive coverage and published details of the supposed O.S.L. conspiracy by Republican papers, elevated public and military fears of revolt or invasion by Confederate raiders and sympathizers to new heights. Republican critics again tarred the Democratic Party with the “Copperhead” brush, a view reinforced by the party’s adoption of a “peace without conditions” campaign plank at the Chicago convention. The guilty sentences handed down in December—including Dodd’s,

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<sup>273</sup> Klement, pp. 162-164

<sup>274</sup> Pitman, pp. 1-19

despite his having escaped to Canada during trial—marked the end for the O.S.L., and for organized, direct antiwar resistance in the North.

Despite receiving new attention in recent years, the exact scope and impact of the “dark lantern societies” remains contentious. Several sources at the time—including some directly involved in the infiltration and exposure of “dark lantern” groups—labeled these organizations as far-reaching conspiracies, stretching across the Midwestern states, and threatening both military efforts and domestic morale and order. This perception remained entrenched well into the 20<sup>th</sup> century, until a series of re-examinations by Frank L. Klement beginning in 1960. In *Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War* (1984), Klement discounts much of the evidence provided by military sources who infiltrated and otherwise investigated the threat of “Copperhead” uprisings, viewing the facts concerning such societies as “embroidered with many rumors and much hearsay, some incidental, most contrived.” Highlighting the intense partisanship, fear-mongering and distrust between both Democrats and Republicans, Klement argues that the latter party’s “crusade for conformism” prompted frequent violence and calumny against citizens who questioned or criticized the war effort, thus creating an ideal atmosphere for suspicions of larger conspiracies.

Jennifer Weber’s *Copperheads: The Rise and Fall of Lincoln’s Opponents in the North* presents both a direct counter to Klement’s arguments, and a modernized re-examination of the elements and effects of Northern antiwar sentiment. Where Klement dismisses the existence of “Copperhead” conspiracies against the Union, Weber—with a declared caveat of relying on election results and impressions drawn from period sources—considers the Union army’s deployment of troops to maintain “order” in the Midwest as evidence of such conspiracies, or the real threat of such. She stresses that bona fide, non-treasonous antiwar sentiment “was not the



peripheral issue that many Civil War histories have made it out to be,” and suggests that it became so prevalent as to threaten Lincoln’s reelection, and periodically forced caution or reversal in the administration’s wartime policy-making.

Stephen Towne’s *Surveillance and Spies in the Civil War: Exposing Confederate Conspiracies in America’s Heartland*, examines another possible source of information about “dark lantern” groups”: their infiltration and exposure by Union Army intelligence agents. Many of the reports and memoirs from these agents appear to give credence to the fear of “Copperhead” revolts in the Midwest and elsewhere. In Towne’s view—often made with comparisons to the Edward Snowden-NSA controversy at the time of writing—military intelligence-gathering and infiltration exposed and prevented a vast number of pro-Confederate conspiracies and planned uprisings, which the Lincoln Administration downplayed or did not provide enough resources to combat. With this argument, Towne directly challenges the arguments made by Frank Klement and other 20<sup>th</sup>- and 21<sup>st</sup>-century historians, asserting that their findings ignore or gloss over the active disloyalty and even pro-Confederate sentiment that lay beyond these groups’ antiwar activities.

The threat of uprisings and other, potentially large-scale antiwar actions by the Knights of the Golden Circle and other antidraft and antiwar groups was indeed greater than Klement and other historians have suggested. However, examination of the records, accounts, and similar evidence of the period shows these organizations were not as widespread or well-supported or -equipped as Towne posits. In addition, the motivations for the formation of direct antiwar resistance groups were by no means solely political, with the aim of overthrowing the Union government or creating a separate “Northwest Confederacy” or similar separatist enclave, as military, government, and Republican Party sources claimed. Despite Towne’s argument, the

advocates of this direct resistance maintained their status as Union citizens, even when allegedly or definitively conspiring with the Confederacy to achieve their goals. As William Blair argues in *With Malice Toward Some*, violent acts against the Union, or conspiracies toward such, were more often individualistic or small group-oriented. Such plots primarily aimed at resisting conscription, as well as a perceivably unjust federal government that had adopted abolition as a war aim, restricted political and individual liberties, and threatened the established social order based on white supremacy.<sup>275</sup>

Although the “dark lantern societies” did include members with goals of armed uprising against the Union—such as Bowles—or who stockpiled arms should they be personally threatened—such as Dodd—the evidence available indicates they were ultimately not intended as pro-South conspiracies or otherwise anti-Union rebel organizations. This was primarily due to reluctance among members for such actions, lack of sufficient adherents or resources, or commitment to Union, if not to its Republican state and federal governments. The “Northwest Conspiracy”, created by Sanderson and Rosecrans when their evidence failed to persuade Lincoln, was largely the result of the general paranoia surrounding “dark lantern societies” and criticism of the Union war effort. Klement’s view, however, that the ambition and incompetence of these officers was the primary motivation behind their reports of widespread, budding direct antiwar action is less supportable.

The fears sparked by Morgan’s Raid and other Confederate victories at the front magnified estimates of the O.S.L.’s size and goals and added fuel to pro-Republican propaganda warning of potential uprisings, leading to the arrests of Dodd, Bowles, Humphreys, Milligan and Horsey. Political ambition and bias among Republican investigators and officials were factors in

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<sup>275</sup> Blair, William Alan. *With Malice toward Some Treason and Loyalty in the Civil War Era*. The University of North Carolina Press, 2014. pp. 211-216

these actions, and the Indianapolis and Camp Douglas trials, yet not to the same level as the simple anxiety and dread that permeated the Midwestern states at this time in the war. The clearest evidence of the latter's greater influence is the inflated membership and arms numbers claimed by Dodd and other O.S.L. leaders, and detailed by Carrington and Stidger, who present them as fact without apparent deeper investigation. The Union military's infiltration efforts were successful in uncovering arms caches and similar evidence which raised the possibility of a "Copperhead" uprising in the Midwest, as Towne details. Yet Towne, in contrast to Klement, fails to fully explore the mentalities and rationales among individual "Copperheads" and even mainstream Democrats that prompted such activities, appearing to accept these—like Carrington and Stidger—as all the necessary proof of a wider, regional conspiracy.

In short, analysis reveals that the O.S.L. and its other "dark lantern" predecessors, despite their short-lived and minimal impact, are nonetheless the strongest examples of organized direct antiwar action in the North. Their formation centered on philosophical and personal objections to expanded federal powers over citizens, restrictions on inviolable personal rights such as *habeas corpus*, and the social and racial upheaval they believed would accompany federal adoption of emancipation and black civil rights. In this philosophy, they mirrored the political dissent of the "Copperheads," and their memberships were often intertwined. However, their clearest intended purpose was as paramilitary-style resistance in the event of feared dictatorship, not as planned, full-fledged anti-Union or pro-Confederate conspiracies. Though their rumored and proven presence in the Midwest stimulated more panic and exaggerated military response than actual rebellion, the fears surrounding their existence and alleged goals were instrumental in shaping the Lincoln Administration and Union military's handling of other, often more localized expressions of antiwar dissent elsewhere in the North. Above all, the inflation of their threat—in

the hopes of breaking imagined conspiracies and advancing personal careers—by loyal prowar Unionists acting as infiltrators and local military officials ironically magnified the effects of the subsequent crackdowns targeting suspected or affirmed dissenters. This, in turn, diverted more troops, resources and political energies from the front lines to the home front, and brought to the fore the judicial disputes concerning legal dissent and the constitutional powers of the executive and military in wartime.

### **Fight & Flight: Union Grassroots Antiwar Resistance**

Where the Order of the Sons of Liberty and similar “dark lantern societies” formed from planned efforts and the ambitions or resentments of individuals opposed to the Lincoln Administration’s policies or goals, other methods of direct resistance—draft evasion, riots targeting draft officials or proceedings, and similar violent and nonviolent acts against Union war policy—were widespread in the North from the beginning of the war, with regional or localized community support. Though frequently spontaneous in nature and motivated by reasons more personal and moral than political, this local resistance exerted considerable influence on the Lincoln Administration’s management of the war, as well as its responses to dissent and its overall policy goals.

The first example of this influence came about in the wake of the Baltimore Riots of April 19, 1861. In this incident, pro-Southern citizens who opposed war to restore the Union and resented the transit of federal forces through the city, harassed and taunted troops of the Sixth Massachusetts Infantry en route to deployment in Washington, D.C. As the Sixth marched to the railway, the demonstrators escalated to hurling bricks and attacking with pistols, leading several soldiers to fire into the crowds, sparking an all-out riot. By the end of the violence, four soldiers had been killed, and thirty-six wounded, while twelve rioters were dead and several hundred

other civilians injured. Though tensions had existed for months between the new Republican Administration and the secessionists in Baltimore—to the point of prompting Lincoln’s pre-inauguration midnight trip through the city, to avoid a suspected assassination plot—this was the first act of violence by civilians against federal troops, and the first direct action in protest of the newly-begun Civil War. The pro-secessionist and Lincoln Administration responses to the Baltimore Riot (see Ch. 5) demonstrates the disturbance’s impact on Maryland’s position in the war, and on executive and military policy concerning order and individual rights in wartime.

Direct antiwar action was not confined to the internally divided Border States. Though support for the war remained strong throughout the North through the first two years of the war, the mounting casualties and the legislation passed to continue the war effort—above all the March 1863 Conscription Act—brought new outrage and resistance, most often in the form of draft evasion. One of the earliest examples of this opposition was demonstrated in what came to be called the Holmes County Rebellion, or Holmes Draft Riots, in June 1863.

Under the terms of the Conscription Act, federal provost marshals held powers to draft military-eligible men should their home state fail to meet its quota of volunteers, building on the earlier Militia Act of 1862 authorizing state-level action to fill this demand. In Holmes County, Ohio, a mob attack on a draft official in early June led to the arrest of four suspects, whom a second posse of citizens promptly liberated. Roughly a thousand residents then gathered and constructed a fort—allegedly equipped with four cannons—to oppose enforcement of the draft in the county. This potential uprising quickly subsided on June 17, when a force of federal troops arrived from the state capital at Columbus, dispersing the resisters with two wounded—a speedy outcome that led to its being labeled the “Battle of Fort Fizzle.” The four original suspects surrendered the following day, in a deal brokered by local Democratic officials, including former

Congressman and army captain Daniel Leadbetter. Eighty residents faced charges of crimes ranging from assault to resistance of the 1863 Act to treason, though only one guilty verdict resulted—farmer Lorenzo Blanchard, on whose property the fort had been erected—with a sentence of six months at hard labor pardoned by President Lincoln.

The unpopularity of the draft, most of all its provisions for substitution or a \$300 fee for commutation, was the primary motivating factor in the “Battle of Fort Fizzle.” The intent of the resisters was not the overthrow of the Ohio or federal government, but a demonstration of popular anger at the enforcement of the Conscription Act. Although protests would continue to be made against the draft in Ohio, “Fort Fizzle” was one of the very few violent incidents of such opposition in the state’s wartime period, pointing to a moderately stable level of support for the war itself, if not for the national and state governments overseeing its efforts. The relatively light response and judgements by federal authorities, in turn, demonstrates pragmatism and cautious leadership on Lincoln’s part, out of awareness and concern over what a draconian response to this display of dissent against the Act would spark elsewhere in the North. In short, even such a minor antiwar, antidraft incident had significant repercussions for Union wartime policy.

Other direct antiwar actions against the draft in the North did not occur with the minimum of violence demonstrated in Holmes County. As the policies of substitution and commutation became more entrenched, alongside the broader war aim of reunion with emancipation, popular anger towards the draft like that which inspired the “Battle of Fort Fizzle” rose concurrently, with additional ire aimed at blacks and abolitionists. The largest and costliest expression of this resentment in the Civil War—and in American history—were the New York City Draft Riots, over the period July 13-16, 1863.

The first violence broke out on the morning of Monday, July 13, aimed at the Ninth

District provost marshal's office in Manhattan. As this site began drawing names for the draft quota, a group of nearly five hundred protestors marched on it from the Twenty-Second Ward and ransacked and set the building ablaze, destroying or scattering the draft records. Firefighters arriving to quell the blaze also faced attack, and rioters severed telegraph wires to cut off reports of the violence and forced out police deployed to the district, leaving them only able to maintain order in the southern, downtown areas of the island. Over the following two days, rioters attacked more sites throughout the city: police stations, the mayor's residence, several abolitionist homes, and many black homes, businesses, and an asylum for black orphans. By Wednesday, July 16, a portion of the rioters dispersed when provost officials halted the draft, and state militia and federal units began to be deployed throughout Manhattan. By Thursday evening, nearly 4,000 troops were in place, breaking up the last mobs. The number of civilians killed is estimated at 120, most of whom were black, and over 2,000 injured; property damage was tallied at between \$1-5 million.

Prior to the Civil War, New York City had been strongly linked with the slave South through finance and cotton processing. This relationship lent itself to considerable sympathy for the Confederacy during the Secession Crisis, to the point that the Democratic mayor of the period, Fernando Wood, proposed in January 1861 "to declare the city's independence from Albany and from Washington," in which it "would have the whole and united support of the Southern States." Though the firing on Fort Sumter caused opinion to swing away from this sentiment, it reveals the level of resistance to war with the South within the city. The signing of the Emancipation Proclamation in January 1863 raised racial tensions among New York City's native-born and immigrant whites—who feared competition from freed blacks for dockyard and other low-wage jobs—to new heights over the following spring and summer. Among the most

prominent expressions of these fears appeared in the editorials and speeches of John Mullaly, editor of the Catholic Church-supported *Metropolitan Record*. One of the most antidraft and anti-Republican figures in the city, Mullaly labeled the “vile and infamous” Proclamation—which he warned “should make the blood of every freeman tingle in his veins, that should mantle the temple of every American citizen with the crimson blush of shame”—as an effort by the Republicans “to bring massacre, and rapine, and outrage into the homes on Southern plantations, sprinkling their hearths with the blood of gentle women, helpless age, and innocent childhood.” Grossly afflicted by the “mental and moral epidemic” of abolitionism, Mullaly warned, the Lincoln Administration sought to destroy the sovereignty of the states and establish a “consolidated despotism” through its use of martial law and expanded executive powers.<sup>276</sup>

When draft drawings began in the city in July 1863, under the rules of the Enrollment Act—which also excluded blacks, who were viewed as noncitizens, raising white animosity even higher—opposition to the war and the Act combined with these factors to launch the Riots. The immediate effect of the Riots was to halt the draft in New York for the short term—until August 19, after which it proceeded without interruption or violence. The bulk of the 4,000 troops brought in to quell the riots came from the Gettysburg Campaign, thus demonstrably affecting the war effort in the Eastern Theater. The *New York Times*, which barely escaped attack and arson during the riots—prevented by Gatling guns posted to the roof, manned by staff members and its founder, Henry Jarvis Raymond—laid the blame for the killings and destruction on local gangs in concert with others from Philadelphia and Baltimore, who “cannot afford to miss this golden opportunity of indulging their brutal natures, and at the same time serving their colleagues the Copperheads and secesh [Secessionist] sympathizers,” a view that gained

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<sup>276</sup> *The Washington Despotism Dissected In Articles From the Metropolitan Record*. New York: Office of the Metropolitan Record, 1863. May 19 Editorial by John Mullaly



considerable support in the riots' aftermath.<sup>277</sup> Mullaly, who had offered editorial encouragement to the rioters by urging their enrollment in the state militia—thus avoiding their conscription by federal officials—was arrested on August 14, though was later released on the grounds that the March 1863 Act was not in effect when he had issued these articles. Opposition to the draft on constitutional grounds achieved new popularity with some antiwar Democrats in the city, though the Tammany Hall Democratic organization avoided this course, choosing instead to use Hall funds to pay draftee commutation fees.<sup>278</sup>

Above all, the Riots made clear the general popular hostility to the draft, and to the Union's shift to an emancipatory war policy. This new cognizance—and such sentiments as espoused by the *Times*—led to a wider perception of antiwar opponents as pro-Confederate traitors or sympathizers, and caused the Union military to pursue a much more stringent crackdown on draft evasion and resistance nationwide, provoking further blatant acts of popular opposition.

A significant example of this repression and backlash is evident in the Charleston Riot in the early spring of 1864, in the town of Charleston, Illinois. Established in the 1820s, pro-slavery and pro-Southern settlers predominated in this locale and the surrounding Coles County, creating an enclave of these sentiments in an otherwise solidly Union and Free-Soil state. President Lincoln himself had family connections in this area and had debated Stephen Douglas in Charleston during the 1858 Senate election. By 1864, the town had gained a reputation for “Copperhead” sentiments and actions. Until that time, the most infamous case had been the 1863 arrest of circuit court judge Charles H. Constable, a onetime associate of Lincoln's during their

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<sup>277</sup> *New York Times*, 7/16/1863

<sup>278</sup> Bernstein, Iver. *The New York City Draft Riots Their Significance for American Society and Politics in the Age of the Civil War*. Oxford University Press, 1991. pp. 43-44

membership in the Whig Party, and his opponent in the noteworthy case *Matson v. Ashmore* concerning a party of slaves brought into free-soil Illinois, for which Lincoln had argued the proslavery position.

In March of 1863, Constable had ordered the release on *habeas* grounds of four deserters who had fled to Illinois from Indiana, and were arrested by soldiers operating from the latter state. In response to this decision, Colonel Henry Carrington was ordered to arrest Constable for interference in military matters, and personally led more than 200 soldiers to surround the Coles County Courthouse in Charleston and remove Constable from the bench during session.<sup>279</sup> Although a federal judge released Constable without charge, his treatment by military authorities incensed many Democratic and “Copperhead” citizens in the county.

These tensions heightened in January 1864 following Constable’s temporary seizure by a “mob” of soldiers in nearby Mattoon, who forced him to kneel and swear allegiance to the Union. The volatile situation boiled over on March 28, 1864, when gunfire broke out between two large groups of “Copperheads” and Union soldiers outside the courthouse. Though the violence ended in moments, with both sides withdrawing, nine were killed (six soldiers, two “Copperheads”, and a local merchant) and twelve wounded. The exact trigger for the riot remains unclear, though newspaper accounts contend that Constable’s treatment, a large military presence, and heavy drinking on the part of the soldiers and the “Copperheads” were the primary factors. In the wake of the riot, reinforcements arrived from Mattoon, arresting fifteen alleged agitators. Authorities sent these men first to Springfield, and then Fort Delaware after President Lincoln issued orders personally waiving their *habeas* rights. All fifteen men returned home in November 1864, after seven months’ imprisonment; two indicted by a Coles County grand jury

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<sup>279</sup> Towne, Stephen E. (Spring 2006). "Such conduct must be put down: The Military Arrest of Judge Charles H. Constable during the Civil War". *Journal of Illinois History*. 9 (2): pp. 43–62.

received acquittals in December. Following the Republican victories in the state and national elections that year, Constable—who had ordered a change of venue in the previous December’s trial that may have aided in the acquittal verdict—was reduced to two of six judicial circuit counties, and remained a target of suspicion and ostracism until his death in October 1865. Through the events of the “Charleston Riot”, popular resentment of the draft, and the cycle of heavy-handed federal actions against citizens who protested this and other Union war policies, is made clear. Another notable, somewhat less violent exercise of grassroots antiwar opposition took place in the summer and fall of 1864, in the eastern Pennsylvania counties of Luzerne and Columbia. Since the beginning of the national draft in 1863, this heavily Democratic region had ranked among the highest in draft evasion and desertion; during the first draft call in July of that year, over 450 of 618 men chosen evaded this summons. Tensions rose higher still when the same level of evasion was reported in June of 1864, and rumors began to circulate that a large force of deserters, drafter evaders and Confederate sympathizers—nearly five hundred, by some reports—had formed to oppose the Enrollment Act and the Union Army, based at a fort constructed on North Mountain in neighboring Sullivan County, overlooking the Fishing Creek tributary of the Susquehanna River.<sup>280</sup>

On July 30, local citizens in Benton Township fired on a detachment of Union veterans performing a sweep for draft evaders in Columbia County, some of whom had previously deserted the army. Rumors of the antidraft and pro-Confederate stronghold spread even farther following this event, reaching Washington and the state government at Harrisburg by August 4. At the request of local officers, reinforcements arrived continuously in Columbia County over the next two weeks, eventually reaching 1,000 under the command of Pennsylvania native Major

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<sup>280</sup> Sauer, Richard Allen, and Tomasak, Peter. *The Fishing Creek Confederacy A Story of Civil War Draft Resistance*. University of Missouri Press, 2013. p. 56

General George Cadwalader. On August 28, one week after an offer of pardon for any draft evaders who surrendered had expired, this force moved into both Luzerne and Columbia Counties—labeled as the "Fishing Creek Confederacy" by a local paper—to arrest any evaders or resisters and to verify the existence of the fort at North Mountain.

The residents of Benton and several nearby towns had met two weeks prior to debate whether to resist, without clear resolution; when the troops began the sweep, several of the more ardent antidraft citizens fled the area, while the majority remained. Army sweeps arrested and confined one hundred locals during this operation, with forty-five later marched to prison at Fort Mifflin outside of Philadelphia. No sign of any fort or sizeable group of resisters emerged at North Mountain, or anywhere else in the Fishing Creek area, leading to the affair's labeling as a "grand farce" by General Cadwalader. The 1,000-strong force remained in the region until December 1864; despite this, and detachments posted at polling stations in the November elections to purportedly deter or arrest Democratic voters, no open, armed rebellion took place. The Union Army released nearly all the prisoners in the counties and Fort Mifflin by January 1865, though some remained in detention through the war's end in April.<sup>281</sup>

In the "Fishing Creek Confederacy" incident, evasion and speech were the main tools of direct antiwar action, with one confirmed instance of violence. This instance, and the rumors of the "fort" at North Mountain, arose from widespread local opposition to the draft, large regional support from the strongly pro-peace Democrats, and personal desires to avoid what had come to be seen as "butchery" on the war's front lines, most of all in the Virginia Overland Campaign then taking place. The actual resistance, the rumors, the politics of the affected counties, the apparent stalemate on all fronts, and the approaching Presidential election all combined to

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<sup>281</sup> Sauers & Tomasak, p. 187–190

produce a rapid, outsized Federal response—though the ultimate fate of the “Copperhead” antidraft prisoners shows that relative leniency, as applied in Holmes County, still prevailed even during the war’s final stages.

The creation of “dark lantern” societies and the incidents of isolated, local resistance exemplify the widespread, various forms of direct antiwar opposition and its motives in the Civil War North, and also indicate how broadly antiwar dissent in general can be defined, in both the Civil War and in modern eras. The organized examples of this opposition, in the form of the K.G.C., O.A.K., and O.S.L., made little impact on the Union war effort in the direct sense, other than providing different levels of institutional support for the rhetoric and actions of the most ardent “Copperheads” and other Peace Democrats. While the philosophy of these groups reflected biases and beliefs then common in 19<sup>th</sup>-century America—strict limits on the authority of government, the near-sanctity of individual and constitutional freedoms, the social and racial superiority of whites above blacks—their activities in the alleged name of these principles failed to garner significant backing even among potential allies among the more moderate Democratic factions who shared their views.

A stronger indication of their effect is in the considerable and at times overreactive response from Union military authorities to infiltrate, assess and expose what they considered antiwar and pro-Southern “dark lantern” societies. This effort’s success in preventing real planned uprisings and other conspiracies is still highly debatable, and it falls far short of the assertions made by Weber and Towne, though the individuals and groups targeted are not as innocent as Klement implies. The crackdown against these societies, however, did have the verifiable effect of drawing off resources intended for the larger war effort, and of increasing the paranoia and fears surrounding potential rebellion and other treasonous activities on the part of

dissenters. As a result of the crackdown, furthermore, the questions of civil-military relations and the rights of the individual in wartime became more clearly defined—as in the *Ex parte Milligan* decision—and the methods of antiwar activism employed by the “dark lantern” societies—direct popular appeals, operating within larger political bodies to advance agendas, even the formation of paramilitary-style groups to defend rights they considered inviolate—were tested and legitimized.

Open, localized antiwar resistance produced shorter-term yet still-significant effects on Northern wartime policy. This resistance arose predominantly from community and regional aversion to the draft, *habeas corpus* suspension, and military arrests of civilians, all of which were believed to be targeted at innocents or political rivals of the Republicans. The brief yet intense violence that marked this form of resistance—riots such as in Baltimore, New York City and Charleston, Illinois; brawls between neighbors supporting opposite political parties; assault and murder against conscription officials and soldiers, as in Holmes County and the “Fishing Creek Confederacy”—provoked large-scale responses from military authorities, often based on exaggerated estimates of the numerical strength of or damages threatened by the deserters or “rebels” responsible. These actions, like those of the “dark lantern” exposés, diverted troops from the front lines and brought about further awareness in the Lincoln Administration of the level of popular resentment towards the Union draft, and the Northern war effort and its goals in general. Among the clearest signs of this awareness is the 1864 amendment to the Enrollment Act, which limited the period of commutation by paid substitutes to one year—a change that had the side effect of drastically increasing the cost of substitution. Above all, however, grassroots antiwar resistance in the North influenced the arrests and trials of the civilians responsible for such, leading to reduced or otherwise lenient sentences to avoid inflaming greater dissent, and

establishing precedents for future civil-military relations during wartime. In these ways, direct antiwar dissent in the North served as a template for later methods—private and clandestine political organizations, attacks on sites and entities carrying out unpopular policies, and flight from the reach of the latter—that would be employed on a much larger scale by dissent movements in the 20<sup>th</sup> and 21<sup>st</sup> centuries.

As in the North, considerable antiwar sentiment was expressed through direct action in the Confederacy. These forms of resistance arose from both the frustration of peaceful opposition efforts by Southern Unionists, and the increasing hardships of the war on all Southern citizens and slaves, most of all in the form of steadily harsher government action to sustain the war effort. Like its Union counterparts, not all direct resistance was intended to overthrow the Confederate national or state governments. Personal motives such as freedom and food security became as vital as and at times merged with anti-secessionism over the course of the war, and it was expressed in both violent and nonviolent forms. Relegated to minor or unimportant roles by past historians, these activities in fact demonstrate the significant unpopularity of secession—prewar and conditional—across the South, their cumulative effect on the Confederacy's war effort and policies, and the greater localist emphasis of direct antiwar action as compared to political and judicial efforts. Connected in form and sometimes methods to the guerrilla wars in the Border States, and to the steadily rising rates of Confederate desertion, direct resistance in the Confederacy is nonetheless a separate field, with its own, often interwoven categories and elements.

## Chapter 8

“We, Governor, are all soldiers Wives or Mothers [...] Our Husbands and Sons are now separated from us by the cruel war not only to defend their humbly homes but the homes and property of the rich man [...] We...were from stern necessity compelled to go in search of food to sustain life.”

--Letter of Mary Moore to N.C. Gov. Vance, March 21, 1863

Direct antiwar resistance in the Confederacy, in the early stages of the Civil War, was most often expressed in what might be called “secession within secession”, where Southern communities and individuals sought to prevent their states, regions or counties from joining the march to secession. Following the defeat of these movements, or their absorption through Union wartime progress—as in the case of Tennessee—direct antiwar action became more varied and localized and personal in its goals, with some adopting militaristic means in their defense. Some forms of this action, such as the Red Strings “peace society” and the “Republic of Winston,” expressed explicit antiwar aims from their beginning, sparked by the enactment of conscription and *habeas corpus* suspension decrees, and sustained from localized prewar bastions of Unionism within specific regions and states, often coalesced along social or ethnic ties. Other forms, such as “contraband” slave escapes and the women-dominated protests of the Southern Bread Riots, endeavored to gain freedom from or voice dissatisfaction with detrimental domestic wartime policy, and thus served as indirect expressions of antiwar sentiment. Through both types of activity, direct antiwar action exerted considerable influence on the Confederate war effort from multiple fronts in Southern society.

### Not In Our County: The “Republic of Winston”

At the start of January 1861, only South Carolina had officially withdrawn from the Union, as of December 20 of the previous year. By mid-February, however, six more Southern states—Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas—approved ordinances of



secession in special convention, joining with South Carolina to form the core of the Confederacy, while a seventh—Tennessee—temporarily rejected this move by refusing to hold a convention. Each of these states contained populations either neutral or hostile toward secession, due to the socioeconomic dominance of the pro-secession plantation elite, or patriotic support for the Union along the lines of Jacksonian Democracy. One noteworthy hotspot of these anti-secession views, eventually known as the “Republic of Winston”, centered on Winston County, Alabama—sparsely populated by 3,450 whites, primarily yeoman farmers, and 122 slaves in 1860—and part of the heavily Unionist “Nickajack” Appalachian region which encompassed northern Alabama and eastern Tennessee.<sup>282</sup> An example of the first Deep South demonstrations of direct action against the Confederate war effort, this county’s resistance, political at first, developed into open conflict between Unionist and pro-Confederate residents, and challenged state authorities to the point of actual rebellion through residents’ refusal to support the war.

When Alabama’s state secession convention convened in Montgomery on January 7, 1861, Winston County’s representative—twenty-two-year-old schoolteacher Charles C. Sheats, an ardent Unionist despite his planter family background—refused from the start to sign the ordinance of secession, making the county’s position clear. Following the convention’s vote for passage on January 11 (61-39), Sheats returned to Winston County, where he continued to denounce secession and urged county residents to pledge neutrality in the event of war with the North. Alongside declarations of this sentiment, the population began to form “home guard” units, intended as self-defense in the event of aggression from secessionist state authorities and neighbors. In a more blatant challenge, the officers of the county militia—by now dominated by Unionists—refused to take any oath of office acknowledging the Confederacy.

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<sup>282</sup> <https://www2.census.gov/library/publications/decennial/1860/population/1860a-04.pdf>

This trend of passive neutrality verging on direct rebellion peaked in July of 1861—on the Fourth of July, according to one source, though the exact date is still debated.<sup>283</sup> At Looney’s Tavern, outside the county seat of Houston, an informal mass meeting of nearly 3,000 Unionists passed three definitive resolutions affirming the county’s neutrality and position on secession. After commending Sheats and other representatives for rejecting secession, the meeting went on to affirm the right to secede by a county *within* a state, and to remain neutral, asking “that the Confederacy on the one hand, and the Union on the other, leave us alone, unmolested, that we may work out our political and financial destiny here in the hills and mountains of northwest Alabama.”<sup>284</sup> The prominence of neutrality and Jacksonian Democracy is clear in these resolutions, indicating that the population did seek to act on the implied right of county secession. Reportedly, however, one of the few Confederate sympathizers present at the meeting scoffed that the county had made its secession clear as “the Free State of Winston,” giving rise to its later, semi-legendary title of “the Republic of Winston.”

Through the summer and early fall of 1861, the Confederate state government took relatively little action against this Unionist enclave, though tensions continued to increase. On November 30, 1861, a gathering of the county’s pro-Confederate citizens—drawn from the “128 secessionists” whom they asserted lived in Winston, opposite “515 Unionists”—petitioned Montgomery to decree that all residents “be required to take the oath of allegiance and that all who refuse to do so be dealt with as aliens.”<sup>285</sup> In response to this petition, Governor John Shorter demanded the resignation of all Winston County militia officers who refused to swear

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<sup>283</sup> <http://freestateofwinston.org/abriefhistory.htm>

<sup>284</sup> Deily-Swearingen, Susan Neelly, "Rebel Rebels: Race, Resistance, and Remembrance in "The Free State of Winston"" (2019). *Doctoral Dissertations*. 2444. <https://scholars.unh.edu/cgi/viewcontent.cgi?article=3443&context=dissertation>, p. 68

<sup>285</sup> *Ibid*; Dodd, Civil War: Dodd, Donald and Wynelle S. Dodd. *Winston: An Antebellum and Civil War History of a Hill County of North Alabama*. Birmingham: Oxmoor Press, 1972. p. 90

loyalty to the Confederacy, and issued arrest warrants for prominently “disloyal” citizens in the county. Apart from these edicts, however, the state government still refrained at this time from a formal crackdown on the “Republic of Winston.”

The Union Army’s effective occupation of Tennessee by March of 1862, the passage of the Confederate Conscription Act in April, and further Northern advances into northernmost Alabama after the Battle of Shiloh, brought about a dramatic shift in this situation, and consequently the county’s stance on neutrality towards Richmond. Winston County Unionists viewed the Conscription Act as an exercise in tyranny, meant to provide substitutions and exemptions for the wealthy slaveholding elite while Southerners of their own social class were unjustly pressed into service—a view that came to be shared throughout the Southern yeomanry, and served as the basis for judicial challenges to the Conscription Act, as discussed in Chapter 6. This view caused neutrality to fade among the county’s pro-Union residents, in favor of open action against the Montgomery and Richmond governments.

When Confederate conscription officials and Home Guards moved to enforce the draft and arrest dissenters in May, open violence broke out with armed groups of Unionists, and prompted the county’s leadership to meet again and make clear their renewed loyalty to the Union. At this meeting, John Penn, a probate judge for the county, laid down the core aims of the Unionist population: “We did not, nor do we now, want to take up arms against our neighbors in our own state. We desire to be let alone that we may remain neutral. If the Confederacy continues to treat our county as a part of it, and attempts to force our citizens to serve in the Confederate Army, as we hear threats that indicate it will, then in that case, neutrality will cease in Winston County. The people in Winston County, rather than be forced to fight for the perpetuation of slavery in the Confederate Army, will abandon neutrality, join the Union Army

and fight for the Union.” The meeting concluded with calls for draftees to follow three courses of action: 1) to desert, and enter the Union ranks “if conscience dictates”; 2) “for each person forced into the Confederate Army against the dictates of his conscience, that two citizens volunteer and enlist in the Union Army, if their conscience approve”; and 3) declaring that if enlistment officers and Home Guards killed any citizens in their pursuit of draft dodgers, “the one who perpetrated the crime be punished in the same way and to the same extent.”<sup>286</sup> With this message, the Winston County Unionists made their formal break with the Confederacy—stopping just short of an official declaration of secession—and entered a new stage of direct action against the Confederate war effort.

A large segment of the county’s residents, aided by neighbors, fled to Union lines in Tennessee over the following three years; William Looney, the owner of the tavern where the “Republic of Winston” had taken shape, assisted an estimated 2,500 refugees in this way.<sup>287</sup> Over 2,000 others joined the 1<sup>st</sup> Alabama Cavalry regiment, raised entirely from Unionists in the state and serving in Tennessee, Georgia and the Carolinas. Those who did not flee or enlist in the Federal army became targets for Home Guard units—many of whom included pro-secessionist citizens of the county, with personal grudges against Unionist neighbors. The raids, massacres, individual murders, and property destruction resulting from the violence between these uniformed and irregular groups left Winston largely devastated by the war’s end in 1865 and cemented the county as a Republican stronghold well into the Reconstruction era.

In her study of Alabama’s Unionist minority, historian Margaret Storey explains how this faction, initially centered on prewar Unionism and the politics of the yeoman-planter divide,

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<sup>286</sup> Deily-Swearingen, Susan Neelly, <https://scholars.unh.edu/cgi/viewcontent.cgi?article=3443&context=dissertation>, 104; Ibid, Judge John Penn

<sup>287</sup> Ibid, 103

became militarized due to Confederate pressure, with emphasis on familial and regional networks of Unionist sentiment. These networks, she argues, were formed from the same broader Southern social relations and hierarchies also prevalent among secessionists; therefore, “although loyalty to the Union represented a rejection of the Confederate state, it did not necessarily represent a rejection of the southern culture or values. Indeed, Unionism thrived precisely because it was predicated upon, rather than formed in opposition to, southern social relations.”<sup>288</sup> The “Republic of Winston”, therefore, shared many characteristics with the “Free State of Jones” in Mississippi and other such localized movements that opposed the Confederate war effort—yeoman-planter divide, centrality of family and clan, antipathy toward draft and other government edicts. Analysis shows, therefore, that the region is best viewed as a microcosm of Southern Unionist dissent from 1861-65—moderation and neutrality giving way to forced self-defense, followed by internecine regional conflict—and as an example of the importance of socioeconomic status, family, community, region and nation found in other open expressions of southern Unionism.

### **Aliens Within: Texas German Unionists**

Other factors besides class and slavery distinguished Southern Unionists from pro-secessionists. Although the number of European immigrants in the Northeastern and Midwestern states far exceeded those in the South, specific regions of the Confederacy nonetheless boasted sizable enclaves of such settlers, some to the point of predominance over native-born citizens and slaves. One prominent example is the “Hill Country” of central Texas—encompassing much of the territory delineated by Bexar, Gillespie, Kendall, Kerr, and Medina Counties—which had been

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<sup>288</sup> Storey, Margaret M. “Civil War Unionists and the Political Culture of Loyalty in Alabama, 1860-1861.” *The Journal of Southern History*, vol. 69, no. 1, 2003, pp. 71–106. *JSTOR*, [www.jstor.org/stable/30039841](http://www.jstor.org/stable/30039841). p. 75

largely colonized by German settlers arriving in the 1840s and 1850s. Through its initial efforts to remain neutral in the Secession Crisis of 1860, while still on guard against Confederate encroachment, this heavily Unionist enclave drew increasing scrutiny and paranoia from Texas secessionists. The tensions and hostilities this standoff precipitated led to more direct resistance, with incidents such as the Nueces River Massacre, and other violent repression aimed at Unionists across Texas.

Beginning in the late 1830s, German immigrants had settled across wide stretches of Texas, drawn by the favorable climate and readily available land. The bulk of such immigrants, arriving during and after 1848—known as *Achtundviergizer*, or “Forty-Eighters”—had fled the suppression of revolutionary uprisings by conservative and monarchical regimes, and retained staunch support for liberal and republican ideology, which included a strong antipathy to slavery. These positions inclined the “Forty-Eighters” towards the Republican Party from the mid-1850s, and to support for the Union during the secession crisis, bringing hostility and suspicion from secessionist Anglo-Texans.

Following Texas’s formal secession from the Union on February 23, 1861, the German communities in the “Hill Country” began organizing home guards and militias. In June, the Union Loyal League came into being, whose architects—and some later pro-Union historians—asserted would “take such action as might peaceably secure its members and their families from being disturbed and compelled to bear arms against the Union, and to protect their families against the hostile Indians.” As historian Stanley McGowen argues, however, the Unionists who formed the League did so not only to deter any Confederate conscription edicts or harassment of citizens, but to directly aid in the restoration—by military force—of federal control over

Texas.<sup>289</sup> Planned operation towards this end included a liberation raid on the Confederate prison at Camp Verde, which housed Union troops captured while retreating from posts in Texas following Fort Sumter. Though the transfer of the prisoners to the better-defended Fort Mason, and the absence of Union reinforcements from outside the state, led to this operation ultimately being called off in early 1862, Confederate suspicions of the League's actual intent remained high.

The passage of the Conscription Act in April of 1862 brought greater hostility from the German Unionist population, and garnered greater support for the "defensive" Loyal League. In May, four companies of state militia and regular Confederate troops arrived in the "Hill Country" under the command of Captain and provost marshal James M. Duff. In late July, Duff proclaimed martial law over Gillespie County, and ordered the arrests and execution of several known pro-Union residents. Deciding to avoid open conflict with superior Confederate forces, an armed contingent of approximately sixty German Unionists under Loyal League co-founder Fritz Tegener departed the "Hill Country" during the first week of August. Traveling westward, this group planned to cross the Rio Grande into Mexico, then find passage to Union-held New Orleans with the assistance of ships from the Federal naval blockade. A company of ninety-six Confederate cavalry pursued this party, under the command of Lieutenant Colin D. McRae. On August 10, 1862, both parties clashed near the Nueces River, with two Confederates killed and eighteen wounded, and an estimated thirty-seven Germans killed, with an unknown number wounded and fled. Reports of eighteen of the latter being captured and killed by Confederate pursuers led the incident to be labeled the "Nueces Massacre." In the aftermath of this clash, organized direct resistance by German Unionists to the Confederacy ceased, although guerrilla

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<sup>289</sup> McGowen, Stanley S. "Battle or Massacre? The Incident on the Nueces, August 10, 1862." *The Southwestern Historical Quarterly*, vol. 104, no. 1, 2000, pp. 64–86. *JSTOR*, [www.jstor.org/stable/30241669](http://www.jstor.org/stable/30241669).

warfare against soldiers and pro-Confederate citizens became widespread in the “Hill Country.” Individual members of the German community also fled to enlist in Federal units, such as the First Texas Cavalry, and draft evasion and opposition persisted for the remainder of the war.

Analysis of the Texas “Hill Country” German Unionists’ direct antiwar dissent against the Confederacy shows that their prewar liberalism and antislavery sentiment was ultimately rooted in the liberal and revolutionary struggles in their native countries. Combined with their foreigner status, these ideological leanings marked them as potentially subversive populations to their pro-secession neighbors and localized their area of settlement as an anti-secession enclave. As with the “Republic of Winston”, their dissent first manifested itself in moderate pro-Union organization in defense of personal and community rights, then evolved to armed regional resistance. The Nueces Massacre and the general chaos resulting from the 1862 Conscription Act and Confederate military sweeps for “disloyal” citizens incited additional reprisals and guerrilla and “bushwhacker” violence throughout the state. These incidents ranged from the Great Gainesville Hanging to personal vendettas carried out by gangs of Unionist and Confederate vigilantes, and forced the diversion of troops and resources from the increasingly short-handed and undersupplied Confederate military presence west of the Mississippi. Thus, despite failing to escape at Nueces, or to resist in any effective way beyond guerrilla warfare, draft evasion, or enlistment in the Union army, the Texas German Unionists, drawing on traditions of republicanism and resistance to central authority, exerted a significant influence on Confederate war efforts and policy in Texas, the Trans-Mississippi, and the South as a whole.

### **Freedom Through Flight: “Contrabands”**

Escape from Confederate authority was one of the most effective means of direct antiwar resistance in the South. Flight from conscription, or potential detention and execution, was not its



only form, however. “Contrabands”—blacks who fled slavery to Union lines and locations—sought freedom despite no official Union emancipation policy until 1863, and no full freedom until 1865. By fleeing bondage, these slaves deprived the Confederacy of essential labor to build fortifications, haul supplies, and grow cotton, tobacco, and much more vital food crops, and brought about the imposition of new internal security decrees by Richmond which incited further antiwar dissent, thus seriously impeding the Confederate war effort.

Among the first recorded cases of slave flight to Union territory in the Civil War included that of Frank Baker, James Townsend, and Sheppard Mallory in May 1861. The owners of these slaves had leased them to the Confederate army to build artillery emplacements at Sewell’s Point, Virginia, directly south of Union-held Fortress Monroe in the Hampton Roads region. After sunset on May 23—the day Virginia approved secession in state referendum, putting popular stamp of approval to its joining the Confederacy—Baker, Townsend, and Mallory escaped across the bay and sought asylum at Fort Monroe, commanded by General Benjamin Butler, a Democratic lawyer and political general appointed to his rank and post only a month prior. At the time of their flight, existing policy regarding runaway slaves consisted of the 1850 Fugitive Slave Act—which mandated the return of all runaways to their legal masters—and repeated pledges by President Lincoln that his administration had “no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists.”<sup>290</sup> In this context, Colonel Charles King Mallory, Virginia militia commander and owner of Townsend, Mallory, and Baker, dispatched a representative to meet with General Butler and seek their return.

When the meeting took place, outside the gates of Fortress Monroe, Butler informed the representative—Major John Cary, an artillery officer in the Virginia militia—that the slaves

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<sup>290</sup> Lincoln’s 1<sup>st</sup> Inaugural Address <https://www.loc.gov/exhibits/civil-war-in-america/ext/al010104.html>

would remain under federal authority at the garrison. When Cary invoked the Fugitive Slave Act, reminding Butler of the “constitutional obligation” to surrender the escaped slaves, the general replied that, as he was “under no constitutional obligations to a foreign country, which Virginia now claims to be,” Colonel Mallory could not claim the slaves in light of their state’s secession. Butler then informed Cary that “I shall hold these negroes as contraband of war, since they are engaged in the construction of your battery and are claimed as your property.”<sup>291</sup> By declaring Baker, Mallory and Sheppard to be “contraband”—though this term did not come into common military use until several months later<sup>292</sup>—Butler affirmed their status as property, thus avoiding any legal achievement of freedom through their escaping Confederate control. Yet by refusing their return and permitting their residence in a Union-held area, he granted unofficial sanction to their flight, thereby encouraging additional escapes; over fifty enslaved men, women, and children would in fact arrive at Fortress Monroe within a week of Butler’s “contraband” decision.<sup>293</sup>

Northern public opinion and Lincoln Administration policy did not generally or seriously support slave “confiscation” in the early stages of the war, whether as a moral, abolitionist measure or one couched in military and legal terms as Butler had done. Lincoln himself, having made his personal opposition to slavery well-known on the campaign trail, had qualified these remarks even with reaffirmation of the Fugitive Slave Clause of the Constitution, holding that “No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein be discharged from such service or labor,

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<sup>291</sup> Butler, Benjamin F. *Autobiography and Personal Reminiscences of Major-General Benj. F. Butler; Butler's Book*. A. M. Thayer, 1892. p. 256

<sup>292</sup> *Official Records of the Union and Confederate Navies in the War of the Rebellion*, Series I, Volume XVI, page 689.

<sup>293</sup> Goodheart, Adam. *1861: The Civil War Awakening*. First ed., Alfred A. Knopf, 2011., p. 315; Pierce, Edward L. "The Contrabands at Fortress Monroe." *Atlantic Monthly* (November 1861), pp. 626-627.

but shall be delivered up on claim of the party to whom such service or labor may be due.”<sup>294</sup>

Lincoln also had reason to oppose the “contraband” rationale on the grounds that it granted de facto recognition to the Confederacy as a foreign power. After Fort Sumter, however, he began to voice concerns that slavery posed a threat to the foundation of popular government and Union—“a vast and far reaching disturbing element”, in one conversation with his aide, John Hay—no matter the legal and constitutional arguments in its defense.<sup>295</sup> Editorial and popular perception of the war had likewise begun to shift at this time, casting the seceded states as enemies rather than stubborn, disgruntled brethren, and thus potentially legitimizing confiscation of property—including slaves—from pro-secession Southerners. More practically, word of Baker, Mallory, and Townsend’s being granted shelter had already encouraged other slaves in the region to make the trek to Fortress Monroe—to the point of coming in “almost hourly”, in the words of one soldier.<sup>296</sup> This exodus threatened to expand to the rest of Virginia, and possibly the entire South, providing the North with a means of crippling the Confederate war effort through slave labor shortages and perhaps insurrection.

When Butler’s “contraband” policy came to the Lincoln Administration’s attention at the end of May, little official action initially followed. Military commanders in the field, however, received permission to shelter escaped slaves at their own discretion, provided such efforts did not interfere with military operations. In August 1861, the first concrete policy concerning “contrabands” became law in the North, in the form of the Confiscation Act, which authorized the seizure by Union forces of any property utilized by the Confederate military, including “any person claimed to be held to labor or service under the law of any State.” This Act did not signify

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<sup>294</sup> Lincoln, Abraham. 1<sup>st</sup> Inaugural Address <https://www.loc.gov/exhibits/civil-war-in-america/ext/al010104.html>

<sup>295</sup> Goodheart, p. 320; Hay, John, et al. *Inside Lincoln's White House: The Complete Civil War Diary of John Hay*. Southern Illinois University Press, 1999.

<sup>296</sup> Pierce, “The Contrabands at Fortress Monroe”

that “contrabands” would be freed upon seizure, but that they would remain technically property under U.S. government control—an ambiguous stance that Lincoln periodically sought to clarify through countermanding army general orders declaring slaves freed in specific operational areas. In March 1862, a second “contraband”-related law, the Act Prohibiting the Return of Slaves, mandated that “All officers or persons in the military or naval service of the United States are prohibited from employing any of the forces under their respective commands for the purpose of returning fugitives from service or labor, who may have escaped from any persons to whom such service or labor is claimed to be due,” with court-martial as punishment for violations.<sup>297</sup> These acts in turn served as precedent for the Emancipation Proclamation, and for the Thirteenth Amendment officially abolishing slavery.

“Contraband” escapes brought about even greater societal and military demands on the South. Prior to the war, and extending into its first months, one of the most commonplace defenses of slavery had been the argument that slaves not merely lived better lives in bondage, but that they did not wish to escape this status, and would loyally stand by slaveowners should the “peculiar institution” be challenged by Northern abolitionists, who knew little to nothing of their true condition. Even before Fort Sumter, however, this fiction had been exposed: Southern militia units had to be raised for local defense against possible slave revolts, and not for national service; slave patrols had to be increased across the South; and slaveowners expressed their private fears of facing “Yankees in front and negroes in the rear.”<sup>298</sup> Such home front anxieties led to decreases in Confederate enlistments, and frequent arms and supply disputes between Richmond and the state governments, which favored maintaining sizable caches and forces

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<sup>297</sup> Library of Congress, "Chap. LX - An act to confiscate Property used for Insurrectionary Purposes," U.S. Congress, p. 319, 6 August 1861

<sup>298</sup> U.S., *Statutes at Large, Treaties, and Proclamations of the United States of America*, vol. 12 (Boston, 1863), p. 354. <http://www.freedmen.umd.edu/artwar.htm>

within their borders to suppress revolts. Confederate field units also became frequently diverted to slavecatching duty as the number of attempted and successful escapes grew exponentially following the first “contraband” flights. The “Twenty Negro Law” of 1862 aimed to quell state and slaveowner fears and avert conflict over enlistments by providing for a form of internal police that would maintain slave discipline and prevent or crush revolts. In practice, however, this policy proved ineffective at deterring slave flight, and exacerbated the divide between slaveowners and middle or poorer-class Southern whites, causing enlistment to fall even more drastically, and draft evasion and desertion to rise once conscription was imposed. Thus, analysis shows that the “contrabands” phenomenon not only served as direct antiwar action and dissent against the Confederacy, but also encouraged such dissent among Southern whites of the non-planter class, and raised new questions and redefinitions of the status of blacks that significantly affected the aims and pursuance of the war.

### **“Bread or Blood”: Confederate Bread Riots of 1863**

As internal Unionist rebellions and the rising slave exodus continued to impede the Confederate war effort, the soaring prices for essential goods, the failures of harvests and urban distribution, and increasing scarcity at all levels brought public anger to new heights, primarily among Southern middle-class and poorer women in Richmond and other large cities. This anger culminated in the women-organized and -led Southern Bread Riots of March and April 1863, the largest and most widespread civil disturbances in the wartime Confederacy.

By the spring of 1863, the state and Confederate economies had become almost entirely devoted to support of the field armies, while at the same time facing ever-growing difficulties. Refugees from the frequent campaigns and engagements on Virginian soil, in particular, had concentrated in Richmond, tripling its population to over 100,000 and bringing about critical

housing and food shortages. Drought during the previous year reduced already-poor harvests, and many of the meager stockpiles gathered from rural areas were often delayed by worn-out railroads, or seized or destroyed by foragers for Union and Confederate armies—the latter of which had come to rely on foraging to meet almost all of its supply needs. rampant Inflation also reigned due to the devaluation of the Confederate dollar through printing additional paper money to fund the war effort. This last burden caused prices to skyrocket, most of all those for bread and other essential goods, while wages remained stagnant. These conditions replicated in communities and cities across the South, leading to increased hunger, popular resentment, and rumors of goods speculation by merchants and other members of the wealthier classes.

The first of the bread riots protesting such dire circumstances occurred in Atlanta on March 8, with more following the next day in Salisbury, North Carolina, and in Mobile, Macon, and Petersburg over the next two weeks. On March 22, Mary Jackson, a Richmond market-seller and mother of a soldier, began organizing a mass meeting of the city's middle- and working-class women to address the rising inflation and failure of government support for "soldiers' wives," as the women labeled themselves, thus casting their efforts as patriotic and necessary to support themselves while their husbands fought for the Confederacy. Over three hundred women attended the meeting, held on April 1 at Belvedere Hill Baptist Church, where it was decided to march on the merchant quarter of Richmond and demand that the stores accept government prices—much lower than those of the market—for bread and other critical supplies including meat, cloth, shoes, sugar and salt. If the demands were refused, Jackson urged that the stores "be broken open and goods taken by force," though without bloodshed. The meeting also agreed to demand an audience with Governor John Letcher to deliver their grievances, with similar

seizures of goods to take place if this was denied.<sup>299</sup>

When the demonstration began on April 2, an estimated three hundred women—though some sources claimed over five thousand, with men and children among this number from the start or joining en route—assembled to take part, with Mary Jackson at their head, and armed with pistols, hatchets, knives, and bayonets. After the embassy to Letcher’s office was turned away, Jackson led the crowd in its march on the market areas of Richmond, attacking and looting twelve warehouses and stores, and carrying off thousands of dollars of goods: bread, beef, bacon, flour, shoes, clothing, blankets and other essential supplies. Both Governor Letcher and Richmond Mayor Joseph Mayo read the Riot Act to the marchers, with the threat of being fired upon by public guard troops; though the crowd largely ignored this, the riot broke up shortly afterwards, with no reported deaths or injuries. Widespread arrests followed in subsequent weeks, including Mary Jackson; ultimately, twelve women and six men were convicted of crimes ranging from theft to public disturbance.

Over the last decade, historians have reached a broad consensus has emerged regarding the Richmond Bread Riot, its origins, participants, context and impact have reached, disproving or discounting many of the contemporary opinions formulated in the Riot’s aftermath. The 1867 memoir of Sallie Brock Putnam, *Richmond During the War: Four Years of Personal Observation*, expressed the first such views: In Putnam’s recollection, the event was “a most disgraceful riot,” intended as mass disorder under the guise of demands for bread. The rioters themselves, she claimed, consisted of “a heterogenous crowd of Dutch, Irish, and free negroes,” who were in fact well-stocked with supplies in their own homes, and thus not from among Richmond’s actual “sufferers of food.” The true sufferers, Putnam argued, had been the looted

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<sup>299</sup> McCurry, Stephanie. *Confederate Reckoning: Power and Politics in the Civil War South*. Harvard University Press, 2010. *JSTOR*, [www.jstor.org/stable/j.ctvjsf3v8](http://www.jstor.org/stable/j.ctvjsf3v8). pp. 188-190

businesses owned by “the most worthy and cultivated of our citizens.” The riot, according to Putnam, also provided evidence of Northern intrigues among the lower classes, orchestrated by a Northern people and body politic that had grown fat on luxury and laughed at Confederate hardships. True Confederates selflessly gave away whatever food and goods they had to the less fortunate, the last point reinforced by the claim of President Davis—according to his wife Varina’s recollections—being present to implore the crowd to disperse, and giving away all the money in his pockets before reading the Riot Act in fact issued by Letcher and Mayo.<sup>300</sup> This starkly elitist view of the Richmond Bread Riot, among the most commonplace in its wake, became a key depiction in “Lost Cause”-era scholarship.

The response of contemporary Southerners such as Putnam also provides insight into how dissent was framed in the wartime Confederacy. By labeling the women behind the Richmond demonstrations as “Dutch, Irish, and free negroes,” among other epithets, Putnam and other critics expressed not only classist disdain, but also attempted to define them as explicitly non-Southern foreigners, outcasts and malingerers. This had the intent of nullifying the grievances that motivated the demonstrations, and of depicting its participants as threats to Southern stability and independence, quelled by the stern yet humane Confederate leadership. Such categorizations formed the basis for the later marginalization or burial of Southern popular dissent by “Lost Cause” proponents.

Among the first studies to challenge this contemporary view is Michael Chesson’s analysis *Heroes or Heroines?* published in 1984. Along with underlining the errors and racial or class biases within the newspaper accounts of the riots, this study emphasizes the context of decaying social conditions—overcrowding and lack of housing, inflation, shortages, collapsing

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<sup>300</sup> Brock, Sallie A. *Richmond during the War: Four Years of Personal Observation*. G.W. Carleton, 1867. p. 208



transport and other infrastructure—that plagued Richmond at the time of the riot, as well as the organization, specific demands and targeting of speculators and “extortioners” by the rioters, rather than devolution into aimless violence, and the possible double standard applied in punishment wherein younger women received lighter punishment than those older or widowed. With this evidence, Chesson holds that the Richmond Bread Riot was one significant part of a general riot pattern in the South, and evidence of Confederate women who, acting not as “harlots or heroines,” defied a society and era defined by masculine laws and mores to make their hardships and sacrifices known.<sup>301</sup>

More recent studies have confirmed and expanded upon Chesson’s arguments. Katherine Titus examines the Richmond Bread Riot more deeply from the perspectives of race, class, and gender, pointing to the strict definitions of women’s roles, of an individual’s class, and of racial descent which formed the core of Southern society. In Titus’s assessment, the increases in the female workforce, higher crime rates—including rises in prostitution—and greater prevalence of children’s gangs that marked Richmond’s transformation to a wartime capital demonstrate the collapse of these definitions, and thus of the antebellum social order. The issue of class remained prominent, however, a fact best displayed by the appointment of younger women of higher “birth” to coveted, well-paid positions in the Confederate Treasury, while women with less privileged or working-class backgrounds were often forced into unsafe, ill-paying factory labor.<sup>302</sup>

Titus’s study also affirms Chesson’s arguments concerning the refusal of “charity” by the organizers of the Richmond Bread Riot, who based this objection on their desire and demand to

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<sup>301</sup> Chesson, Michael B. “Harlots or Heroines? A New Look at the Richmond Bread Riot.” *The Virginia Magazine of History and Biography*, vol. 92, no. 2, 1984, p. 174

<sup>302</sup> Titus, Katherine R. (2011) “The Richmond Bread Riot of 1863: Class, Race, and Gender in the Urban Confederacy,” *The Gettysburg College Journal of the Civil War Era*: Vol. 2, Article 6. p. 92

work and purchase goods fairly rather than be made to “beg” for assistance. The stereotypes of the rioters as “low foreigners, Irish, Dutch, & Yankee” reflects, in the author’s view, the denial of serious need among Richmond’s population by the city’s upper class. Though antebellum paternalism had faded with secession, Titus argues, the sentiment was demonstrated in the minimal “poor relief” reforms passed by the national government in the wake of the Riot, with greater weight still given to support for the armed forces. In short, the Richmond Bread Riot exposed the illusion of a harmonious Southern society, drove its citizens further from Confederate loyalty to state loyalty, and pushed the war effort closer towards collapse through social pressure.<sup>303</sup>

Stephanie McCurry’s includes a detailed examination of the Southern Bread Riots as a whole, their context and their organizers in her 2012 work *Confederate Reckoning: Power and Politics in the Civil War South*. The central characters of the Riots, McCurry argues, were the “soldiers’ wives”: an umbrella term for the middle- and working-class women who comprised the bulk of the protestors. The roots of the Riots are found in the demonstrators’ view of a “violated social contract” between the Confederate national government and themselves, leading to the rise of a “politics of subsistence” campaign to address their hardships. The prior marches in Georgia, North Carolina and elsewhere, in McCurry’s view, set the pattern for bread riot action: disciplined marches, often with a single leader; violence only if necessary to acquire needed goods; and appeals to public conscience through justification of seizures as the result of the national government failing to provide what was owed to the people. This method of campaigning also had the effect of fixing the image of “soldiers’ wives” as the model for Confederate welfare, leaving out widows, mothers such as Mary Jackson, and indigent men.

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<sup>303</sup> Titus, pp. 129-132

Through such pressure, an unprecedented welfare system—predating the more expansive postwar version created for Union veterans—was established in the South, alongside far greater relief funds in each Southern state.<sup>304</sup>

Although the above studies provide comprehensive background and analysis of the true makeup and goals of the Richmond Bread Riot, they nonetheless discount or only partly explore the impact of the Riot on the broader Southern war effort. Chesson’s study makes minimal reference to how word of the Riot may have affected soldiers and civilians outside Richmond, discussing only an alleged drop in morale among both in locations along a single key rail line connecting Richmond and Danville, Virginia.<sup>305</sup> Titus’s analysis goes somewhat further in this regard by addressing the shift in citizens’ loyalties from the Davis Administration to state and local officials, and how such shifts created greater tension and conflict between Richmond and the state governments, causing additional breakdown in the Confederate war effort. McCurry provides the clearest reference to the Riot’s war policy impact in her discussion of the “dissent equals desertion equals military defeat” belief—a view she argues “resists definitive proof,” and describes the threat of desertion as an effective tool to gain greater state relief and welfare employed by the “soldiers’ wives”, a blanket term that she appears to accept without clear-cut distinction between the varied roles of the women involved in the bread riots.<sup>306</sup>

Other factors, apart from fears of soldiers’ families suffering at home, drove the Confederate army’s desertion rates that would eventually mushroom after 1863. Nonetheless, events such as the Richmond Bread Riots exposed the Confederacy’s previously hidden or denied home front hardships. Poor harvests, army demands, and escalating inflation and prices

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<sup>304</sup> McCurry, pp. 203-217

<sup>305</sup> Chesson, p. 169

<sup>306</sup> McCurry, p. 192

combined with perceptions of rampant speculation and government failures to produce the Richmond Bread Riot and other such incidents throughout the South. Through their coordinated actions, Mary Jackson and the other women who participated in and led these demonstrations cast themselves both as patriotic “soldier’s wives” pushed to desperate measures, and as disillusioned citizens furious with wartime policy, taking rightfully-deserved goods being absorbed by the army with ever-growing rapacity.

Analysis thus shows that, although the demonstrations were not intended as expressions of antiwar sentiment in terms of philosophy or action, the pressure of the demonstrators produced antiwar effects within Virginia and the South as a whole. These effects came about through new demands and expenses for welfare, which placed additional burdens on a Confederate government unwilling or unable to take the steps needed to fully finance these and other war policies. This in turn added pressure to the Confederate military effort through shortages of funds and supplies, and eventually through ever-increasing desertion stimulated by these demands and reports of deprivations from soldiers’ families. Such effects support the “dissent equals desertion equals defeat” contention and reinforce the definition of the “soldiers’ wives” reform efforts as indirect antiwar action.

Direct antiwar action in the South took subtler forms than such public displays of popular dissent as the Bread Riots. Alongside Federal advances further into the South, the Confederacy’s war effort exerted a greater toll on its domestic population, and Confederate front-line troops began deserting in droves. Clandestine “peace society” organizations composed of prewar anti-secessionist figures and ordinary citizens disenchanted with Confederate prospects and war policy arose to aid both, and advocate peace and reunion. One key group in this regard is the Red

Strings, centered in western North Carolina, eastern Tennessee, and portions of southwest Virginia.

### **Rebels for Peace: The Red Strings**

Peace societies composed of “Opposition” Whigs, Constitutional Unionists and others opposed to civil war had existed since the beginning of the conflict. The Arkansas Peace and Constitutional Society, centered on the heavily Unionist northern counties in the state, sought to evade impressment of pro-Union citizens and encourage desertion through the spring and summer of 1861, before being broken up in late fall by military authorities.<sup>307</sup> Another organization, the Peace Society in Alabama, extended its membership into Mississippi, Georgia, and Tennessee, with an unknown number of supporters enlisting in the Confederate army to encourage desertion, pass intelligence to the Union, or launch outright mutinies. This group also enjoyed success on the political front, to the point of electing a state governor and six representatives to the Confederate Congress in August 1863, all of whom pledged to oppose conscription and enact legal protections for deserters.<sup>308</sup>

The Red Strings shared the same aims as these societies, though did not adopt as diverse and combative methods. Allegedly founded in December 1861, the group did not become widely active until 1863, and drew official notice only in 1864. Concrete membership figures are nearly nonexistent, with estimates reaching 10,000 active supporters. Its leadership originated chiefly from North Carolina’s prewar Whigs, including John Pool, a lawyer and former state senator who had run against Governor Ellis as the “Opposition” candidate in the 1860 state election.

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<sup>307</sup> Worley, Ted R. “The Arkansas Peace Society of 1861: A Study in Mountain Unionism.” *The Journal of Southern History*, vol. 24, no. 4, 1958, pp. 445–456. *JSTOR*, [www.jstor.org/stable/2954672](http://www.jstor.org/stable/2954672).

<sup>308</sup> “Civil war and reconstruction in Alabama; By Walter L. Fleming, Ph.D.; Professor of History in West Virginia University. [Title page]” *The New York Public Library Digital Collections*. 1905. <http://digitalcollections.nypl.org/items/510d47df-9d38-a3d9-e040-e00a18064a99>, p. 137

Like many other moderates, Pool at first supported secession following Lincoln's call for volunteers after Fort Sumter, yet he came to support reunion by 1863, and had become seen as an ally of William Holden's peace movement despite Holden's personal distance from the Red Strings' activities.

Like the Arkansas and Alabama Peace Societies, the Red Strings protected escaped Union POWs, Confederate deserters, and Union spies, and provided information on Confederate troop numbers and maneuvers directly to Federal forces. Unlike these groups, however, the Red Strings did not actively encourage mutiny, through army infiltration or other means. Its political impact was also largely local, through Pool's reelection to the North Carolina State Senate in 1864, and other members holding positions in the state's bureaucracy and military forces—such as Major General William A. Smith, battalion commander in the North Carolina Home Guard, whose official task was to pursue and arrest deserters. Moreover, unlike the guerrilla and bandit groups beginning to proliferate throughout the South by this time—such as the “Buffaloes”, a local, mixed band of deserters, Unionists, escaped slaves and criminals—or the *de facto* breakaway movements in the “Republic of Winston” or the Texas Germans, the Red Strings did not raid or otherwise attack Confederate soldiers or civilians, or attempt to create a separate, Unionist enclave within sympathetic territory. Their activities, rather, resembled that of an “Underground Railroad” for Southern Unionists, with its greatest support among families of soldiers in North Carolina. By aiding deserters and POWs, and spying for Federal troops, the Red Strings built on Southern Unionist and “Opposition Party” sentiments to create a largely nonviolent form of direct antiwar resistance. This resistance created greater difficulties for the Confederate war effort as the conflict turned further against Richmond, added to the hindrances

from more violent resisters such as the “Buffaloes” and other guerrillas, and laid the foundation for North Carolina’s Reconstruction era.

Although arising from different bases—peaceful dissent, war-weariness, and the social and racial divisions of the South—Southern direct antiwar opposition shared goals of personal, community, and regional security, and methods aimed at securing these goals. “Secession within secession” served as the primary means of direct antiwar action on the part of “Opposition” Southerners, sometimes even before their region or state seceded from the Union. When this method was met with repression and violence from Confederate forces and citizen supporters, regions in which opposition was prevalent—due to social, economic, and ethnic factors—became, in effect, separatist antiwar enclaves in some form, resisting the Confederate draft and other war policies through evasion, espionage, and armed resistance.

This last was often carried out in markedly different ways than those of Unionist guerrillas, and other, semi-lawless groups. Charles Sheats and the yeomen farmers who dominated the “Republic of Winston” made their resistance clear first through anti-secession voting, then blatant refusals to serve the Confederacy in any capacity, isolating their county and communities from the secessionist state and national governments. The “contrabands” exhibited such resistance through their flight from forced labor in the Confederate army and national infrastructure, their service in the Union military, and their establishment of settlements under Union protection. The demonstrators of the Richmond Bread Riots made their opposition to Confederacy wartime policy clear through their demands for fair prices and welfare reform, and their attacks upon individuals and stores they believed were profiting at the expense of the families of the Confederacy’s soldiers. The Red Strings and the Texas Germans also created theirs through flight or avoidance of authority, and both turned to acts of violence against

Confederate troops and officials seeking to impose Richmond's conscription and anti-Unionist policies. The result of this opposition was increased military, political, and logistical demands on the Confederate home front, shifts in the war goals and practices in the North concerning black military service and civil rights, and the creation of factions and ideologies that would rise to power in the postwar South.

Race, immigrant status, prewar Unionism, and social class, often in combination, were thus the defining factors in the manifestations of direct antiwar dissent in the Confederacy. Flight to Union territory was the most successful expression of this dissent, whether done in organized fashion (as with the Texas Germans and the Red strings) or on individual, spontaneous bases (in the case of the "contrabands" and the residents of the "Republic of Winston"). Even those claiming to resist only policies, and not Richmond or the Confederacy itself (such as the "soldiers' wives of the Richmond Bread Riots) exposed deep rifts in Confederate policy and society, thus affecting public and political morale and leading to their suppression or denigration. Not only does closer analysis of these expressions of dissent further break down the monolithic Confederacy presented in the "Lost Cause" myth, but it emphasizes the profoundly class-based roots of secession, reveals the general unpopularity of Southern war policies even from the war's earliest days, and shows the deleterious effects of both antiwar dissent and the Richmond government's response to this, leading to the failure of the South's rebellion. Direct antiwar dissent in the South is therefore another example of how such dissent, using many similar tactics as in the North, and in later eras—flight, armed resistance, mass protests—not only influences wartime policy, but aids significantly in both the negation of said policy, and ending the larger conflict itself through public disavowal or national defeat.



## Conclusion

Antiwar dissent in the American Civil War in both the Union and the Confederacy manifested itself in forms beyond those traditionally associated with such. Although their stated and implied intentions varied widely, the impact and scope of political, judicial and direct grassroots dissent in Northern and Southern society compelled the Lincoln and Davis Administrations to alter their wartime policies in punitive or reformatory ways to avoid greater dissension and retain loyalty or authority in critical regions and constituencies. These reactions, in turn, established precedents for the expansion or limitation of executive powers in wartime, and the protection or restriction of civil liberties during periods of crisis.

Political antiwar dissent in the Union and Confederacy had its strongest roots in traditionalist views of national and state government, and fears of socioeconomic upheaval should the wartime measures of Washington or Richmond be fully implemented. In the Union, the “Copperhead” Democrats viewed their cause as one of defense of personal liberties and against despotic centralized authority, linking themselves with the rebels of the American Revolution. This populist stance was paired with explicit warnings of the undesirable effects of “Black Republican” rule: voting and citizenship rights for blacks, job competition with lower-class whites, and racial miscegenation. In the Confederacy, similar warnings against dictatorial government by Alexander Stephens and other old-guard Jeffersonian-Jacksonian politicians developed in parallel to anti-elitist campaigns by middle-class Southerners, whether staunch Unionists such as William Brownlow or disillusioned Confederates such as William Holden. As in Northern movements, Southern political dissenters viewed race as a tool for the ruling elite—the plantation aristocracy—to maintain its primacy while avoiding the burdens of the war: conscription, impressment of goods and property, inflation and shortages. Therefore, while both

regions shared resentment of perceived tyranny by government or a privileged few, Northern political dissent emphasized race as a key element of their appeals against dangerously radical wartime measures, whereas Southern political dissenters viewed race as a means for wealthier citizens and leaders to further entrench their prosperity and authority.

The differing political configurations of the Union and the Confederacy also contributed to the manner in which this form of opposition was expressed. Prior to the South's secession, the collapse of the Second Party System had weakened the Democrats to the point of an irreparable split between its northern and southern branches in 1860, and had allowed the Republicans to emerge as a cohesive body formed from the remnants of the Whigs, Free-Soilers, Know-Nothings, and Northern Democrats. While the Union retained much of the two-party infrastructure despite this turmoil, the Confederacy—whose leadership descended almost uniformly from resolutely proslavery Southern Democrats—lacked this form of organization from its beginning, which also severely hampered the formation of definite political opposition groups beyond the state level. Therefore, Democrats and other political opponents of the Lincoln Administration could continue to challenge federal war policy in the Congress, statehouses and on the speech circuit with the benefit of strong party machine funding and support. In the South, anti-Davis and anti-Confederate factions, though building in places on the old Whig-Democrat divide, were limited to localized campaigns against the President's or Richmond's policies and state proxies, and lacked national appeal—save on basic, nebulous ideals of states' rights, or a negotiated peace with the North—as well as the infrastructure to spread their sentiments to wider audiences.

Political antiwar opposition in the North and South was further divided between dissenters who inhibited, in effect or intent, their ruling government's war effort by opposing

specific policies, and those who opposed the war itself, with certain parties prioritizing one position over the other as the conflict unfolded. In the Confederacy, Southern Unionists such as those of Winston County, Alabama and the East Tennessee Convention opposed the war from its beginning, advocated negotiation between both sides up to the date of their state's secession, and worked to prevent their regions or constituencies from joining the Confederacy in law or fact following statewide votes for secession. When their efforts brought repressive actions by secessionist state governments or Richmond, these groups shifted to opposing these responses and other edicts believed to be specifically targeted towards them: *habeas* suspension, military arrests, conscription, and property confiscation.

During this same period, staunch Confederates such as Vice President Alexander Stephens objected to particular national policies: *habeas* suspension, conscription, and other pragmatic social, political, and economic demands imposed by the Richmond government in support of the South's military effort. These individuals prized what they saw as the core principles of the Southern "revolution"—state autonomy and individual liberties—above all else, and viewed the growth of executive power under Davis as a threat to the very reasons for the Confederacy's existence, while continuing to support their region's bid for independence. Later in the war, Southerners such as North Carolina editor William Holden, who had backed secession on more conditional terms, took this states' rights-based dissent to a new, more definitively antiwar level with calls and campaigns for North-South peace negotiations—and barring this, separate state or regional talks with the Union, in defiance of Richmond.

These efforts represent a clear opposition to the war itself, growing from both disillusionment with the prospect of an independent South, and anger towards the Davis Administration for its incompetence and alleged betrayal of Southern ideals in the pursuit of

independence. To prevent the rise of an organized antiwar political force, motivated by either or both sentiments, President Davis adopted a twofold strategy: minimization of his critics' position and chances of success in any peace negotiations (Stephens), and discreditation through allegations of pro-Union or anti-Southern activities (Holden). On occasion, this strategy entailed the threat or use of military force to suppress what might become structured political opposition (Brownlow), sometimes in cooperation with moderate, state-level critics who viewed their more radical counterparts as greater threats to the South or their own political futures (Vance). While this approach prevented any serious challenge to Davis's government up to the war's last days, it cost the administration significant domestic political assets, and required diversions of troops, favors and campaign resources from the Confederate war effort to shore up domestic order.

Political antiwar opposition in the Union fell along similar specific vs. generalized lines. The split between the War and Peace wings of the Democratic Party—demonstrated in the differing positions of Wisconsin editor Marcus Pomeroy and Ohio Congressman Clement Vallandigham—is one of the clearest examples of this. Although fiercely opposed to Lincoln personally and to the Republican Party on ideological grounds, Pomeroy nonetheless maintained a consistent pro-Union, anti-secession viewpoint throughout the war, supporting war to restore the former, and unflinching in his praise for the Federal armies' successes in the field. Pomeroy's antipathy to Republicanism, however, and his disgust at the corruption and despotism he saw as rife on the war and home fronts under Republican governance, caused him to attack this party for what he viewed as deadly incompetence in military affairs, as well as the Lincoln Administration's abuse of civil liberties and its dangerous pursuit of racial equality. Such beliefs and attacks caused Pomeroy to align rhetorically with the "Copperhead" Peace Democrats, though his support for the war on reunion grounds alone show his continuing allegiance to the

War branch of this party. Pomeroy's antiwar opposition, therefore, targeted wartime policies—most of all those based in abolition—while remaining silent on or supportive of the war itself.

The “Copperhead” Peace Democrats, in contrast, opposed not only the policies and ideology employed to sustain the Union war effort, but rejected the idea of war for reunion itself, from the start of the conflict. This stance finds its best expression in the rhetoric of Clement Vallandigham, who called for a negotiated settlement as the Secession Crisis began, and held to this demand for the duration of the war, during periods of defeat or success on the front lines. Like Pomeroy, Vallandigham often couched his denunciations of the war in racial terms, pointing to the threats to white liberty, livelihood and society should Lincoln's military or abolitionist measures be upheld. Vallandigham, however, expressed such fears principally in the context of constitutionalism and Jeffersonian-Jacksonian ideals of limited government, state autonomy and personal freedom—including property rights, especially slave ownership—whereas Pomeroy concentrated on their potential social upheaval, most of all through miscegenation and the then-abhorrent notion of black-white equality. In Vallandigham's view, reunion through war was not only unconstitutional, but destructive to the ideals of republicanism in whose name it was waged. This belief lent itself to his attacks on Lincoln's and Republican war policy in general—most of all *habeas* suspension and expanded military authority over civilians—and to his tentative, ill-conceived efforts at seeking out Confederate support for peace negotiations in 1864, even as Union victory became certain.

Opposition in the vein of Pomeroy's and Vallandigham's attacks, meanwhile, brought about a response by the federal government that combined political calculation with arguably dictatorial exercises of military powers. During his tour of the front, Pomeroy described in detail the neglect and abuses he noted in the camps and conquered territories, which led to his

expulsion by the Union army and effective ban from military zones in future. A more draconian response came about with regards to Vallandigham following his “Mt. Vernon” speech: arrest, trial and imprisonment by military court, and exile from the United States. Both actions were undertaken as a means of silencing or discrediting vocal administration opponents, without risking their political martyrdom with harsher responses, and the likely damage to public morale and support for the war.

Judicial antiwar opposition in the Union and Confederacy drew on the same conservative, constitutionalist beliefs in the supremacy of individual rights during peace or wartime. In both regions, this form of dissent was most often expressed in court challenges to arrests of draft evaders or protestors made under *habeas* suspension edicts, and in the opinions issued by judges concerning suspension and conscription.

Key distinctions between Northern and Southern courts during the Civil War were organization, the real or suspected political biases of judges, and the effect of their decisions once handed down. At the start of the Civil War, the Union retained an intact, functioning judicial system from the state to Supreme level, which allowed for prompt hearings of *habeas* petitions from citizens arrested by military authorities acting under still ill-defined and contested Presidential authority. Judges appointed during Democratic administrations, or who were outspoken Democrats or Southerners, came under suspicion as pro-Confederate sympathizers; when their decisions ruled against wartime policies such as *habeas* suspension and conscription, they became targets for Republican ire. In the case of Judge William Merrick following *Ex rel Murphy*, this extended to his confinement and the abolition and restructuring of the District of Columbia judicial system in order to remove him from the bench. President Lincoln in effect ignored Chief Justice Roger Taney’s *Merryman* opinion, leaving the question of *habeas*

unresolved past Taney's death in 1863. The rulings against military arrests in *Skeen* and *Griffin* by Judge Samuel Perkins contributed greatly to his removal by Indiana voters, and to the perception of Midwestern and national Democrats as disloyal, or openly subversive "Copperheads." These judges' opinions, whether based on Jeffersonian-Jacksonian ideals of government power, or merely pro-Democrat sympathies, intended to challenge Union war policy as illegal and destructive to the nation, thus framing their dissent in antiwar terms. This in turn caused the Lincoln Administration to defend and reform its wartime edicts to avoid further judicial and public anger, and to pursue measures limiting or neutralizing the effect of the courts' rulings.

Yet partisan bias on the part of judges or the Lincoln Administration did not solely define Northern judicial antiwar dissent. As the opinions in the *In re Kemp* decision show, openly Republican judges could and did question the legality of Union war policies, most of all the power of the Union army to arrest and try civilians by military commission. These issues joined with political concerns for public support even during the later stages of the war, resulting in reduced or commuted sentences, frequently ordered by Lincoln himself, in numerous cases of draft evasion, rioting, and violence against officials or soldiers. In the matter of *Ex parte Milligan*, the U.S. Supreme Court—dominated at this time by Republican appointees, and expanded to ten seats, thus accentuating the ideological shift from the Taney Court—concretely determined the limits of government powers of *habeas* suspension and rule through military authorities in war or peace. Justice David Davis, one of Lincoln's longest supporters, declared in no uncertain terms that trials by military commission were unconstitutional in regions where civilian courts remained functioning and no threat of invasion existed. Pro-Republican or merely pro-administration judges, therefore, did not intend to overturn Union war policy when

challenging *habeas* suspension, military arrests, or draft edicts, but to highlight what they saw as genuine constitutional concerns which could only be alleviated by Congressional action. Like those from Democratic or otherwise anti-administration judges, however, these rulings had the effect of forcing reforms in Presidential war-making and military arrest powers, and in turn influencing the Northern war effort—and later jurisprudence—towards greater limitations on Executive authority.

The structure of the Confederate judicial system prevented disputes of *habeas*, conscription, and other constitutionally uncertain government edicts from reaching courts beyond the state level. Article 3, Section 1 of the Confederate Constitution, adopted in February 1861, stated plainly that “the judicial power of the Confederate States shall be vested in one Supreme Court, and in such Inferior Courts as the Congress may from time to time ordain and establish.” The demands of the war, however, the impractical requirements for the Court’s staffing—district court judges were expected to serve on the Supreme bench in Richmond, a serious logistical hurdle after the transfer of the capitol from Montgomery—and the opposition to judicial review of state courts by ardent states’ rights Congressmen rendered this clause unenforceable. District and state courts transferred with relative smoothness from Federal to Confederate sovereignty, with pro-secession judges remaining in their prewar positions, or reappointed by the Davis Administration. Yet these bodies also suffered from a lack of infrastructure and speedy communications, and Union advances into Confederate territory as the war ground on increasingly prevented courts from sitting *en banc* for critical cases, thus giving greater weight to the decisions handed down by individual judges.

Furthermore, support for secession among the Southern judiciary did not entail uniform deference to the new Confederate national government. Many judges, despite their loyalty to the



Southern cause, favored narrow constitutionalist views of centralized authority, state powers, and civil liberties that clashed with the accumulation of war powers by the Executive Branch. North Carolina Chief Justice Richard M. Pearson embodied these views through decisions that limited the reach of conscription and its expansion to citizens who had acquired substitutes (*In re Irvin*), and affirmed the power of state courts to issue *habeas* writs for citizens arrested for alleged violations of the April and September 1862 Conscription Acts (*In re Bryan*). Unlike Perkins and Chief Justice Taney, and similar to the Republican-dominated Wisconsin Supreme Court's *In re Kemp* decision, Pearson did not intend to void Confederate wartime policy, or to express openly antiwar views concerning the North-South conflict itself. Instead, the North Carolina judge sought to emphasize the powers of the Confederate Congress and the Southern state governments, and the civil rights of the individual, as paramount to the Confederate national government's authority to enact any legislation it believed necessary for the war effort.

President Davis, however, viewed these attempts at judicial review as a dangerous and even potentially treasonous effort on Pearson's part to encourage disloyalty and desertion that would eventually cripple the Confederacy through manpower shortages and internal dissension. Therefore, rather than measurably reform its *habeas* suspension and conscription edicts to comply with Pearson's rulings, the Davis Administration enacted new legislation in 1864 which expanded the pool of potential soldiers, and specifically marked for arrest any citizens believed to be avoiding military service. These measures, arguably pragmatic given the Confederacy's plight at this late period in the war, placed additional burdens on the South's population, aided in significant increases in desertion, and heightened the friction between North Carolina and Richmond in particular and the Southern states in general.

Pearson, for his part, continued to oppose expansions of central authority for the

remainder of the conflict. A later, 1864 decision denied Richmond the power to revoke substitution “contracts” and arrest those who had entered these agreements for draft evasion (*Ex parte Walton*). Another in this period, employing the Tenth Amendment retained from the U.S. Constitution, confirmed the exemption of military-age state officials from conscription as well as the right of state governments to increase their civil workforces without Congressional restriction (*Johnson v. Mallett*). As with prior rulings on conscription and *habeas*, these decisions do not indicate treasonous or otherwise disloyal sentiments on Pearson’s part, but his devotion to legalism and clearly defined constitutional demarcations of the reach of state and national powers. One of the clearest indications of this ultimately state-centered viewpoint’s popularity—and of its debatably unintended effect on the Confederate war effort—is Governor Vance’s vow to defend Pearson’s rulings by force. Vance’s pledge created the potential for armed conflict between North Carolina and Richmond, and for the former’s separation from the Confederacy to seek a separate peace with the Union. The defeat of the peace faction in the state and the nation, and the Union’s campaigns of the war’s last year, rendered this prospect moot. Nonetheless, the specter of internal rebellion, encouraged by the decisions of judicial “activists” such as Pearson, haunted the Davis Administration throughout the war, causing it to enact ever more restrictive measures to safeguard its authority and the Confederacy’s war-making abilities, at the cost of significant political, social and military capital.

Direct, grassroots dissent against the Union and Confederate war efforts drew its support from similar, often intertwined sources: geographical makeup and distance from the front lines, prewar economic divisions, the social rifts of racism and nativism, personal or community antipathy to war in general or for specific causes, and government measures to sustain the national military. Its expression in both North and South took the form of resistance to troops

and officials enforcing wartime decrees, through flight or armed clashes; large-scale public protests and riots; and the organization of “self-defense” and other underground groups to aid those they believed to be targets of the national government. This form of dissent, however, varied widely in motivation, antiwar intent and effect, and response by the central government.

The most common acts of direct dissent in the Union centered on the conscription measures put in place by the Lincoln Administration. The high cost of substitution (\$300, equivalent to \$55,000 in 2020), which led to intense class-based resentment, the high death rate from disease and seemingly constant failure at the front, and the adoption of black enlistment all motivated potential draftees to flee and otherwise evade officials acting to fill state draft quotas, mandated under the Militia Act of 1862 and the Enrollment Act of 1863. When flight proved inadequate or public ire reached boiling point, localized community violence against officials and soldiers often resulted. This violence ranged from the relatively minor clashes of the “Battle of Fort Fizzle” and the “Fishing Creek Confederacy” to the large-scale, destructive riots of Port Washington, Wisconsin, the “Camp Jackson Affair” in St. Louis, and, above all, New York City. Given such violence, and the perceived escalating restrictions on sacrosanct civil liberties, “dark lantern societies” such as the Sons of Liberty formed “self-defense” groups intended to “safeguard” Democratic voters against intimidation and violence from the military or the pro-Administration “Union Leagues.”

The forces behind these events—racial and economic anger, self-preservation, prewar regional politics—were explicitly antiwar in challenging conscription and military authority, whether imposed through direct occupation or *habeas* suspension and commission trials. Apart from the “dark lantern societies,” however, the parties involved did not seek to halt the war itself, but rather to force reform or revocation of policies viewed as unjust or anathema to their

livelihoods and freedoms. The “dark lantern societies,” in contrast, did not intend to oppose the war through armed rebellion, despite contemporary assertions, but through armed “protection” of the voting populations they believed would hold to account the Lincoln Administration for its growing abolitionism, domestic constitutional abuses, and seemingly endless military failures well into 1864.

Though differing in intent, these forms of direct resistance had much the same effect on domestic and frontline war policy. The pursuit of draft dodgers and the quelling of riots and other violent incidents required the Lincoln Administration to divert military resources—troops, supplies, officials—from the larger war effort to police the Northern population. The rumors, speculation and paranoia surrounding domestic dissent, as in the “Fishing Creek Confederacy” and the “dark lantern societies,” encouraged additional crackdowns and arrests, stoking public anger and political controversy. The risk of *creating* armed dissent through such measures—and Lincoln’s personal skepticism regarding its prevalence and appeal—led the administration to press for lighter sentences in the military trials of direct dissenters, and pardons or alterations in the trials’ aftermath. Meanwhile, the constitutional questions raised by the administration’s response to direct dissent actions culminated in the Supreme Court decision *Ex parte Milligan*, which plainly rejected the notion of military trials for civilians in regions unaffected by war, and placed clear limits on presidential authority to employ the military against antiwar dissent.

In the Confederacy, direct antiwar dissent first manifested itself in a combined political-direct form, with the creation of entities such as the East Tennessee Convention and the “Republic of Winston” in Alabama. These groups opposed their states’ joining the Confederacy, and, more generally, the use of war to restore the Union. When their states’ secession became official, they continued this resistance in the form of draft evasion—including escape to Union

lines—sabotage of railroads and other infrastructure, and clashes with Confederate officials or with pro-secessionist communities and individual families in their home regions. Such actions, though aimed towards conscription, *habeas*, and military governance policies, retained the groups' earlier, broader antiwar goal of ending the conflict in favor of Union or the higher notion of peace, in tandem with more immediate, personal desires to safeguard their members against reprisals.

This blended “specific-general” intent persisted through the period 1861-1863. Like Winston County and East Tennessee, it originated among dissenting groups geographically isolated from Union support or protection. Often these groups were already subject to suspicion, discrimination, and outright oppression by secessionist and then Confederate authorities, based on ethnicity, race, or political leanings. The German immigrants of the Texas “Hill Country”, who adhered almost as a body to Unionism and antislavery views, expressed their dissent against the war overall, and specifically against conscription and military rule of their settlements, through flight from draft officials and garrison troops. The Confederacy's efforts to stifle this dissent provoked the Nueces Massacre, followed by the “Great Hanging” at Gainesville, and a persistent state of guerrilla warfare between staunch Unionists and pro-Confederates. The demands of this armed internal dissension, and the defection of many Texas Unionists to the Union army, thus further exhausted the Confederacy's military strength in Texas and the Trans-Mississippi theater of the war.

The “contraband” slaves that fled to Union camps beginning in 1861 did so for the most basic reason: Freedom, which Lincoln's election had first seemed to herald, and the advance of Northern armies appeared to validate. Escape, for slaves, meant not only personal freedom, but freedom from the grueling, at times deadly labor on behalf of the Confederate military: building

fortifications—often during combat—transporting ammunition and other supplies, and harvesting essential crops. On the Confederate home front, “contraband” escapes heightened fears of widespread slave uprisings inspired by the Proclamation, or a mass exodus North. These potential nightmare scenarios motivated the creation of the “Twenty Slaves Law,” intended to maintain a domestic police and militia force to keep the Southern labor and logistical systems intact. The socially and economically selective nature of this law, however, stoked resentment among the majority non-slaveholding, yeoman farmer population, who, along with their families and communities, bore the brunt of conscription, impressment, and other wartime edicts. This resentment, paired with the steady collapse of the Confederate war effort beginning in mid-1864, encouraged higher and higher levels of desertion and public anger, which pushed the Davis Administration to more widespread and harsher conscription and *habeas* suspension measures, which increased this dissension even further. Thus, though not explicitly motivated by antiwar sentiment or intent, “contrabands” had an antiwar effect on Confederate war policy, alongside their pressure on the Lincoln Administration to adopt more abolitionist measures—the Emancipation Proclamation, enlistment of black troops, the Thirteenth and Fourteenth Amendments—during the war’s later years.

Direct antiwar dissent also came from elements of Southern society that considered themselves loyal Confederates, yet who objected to the disproportionate economic burdens the war and the Richmond government had foisted on them. The Richmond Bread Riot of spring 1863, and similar disturbances elsewhere in the South in the same period, were instigated by organized groups of Southern women from the poor and middle class, who demanded fair prices for bread and other foodstuffs and goods, all of which had become scarce given drought, inflation, refugee influx to the cities, overextended or broken supply lines, and the demands of

the Confederate armies. Mary Jackson, the leader of the Richmond demonstration, and the rioters as a body adopted the label of “soldiers’ wives”, to cast themselves as patriotic, self-sacrificing figures who had given up their husbands, sons and brothers to defend the Confederate cause, and now sought compensation and state support in the face of hardship. While the bread riots were quickly ended by arrests and the threat of military force, they revealed the potency of public discontent towards the Davis Administration’s wartime economic decrees, and the deterioration of the Southern home front. Although word of the riots did not produce the immediate increases in desertion or decreases in troop morale that the Confederate leadership feared, the dire domestic situation exposed by them stimulated such shifts to new levels in the war’s last two years and eroded popular support for the war. In this way, though they intended to affirm their loyalty while merely protesting unjust policies, the rioters’ demands and actions in effect expressed and enlarged upon a generalized, growing level antiwar dissent in Confederate society.

Alongside desertion and armed rebellion, direct dissent expressed itself in organized, nonviolent opposition. The “Red Strings” group, led by John Pool in Appalachian North Carolina and Virginia, carried out such actions from mid-1863 to the end of the war in April 1865. Composed of Southern Unionists, former Opposition Whigs and Quakers, this group—similar in general form to the Union’s “Loyal League”—hid Confederate deserters and escaped Union POWs from Home Guard sweeps and supplied information on Confederate troop movements to Union commanders. Like the peace societies of Arkansas and Alabama earlier in the war, their members also entered the state bureaucracy and military—most of all in North Carolina, where the expansion of civil servant ranks to hinder conscription provided more vital opportunities for intelligence-gathering, and the sabotage of campaigns to quell the “Red Strings” and more openly rebellious groups such as the “Buffaloes.” The efforts of the “Red

Strings,” therefore, represent the final, clearest form of Southern antiwar direct dissent in terms of intent and effect, and in its origins in both specific and general opposition to the Civil War.

Closer analysis provides important new insights into the forms, motives, intents and effects of antiwar dissent in the American Civil War. Among the most important is that this dissent was not monolithic in either the North or South; it was not solely political in nature, or limited to judicial protests, or manifested only in grassroots protests, riots and armed resistance against the wartime policies of Washington or Richmond. Factors within each of these areas motivated dissenters to challenge or circumvent prowar policies, edicts, and individuals: fear of abuses of military or executive power; anger towards abolition and black civil rights, or socially selective draft and economic laws; concern for the loss of sacrosanct ideals and freedoms; a personal desire to avoid hardship, deprivation and death through military service or supply demands.

Dissenters adopted stances that were both implicitly and explicitly against the war, and targeted similar grievances in both North and South. Some challenged specific aspects of the war (draft laws, *habeas corpus* suspension, emancipation, military arrests, forced labor, socioeconomic stratification), while maintaining varying levels of support for the war itself due to regional, state or party loyalty. Others attacked the idea of war in general, in the name of secession or Union (with or without slavery) and sought to either negotiate a peaceful reconciliation or separation, or to merely avoid being coerced into participating in the conflict. Regardless of their implicit or explicit nature, however, their existence, rhetoric and actions—on the local, state or national scale—provoked charges of subversion and treason from Northern or Southern pro-administration factions and advocates and led in turn to campaigns of discreditation and suppression.

This suppression offers another perspective regarding Civil War dissent, the war itself,



and antiwar dissent in American history overall. Through their highlighting of particular policies, or of the nature and impact of the conflict as a whole, dissenting movements and individuals drew additional public attention to these issues. Intentionally and otherwise, this brought increased pressure on the Lincoln and Davis Administrations to reform or revoke unpopular or uncertain aspects of the war. The escapes of the “contrabands,” to take one example, aimed solely at attaining the personal freedoms believed guaranteed in Union-controlled territory. Yet these escapes also served as a catalyst for both the Union’s adopting of emancipation as a war aim and the growth of dissent in the non-plantation South following the imposition of the “Twenty Slaves Law” and other edicts intended to prevent further flight and potential uprisings. The challenges by Democratic and Republican jurists to *habeas* suspension, military tribunals and other perceived unconstitutional acts, to take another, brought about new legislation passed with Congressional approval to allay partisan fears, and brought about such landmark rulings as *Ex parte Milligan* that continue to define civil-military relations and the limits of Executive power in the modern day.

Furthermore, in targeting the multiple expressions of dissent within their borders, the Union and Confederate governments diverted political capital, military forces, and critical funding and supplies from the war effort to the suppression effort, often with contrary outcomes. The Confederacy’s military occupation of Unionist enclaves (eastern Tennessee, the Texas “Hill Country”) sparked additional dissent in these areas: their populations fled or were expelled to Union territory, drained Confederate power through enlistment in the Union army, and even formed the basis for pro-Union state and local governments once their regions came under Northern control. The 1863 New York City Draft Riots pulled forces from the Gettysburg Campaign, possibly preventing a definitive destruction of Robert E. Lee’s Army of Northern

Virginia, and the exaggerated threat of a “Copperhead” uprising in the Midwest and mass escapes of Confederate POWs from Chicago’s Camp Douglas also drew manpower and resources from the battle lines in Virginia and the Deep South. The imposition of harsher or wider-reaching versions of already-unpopular measures—conscription, the “Twenty Slaves Law”, *habeas* suspension, burdensome price and other economic decrees—intensified political, judicial and direct dissent against such, as well as the war in general, which placed additional demands on the governments, economies and societies of both regions. Even isolated expressions of dissent, with little effective impact beyond a certain region or even locale—the “Fishing Creek Confederacy”, the “Republic of Winston”, the Charleston Riot, the Southern bread riots—provoked draconian responses, adding to the political, military and public support concerns of Washington or Richmond, and to demands for policy changes.

Thus, the policies and aims of both the North and South—and the course and nature of the Civil War—were directly shaped by the antiwar dissent on their home fronts. This effect has recurred throughout American history, with especially notable results in the previous century. Dissent against U.S. entry into World War I, based on socialism, pacifism, isolationism, antiracism and other beliefs, brought about repression in the form of the 1917 Espionage Act and the arrests of the “Red Scare.” These actions, like the counter-dissent efforts of the Civil War, were undertaken in the name of patriotism and the wartime security of the nation, and also set the stage for the paranoia and domestic surveillance and infiltration activities of the Cold War era. Dissent against the Vietnam War, on similar grounds, brought even greater expansion of federal monitoring and policing powers, which triggered similarly more powerful challenges to these, the declining economic and social state of the country, and the war, in the courts, at the ballot box, and among the armed forces. And dissent against the War on Terror has led to both new

extensions of Executive, military and police powers through such means as the Patriot Act, and new yet familiar questions concerning the legality of military tribunals and the protection of the rights of privacy, speech, and personal liberty during periods of conflict.

Victory or defeat in the Civil War did not put an end to the divisions and issues in each society that gave rise to the dissent itself. By extending the nature of dissent as done in this study, more these issues are uncovered and fully explored, as well as their manifestations and impact, and their place in modern debates regarding dissent, government authority, and individual rights in America, in war or peace.

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## Mark A. Ciccone

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### Education

**University of Wisconsin-Milwaukee**- *Doctor of Philosophy in History* (Dec. 2020)

PhD Dissertation Title: *Houses Divided: New Perspectives on Antiwar Dissent in the American Civil War*

**University of Wisconsin-Milwaukee**- *Master of Arts in History* (May 2014)

MA Thesis Title: *Not Our Fight: The Roots and Forms of Antiwar Dissent in Civil War Wisconsin, 1860-1865*

**The Evergreen State College, Olympia, WA** - *Bachelor of Arts in History and Political Science* (June 2011)

**Sussex University, United Kingdom** - *Semester Abroad* (Jan. 2009—June 2009)

### Awards

Teaching Assistantship (Fall Semester, 2020)

- Course taught: Hist. 151 (American History 1607 to 1877, Online)

Frederick I. Olson Scholarship (Fall & Spring Semester, 2019-2020)

Ellen Healy Award for Graduate Studies (Fall Semester, 2018)

Chancellor's Graduate Student Award (Spring Semester, 2018)

Teaching Assistantship (Fall Semester, 2016)

- Course taught: AIS 203 (American Indians of the Western Great Lakes)

Teaching Assistantship (Fall & Spring Semester, 2013-2014)

- Courses taught: Ethnic Studies 101, History 151-202: American History to 1877 (Online)

Outstanding Student Worker Award (May 2011)

Foundation Scholarship Award (Winter & Spring Quarter, 2007-08)

- Presented to students attending full time who have the potential to distinguish themselves after graduation in a field of their choosing (History and Political Science)

### Special Coursework

**Independent Research Project**, Spring 2011

- *Reconstruction: Then and Now*, an examination of post-Civil War Reconstruction politics and strategies, and what measures exist today to stave off and rebuild after a future crisis of similar magnitude.



### **Independent Research Project, Fall 2008**

- *Under Two Shadows: Europe during the Cold War*, a study of superpower sociopolitical and economic influence on Western and Eastern Europe, through individual country case study (France, West Germany, East Germany, Romania).

### **Relevant Extracurricular Activities**

#### **Cooper Point Journal, The Evergreen State College** (Sept 2008 – May 2011)

- Began as copy editor and general staff member for student newspaper
- Promoted to opinion columnist (Sept 2010)

#### **KAOS Community Radio, The Evergreen State College** (Winter & Spring, 2008)

- Volunteer for the station's "Rookie Radio" program, pitched Classical Music broadcast

### **Publications**

"Kansas Troubles," historical fiction e-book publication, Amazon Kindle (Sept. 2019) <https://www.amazon.com/Kansas-Troubles-Mark-Ciccione-ebook/dp/B07YDY7TTT>

"Divided Worlds," historical fiction e-book publication, Amazon Kindle (April 2018) <https://www.amazon.com/dp/B07BW8DPGK>

"Red Delta," historical fiction e-book publication, Amazon Kindle (Dec. 2017) <https://www.amazon.com/dp/B078NRSN9B>

"Obsidian & Steel," historical fiction e-book publication, Amazon Kindle (June 2016) <https://www.amazon.com/dp/B01GOUPH66>

"For State and Country," historical fiction e-book publication, Amazon Kindle (March 2016) <https://www.amazon.com/dp/B01CTN98SU>

"Dillinger in Charleston," historical fiction e-book publication, Amazon Kindle (April, 2015) <https://www.amazon.com/dp/B0167UTNT0>

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### **Relevant Employment**

#### **University of Wisconsin-Milwaukee**

- Teaching Assistantship (Sept 2013—June 2014, Sept 2016—Dec 2016, Sept 2020—Dec 2020)
- Panther Academic Support Services (PASS) Tutor (Sept 2017—June 2018)
- Library Work-Study (June 2013—Sept 2013)

### **Skills and Languages**

**Computer**--Proficient in Microsoft Office: Word, Excel, Power Point. Basic-level training in voice and typed transcription.

**Language**—Spanish (Intermediate)

### References

- Professor Lex Renda, UWM History Dept., 414-229-5211 renlex@uwm.edu
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- Anita Cathey, UWM History Dept. Staff, 414-229-4362 cathey@uwm.edu
- Aaron Dobbs, UWM Library, 414-229-5410 dobba@uwm.edu
- Prof. Thomas Rainey, Evergreen State College, 360-867-6010 raineyt@evergreen.edu