

ESSENTIAL CIVIL WAR CURRICULUM

The Emancipation Proclamation

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On September 22, 1862, Abraham Lincoln issued the preliminary Emancipation Proclamation. The document declared that the war would continue to be waged for the “object of practically restoring the constitutional relation” of the United States with the people of the seceded states, and that Lincoln would use all his authority and power as President and commander in chief to achieve that goal. It announced that the President would encourage Congress again to provide financial aid to any slave states willing to adopt gradual or immediate plans of emancipation, and also funds to “colonize persons of African descent with their consent.”

It then stated Lincoln’s intentions: “That on the first day of January in the year of our Lord, one thousand eight hundred and sixty-three, all persons held as slaves within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States shall be then, thenceforward, and forever free.” Such freedom would be recognized and maintained by the government, including the army and navy, “which will do no act or acts to repress such persons . . . in any efforts they may make for their actual freedom.”

The Proclamation proceeded to call attention to two Acts of Congress. The first, approved on March 13, prohibited the military from returning fugitive slaves. The second, approved July 17, provided for the seizure and confiscation of the slaves of anyone “engaged in rebellion” against the United States and declared that they “shall be forever free of their servitude.” It also restated that no escaped slave “shall be delivered up,” unless the lawful owner took an oath that he had not borne arms against the United States or supported the rebellion. The document concluded with a promise to recommend “in due time” that those loyal citizens who lost slaves would be compensated.

Lincoln had first announced the decision to emancipate to his Cabinet on July 22, 1862, but was persuaded to wait for a Union military victory before issuing the Proclamation so as not to seem to be acting out of desperation. That victory came at Antietam, on September 17, a costly but strategically significant triumph that forced Robert E. Lee’s invading army back into Virginia.

The decision to issue the preliminary Emancipation Proclamation evolved slowly, too slowly according to Lincoln’s radical critics, who wrung their hands over the

President's seeming unwillingness to act directly against slavery. But Lincoln had multiple reasons not to move precipitously.

First, he believed his oath of office to uphold the Constitution prevented him from tampering with slavery in the states. Whatever Lincoln believed personally, and he was decidedly antislavery, his "official duty," as he reminded others time and again, did not permit him to interfere directly with slavery, which was a local institution under state aegis. As long as the Confederate states remained technically in the Union, and Lincoln insisted that they did, then the citizens of those states, whether Unionist in sentiment or not, were entitled to the protection of their Constitutional rights. "If slavery is not wrong, nothing is wrong. I can not remember when I did not so think and feel," Lincoln wrote in April 1864. "And yet," he added, "I have never understood that the Presidency conferred upon me an unrestricted right to act officially upon this judgment and feeling." He would need to be convinced that another principle existed whereby he could take action.

Second, he had good reason to be concerned about the disposition of the four slave states that remained in the Union—Delaware, Maryland, Kentucky, and Missouri. He feared that should he take direct action against slavery, these states (except for Delaware) might also bolt and join the Confederacy, which would seriously weaken the Union military cause. His eagerness that these Border States pursue independent action against slavery led him in March 1862 to take the unprecedented step of proposing that Congress offer pecuniary aid to any state that would adopt some plan of gradual emancipation, an offer he repeated in the preliminary Emancipation Proclamation. Lincoln would not act against slavery until he became convinced that the Border States had no intention of taking him up on his offer.

Third, he was concerned about maintaining support for the war. There were many Democrats in the free states and while they could support a war to preserve the Union, a war to abolish slavery might well alienate them from the cause. Many Northerners feared an influx of black laborers should slavery be abolished. Political opposition on the home front, what was called "the fire in the rear," could make it that much more difficult to enlist men in the army and successfully prosecute the war.

Finally, there were diplomatic considerations for proceeding cautiously. Lincoln's administration rightly feared that England and France might recognize the Confederacy and provide support that would lead to a negotiated peace that recognized Confederate independence. Early in the war, attacking slavery seemed to pose more of a diplomatic problem than not doing so. Europe was dependent on Southern cotton, and, as long as European leaders believed the conflict was a domestic insurrection over internal political issues they would likely stay out of it. But should the Union make it a war against slavery, foreigners might see it as a play for Northern expansion and empire that would damage their own interests and lead them to intervene in the struggle.

Between April 1861, when war broke out, and July 1862, when Lincoln decided to issue an Emancipation Proclamation, much had changed. The most important development was the growing influence of an argument that emancipation could be

justified on grounds of military necessity, an argument that became increasingly persuasive to the President and those initially reluctant to see the administration strike directly against slavery. In many ways it was the slaves themselves who compelled the issue. From the start of the war, they began to seek refuge within Union lines. Generals such as Benjamin Butler, stationed at Fortress Monroe, in Virginia, wondered what to do with these runaway slaves.

In May, Butler wrote, that “the question in regard to Slave property is becoming one of very serious magnitude.” The number of slaves coming into his lines was growing and he confessed “the utmost doubt what to do with this species of property.” Recognizing the vital aid these slaves were providing to the enemy (twelve runaways who entered that morning had been forced to help erect the batteries that fired upon Butler’s men), he concluded that “as a military question, it would seem to be a measure of necessity to deprive their masters of their services.” Knowing that under the laws of war he could seize as contraband anything that could aid the enemy, he decided to confiscate the slaves as a function of military power, and the label “contrabands” stuck as the term for all slaves who ran off and entered Union lines.

Adding urgency this doctrine of confiscation based on military necessity, which would morph into emancipation, was the defeat of Union forces at Bull Run on July 21, which came as a shock, and the continued unevenness of the Union war effort: defeats at Wilson’s Creek in Missouri in August and Ball’s Bluff in Virginia in October were followed by victories in Tennessee at Forts Henry and Donelson in February and Shiloh in April; but then in late June, General George B. McClellan’s Peninsular campaign to take Richmond, which many northerners expected to bring the war to a successful close, stalled short of the Confederate capital and was abandoned, on Lincoln’s orders, a month later. Given the setbacks suffered by Union forces, it could be argued that emancipating the slaves, who played a critical role in sustaining the Confederate Army as servants to officers, as laborers, and as essential to the agricultural, manufacturing, and transportation sectors of the Confederacy’s economy, would indeed help Union efforts on the battlefield and was justified on military grounds.

The decision, however, was Lincoln’s to make. On two occasions, Union generals issued decrees freeing slaves within their respective military departments: In August 1861, General John C. Frémont in Missouri and in May 1862, General David Hunter, whose department encompassed South Carolina, Georgia, and Florida, though his forces occupied only a few enclaves in those states. Lincoln quickly revoked these decrees. He denounced Frémont’s actions as “purely political, and not within the range of military law, or necessity.” Missouri, after all, remained in the Union. More significantly, Lincoln included the following statement when he overturned Hunter’s order: “I further make known that whether it be competent for me, as Commander-in-Chief of the Army and Navy, to declare the Slaves of any state or states, free, and whether at any time, in any case, it shall have become a necessity indispensable to the maintenance of the government, to exercise such supposed power, are questions which, under my responsibility, I reserve to myself, and which I can not feel justified in leaving to the

decision of commanders in the field.” Within two months of that message, Lincoln would decide to take the action that he explicitly reserved to himself.

As Lincoln carefully considered how best to move forward, the Republican-dominated 37th Congress steadily assaulted slavery. Lincoln signed bills abolishing slavery in the western territories and in Washington D.C., an area over which Congress had unquestioned authority; he also signed two Confiscation Acts, a treaty with Great Britain for the suppression of the slave trade, and a revision of the Militia Act that authorized the employment of blacks in non-combat positions in the military. Joshua Giddings, an Ohio Congressman from 1838-1859 and an antislavery activist, predicted in April 1861 that, “The first gun fired at Fort Sumter rang out the death-knell of slavery.” For radical Republicans, it was merely a question of how to help move the President in the direction of emancipation.

Conservative border state representatives played into the hands of radical and even moderate Republicans by refusing to take action against slavery in their states despite repeated entreaties and inducements to do so. On March 10, and again on July 12, Lincoln met with border-state members of Congress. At the second meeting, 28 representatives and senators including several loyalists from Virginia and Tennessee, heard him warn that as long as their states continued to maintain slavery, the Confederacy would hold out in hopes of their eventually joining in the rebellion. He pleaded with the delegation to recognize that “the incidents of the war can not be avoided. If the war continue long, as it must, if the object be not sooner attained, the institution in your states will be extinguished by mere friction and abrasion—by the mere incidents of the war. It will be gone, and you will have nothing valuable in lieu of it.” He reminded these mostly conservative politicians that he had repudiated General Hunter’s proclamation but that, in doing so, he angered many whose support the country needed. “The pressure in this direction, is still upon me, and is increasing,” Lincoln admitted. He begged them to relieve him and the country by merely stating that they would begin a process that would gradually lead to emancipation.

Lincoln failed to persuade them. In a formal response two days later, 20 of the 28 Congressmen denied the “necessity of emancipating the Slaves of our States, as a means of putting down the rebellion.” The representatives emphasized that the people in their states could not consider the President’s proposition “in its present impalpable form.”

On Sunday, July 13, the day after addressing the border state representatives, Lincoln attended the funeral of Secretary of War Edwin Stanton’s infant son. He invited Navy Secretary Gideon Welles to accompany him. Secretary of State William Henry Seward and his daughter-in-law were also in the carriage. Along the way, Lincoln brought up the possibility of issuing an Emancipation Proclamation. “in case the Rebels did not cease to persist in their war on the Government and the Union, of which he saw no evidence.” According to Welles, he “dwelt earnestly on the gravity, importance and delicacy of the movement, said he had given it much thought and had about come to the conclusion that we must free the slaves or be ourselves subdued, etc., etc.”

Welles called it a “new departure” for the President and it emerged for a variety of reasons: the growing importance of military necessity as both a legal doctrine and a practical reality, setbacks on the battlefield, the actions of the slaves, the vigorous debate over confiscation and emancipation in Congress, and the negative response of the Border States to Lincoln’s repeated entreaties to move against slavery. He had long believed that the abolition of slavery in Kentucky, Missouri, Delaware, and Maryland would help end the rebellion and lead gradually to emancipation in the Confederacy. He now realized that, if anything, it would have to be the other way around. Attack slavery in the rebellious states first, for which he now was convinced he had the constitutional authority because of his war power as commander in chief of the armed forces, and let emancipation filter up to the Border States. Lincoln still clung to the idea of gradual, compensated emancipation, and he still favored colonization, but he was now preparing to issue some sort of proclamation of emancipation. He promulgated it on September 22 – exactly two months after first broaching the idea to his cabinet and five days after the Battle of Antietam.

Reactions ranged from ecstatic to enraged and every shade of emotion in between, including indifference. One writer proclaimed, “As I write millions are discussing it in every section that is traversed by the telegraphic wires. It will be greeted by many differences of opinion. It will startle the weak, confirm the conscientious, and for a brief period supply a new weapon to the sympathizers with the common enemy.” “It is the beginning of the end of the rebellion; the beginning of the new life of the nation. God bless Abraham Lincoln,” declared the *New York Tribune*. ” “The 22d of September in this year will hereafter be a day to be commemorated with peculiar honor,” predicted the *New York Evening Post*, because “on that day, it will be recorded, the chains of bondage were struck from the limbs of three millions of human beings.”

By contrast, opponents denounced the Proclamation as an example of radical fanaticism. The *New York Herald*, a paper that leaned Democratic, warned that the Proclamation would inaugurate a “social revolution.” Another editor railed that it was “an outrage upon the humanity and good sense of the country, to say nothing of its gross unconstitutionality” and it will lead blacks to “massacre white men, women and children till their hands are smeared and their appetites glutted with blood.” The *Louisville Journal* excoriated the measure as “wholly unauthorized and wholly pernicious,” adding that “Kentucky cannot and will not acquiesce in this measure. Never!”

Other opponents played down the Proclamation’s significance. The *New York World*, the country’s leading Democratic paper, asserted that “This new proclamation really amounts to little. The President proclaims in substance that on the first of next January he will issue still another proclamation, putting in force the main provisions of the confiscation act.” The *Boston Post* agreed: “There is nothing strikingly new in the measures advocated in the proclamation. . . . The declaration that slaves are free where our armies cannot penetrate, of course, is a nullity, and will excite the ridicule that follows impotency.”

January 1, the date on which Lincoln promised to issue a final Proclamation, was one hundred days away, and over those three months several issues became clarified. A debate raged over the constitutionality of the Proclamation. A former member of the Supreme Court, Benjamin Curtis of Massachusetts, denounced the decree as an unconstitutional use of executive power. Others however came to the President's defense, and Lincoln never doubted that he had the power, justified by military necessity, to take action in this way. Across the Atlantic, the conservative *Times* of London decried the measure as a "very sad document," but it also became clear to the administration that many people in Great Britain supported making this a war against slavery and that the decree might just as readily inhibit foreign recognition of the Confederacy as provoke it.

Lincoln also took solace from the reaction of the soldiers in the field, particularly in the Army of the Potomac where General McClellan opposed any measures against slavery. Despite some grumbling, particularly among officers, following issuance of the Proclamation, the great majority of soldiers, many of whom shared the racial antipathies commonplace among northerners, remained true to the cause. They supported the commander in chief and were for the most part willing to abide by any measure that, as a private in the 33rd Massachusetts told his mother, "will hurry the close of rebellion somewhat."

The most significant setback for the administration during the hundred days came in the fall elections. The Republicans lost 28 seats in Congress, saw the Democrats win the Governorships of New York and New Jersey, and take control of the state legislatures in Indiana and Illinois. But the preliminary Emancipation Proclamation was only one of several factors, and probably the least important, that contributed to this outcome. It was common for the party in power to lose seats in the off-year elections, and war weariness, as well as dissatisfaction with the way in which the war had been managed to that point, left many voters hungering for change. Furthermore, many of the elections were fairly close, and Republicans attributed some defeats to the fact that soldiers in the field could not vote. While Lincoln's opponents thought the election results would lead the President to withdraw his Proclamation, they had the opposite effect. He came away all the more determined to take action (he fired McClellan and successfully resolved tensions in his Cabinet.) Senator Charles Sumner met with Lincoln on December 27 and reported "The Presdt. says that he could not stop the Proclamation if he would, & would not if he could."

On Monday, December 29th, the Cabinet convened. According to Gideon Welles, "the President read the draft of his Emancipation Proclamation, invited criticism, and finally directed that copies should be furnished to each." The document that Lincoln read began by citing the preliminary decree of September 22, and then, "in accordance with my purpose so to do publicly proclaimed for the full period of one hundred days, from the first day above mentioned" designated those states and parts of states that were still in rebellion and to which the Proclamation thus applied.

The final Proclamation differed in three significant ways from the preliminary Emancipation Proclamation. First, it made no mention of colonization. In all likelihood, Lincoln had included colonization in the preliminary Emancipation Proclamation not only because he favored it, but also as an inducement to encourage slave states to adopt plans of abolition. With no states taking him up on his offer, or responding to his threat to issue a final Proclamation on January 1, there was no longer a need to include the incentive.

Second, the final draft stated that blacks would be accepted into the armed services. Here too was reason to abandon colonization: it would be a cruel policy to call on blacks to serve the country and then expect them to leave. Enrolling blacks in the army also lent further credence to the argument that the Proclamation was justified as a military necessity— not only to deprive the Confederacy of the slaves' labor but also to enlist freedmen to serve the Union cause.

Finally, Lincoln amended a sentence from the preliminary Proclamation that had caused controversy. Instead of saying that the government “will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom,” he now wrote “and I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defence; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages.” He hoped this would put an end to the accusation that he sought to foment insurrection, and, at the same time, he provided a recommendation for what was to be done with the former slaves: allow them to work for wages.

Following the meeting on December 29, the President received memos from several Cabinet members offering suggestions for revision. The group differed on whether fractional portions of states should be exempted. Gideon Welles and Secretary of Treasury Salmon P. Chase thought not, whereas Attorney General Edward Bates thought the President had to declare, “as a simple matter of fact,” which parts of states were in actual rebellion. At a cabinet meeting on the 31st to review the text of the Proclamation a final time, Lincoln agreed to add a sentence proposed by Chase that bolstered the constitutional justification and lent the necessarily dry legal document a measure of moral and emotional force. After Lincoln replaced one of Chase's phrases with a more incisive substitute the sentence read: “And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, *upon military necessity*, I invoke the considerate judgment of Mankind & the gracious favor of Almighty God.”

On January 1, 1863, Lincoln signed the Emancipation Proclamation-- the day of Jubilee had arrived. The *Washington Morning Chronicle* spoke for all the supporters intoxicated with joy: the Emancipation Proclamation was “a great moral landmark, a shrine at which future visionaries shall renew their vows, a pillar of fire which shall yet guide other nations out of the night of their bondage. Abraham Lincoln . . . is entitled to the everlasting gratitude of a despised race enfranchised, the plaudits of a distracted

country saved, and an inscription of undying fame in the impartial records of history.” It was a “second Declaration of Independence.”

Opponents, of course, denounced it. The *New York Herald* called it “unnecessary, unwise, and ill-timed, impracticable, outside of the constitution and full of mischief.” Most conservatives preferred simply to ignore it, confident in their belief that it was only a paper proclamation that would have no real effect. “The proclamation has been five days before the country in print and the sun, moon and stars seem to continue in their courses, unmindful of the decree,” claimed the *Cincinnati Daily Commercial*, an exceptionally conservative Republican paper..

But opponents misjudged the significance of the action. The Emancipation Proclamation was not a *brutum fulmen*—inert thunder—as they claimed time and again. And it was not a “Pope’s bull against the comet,” which Lincoln had told a group of Chicago clergymen on September 13 that he feared any such a proclamation would be. The Emancipation Proclamation freed the slaves of those States and parts of States in rebellion against the United States, with the exception of the forty-eight counties in far western Virginia destined to become the new state of West Virginia, seven counties elsewhere in Virginia, thirteen parishes in southern Louisiana, and all of Tennessee. The excepted areas contained approximately 300,000 slaves. The Proclamation also did not apply, of course, to the Border States, which contained 500,000 slaves. But Lincoln did not include certain Union-controlled areas as exceptions which he might have—such as Eastern North Carolina and the Sea Island of South Carolina—which meant tens of thousands slaves immediately received their freedom. The remaining 3.1 million were declared free, and in time they would come to possess that freedom.

The enlistment of black soldiers also proved to be a momentous development. By war’s end, some 179,000 black soldiers had served, nearly 10% of the Union total, and another 19,000 sailors. Nearly sixty percent came from the states of the Confederacy, and twenty-five percent from the Border States. In August, Lincoln declared that “the emancipation policy, and the use of colored troops, constitute the heaviest blow yet dealt to the rebellion.”

Lincoln would continue to defend the Emancipation Proclamation and refuse to retreat from it (“the promise being made, it must be kept,” he said) even as he simultaneously continued to press for the Border States to adopt plans of gradual emancipation. Lincoln feared, however, that the Emancipation Proclamation might not hold up if challenged in Court, and he worried about what would be done should he not be reelected in 1864. Only a constitutional amendment abolishing slavery would guarantee the result proclaimed on January 1, and Lincoln and the Republicans worked hard to secure its passage. In April 1864, an Amendment that stated “neither slavery nor involuntary servitude” shall exist in the United States passed the Senate but it was defeated in the House in June. Following Lincoln’s re-election, however, on January 31, 1865 the House approved the Thirteenth Amendment and it was ratified by year’s end.

It has been all too easy for critics in the past one hundred and fifty years to scorn the Emancipation Proclamation, to say it did not free the slaves, that it had no moral ballast, and that it did not help win the war. Frederick Douglass offered an impassioned response to all the detractors: “our own Declaration of Independence was at one time but ink and paper. The freedom of the American colonies dates from no particular battle during the war. No man can tell upon what particular day we won our national independence. But the birth of our freedom is fixed on the day of the going forth of the Declaration of Independence. In like manner after coming generations will celebrate the first of January as the day which brought liberty and manhood to the American slaves.” Indeed, Douglass thought “The fourth of July was great, but the first of January, when we consider it in all its relations and bearings, even greater.”
