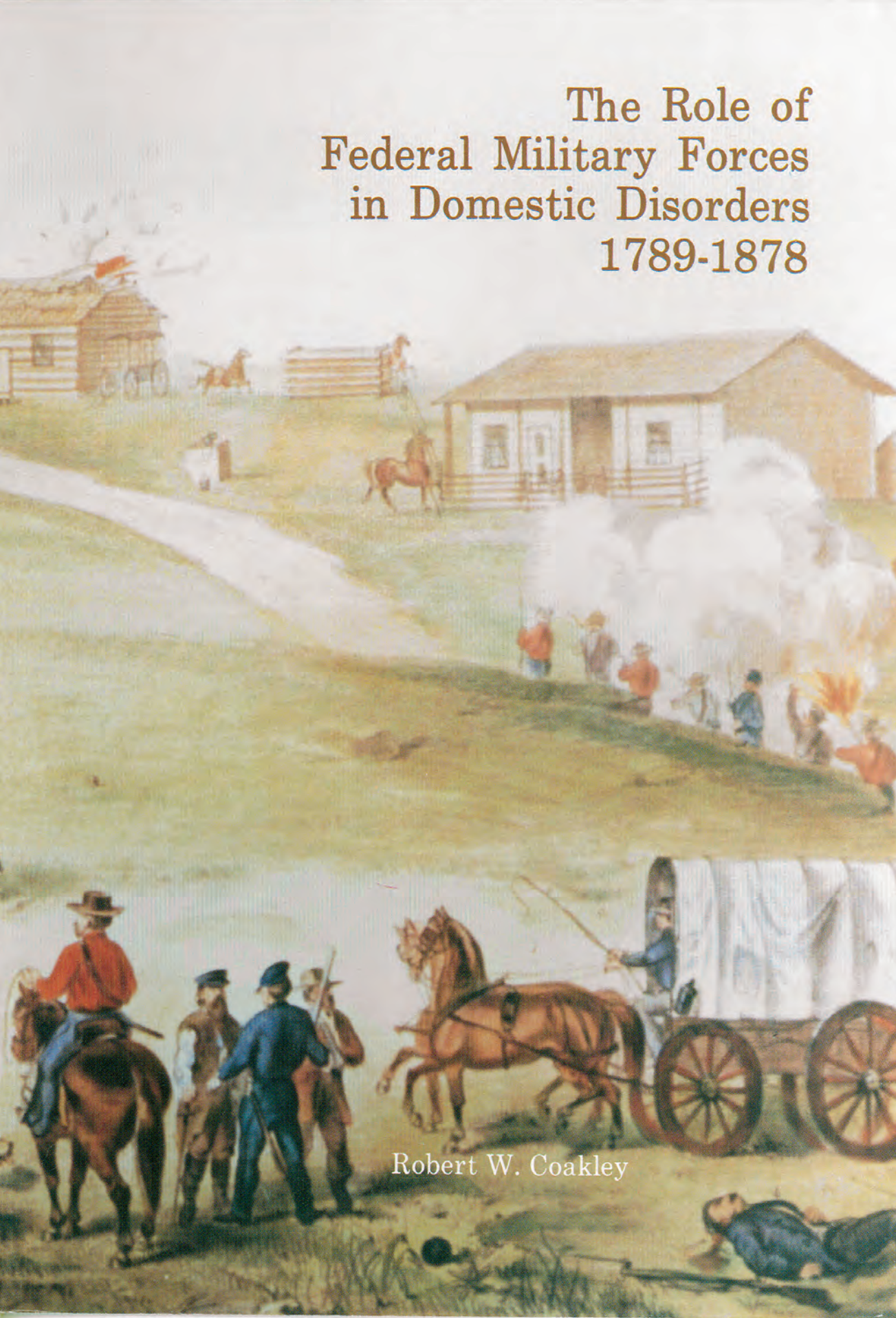
The Role of Federal Military Forces in Domestic Disorders 1789-1878



Robert W. Coakley

ARMY HISTORICAL SERIES

THE ROLE OF FEDERAL MILITARY FORCES IN DOMESTIC DISORDERS 1789–1878

by

Robert W. Coakley



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Foreword

It seems especially appropriate that during the nation's celebration of the Bicentennial of its Constitution the U.S. Army publish a history of the use of federal troops during instances of domestic disorder. Domestic disorders were very much on the minds of the Constitution's framers when they met in Philadelphia in the summer of 1787. In fact, as students of the period point out, the rebellion led by Daniel Shays in western Massachusetts the previous fall and winter must be counted as a proximate cause of the Constitutional Convention. Concern over the proper application of military force in domestic situations, especially in a new nation dedicated to personal liberty, is clearly reflected in the debate and in the Constitution as finally drafted. It is also enshrined in the document's noble preamble: "We the People of the United States in Order to . . . ensure domestic Tranquility."

The quest for domestic tranquility produced many troublesome and controversial incidents during the first century of our nation's history. In the account that follows the reader will find the essential elements of those incidents from the Whiskey Rebellion in 1794 to the Reconstruction that followed the Civil War and the ways in which federal military force was applied in each. The volume also clearly documents how the twin hallmarks of federal intervention in domestic affairs—the subordination of the military to civil authority and the use of minimum force—evolved according to principles enunciated in the Constitution and out of traditions established by the first commander in chief.

This study is the first in a series. Nearing completion are two volumes that will carry the story to the end of World War II and on through the great domestic upheavals that marked our recent past. Their publication is in keeping with the Center's mission of relating the nation's relevant military historical experience to professional issues of today and tomorrow for the military community and the public.

Washington, D.C.
14 August 1987

WILLIAM A. STOFFT
Brigadier General, USA
Chief of Military History

The Author

Robert W. Coakley received the degree of Doctor of Philosophy in History from the University of Virginia. He has taught at that university, and at Tulane University, the University of Arkansas, American University, the University of Maryland, and Fairmont State College. After serving as a noncommissioned officer in World War II, he became a member of the Historical Division of ETOUSA (European Theater of Operations, U.S. Army). He served on the staff of the Center of Military History between 1948 and 1980, during the last eight years as Deputy Chief Historian. Dr. Coakley is the coauthor of three volumes and many shorter studies in the Army's historical program, including: *Global Logistics and Strategy: 1940–1943; Global Logistics and Strategy: 1943–1945; The War of the American Revolution;* he was also one of the general editors of *A Guide to the Study and Use of Military History.* He is currently working on the Center's second volume on the use of federal troops in civil disorders.

Preface

This is the first of three projected volumes on the use of federal military forces in domestic disorders within the United States. Although the scale and frequency of such use in this country have been less than in most others, particularly countries of the third world, instances have ranged from the Whiskey Rebellion in 1794 to the urban riots of the 1960s. Many occurred at the very center of our development as a nation, arising out of great and controversial issues of their time. The purpose of this and succeeding volumes is not, however, to deal with these issues beyond the extent necessary to make clear why and under what circumstances troops were called upon to quell disturbances or to enforce the law against dissidents.

In this connection, it is necessary to make a distinction between the use of military force, either regulars or militia, by the federal government and the use of militia by state governments. This volume and its successors deal only with the former, the use of military force under federal control. Yet the use of force under state control has in fact been much more common in our history. The use of federal force, limited by the provisions of the Constitution and by judicial restraints on such use within our federal system, has been confined to cases that were often great national crises.

The treatment of this subject is necessarily episodic in nature, not a seamless narrative with a central theme, and the episodes are sufficiently diverse in nature to defy any rigid grouping or classification. The central focus, therefore, is on the pattern of military intervention in each case, including its legal basis and the way in which troops were used once intervention was ordered.

I first became interested in this subject when assigned as a staff historian to the Pentagon office controlling the troops at Little Rock in 1957. This assignment led to a belief that there should be a ready historical reference on the role the Army played in such crises. When this type of military intervention became quite frequent in the civil rights crises of the 1960s, the Center of Military History decided to prepare such a work. In 1903 the Army's Adjutant General had published *Federal Aid in Domestic Disturbances* by Frederick T. Wilson. A supplement was published in 1922, covering the years between 1903 and that date. The Center planned to update Wilson both by providing a more comprehensive account of the period to 1922 and by extending the coverage to the present, focusing particularly on those instances of troop intervention in the 1950s and 1960s.

Such a comprehensive treatment, we soon decided, required three volumes. This first volume covers the period from 1787 to 1878, beginning with the formulation of the Constitution and ending with the passage of the Posse Comitatus Act, which made legal requirements for federal military intervention more stringent and ended the frequent use of troops that had characterized the Civil War and Reconstruction period.

Many individuals aided the author in the preparation of this volume. Mrs. Emma Portuando Eaton, an indefatigable researcher, did much of the research on the earlier chapters. I also received assistance on other chapters from reserve officers on active duty, notably Col.

Stanley Falk and Col. John Price. Quite beyond research assistance, Morris J. MacGregor prepared the draft chapters on the Civil War, while Ronald H. Cole prepared the draft chapters on Reconstruction. These individuals are in fact coauthors of these chapters. To Mr. MacGregor also must go the credit for shepherding the volume through to final publication after the author suffered a stroke. Diane S. Arms, Rae T. Panella, and Cheryl A. Morai edited the volume; Howell C. Brewer, Linda M. Cajka, and Arthur S. Hardyman prepared the artwork; and Ernest F. Fisher, Jr., helped in the selection of suitable photographs. Jerry M. Cooper, John W. Pratt, David C. Skaggs, Paul J. Scheips, and Rebecca R. Raines read and made many helpful suggestions on the draft manuscript. But the author accepts responsibility for any errors that may still be found.

Arlington, Virginia
14 August 1987

ROBERT W. COAKLEY

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THE ROLE OF FEDERAL MILITARY FORCES IN DOMESTIC DISORDERS 1789–1878

CHAPTER 1

Constitutional and Legislative Foundations

Congress shall have power . . . to provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions.

——Article 1, Section 8. *Constitution of the United States.*

The United States shall guarantee to every state in this Union a Republican form of government, and shall protect each of them against invasion, and on the application of the Legislature, or of the Executive (when the legislature cannot be convened) against domestic violence.

——Article IV, Section 4. *Constitution.*

Opposition to the use of military force in the enforcement of civil law is deeply imbedded in American tradition. It derives both from British precedents and from the experiences of the American Revolution, the ostensible cause of which was the use of British troops to enforce oppressive measures. The image of hated Redcoats shooting down innocent citizens in the Boston Massacre of 1771 was a vivid one, easily transferable to any soldier employed as an instrument of internal control by a central government. The sentiment that a standing army in time of peace was "dangerous to the liberties of the people," a standard article of faith of almost all Americans in the post-Revolutionary period, derived largely from fears that such an army would be used by an arbitrary government to tyrannize its own people, not to fight its foreign foes. A standing army, it was thought, could be the instrument only of a monarchy, not of a democratic state.

Most of the members of the Constitutional Convention that met in Philadelphia in the summer of 1787 were imbued with this philosophy, but they were far too practical and experienced not to recognize that some sort of force must buttress the "laws of the union" if that union was indeed to be more permanent than the one established under the Articles of Confederation. They knew that the ordinary processes of civil law could sometimes be insufficient, and they were accustomed to the use of militia by colonial and state governments in domestic emergencies. It has been customary to think of the militia as a force employed only in fighting Indians or a foreign enemy; in truth it was, from its beginnings, also an instrument for the suppression of insurrection and rebellion, the enforcement of law, and the performance of a host of other services at the behest of both governors and local officials. In the rebellions and other internal conflicts writ large in colonial history—events such as Bacon's Rebellion in Virginia, Leisler's Revolt in New York, and the Regulator movement in the Carolinas—the established government's legal power to call forth the militia had been a decisive factor. (The new state governments had retained this power under the Confederation, maintaining a military instrument for use by the affected governors in domestic

disturbances within the borders of their own states, insofar as they could depend on their own militias to respond.) It was a logical corollary, therefore, that any new federal government created must have a force sufficient to ensure that its laws could be enforced throughout a wide and sparsely settled geographic territory, to take care of domestic violence or insurrection that a state's constituted authorities proved unable to handle, and indeed to settle quarrels between the states themselves. How to assure these ends without granting powers to the federal executive that would tempt him to use military force to suppress the liberties of the people, as the British government was thought to have done, was one of the fundamental dilemmas the framers of the Constitution faced.

The Specter of Shays' Rebellion

A debtors' revolt in western Massachusetts in 1786–1787 on the eve of the Philadelphia Convention provided an object lesson. The catalog of grievances of the people of western Massachusetts was long, and the governor and General Court, dominated by eastern mercantile interests, were quite inattentive to them. Small farmers, caught in a web of economic depression, suffered from a scarcity of circulating currency, heavy disproportionate taxation, excessive legal fees, court practices they deemed unfair, and a heavy burden of debt. A growing number of seizures of property for overdue debts and delinquent taxes touched off a spontaneous and essentially leaderless revolt in the summer of 1786, when debtors prevented the courts from convening in several western counties. Many of the participants were former continental soldiers and company-grade officers, men embittered by the extent to which speculative interests seemed to have reaped the rewards for their wartime sacrifices. One of these was Daniel Shays, who had served as a captain in Washington's army and had later settled in the town of Pelham in western Massachusetts.[1]

The Massachusetts Supreme Court, meeting at Worcester on 19 September 1786, brought indictments against several of the men who had participated in the closing of the courts in that region. When the court moved to Springfield with the evident intention of bringing indictments against similar offenders in Hampshire County, Shays appeared at the head of a body of armed men. In a bloodless confrontation with militia gathered there by the local commander, Maj. Gen. William Shephard, they forced the session to adjourn. Shays in this way assumed leadership of the movement. He was a colorless figure, no revolutionary firebrand like Nathaniel Bacon or Samuel Adams. A reluctant rebel, as indeed were most of his followers, he always disclaimed leadership of the movement with which his name has been associated. He was in fact but one of a number of leaders of independent bands that in the latter part of 1786 kept the judicial processes in western Massachusetts at a standstill.

Shays' name was, unbeknownst to him, signed to a circular letter on 13 October 1786 appealing to the leaders in Berkshire and Hampshire counties to assemble their men, arm

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[1] The earliest history of the affair is George Minot, *The History of Insurrections in Massachusetts . . .* (Boston: James W. Burkett & Co., 1810). A popular account is Marion L. Starkey, *A Little Rebellion* (New York: Alfred A. Knopf, 1955). The best short scholarly account is in Robert J. Taylor, *Western Massachusetts in the Revolution* (Providence: Brown University Press, 1954), pp. 128–67. Except where otherwise noted, the account is based on these works.

and organize them, and have them ready to turn out at a moment's warning to resist the "condign punishment" that the Massachusetts government apparently intended to inflict on the dissidents. This circular letter, giving evidence of armed revolt, stirred the Massachusetts General Court to coercive measures, proscribing illegal assemblies and suspending the writ of *habeas corpus*. The legislative body at the same time passed some alleviating measures, providing for the payment of certain back taxes in kind and promising pardon to all those who would take an oath of allegiance by 1 January 1787. But it was the threats of coercion that made the greatest impression on the malcontents, giving greater impetus to their efforts in the waning months of 1786. Local militia called into the field to protect the courts proved all too frequently sympathetic to the insurgents' aims.

The reverberations of these events spread well beyond the bounds of Massachusetts. Conservative elements in all the states were alarmed at the dangers of anarchy that the disorders in Massachusetts seemed to portend. George Washington in his Mount Vernon retreat was deeply stirred. "Commotions of this sort," he wrote on 22 October 1786, "like snow-balls, gather strength as they roll, if there is no opposition in the way to divide and crumble them."[2]

Henry Knox, secretary at war under the Confederation and a Massachusetts conservative, was even more exasperated at the inability of the national government to do anything to keep the snowball from gathering strength. The Department of War had a special interest in the matter, since Springfield was the site of one of the more important national arsenals, containing muskets, cannon, ammunition, and other military stores. Should these fall into rebel hands, the revolt would take on far more serious proportions. Knox was present at Springfield when Shays first appeared there in September 1786. Lacking a "respectable body of troops in the service of the United States" to station there to protect the arsenal, Knox requested that Governor James Bowdoin of Massachusetts order General Shephard to provide a militia guard. Since Shephard was unable to keep one there permanently (he did not believe it to be within his authority), after a second visit to Springfield in October Knox asked Congress to enlist 500 troops in New England to guard the arsenal. Congress, alarmed by the pessimistic reports of its secretary at war, did vote to increase the size of the army from 900 to 2,040 men and to recruit the new men in New England, but it cloaked the purpose of its move by citing the need for more men on the Indian frontier. In any case, Congress was without money to pay and support its troops properly, and enlistment proceeded too slowly to provide any federal guards for the arsenal in time to meet the threat. This task as well as that of quelling the incipient revolt fell to the government of Massachusetts.[3]

When on 26 December 1786 Shays' men again interrupted the court at Springfield, Governor Bowdoin issued orders to raise a force of 5,000 militia to deal with the insurgents. Since the state treasury, like that of the Confederation, lacked the resources to pay for such an effort and since the legislature was not in session, funds were raised by private subscription from the wealthier men of the state whose interests were most directly involved. General Benjamin Lincoln of Revolutionary fame was placed in command and instructed to support the

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[2] John C. Fitzpatrick, ed., *The Writings of George Washington from the Original Manuscript Sources, 1745–1799*, 39 vols. (Washington, D.C.: Government Printing Office, 1931–44), 26:27.

[3] Harry M. Ward, *The Department of War, 1781–1795* (Pittsburgh: University of Pittsburgh Press, 1962), pp. 76–77. Some 125 troops recruited in Connecticut did arrive to relieve the Massachusetts militia on 24 February 1787, but by then the crisis had passed.



HENRY KNOX

civil authority in executing the laws and, if he should deem it necessary, "to march a respectable force through the western counties."[4]

Because local militia was undependable, Lincoln's force was to be raised mainly in the eastern part of the state. The term of service was to be but thirty days. Before he could organize his force and move it west, Shays once again appeared at Springfield on 25 January 1787 with a contingent of about 1,500 men, this time to demand arms from the national arsenal. He was confronted by General Shephard with about 900 Hampshire County militia armed with muskets and cannon from the arsenal. Shephard's position was precarious for he had no assurance that he could rely on men whose friends and neighbors were in Shays' ranks. He chose the most impersonal way to deal with the matter—the use of artillery. When Shays' men refused to halt at his command, Shephard first ordered cannon fired over their heads. As they continued to advance, he directed several rounds in their midst. Three men fell dead, another mortally wounded; the rest, unprepared to face artillery fire, fled in panic. All the while, another insurgent band remained a few miles away, aloof from the conflict.

The confrontation at the Springfield Arsenal was the high point of Shays' Rebellion. The insurgents were never again able to mount any substantial threat for they lacked organization, leadership, weapons, and, as the Springfield incident illustrated, any strong will to start a civil war. Lincoln soon arrived in the area and, in a series of maneuvers undertaken in a cold and snowy Massachusetts winter, dispersed the insurgent bands. Lincoln's forces took Shays' group by surprise at Petersham in early February and overcame the rebels with hardly the discharge of a musket. The insurgent leaders fled the area to take refuge in neighboring states.

The back of the rebellion, if such it might be called, was broken, but incidents continued, particularly along the borders of Vermont and New York where the rebel leaders had taken sanctuary. Lincoln and Shephard, recruiting new militia for short terms, had to maintain a force in Berkshire and Hampshire counties until April 1787, and meanwhile the Massachusetts General Court, called into special session by the governor, had declared a state of rebellion existing in the state. But Massachusetts had great difficulty in getting any cooperation from neighboring states in apprehending the insurgents who fled her borders or in preventing the rebels from continuing to stir up trouble in the western counties. The Confederation government remained powerless to aid.

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[4] Ltr of instructions from Bowdoin to Hon Maj Gen Lincoln quoted in Frederick T. Wilson, *Federal Aid in Domestic Disturbances, 1787–1903*, 67th Cong., 2d sess., S. Doc. 263, p. 10.

In the end, the whole Shaysite movement gradually fizzled out, as the Massachusetts government by a combination of coercion and concession was able to reassert its authority. The jails were at first filled with insurgents, but the rank and file were quickly pardoned. About a dozen of the ringleaders were condemned to death, some *in absentia,* but in the end all were granted amnesty, including even the arch-rebel Shays, who lived to be eighty-four and died in obscurity in a small village in western New York. In Massachusetts the principal result of the whole affair was to produce reforms that met many of the Shaysite demands.

The effects in the broader national sphere were of ultimately greater consequence, for the shock effect of the rebellion had much to do with the movement for a constitutional convention. On 22 November 1786 Washington wrote James Madison,

> What stronger evidence can be given of the want of energy in our governments than these disorders? If there exists not a power to check them, what security has a man for life, liberty, or property? . . . Thirteen Sovereignties pulling against each other, and all tugging at the federal head will soon bring ruin on the whole; whereas a liberal, and energetic Constitution, well guarded and closely watched, to prevent encroachments, might restore to us that degree of respectability and consequence, to which we had a fair claim and the brightest prospect of attaining.[5]

Washington was not alone in this reasoning as conservative leaders everywhere could but view with alarm the dangers of a movement that might have disrupted the country had it had more effective leadership. "Nothing was wanting to bring about a revolution," Henry Lee of Virginia was to assert later, "but a great man to head the insurgents."[6] The specter of that drab and reluctant rebel, Capt. Daniel Shays, was ever present in the minds of the men who met at Philadelphia in the summer of 1787 to draw up an instrument for "a more perfect union." The need to provide the federal government with the powers to deal with similar eruptions in the future acted as an effective counterbalance to the fears of the use of federal military force in domestic emergencies.

The Constitutional Provisions

The specific issue of the right of the federal government (or as it was then usually called, the general government) to use military force in domestic disorders was not a subject of extended debate in the Constitutional Convention. With few exceptions the convention delegates accepted the premise that the new national government must possess a coercive power that the Confederation had lacked and that it must be capable of exercising this power in its own right without having to rely on the state governments. That any coercive power must rest, *in extremis,* on some type of military force was part of the premise. The whole issue was inextricably linked with broader considerations of the proper distribution of power between the state and general governments and among the branches of the latter and of the nature of the military force the general government could command. Insofar as separate consideration of the domestic role of military force can be distinguished, it involved three main issues: assuring that no state could itself defy the authority of the federal union operating within its prescribed sphere; enforcing the "laws of the union" against combinations of

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[5] Fitzpatrick, *Writings of Washington,* 29:52.

[6] Jonathan Eliot, *The Debates in the State Conventions on the Adoption of the Federal Constitution . . . ,* 5 vols. (Philadelphia: J. P. Lippincott Co., 1901), 3:180.

individuals when civil law should fail; protecting the states themselves against internal violence, rebellion, and insurrection against their authority and assuring them "a republican form of government."

On 29 May 1787 Governor Edmund Randolph of Virginia presented a plan for a strong national government worked out by the members of his state's delegation, consisting of a set of resolutions that became the basis for the discussion and debate of the next two weeks. Randolph prefaced his resolutions with a discourse on the weaknesses of the Confederation that in his view made a new compact of union necessary. James Madison, the most reliable and indefatigable of the notetakers, reported one of Randolph's statements as "the federal government could not check the quarrels between states, nor a rebellion in any not having constitutional power nor means to interpose according to exigency."[7] James McHenry, a fellow Virginian, reported this part of Randolph's remarks in greater detail.

> It [the Confederation] cannot preserve the particular States against seditions within themselves or combinations against each other. What laws in the confederation authorize Congress to intrude troops into a State? What authority to determine which of the citizens of a State is in the right, The supporters or the opposers of the government, Those who wish to change it, or they who wish to preserve it.[8]

The fifteen resolutions that Randolph presented to remedy these defects included one (Number 6) that the national legislature should have the power to "negative" state laws contravening the articles of union and that it might "call forth the force of the Union agst. Any member of the Union failing to fulfill its duty under the articles thereof"; and another (Number 11) "that a Republican Government & the territory of each State, except in the instance of a voluntary junction of Government & territory, ought to be guaranteed by the United States to each State."[9] These two resolutions clearly envisaged the use of some form of national force to coerce recalcitrant states and to subdue any new rebellion like that of Shays' against a constituted state government. There was no specific statement on the use of military force to execute the laws of the Union against combinations of individuals, nor indeed any mention of the kind of military might the Union could command in any exigency.

The idea that the force of the Union could be explicitly used against a particular state raised many misgivings. When Randolph's sixth resolve was considered on 31 May, James Madison

> observed that the more he reflected on the use of force, the more he doubted the practicability, the justice and the efficacy of it when applied to a people collectively and not individually.—A Union of States (containing such an ingredient) seemed to provide for its own destruction. The use of force agst. a State, would look more like a declaration of war, than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this recourse unnecessary, and moved that the clause be postponed.[10]

Madison's motion was passed unanimously and the last part of Randolph's sixth resolve deleted.

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[7] Max Farrand, ed., *The Records of the Federal Convention*, 3 vols. (New Haven: Yale University Press, 1911), 1:19.

[8] Ibid., p. 25.

[9] Ibid., pp. 21–22. For variant texts of the Randolph resolutions, see C. C. Tansill, ed., *Documents Illustrative of the Formation of the Union of the American States*, 69th Cong., 1st sess., H. Doc. 398, pp. 953–63. The wording of these particular resolutions is practically the same in the two variants.

[10] Farrand, *Records*, 1:54.

On 15 June 1787, when Governor William Paterson of New Jersey presented his plan on behalf of the smaller states, it contained a resolution similar to that in Randolph's initial plan. While Paterson would restrict the general government to a much narrower sphere than Randolph, within that sphere he proposed that acts of Congress and treaties ratified by it should be "the supreme law of the respective States so far forth as those Acts or Treaties shall relate to the said States or their Citizens" and that "if any State, or any body of men in any State shall oppose or prevent carrying into execution such acts or treaties, the federal Executive shall be authorized to call forth the power of the Confederated States, or so much thereof as may be necessary to enforce and compel an obedience to such Acts or an observance of such Treaties."[11] Paterson's resolve went a step beyond Randolph's because it would apply national force against combinations of individuals as well as against the states themselves, but it illustrates the fact that there was no essential difference between the large and small state plans in their approach to the use of military coercion by the national government. Paterson would entrust the enforcement authority to the national executive, which in his plan was to be a plural one, rather than to the national legislature.

Paterson's plan was so different from Randolph's in other respects that it was not until the Great Compromise was finally arranged in early July that the convention could proceed to shaping a constitution with any degree of harmony. This compromise, involving as its essential feature an upper house of Congress with equal representation of all the states and a lower house with representation in proportion to population, made the small-state delegates far more amenable to the construction of a strong national government and conversely dimmed the ardor of many of the delegates from the larger states for centralized power. In any case, the two plans were merged into the single set of twenty-three resolves passed to a Committee on Detail on 26 July, along with the record of the convention proceedings, as the basis for a first draft of the Constitution.[12]

In the final resolves the provision of the Paterson plan that acts of Congress and treaties should be the "supreme Law of the respective States, or their Citizens and Inhabitants" as well as Randolph's that Congress could "negative" state laws were included, but no reference remained to using the "force of the union" to coerce either a state or its inhabitants.[13]

Randolph's other resolution, involving the guarantee of a "republican form of government" to each state, underwent changes. On 11 June, at the instigation of James Madison, it was amended to read: "The republican constitutions and the existing laws of each state, to be guaranteed by the United States."[14] In this form it came up for debate on 18 July. There were objections to the clause from several different perspectives. Luther Martin of Maryland thought the states should be left to suppress their own rebellions. John Rutledge of South Carolina found the clause unnecessary since "no doubt could be entertained but that Congress had the authority if they had the means to co-operate with any state in subduing a rebellion" without any specific mention of it in the Constitution. Several members objected that they did not want to guarantee the existing laws of certain states (Rhode Island and Georgia were specifically cited), which they thought to be particularly bad. But the sentiment of

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[11] Ibid., p. 245. See variant texts in Tansill, *Documents*, p. 967–68.

[12] Max Farrand, *The Framing of the Constitution*, 20th ed. (paperback) (New Haven: Yale University Press, 1964), p. 84–123.

[13] Tansill, *Documents*, p. 468–69.

[14] Farrand, *Records*, 1:206. This is Madison's version.



GEORGE MASON

George Mason of Virginia—"If the Genl. govt. should have no right to suppress rebellions agst. particular states . . . it must remain a passive spectator of its own subversion"—won the endorsement of most delegates. James Wilson of Pennsylvania finally offered a motion for a better expression of the idea—"That a Republican form of government shall be guaranteed to each State and that each State shall be protected agst foreign and domestic violence"—that was accepted and made part of the resolutions referred to the Committee on Detail.[15]

These resolutions also contained a provision that the executive should have power "to carry into execution the national laws."[16] Since any specific reference to use of military force for this purpose had meanwhile been removed, it led Dr. James McClurg of Virginia on 20 July to wonder

> . . . whether it would not be necessary before a committee for detailing the constitution should be appointed, to determine on the means by which the Executive is to carry the laws into effect, and to resist combinations agst. them. Is he to have a military force for the purpose, or to have command of the Militia, the only existing force that can be applied to that use? As the Resolutions now stand the committee will have no determinate direction on this great point.[17]

While James Wilson agreed, Rufus King of Massachusetts effectively closed the debate by asserting that "the Committee are to provide for the end. The discretionary power to provide for the means is involved according to established axiom."[18]

The committee followed the "established axiom." The draft constitution it presented to the convention on 6 August proposed to give Congress the following pertinent powers:

> To subdue a rebellion in any State, on the application if its legislature;
>
> To make war;
>
> To raise armies;
>
> To build and equip fleets;
>
> To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions.

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[15] Ibid., 2:47–49.
[16] Tansill, *Documents*, p. 469.
[17] Farrand, *Records*, 2:69–70.
[18] Ibid, p. 70.

The president was to be "commander in chief of the Army and Navy of the United States, and of the Militia of the Several States." The guarantees to the states now read, "The United States shall guaranty to each State a Republican form of Government; and shall protect each State against foreign invasions, and, on the application of its Legislature, against domestic violence."[19]

The committee had evidently answered Dr. McClurg's question by granting to Congress the power to call forth the militia to enforce the laws and suppress domestic insurrections and giving to the president the command of them when so called forth. If Congress could also "raise armies," the inference appeared to be that they would be used only against a foreign foe, but it was an inference only, not a specific prohibition. The committee was probably anxious to avoid this sensitive point. In any case, the net result was to leave the clause on calling forth the militia the only explicit reference anywhere in the draft constitution to the right of the general government to use military force in domestic disorders. It was to remain so in the finished product.

In the committee draft, the guarantee to the states now consisted of two separate and partially redundant clauses, the first empowering Congress to subdue a rebellion in a state and the second pledging the national government's protection against foreign invasion and domestic violence, without any specific prescription as to the branch of the government that would act to provide it. Neither power was to be exercised except upon the application of a state's legislature. In just what way the committee intended to differentiate between "rebellion" against a particular state in the one clause and "domestic violence" cited in the other, the existing record does not reveal.

In any case, only the second clause was to survive. During the long summer days of August 1787, the delegates worked over the Committee on Detail draft clause by clause, adding, deleting, refining, and clarifying. On 17 August when the clause granting Congress power "to subdue rebellion in any State, on the application of its legislature" came up for consideration, Thomas Pinckney of South Carolina moved immediately to strike the phrase "on the application of its legislature," thus to give Congress power to intervene on its own initiative in a rebellion within a state. This move by one of the leading advocates of a powerful central government was immediately countered by Oliver Ellsworth of Connecticut, Luther Martin of Maryland, and Elbridge Gerry of Massachusetts, all men suspicious of vesting any strong military power in the general government. "Mr. Gerry," Madison recorded, "was agst letting loose the myrmidons of the U. States on a State without its consent. The States would be the best Judges in such cases. More blood would have been spilt in Massts in the late insurrection, if the General authority had intermeddled." The upshot of this exchange was the passage of amendments to the clause so that it finally read, "To subdue rebellion in any state against the government thereof on the application of its legislature or without it when the legislature cannot meet." In this form the clause got the support of only four states, with four opposed and two absent. Madison noted it "lost," and it disappeared from the draft constitutions.[20]

When the other clause guaranteeing each state a "republican form of government" and protection against foreign invasion and domestic violence (Article 18 of the draft) came up

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[19] Ibid., pp. 182, 185, 188.
[20] Ibid., pp. 316–18.

on 30 August, the debate almost echoed that of the seventeenth. John Dickinson of Pennsylvania moved to strike out the clause requiring "the application of its Legislature" as a prerequisite to federal interference in a state to protect it against domestic violence. "He thought it of essential importance to tranquillity of the U – S. that they should in all cases suppress domestic violence which may proceed from the State Legislature itself, or from disputes between the two branches where such exist." But Dickinson's motion was voted down eight states to three. Then a motion to strike "domestic violence" and insert "insurrection" was also voted down six to five. Dickinson finally won approval for inserting the words "or Executive" after the words "application of the Legislature" on the grounds that "the occasion itself might hinder the legislature from meeting." Luther Martin's move to make this more explicit by permitting the state executive to act only "in the recess of the legislature" was voted down on 30 August only to be revived in substance on 15 September when the clause was put into final form. As Article IV, Section 4, of the finished Constitution submitted to the states for ratification, it read, "The United States shall guarantee to every state in this Union a Republican form of government, and shall protect each of them against invasion, and, on the application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence."[21]

Meanwhile, the military clauses of the Constitution were hammered out in a debate in which the opposition to peacetime standing armies and to federal control over the militia asserted itself strongly. A move by Elbridge Gerry and Luther Martin to limit any peacetime army to a specific number of troops was defeated, in part because George Washington, the chairman, wondered in a stage whisper whether any potential enemy could be expected to act likewise. Eventually, the members drafted a compromise clause that limited Congress' power to "raise and support armies" by providing that no appropriation should be for a longer period than two years, thus assuring that each newly elected House of Representatives should have an opportunity to exercise its own will.[22]

On 18 August the Convention debated the question of national versus state control of the militia. On that day, in the midst of the debate over standing armies, George Mason of Virginia moved that Congress be granted additional power "to make laws for the regulation and discipline of the Militia of the several States reserving to the States the appointment of the officers," citing as his reason the need for uniformity in the militia throughout the nation. Mason, apparently unwittingly, raised an issue that touched sensitive nerves in the Convention Hall. If Congress were granted exclusive power to raise armies as well as exclusive control over the state militias, then what military power would remain in the hands of state governments? Roger Sherman of Connecticut, Madison recorded, "took notice that the States might want their Militia for defense agst invasions and insurrections, and for enforcing obedience to their laws. They will not give up this point." Elbridge Gerry went further. He thought "this was the last point remaining to be surrendered. If it be agreed to by the Convention, the plan would have as black a mark as was set on Cain. He had no such confidence in the Genl Govt as some Gentlemen possessed, and believed it would be found the States have not." Mason, who had never intended to give the national government exclusive control over

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[21] The material on the debates is all based on Madison's notes and the official *Convention Journal*. Ibid., pp. 466–67, 621.

[22] Ibid., pp. 329–30.

the militia, had second thoughts. He first proposed to amend his motion to provide that the federal power should extend to "not exceeding one tenth part in any one year" and then to exclude "such part of the Militia as might be required by the States for their own use." But Thomas Pinkney insisted on the original motion, and there were others who clearly envisaged a well-nigh exclusive federal power over the militia. The convention finally decided to refer the question to a grand committee of one member from each of the eleven states then represented—a committee already constituted to consider the problem of assuming state debts.[23]

On 21 August the Grand Committee reported a clause that was accepted by the convention with minor changes of wording but again only after bitter debate. It was made part of Article I, Section 8, of the Constitution. Congress was to have power

> to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training militia according to the discipline prescribed by Congress.[24]

On 23 August the convention approved the "calling forth" clause drafted by the Committee on Detail with only minor revisions (insertion of "to provide for" and deletion of any reference to enforcing treaties since they would be embraced in the general category of laws). With these changes the clause incorporated in Article I, Section 8, read,

> Congress shall have power . . . to provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions.[25]

Luther Martin, the Maryland delegate who afterward became an ardent opponent of ratification of the Constitution, wrote that there had been "no objection" to this provision, but "it was thought by some that this power ought to be given with certain restrictions."[26]

This militia clause was ambiguous enough, when combined with the power of Congress to call forth the militia to enforce the laws, suppress insurrections, and repel invasions, to raise strong fears that the states were surrendering their control over the militia entirely. The argument to this effect was to reverberate in the state ratifying conventions. The same fear resulted in an addition to the committee's proposal that the president should be "Commander in Chief of the militia of the several states" with the words "when called into the actual service of the United States."[27]

In any case, the Constitution as finally engrossed and referred to the Continental Congress for submission to the states on 17 September 1787 clearly contained provisions authorizing the use of military force in the enforcement of federal law, in the suppression of insurrections against the federal government, and in control of uprisings and domestic violence within the states themselves when their properly constituted authorities should ask for it. It clearly did not go so far as the more ardent centralists desired, for it did not authorize

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[23] Ibid., pp. 330–32.
[24] Ibid., pp. 384–89.
[25] Ibid., p. 390.
[26] Ibid., 3:307.
[27] Article II, Section 2. For a discussion of the shaping of the military clauses of the *Constitution of the United States* see Richard M. Kohn, *Eagle and Sword: The Federalists and the Creation of the Military Establishment in America, 1783–1802* (New York: Free Press, 1975), pp. 75–81.



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the use of the "force of the union" against a recalcitrant state nor the intervention of the federal government to suppress domestic violence (not involving opposition to federal law) within a state itself without an application from its legislature or governor. Moreover, the whole emphasis, embodied in the clause empowering Congress to "provide for calling forth the militia to execute the laws of the union, suppress insurrection, and repel invasions" was on the use of the militia, not a "standing army" in such cases. And the militia clause, though subject to attack on the grounds that it granted too great federal control over the militia, was objectionable to the centralists because it did not give that power clearly or unequivocally.

Almost all the powers over domestic affairs granted to the federal government by the new Constitution were vested in the Congress, not the president, but the latter was to be commander in chief of the Army and Navy and of the militia when called into federal service to handle domestic disturbances as well as foreign wars. He was to "take Care that the Laws be faithfully executed."[28] Coupled with the provision as it finally evolved—that the Constitution, the laws made under it, and the treaties duly ratified should be "the supreme Law of the Land"—there were implied powers here the extent of which only future practice and interpretation could determine.[29]

That no power to use regular forces in domestic disorders was explicitly granted to either the president or Congress was testimony to the fear of standing armies that pervaded the meeting. Very near the end of the convention on 14 September 1787, George Mason, being sensible that an absolute prohibition of standing armies in time of peace might be unsafe, and wishing at the same time to insert something pointing out and guarding against the dangers of them, moved to preface the clause Article I, Section 8 "To provide for organizing, arming and disciplining the Militia & c" with the words "And that the liberties of the people may be better secured against the danger of standing armies in time of peace."[30] He got important support from Randolph and Madison from his own Virginia delegation, but Gouverneur Morris of Pennsylvania insisted that it would be "setting a dishonorable mark of distinction on the military class of Citizens," and the motion was voted down eight states to two.[31] The fact that this proposal was made illustrated how dangerous to the ratification of the Constitution it might have been if the framers had even suggested that standing armies

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[28] Article II, Section 3.
[29] Article VI.
[30] Farrand, *Records*, 2:616.
[31] Ibid., pp. 616–17.

might be used to control domestic violence or to enforce federal law. "With respect to a standing army," quoth Governor Edmund Randolph in the Virginia ratifying convention, "I believe there was not a member of the federal Convention, who did not feel indignation at such an institution."[32]

The Ratification Debates

In the great debate over ratification of the Constitution that raged in seventeen state conventions, pamphlets, and the public press in 1787–1788, the emphasis on the militia as the principal military arm of the proposed new government gave to its proponents a certain tactical advantage. They could allay fears of the power granted to Congress "to raise and support armies" by contending that any sizable standing army in peacetime, such as could be used to endanger the liberties of the people, would be rendered unneccessary as long as the federal government could rely on the militia. This argument was applied with particular vigor whenever the issue of the use of military force to execute federal law and suppress domestic insurrection was raised.

The opponents of ratification—or Antifederalists as they were called—were placed in the position of having to argue that the militia clauses of the Constitution carried within them the seeds of despotism by granting such a degree of federal control as to deprive the states of all effective power over their militias or to lead to a neglect that would inevitably produce their decay. In either case they charged that a standing army in peacetime, since Congress had virtually unrestricted power to raise and support one, would eventually usurp the functions prescribed for the militia. "As it now stands," charged Luther Martin of Maryland, "the Congress will have power, if they please, to march the whole militia of Maryland to the remotest part of the Union, and Keep them in service as long as they think proper, without being in any respect dependent upon the government of Maryland for this unlimited exercise of power over its citizens." It could continue them in service "as long as it pleases, thereby subjecting . . . freemen . . . to martial law and reducing them to the situation of slaves." Possessing the exclusive powers by which the militia could be organized and armed, the federal government could by neglect render them "useless and insignificant, when it suits the ambitious purpose of government." The government might "improperly oppress and harass the militia, the better to reconcile them to the idea of regular troops, who might relieve them from the burthen."[33]

Martin's arguments were echoed and elaborated on in the ratifying convention in the crucial state of Virginia by such giants as Patrick Henry and George Mason. When Delegate Charles Clay asked to be informed why Congress was to have power to provide for calling forth the militia to execute the laws of the Union, James Madison put forth his best defense.

> [He] supposed the reasons for this power to be so obvious that they would occur to most gentlemen. If resistance should be made to the execution of the laws . . . it ought to be overcome. This could be done only in two ways—either by regular forces or by the people. By one or the other it must unquestionably be done. If insurrections should arise, or invasions should take place, the people ought unquestionably to be employed, to suppress and repel them, rather than a standing army. The best way to

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[32] Eliot, *Debates*, 3:403.

[33] Farrand, *Records*, 3:207, 285.



JAMES MADISON

do these things was to put the militia on a good and sure footing, and enable the government to make use of their services when necessary.[34]

Madison's answer did not satisfy Mason, Henry, or Clay. Consistent with his position at the Constitutional Convention, Mason agreed that the "general government ought . . . to have some such power" but asked for restrictions such as that the militia of any state should not be marched beyond the limits of an adjoining state without consent of its legislature, that the state government should have the express concurrent power of arming and disciplining the militia, and that the militia should be under martial law only in time of war. "If the clause stands as it is now, it will take from the state legislatures what divine Providence has given to every individual—the means of self-defense. Unless it be moderated in some degree, it will ruin us, and introduce a standing army."[35] Henry was less moderate, charging that the militia clauses gave complete and exclusive control over the militia to the national government, with all the implications of tyranny this implied. With some heat he charged also that the Constitution provided only for military enforcement of the laws.

Sir, the military power ought not to interpose till the civil power refuse. If this be the spirit of your new Constitution, that the laws are to be enforced by military coercion, we may easily divine the happy consequences which will result from it. The civil power is not to be employed at all. If it be, show me it. I read it attentively, and could see nothing to warrant a belief that the civil power can be called for. I should be glad to see the power that authorizes Congress to do so. The sheriff will be aided by military force. The most wanton excesses may be committed under color of this; for every man in office, in the states, is to take an oath to support it in all its operations.[36]

When Clay, pursuing his own line of inquiry, asked for instances where opposition to the laws did not come within the idea of an insurrection, Madison cited the case of "riots, to oppose the execution of the laws, which the civil power might not be sufficient to quell." He again drew Henry's wrath "To what length may it not be carried? A law may be made that, if twelve men assemble, if, they do not disperse, they may be fired upon. I think it is so in England. . . . Who is to determine whether it be a riot or not? Those who are to execute the laws of the Union? If they have power to execute the laws in this manner, in what situation are we placed?"[37]

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[34] Eliot, *Debates*, 3:378.
[35] Ibid., pp. 380–81.
[36] Ibid., p. 387.
[37] Ibid., pp. 410–12.



ALEXANDER HAMILTON

Henry Lee characterized Henry's constructions as "absurd." Madison, Randolph, and George Nicholas labored diligently to show that the states would maintain control over their militias when not in federal service; that Congress, controlled by frequent elections, could hardly abuse its powers; that the militia, being of the people, could be corrupted only if the people corrupted themselves; that militiamen would be governed by the articles of war only in the three instances in which they could be called into federal service, and finally that the Constitution contemplated the use of the militia to enforce the law only when civil authorities proved unable to do so. When Henry asked pointedly what authority the state governments had over the militia, Madison replied that they "might do what they thought proper with the militia, when they were not in the actual service of the United States. They might make use of them to suppress insurrections, quell riots, & c. and call on the general government for the militia of any other state, to aid them, if necessary."[38] Although Madison's reply did not satisfy Henry and other critics, it represented a fair interpretation of the way in which the militia clauses of the Constitution were actually to operate.

The debates at the Virginia convention were the most extensive and best recorded, and practically all the issues raised elsewhere were reflected in them.[39] Some notice should be taken, nevertheless, of the arguments in that most celebrated commentary on and defense of the Constitution, *The Federalist Papers*. In Number 28, Alexander Hamilton put it bluntly.

> That there may happen cases in which the national government may be necessitated to resort to force, cannot be denied. Our own experience has corroborated the lessons taught by the examples of other nations; that emergencies of this sort will sometimes arise in all societies, however constituted; that seditions and insurrections are, unhappily, maladies as inseparable from the body politic as tumors and eruptions from the natural body; that the idea of governing at all times by the simple force of law (which we are told is the only admissible principle of republican government) has no place but in the reveries of those political doctors whose sagacity disdains the admonitions of experimental institutions. Should such emergencies at any time happen under the national government, there could be no remedy but force. The means to be employed must be proportioned to the extent of the mischief. . . .[40]

In this essay, with its essentially Hobbesian view of human nature, there was at least a

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[38] Ibid., p. 416.

[39] *The Documentary History of the Ratification of the Constitution* undertaken under the editorship of Merril Jensen and projected in thirteen volumes is still far from complete. The only volume containing a record of debates within a state yet published is Vol. 2, *Ratification of the Constitution by the States: Pennsylvania* (Madison: State Historical Society of Wisconsin, 1976).

[40] *The Federalist* (Modern Library Edition, New York, 1937), p. 170–71.

hint that the "means" to control any large "mischief" might involve a standing army, but in Number 29 Hamilton advanced much the same argument Madison had before the Virginia Convention.

If the federal government can command the aid of the militia in those emergencies which call for the military arm in support of the civil magistrate, it can the better dispense with the employment of a different kind of force. If it cannot avail itself of the former, it will be obliged to recur to the latter. To render an army unnecessary, will be a more certain method of preventing its existence than a thousand prohibitions on paper.[41]

Hamilton then went on to demolish the argument that the federal government could not, under the Constitution, use civil power to enforce the laws.

The same persons who tell us in one breath, that the powers of the federal government will be despotic and unlimited, inform us in the next, that it has not authority sufficient even to call out the POSSE COMITATUS. The latter, fortunately, is as much short of the truth as the former exceeds it. It would be . . . absurd to doubt, that a right to pass all laws *necessary and proper* to execute its declared powers would include that of requiring the assistance of the citizens to the officers who may be intrusted with the execution of those laws. . . . What reason could there be to infer, that force was intended to be the sole instrument of authority, merely because there is power to make use of it when necessary?[42]

The Constitution was duly ratified after a hard struggle (though Rhode Island did not join in until 24 May 1790), but the arguments of the opponents had their effect. Eight of the states attached recommended changes, amendments, or conditions to their action. These proposals almost universally reflected fears of the military coercive power of the national government. Six states would have required a two-thirds or three-fourths vote in Congress to approve a standing army; most asked for a specific clause prohibiting the quartering of soldiers in private houses without the consent of their owners. The Virginia ratifying convention proposed most of George Mason's restrictions on federal use of the militia.

That each State respectively shall have the power to provide for organizing, arming and disciplining its own Militia, whenever Congress shall omit or neglect to provide for the same. That the Militia shall not be subject to Martial law, except when in actual service in time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties, and punishments as shall be directed or inflicted by the laws of its own state.[43]

The first ten amendments, as finally ratified, did not contain the great detail that Virginia and the other state conventions originally proposed. But in three articles, they went some distance toward meeting the objections of such people as George Mason, Patrick Henry, and Luther Martin. Article II provided that "a well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed." The "State" referred to was obviously not the nation itself, but each individual state within it. Article III contained the prohibition against quartering of troops on private property without the consent of the owner, and Article X provided that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The Second and Tenth Amendments

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[41] Ibid., p. 176–77.
[42] Ibid., p. 177.
[43] Tansill, *Documents*, p. 1032. This volume contains all the ratifying instruments, p. 1009–59.

were intended, among other things, to preserve for the states some of the control over their militias that the Antifederalists of 1787-1788 had so ardently sought.

Throughout the great debates both in the Constitutional Convention and the ratifying bodies, none of the most ardent Antifederalists ever advocated that the federal government should possess no power whatsoever to use military force in domestic disorders. In the ratifying conventions there was little argument at all over the clause permitting the federal government to intervene in a state on the application of its legislature or governor. And with regard to calling forth the militia "to execute the laws of the Union," the principal effort was devoted to restricting this congressional power in as many ways as possible. What emerged was, in effect, a consensus that the militia would be used by the federal government in only those instances where civil law should completely fail and that, at all odds, the creation and use of a standing army to control the people was the greatest danger to be avoided. The authors of the Constitution had extended to the new federal government the same powers to use military force in domestic emergencies that the state government had, by law and custom, long exercised. There could be little doubt that it was a concurrent power, shared with the states within their own spheres, but it provided a sufficient basis for the federal government to take a hand in any repetition of Shays' Rebellion. The language of the Constitution was broad, general, and in some cases, a little ambiguous—a product of the necessity for compromise and consensus. It remained for future Congresses, presidents, and federal courts to determine what it would mean in practice.

The First Enabling Act

The first law delegating to the president powers to intervene with military force in domestic disorders was passed by the Second Congress and became law on 2 May 1792.[44] The clauses dealing with the use of force in internal affairs were part of a broader scheme to carry into effect Congress' power to "provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions." It was a companion piece to the Uniform Militia Act of 8 May 1792, which represented the final plan for carying out the other militia clause granting Congress power to provide for "organizing, arming and disciplining the militia."[45]

The Calling Forth Bill was introduced in the House on 16 April 1792 by Representative Alexander White of Virginia "from the committee appointed" and was the subject of a lively debate in that body. Unfortunately the wording of the bill as introduced has not been preserved in the record, making it necessary to analyze the effects of the House debate by the reverse process of first showing the final provisions of the act and then the effects the House debate seems to have had in shaping them. Since the Senate kept no record of its debates until 1794, it is impossible to determine what changes may have been made there.

The first section of the Calling Forth Act of 2 May 1792 provided for the contingencies of invasion or of insurrection in a state against the government thereof.

That whenever the United States shall be invaded, or be in imminent danger of invasion, from any

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[44] 1 *Statutes at Large* 264. *An Act to provide for calling forth the militia, to execute the laws of the Union, to suppress insurrections and repel invasions.*

[45] 1 *Statutes at Large* 271.

foreign nation or Indian tribe, it shall be lawful for the President of the United States to call forth such number of the militia of the state or states, most convenient to the place of danger, or scene of action, as he may judge necessary to repel such invasion, and to issue his orders for that purpose, to such officer or officers of the militia as he shall think proper. And in the case of insurrection in any state, against the government thereof, it shall be lawful for the President of the United States, on the application of the legislature of such state, or the Executive (when the legislature cannot be convened) to call forth such number of the militia of any other state or states, as may be applied for, as he may judge sufficient to suppress such insurrection.

This clause occasioned little debate and appears to have been passed much as the committee reported it. It made no provision for an insurrection against the national government, only against the government of a state; and the use of the word "insurrection" was not in consonance with the constitutional guarantee in Article IV, Section 4, to protect a state against "domestic violence," which might be presumed to mean something less than "insurrection." A second notable feature was that the section did not explicitly authorize the president to call into federal service the militia of the state where the insurrection should occur, only that of "any other state or states." Evidently, the presumption was that the militia of the state applying for aid would already be employed in suppressing the insurrection insofar as some of them weren't in rebellion themselves (the lesson of Shays' Rebellion was that militia in dissident areas could not be counted on). Yet if the clause were followed literally it would mean that there could be no unified federal control of all militia elements involved in suppressing an insurrection in a state. These matters seem to have passed unnoticed at the time, and subsequent revisions of the law were to leave this particular clause practically unaltered to the present day.[46]

The second section covered the more sensitive point of calling forth the militia to "execute the laws of the Union," a situation in which no state request would be involved. Some members of the House at least equated organized resistance to federal laws with "insurrection" against the national government and so provided in the second section what they had omitted in the first. In its final form the section read,

that whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any state, by combinations too powerful to be suppressed by ordinary course of judicial proceedings, or the powers vested in the marshals by this act, the same being notified to the President by an associate justice, or the district judge, it shall be lawful for the President of the United States to call forth the militia of such state to suppress such combinations, and to cause the laws to be duly executed. And if the militia of the state, where such combinations may happen, shall refuse or be insufficient to suppress the same, it shall be lawful for the President if the legislature of the United States be not in session, to call forth and employ such numbers of the militia of any state or states most convenient thereto, as may be necessary, and the use of the militia, so to be called forth, may be continued, if necessary, until the expiration of thirty days after the commencement of the ensuing session.

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[46] Title 10, Section 331, of the *Revised U. S. Code* has practically the same phraseology except in that it permits the president also to use the "armed forces." The President's Commission on Civil Disorders noted the difficulties in the wording of this section in 1968 and recommended that the word "insurrection" be changed to "domestic violence," and that the president be expressly authorized to call the militia of the state in which violence occurred as well as that of other states.—*Report of The National Advisory Commission on Civil Disorders* (Washington, D.C.: Government Printing Office, 1968), p. 288. The explanation for the word "insurrection" appears to be that Congress was enacting a law primarily designed to provide for calling forth the militia under Article I, Section 8, to repel invasions and suppress insurrections while at the same time incorporating the provisions of Article IV, Section 4. The term "domestic violence" in the later article was simply equated to "insurrection."

The "powers vested in the marshals" were set forth in Section 9.

> That the marshals of the several districts, and their deputies, shall have the same powers, in executing the laws of the United States, as sheriffs, and their deputies, in the several states, have by law in executing the laws of their respective states.

In this way the legislators disposed of the argument that the federal government would rely entirely on military force to enforce its laws.

The second section was adopted only after prolonged debate, and some of its phraseology resulted from floor amendments. After some preliminary fencing, Representative John Page of Virginia moved to strike the clause entirely. "It holds out an idea of resistance which I will not suppose can exist. Mild and equitable laws will not be resisted; and if Congress should be so infatuated as to enact those of a contrary nature, I hope they will be repealed and not enforced by martial law. . . . It is not necessary to make laws merely because the Constitution authorizes a dangerous power."[47] Representative Abraham Clark of New Jersey supported him, noting that it could be used in case of opposition to the excise law "so that if an old woman was to strike an excise officer with a broomstick, forsooth the military is to be called out to suppress an insurrection."[48]

Representative John F. Mercer of Virginia took a more moderate view, citing the need for the power to exist, since he had "no idea that this government was to depend on the several state governments for carrying its laws into execution." He cautioned that it must be used sparingly, adverting to

> . . . the two different powers in a community, the civil and the military the first a deliberative power, the other cannot deliberate; and therefore in no free country can the latter be called forth nor martial law proclaimed except under great restrictions. He observed that the General Government had respect to the citizens of the several States, and not the Government of those states; on this principle the marshals of the several States have a power to call forth the *posse comitatus;* and additional marshals should be appointed, and only in the last extremity they may call forth the military power; he was in favor on the whole of retaining the clause.[49]

Page returned to the fray, raising the familiar bugaboo of the use of a standing army. "Suppose the case should happen in which the Militia should refuse to act, regulars must then be called in—a fair pretext for a military establishment. . . . Soldiers, not Militia, must be the proper tools for the Government that wishes to enforce its laws by arms.[50] Both William B. Giles of Virginia and Abraham Baldwin of Georgia suggested that the power should not be delegated but retained in Congress which body could, when the necessity arose, then make proper provision for its exercise. "The power now under consideration," Giles thought, "could not with safety be entrusted to the President of the United States.[51] Although

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[47] *Annals of Congress*, 3:574.

[48] Ibid., p. 575.

[49] Ibid. Mercer ended by proposing an additional clause to the act. One legal scholar holds that this was Section 9 dealing with the power of marshals.—David E. Engdahl, "Soldiers, Riots, and Revolution: The Law and History of Military Troops in Civil Disorders," *Iowa Law Review*, vol. 57, no. 1 (October 1971):47. Engdahl maintains that this section gave federal marshals the power to call militia into the federal service as a part of a *posse comitatus* to enforce federal law. While undoubtedly it gave them the power to call individual militiamen as part of their *posses*, there is no evidence that marshals ever claimed, under the law, to possess the power to call militia as organized bodies. For further discussion of this subject, see below, Chapter 7.

[50] *Annals of Congress*, 3:575–76.

[51] Ibid., p. 576.

all moves to strike the clause were voted down, a consensus emerged that the delegation of powers to the president should be as restricted as possible. An amendment proposed by James Madison that the president should be authorized to act only in the recess of Congress was passed; this was followed by another offered by Abraham Baldwin that would require information of an "insurrection" from an associate justice or federal district judge as a basis for presidential action. Finally, John F. Mercer proposed an additional section requiring the president to issue a proclamation in advance, which the House duly approved.[52] It was incorporated as Section 3 of the act.

> That whenever it may be necessary in the judgment of the President to use the militia force hereby directed to be called forth, the President shall forthwith and previous thereto, by proclamation, command such insurgents to disperse and retire peaceably to their respective homes, within a limited time.[53]

The powers delegated to the president to intervene with military force in domestic emergencies by the Calling Forth Act of 2 May 1792 were thus circumscribed in many ways. The powers of the civil authorities must first be tried. The chief executive could not call the militia to enforce federal laws without a judicial certificate or to put down an insurrection within a state without application by the state government. In both cases, he had to issue a cease and desist proclamation first. Even with the judicial certificate, he could call forth the militia to enforce the laws on his own authority only when Congress was not in session, and he could not keep them in service for more than thirty days after the opening of a new session without legislative consent. There were various qualifications that seemed to limit the geographical area from which militia could be called. The act itself was to expire at the end of the first session of Congress after two years had elapsed.

The act also laid down rules to govern the militia when called into federal service and penalties to apply to those who did not obey the call. Service was limited to three months in any one year for any individual militiaman. While militiamen called could receive the same pay and allowances as regulars of corresponding rank and be subject to the Articles of War, their courts-martial were to be composed of militia officers only. The penalty for failure to respond was not to exceed one year's pay or imprisonment for one month for each $5.00 of an unpaid fine.

The safeguards conformed closely to the restrictions that George Mason, Luther Martin, and other Antifederalists had wanted written into the Constitution itself. The act of 2 May 1792 represented a consensus of political thought at the time as to how far the president could be trusted to use military force wisely in dealing with domestic disturbances. It rested firmly on the premise that only militia, not regulars, should be employed in this activity.

The companion piece of legislation, the Uniform Militia Act of 1792 that established a militia system to endure for 111 years, was a clear victory for those who stood for state rather than national control of the militia. Congress rejected the pleas of Washington and Knox for a select militia, trained under federal standards and organized into units that could respond quickly in emergency, in favor of a large conglomerate body of separate state militias with-

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[52] Ibid., pp. 576–77.

[53] It is quite possible that this proclamation requirement, rather than the clause relating to marshals, is the "additional section" that Mercer proposed earlier.

out any really uniform discipline or organization. Every free white ablebodied male between eighteen and forty-five was liable for militia service except for those exempted by the act (mainly federal employees) and others the states themselves might exempt. Each man was to be responsible for arming himself in the old colonial tradition. Organization into divisions, brigades, regiments, battalions, and companies was prescribed but only "if the same be convenient." In effect, control of the militia rested in the hands of the states until such time as they might be called into federal service to fulfill the purposes of the Calling Forth Act. The efficiency of the militia that was presumed to be the principal military instrument of the federal government in either domestic or foreign emergencies was thus to be determined by the variant laws and practices of the individual states. On the one hand, the Congress prescribed that the militia was the only force that could be used in domestic emergencies, and on the other, it shaped a militia system that could hardly guarantee that any president could, in such emergencies, fully rely on it.[54]

[54] 1 *Statutes at Large* 271. See the discussion of this act in Kohn, *Eagle and Sword*, pp. 128–38 under the chapter head, "The Murder of the Militia." Also see John K. Mahon, *The American Militia, Decade of Decision, 1789–1800*, University of Florida Monographs Social Sciences no. 5 (Gainesville: University of Florida Press, 1963), pp. 14–24.

CHAPTER 2

The First Precedents: Neutrality Proclamation and Whiskey Rebellion

If the Laws are to be so trampled upon, with impunity, and a minority (a small one too) is to dictate to the majority there is an end put, at one stroke, to republican government; and nothing but anarchy and confusion is to be expected thereafter; for Some other man, or society, may dislike another Law and oppose it with equal propriety until all Laws are prostrate, and every one (the strongest I presume) will carve for himself.

——Washington to Charles M. Thurston, 10 August 1794.

The great precedent for the use of federal military force in internal disturbances was established when President Washington in 1794 called forth a militia force from four states and marched it westward to repress the Whiskey Rebellion in western Pennsylvania. This precedent was of such importance that it requires examination in some detail. But it was not the first time that federal authorities authorized the use of military force in the enforcement of federal law. This distinction belongs rather to the Washington administration's effort to enforce its neutrality policy in 1793 and 1794.

Enforcing Neutrality

In 1789 the state governments were already well established, whereas the federal government was still in the process of setting up its law enforcement machinery. For a time, indeed, there was some question as to whether a separate federal enforcement system should be established at all, since state officials were required to take an oath of allegiance to the Constitution and many felt that those officials would suffice to enforce federal law. The guiding rule adopted by the First Congress after extended debate, however, was "federal agents for federal business." This rule applied particularly to the collection of customs duties, the administration of the federal judiciary, the naturalization of aliens, and the collection of excise taxes. Law enforcement machinery, including federal district attorneys (one for each state), federal marshals and deputies, customs collectors, and inspectors and collectors of the excise took shape during Washington's first administration.[1] These federal officials were spread thin over an extensive and sparsely settled country, and the states still had to share in the enforcement of federal law, usually as a result of specific requests on their governors by the president or cabinet officers. State governors, following traditional practices, might call on

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[1] Leonard D. White, *The Federalists, A Study in Administrative History, 1789-1801*, paperback edition (New York: Free Press, 1965), p. 391.

contingents of militia to accomplish what neither the regular state and local nor the federal law enforcement officers could do. This pattern was followed in the federal government's effort to maintain neutrality in the war between England and France, which broke out in 1793.

On 22 April 1793 President Washington issued a proclamation of neutrality in the European war, warning all citizens of the United States that they would not receive the protection of their government against punishment or forfeitures of property under the "law of nations" should they commit acts that favored one side or the other and threatening prosecution of those who should "within the cognizance of the Courts of the United States, violate the law of nations, with respects to the powers at war".[2] Thomas Jefferson, a supporter of France within the cabinet, sent the proclamation in a circular letter to the governors of the various states, and a month later, Secretary of War Knox forwarded instructions on enforcement. As heads of the militia within their respective states, the governors were charged with "interposing" in cases of hostility between belligerent parties and with preventing the arming of privateers within their jurisdiction. Hamilton was later to argue that these instructions constituted an order given by the president, "founded upon mature deliberation" of the cabinet, clearly authorizing the "use of military coercion" by the governors to enforce the Neutrality Proclamation.[3]

These instructions were necessitated by the activities of a new envoy from the French revolutionary government, Citizen Edmund Genet, who arrived in the United States in April 1793 and, before even presenting his credentials to Washington, began openly to outfit privateers in American ports to prey on British commerce. Genet invoked the terms of the Franco-American Treaty of Alliance of 1778 and, rallying friends of France in the country, undertook to undermine the president's neutrality policy. His conduct was so flagrant as eventually to alienate even such friends of France as Jefferson, but for a time his activities in outfitting privateers, recruiting for the French service, and mounting filibustering expeditions against Spain raised serious questions as to whether Washington could actually enforce his Neutrality Proclamation. Matters came to a head when he started fitting out a privateer, the *Little Sarah*, in Philadelphia itself, then the seat of the American government. Governor Thomas Mifflin mustered contingents of the Pennsylvania militia to enforce the president's proclamation. At a cabinet meeting on 8 July 1793 Secretary of the Treasury Hamilton and Secretary of War Knox proposed to have Mifflin position a body of militia with cannon on Mud Island south of the city, a site well situated to prevent the *Little Sarah* from proceeding to sea. But Jefferson opposed this use of military force, and Mifflin, faced with divided counsels, did nothing. The *Little Sarah* slipped past Mud Island to an anchorage at Chester, where any action to prevent its going to sea was impracticable.[4]

The decisions on the *Little Sarah* (renamed the *Little Democrat* before it went to sea) were made while President Washington was absent from the capital. When he returned he showed some ambiguity about the use of military coercion in this case, Jefferson opining that "the

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[2] Fitzpatrick, *Writings of Washington*, 32:430–31.

[3] Harold C. Syrett and Jacob Cooke, eds., *The Papers of Alexander Hamilton* (New York: Columbia University Press, 1961–), 15:77.

[4] Dumas Malone, *Jefferson and the Ordeal of Liberty* (Boston: Little, Brown & Co., 1962), pp. 116–18; John A. Carroll and Mary W. Ashworth, *George Washington*, vol. 7, *First in Peace*, completing the biography by Douglas Southall Freeman (New York: Charles Scribner's Sons, 1957), pp. 187–88. Syrett, *Papers of Hamilton*, 15:70–79. Paul Leicester Ford, ed., *The Works of Thomas Jefferson*, 12 vols. (New York: G. P. Putnam's Sons, 1904–05), 1:282–88.

President wished the *Little Sarah* had been stopped by military coercion, that is by firing on her," but he did "not believe he would have ordered [it] himself had he been here, tho he would be glad if we had ordered it."[5] At a cabinet meeting on 15 July the president admitted of some doubt as to how far military coercion could actually go in enforcing his proclamation. According to Jefferson "He did not think the Executive had a power to establish permanent guards he had never looked to anything permanent when the orders were given to the governors, but only an occasional call on small parties of militia in the moments requiring /sic/it."[6]

It was in the manner envisaged by Washington that federal military force was in fact used to enforce neutrality. In the wake of the *Little Sarah* affair, the cabinet worked out rules to govern neutrality that included strict prohibitions against outfitting privateers to serve foreign powers in American ports. These "Rules Governing Belligerents" were clearly set forth in a Treasury Department circular dispatched to the port collectors on 3 August 1793. Secretary of War Knox followed with another circular to the governors on 7 August requesting that each "in your capacity as Commander in Chief of Your Militia, would in the earliest stage possible, suppress all practices throughout the state . . . which shall be a violation of these regulations, or the neutrality of the United States."[7] The governors seem to have understood that when militias were so used they were actually in the federal service and that the federal government should be billed for their expense. Governor Henry Lee of Virginia at least did so in the case of a ship suspected of being a French privateer fitting out at Smithfield in his state.[8]

The whole effort to outfit French privateers in American ports came to a practical halt in the face of these enforcement measures and with the discrediting of Genet, who was recalled by his own government. His filibustering schemes, on the other hand, involving expeditions to be mounted against Spanish territories in Florida and Louisiana, caused trouble until well into 1794. The leader in this effort was the revolutionary hero, George Rogers Clark, who had accepted a general's commission in the French Army from Genet. Clark was able to enlist much support, particularly in Kentucky, South Carolina, and Georgia, for the frontiersmen in general thought of Spain as an enemy.

The Spanish commissioners in Philadelphia complained to the president of these activities stirred up by the French in the West and on 29 August 1793 Jefferson asked Governor Isaac Shelby of Kentucky to use all legal means to prevent them. He followed this up on 6 November with a specific warning against the activities of two French agents in Kentucky and noted that where the ordinary civil proceedings had failed or were inadequate in other states "a suppression by the militia of the State had been ordered and practiced." Secretary of War Knox sent more specific instructions on this point to the governors of Kentucky and the Northwest Territory on 9 November. To Shelby, he wrote: "I am instructed by the President to request that your excellency should use effectual military force to prevent the execution of the plan . . . for the lawful expense of which the United States shall be responsible." "Effectual military force" was to include regulars posted within the state as

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[5] Ford, *Works of Jefferson*, 1:290.

[6] Ibid., p. 292.

[7] Quoted in Syrett, *Papers of Hamilton*, 15:171. See also pp. 168–70 and Ford, *Works of Jefferson*, 6:358.

[8] Sherwin McRae, ed., *Calendar of Virginia State Papers and Other Manuscripts*, 11 vols. (Richmond, 1875–93), 7:233. (Hereafter cited as *Cal. Va. State Papers.*)

well as the Kentucky militia. Knox gave similar instructions to Arthur St. Clair, governor of the Northwest Territory, empowering him, among other things, to call on General Anthony Wayne, if necessary, for troops from his legion then deployed against the Indians.[9]

Shelby wrote Jefferson on 13 January 1794, complaining that he had no legal power to prevent people from leaving his state with arms and provisions and evincing no great desire to interfere with Clark's activities. Edmund Randolph, Jefferson's successor as secretary of state, came back with a strong response, admonishing Shelby that he had ample authority under the president's proclamation to take action and even citing the law of 1792 which permitted the president to call the militia to suppress domestic insurrection.[10]



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In truth, the legal basis for action against the filibusterers was shaky, and happily for the federal authorities the threat seems to have dissipated toward the end of 1793 without any military action. But it reemerged in February and March 1794, and Washington tried in vain to get Congress to pass some effective legislation to enable him to deal with violations of neutrality. He was finally to get such a law in June but too late to meet the immediate threat. The government simply continued to act as if there were no legal doubts. On 24 March 1794, Washington issued a strong proclamation warning all persons against mounting expeditions into the territory of any power with which the United States was at peace and threatening "condign punishment."[11] On 31 March Secretary Knox instructed General Wayne to establish a post at Fort Massac to block passage of the Ohio River. If a party "armed and equipped for war" should appear in the vicinity, Wayne was first to deliver a warning through a peace officer forbidding them to pass the fort and then, if they persisted, "to use every military means" in his power to prevent their passing.[12] The same spirit was evidenced in the secretary's letter to the governor of Georgia in May authorizing the employment of both militia and regulars to oppose a new threat of a filibustering expedition to be mounted in that state.[13] The effort in Georgia proved to be the dying gasp of the whole scheme. Lack of financing after Genet's fall from grace and waning enthusiasm along the frontier combined to thwart any further efforts, and the military measures taken proved to be precautionary only.

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[9] Jefferson to Shelby, 29 Aug 93 and 6 Nov 93. Knox to Shelby and St. Clair, 9 Nov 93. *American State Papers, Foreign Relations,* 1:455–57.

[10] Shelby to Jefferson, 13 Jan 94; Randolph to Shelby, 29 Mar 94; ibid., pp. 456–57.

[11] Fitzpatrick, *Writings of Washington,* 33:304–05.

[12] Knox to Wayne, 31 Mar 94, *American State Papers, Foreign Relations,* 1:458.

[13] Knox to Gov of Ga., 14 May 94; ibid., p. 460.

The lasting result of this episode was the passage of a law, signed by the president on 5 June 1794, specifically forbidding the fitting out of privateers to serve foreign powers in American ports, the mounting of military expeditions from the United States against any power with whom the country was at peace (declared a high misdemeanor), the recruiting of U.S. nationals for foreign armies, and the acceptance of commissions by U.S. citizens to serve a foreign power. The act specifically provided for military enforcement.

> In every such case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States or of the militia thereof as shall be judged necessary for the purpose of taking possession of, and detaining any such ship or vessel . . . and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territory of the United States against the territories or dominions of a foreign prince or state, with whom the United States are at peace.[14]

This first authorization of the use of regulars as well as militia in the enforcement of federal law was limited in scope to the single instance of enforcement of neutrality and was originally intended to expire in two years. Authorization was, however, extended in 1797, and then in 1800 it was continued in effect "without limitation of time."[15]

Meanwhile, another example of Washington's policy to use militia under state control but with federal financing to enforce federal law emerged when Congress in March 1794 authorized the president to place a thirty-day embargo on all foreign trade. Washington's cabinet unanimously agreed that the use of state militia to enforce the ban was "incidental to an embargo," and the president issued a circular letter to the governors of the states requesting them to use their militias "if it should be necessary for the detention of vessels."[16]

The Calling Forth Act of 1792 was not invoked here any more than it had been in the cases involving the enforcement of the Neutrality Proclamation. The militia would be employed under state, not federal, control, but in the enforcement of federal law, and the federal government clearly had the obligation to reimburse the states for expenses incurred. The embargo proved to be short lived, and it was not until some years later that Jefferson, as president, was to use militia extensively to enforce trade regulations. But in at least one state, Virginia, militia were employed in 1794 to detain a vessel, so that a precedent was set before Jefferson's time.[17] The real precedent for the use of troops in "enforcing the laws of the Union," nonetheless, came later in 1794 when the long simmering opposition in the West to the payment of the excise tax on whiskey came to a head.

Origins and Outbreak of the Whiskey Rebellion

The Whiskey Rebellion was, like Shays' Rebellion earlier, a popular Western protest against what was deemed to be an unresponsive government dominated by Eastern financial interests, and a spontaneous movement without strong direction that erupted in violence but was hardly deserving of the appellation "rebellion." In contrast to Shays' uprising, it was a protest against actions of the national government, rather than the state government

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[14] 1 *Statutes at Large* 381–84.
[15] 2 *Statutes at Large* 54.
[16] Fitzpatrick, *Writings of Washington*, 32:206–07.
[17] See *Cal. Va. State Papers*, 7:98–99, 103–04, 105–106, 125.

of Pennsylvania. And it provided the first test of whether that national government, newly created, could enforce a law of the union in an area where that law was almost universally deemed to be unjust and oppressive.

In the last two decades of the eighteenth century, the entire trans-Allegheny west, north and south, was restive. Frontiersmen had many grievances—lack of adequate access to markets, insufficient circulating currency, lack of protection against the depredations of the Indians, and land and tax policies that seemed to favor commercial and speculative interests. Discontent on the trans-Allegheny frontier led to numerous separatist movements and to intrigues with Spanish and British neighbors. An influence from abroad, the egalitarian spirit engendered by the French Revolution, found fertile ground in many frontier settlements, leading to the creation there, as in the East, of democratic societies that agitated against both real and imagined wrongs.

In western Pennsylvania, frontier discontent found its most pointed expression in opposition to the excise tax imposed by Congress in 1791 on spirituous liquors and the stills that produced them. The excise tax was part of Secretary of the Treasury Alexander Hamilton's broader financial plan to place federal finances on a firm footing. The original law of 1791 imposed taxes on liquors distilled in city, town, or village at a rate varying from 9 to 25 cents per gallon depending on proof and on country stills at an annual rate of 60 cents per gallon of their capacity or at 9 cents per gallon of production. To enforce the law, each state was designated a district and in turn was divided into surveys and collectorships. Each district had its supervisor, each survey its inspector, and the inspector appointed collectors in each collectorship who were actually to register the stills and collect the excise tax.[18] The excise law for the first time brought federal tax collectors into direct contact with the masses of people, and it had a tremendous impact on those areas such as western Pennsylvania where distilling was an important industry.

The state of Pennsylvania was divided into four surveys. The fourth, composed of the counties of Allegheny, Washington, Fayette, Westmoreland, and Bedford, lay almost entirely west of the Alleghenies. Pittsburgh, in Allegheny County, was the largest town in the survey, though the towns of Washington in Washington County and Uniontown in Fayette County had upwards of a hundred houses. In the fourth survey were concentrated perhaps one-quarter of the stills in the United States, scattered through the countryside and in the towns.[19]

Hamilton's funding scheme in general and the excise tax in particular created sharp divisions in a country where organized political parties did not yet exist. The excise tax on liquors was inevitably linked to Hamilton's scheme for assumption of unpaid state debts that in turn had overtones of taxing agricultural interests to pay off at par obligations that had been bought up by commercial speculators at depreciated prices. The excise bill passed Congress only after bitter debate, and opposition to it throughout the country was strong. Both Governor Thomas Mifflin of Pennsylvania and Governor Henry Lee of Virginia, later to play impor-

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[18] 1 *Statutes at Large* 199–214.

[19] Leland D. Baldwin, *Whiskey Rebels, The Story of a Frontier Uprising* (Pittsburgh: University of Pittsburgh Press, 1939) is the most extensive treatment of the Whiskey Rebellion by a modern scholar. Baldwin was unable to find any truly accurate statistics on stills in the 1790s but on the basis of fragmentary information concludes that 25 percent of the country's stills in 1794 were in the fourth survey of Pennsylvania. See pp. 107–08 and fn. pp. 284–86.

tant roles in the suppression of the Whiskey Rebellion, were initially opponents of the measure. The Pennsylvania legislature, strongly influenced by the Westerners' opposition, passed a resolution urging the representatives and senators from the state to "oppose every part of the excise bill now before Congress, which shall militate against the rights and liberties of the people."[20]

Opposition to the excise tax, once it was in force, was not confined to the fourth survey or even to the state of Pennsylvania. It was the general feeling throughout Kentucky, the western parts of Maryland, Virginia, and North and South Carolina, and in many areas engaged in distilling in the East. But it was only in the fourth survey that this opposition became sufficiently violent to amount to something approaching insurrection. Whiskey played a more important role in the economy and life of this region than of any other. Monongahela rye was consumed locally in large quantities, extensively bartered for other articles, shipped to the East by packtrain, sold to General Anthony Wayne's army then operating against the Northwest Indians, and sent down the Ohio and Mississippi for export when the Spanish would permit it. Distillation into whiskey was the most economical use to which grain produced on the farms could be put, for jugs or casks of whiskey were far easier and less expensive to transport than bulky sacks of grain. Stills, large and small, were to be found on almost every farm and in the towns, and their owners resented, with some passion, the imposition of a tax on what they considered to be their principal means of livelihood. Hamilton could of course point out that the tax really had to be paid by the consumer and if the West had to pay more it was only because its people drank more whiskey, but this was hardly a convincing argument to the small distillers who bartered much of their produce while they had to pay the tax in cash, a scarce commodity in the fourth survey of Pennsylvania. Moreover, these distillers, with the typical independent spirit of frontiersmen, resented the prying of excise officers into their business and their markings and brandings of stills and containers. And above all they objected to the provision of the original law of 1791 that specified that cases arising out of violations anywhere in Pennsylvania be tried in the federal district court at Philadelphia, a requirement the Westerners equated to transportation to distant points for trial against which the Declaration of Independence had so strongly inveighed.[21]

An excise tax on liquors was not a new thing in Pennsylvania. As a colony and a state, it had had such a tax almost continuously since 1684. But the latest of these excise laws, passed in 1780, was really never enforced in the western country in the face of popular and sometimes violent opposition. The state law was quietly repealed in 1791 almost as an afterthought when the legislature passed its resolution against a federal excise. Thus the tradition of opposition to any excise law in western Pennsylvania was strong, and its inhabitants saw no more reason to accept a federal than a state tax. To them it smacked of the same sort of tyranny that the Stamp Act had represented to their fathers in 1765. Brigadier General John Neville, a prominent citizen and landowner in Washington County, a Revolutionary veteran, a slaveholder, and representative of his district in the Pennsylvania assembly, accepted the position as inspector of the fourth survey (with its salary of $450 a year and fees amounting to 1 percent of collections). But Neville had formerly been an opponent of the state excise, and

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[20] "Papers Relating to What is Known as the Whiskey Insurrection in Western Pennsylvania, 1794," *Pennsylvania Archives*, 2d ser., 4:19.

[21] On the impact and justice of the excise compare Baldwin, *Whiskey Rebels*, pp. 69–70 and Jacob E. Cooke, "The Whiskey Insurrection—A Re-evaluation," *Pennsylvania History* 30 (1963):316–46.

his shift of position created much resentment, a factor that was to play a part in the ultimate outbreak of violence. Popular opposition was so universal that Neville had great difficulty getting respectable men to serve under him as collectors.

Opposition to the tax started with petitions and resolutions but soon led to direct action. In September 1791 the collector appointed by Neville for Washington and Allegheny counties was waylaid by a gang and tarred and feathered. All efforts to seize the culprits responsible were frustrated, and other outrages followed against those who even spoke in favor of the tax. A regional meeting at Pittsburgh on 21 August 1792, attended by such a prominent figure in the area as Albert Gallatin of Fayette County, drew up a strong remonstrance to Congress and resolved that those accepting positions as excise officers should be ostracized and treated "with the contempt they deserve."[22]



ANTHONY WAYNE

In September 1792 the Pittsburgh resolves were one of several developments stirring the federal government to action. Alarming news of open resistance to the tax reached Hamilton and Washington from North and South Carolina as well as Pennsylvania. At the suggestion of the secretary of the treasury, Washington on 15 September issued a proclamation calling on all persons involved in the incidents to "refrain and desist" and on all courts, magistrates, and officers to assist in the enforcement of the law. Special letters to the governors of Pennsylvania and North and South Carolina called attention to the necessity for exerting all their weight and influence to this end.[23] Both Hamilton and Washington regarded the situation in western Pennsylvania as the most dangerous, and if Hamilton was more insistent on acting "with decision" there as an example for other areas, the president also made it abundantly clear that the law would be enforced, by military means if necessary.[24] On 7 September 1792 he wrote Hamilton, "I have no hesitation in declaring, if the evidence is clear and unequivocal, that I shall, however reluctantly I exercise them, exert all the legal powers with which the Executive is invested to check so daring and unwarrantable a spirit. It is my duty to see the laws executed."[25] The day after the proclamation was issued he again wrote the secretary of the treasury.

> I have no doubt but that the Proclamation will undergo many strictures; and as the effect proposed may not be answered by it; it will be necessary to look forward in time to ulterior arrangements; and here not only the Constitution and the Laws must strictly govern; but the employing of regular troops

[22] Baldwin, *Whiskey Rebels*, pp. 76–86, *Penn. Archives*, 2d ser., 4:29–31.
[23] Fitzpatrick, *Writings of Washington*, 32:137–38, 143–45, 149–51, 152–55, 169.
[24] Ltr to Washington of 9 Sep 92; Henry C. Lodge, ed., *Works of Hamilton*, 9 vols. (New York, 1885–86), 6:344.
[25] Fitzpatrick, *Writings of Washington*, 32:144.

avoided if it be possible to effect order without their aid; otherwise there would be a cry at once, "The Cat is let out; we now see, for what purpose an Army was raised." Yet, if no other means will effectually answer, and the Constitution and the Laws will authorize these they must be used as the Dernier resort.[26]

As events proved, the proclamation hardly had "the effect proposed," though the situation did improve for a time. The only important overt act in 1793 was the burning of the house of Benjamin Wells, collector for Fayette and Westmoreland counties. Hamilton sought to secure compliance by pressing for the prosecution of those accused of violations or outrages against collectors, by concentrating on intercepting the product of the distilleries on its way to market, and by restricting purchases for the Army to spirits on which the tax had been paid. Governor Mifflin and the Pennsylvania authorities lent him some support, though their actions, for all their protestations of earnest endeavor, seem to have been far more effective in the East than in the trans-Allegheny area. Much of the surplus whiskey marketed found its way westward down the Mississippi to Spanish possessions rather than eastward; efforts to collect taxes on that used locally were ineffective, and Neville had the greatest difficulty in even keeping collectors' offices open. When Hamilton sent George Clymer, supervisor of the Pennsylvania District, to the West to investigate, Clymer found his movements severely restricted, and he actually left the country under a cavalry escort furnished by General Wayne. Washington urged Attorney General William Bradford to prosecute offenders vigorously, but most of these cases bogged down in the courts on technicalities or for lack of evidence.[27]

Congress, meanwhile, did take some steps to revise the law to meet some of the objections of its opponents while tightening the machinery of collection. An act of 8 May 1792 reduced the rates and provided that each county must have an excise collector's office, where entry of stills was to be made in June of each year. An act of 5 June 1794 made some further revisions in the methods of entering stills and paying the tax and, what was more important, provided that violations could be tried in state courts when they occurred more than fifty miles from the seat of a U. S. district court.[28]

Despite these easements, the spirit of resistance quickened in the summer of 1794. It was in part a result of agitation for democratic reform to which the French Revolution and the arrival of Genet in America gave impetus—to just what extent it is impossible to determine. Democratic societies supporting the principles of liberty, equality, and fraternity sprang up all over the country, their propaganda particularly aimed at Hamilton's system and ideas. At least two appeared in western Pennsylvania: one, the strongest, in the Mingo Creek settlement in the area of Allegheny County south of Pittsburgh and the other in the town of Washington. It is of some significance that the violent phase of the Whiskey Rebellion came in the Mingo Creek area, and that Allegheny and Washington counties were the center of the main disorders.[29] In 1794 papers signed by "Tom the Tinker" made their appearance, warning all to refrain from supporting the law, and liberty poles were erected as a symbol of resistance. Neville announced collectors' offices for each of the counties in accordance with the law, but a concerted effort was undertaken to keep them from operating, and not

[26] Ibid., p. 153.

[27] Syrett, *Papers of Hamilton*, 17:24–58; Baldwin, *Whiskey Rebels*, pp. 86–91; Fitzpatrick, *Writings of Washington*, 32:171, 236. *Penn. Archives*, 2d ser., 4:57–63.

[28] 1 *Statutes at Large* 267–71, 378–81.

[29] See discussion in Baldwin, *Whiskey Rebels*, pp. 91–109. Washington was to attribute to these societies much of the responsibility for the violence that followed, see Fitzpatrick, *Writings of Washington*, 33:475–76, 506–07; 34:29.

a single still had been entered by 20 June. A deputy collector in Washington County, John Lynn, was so harassed that he was forced to flee the county, and several attempts were made against the house of the collector in Westmoreland. Vandals destroyed the stills of some of those who attempted to comply with the law.[30]

It was into this highly charged atmosphere that David Lenox, U. S. marshal for the District of Pennsylvania, rode in mid-July to serve writs against distillers for violation of the excise law in 1793—a move in Hamilton's scheme of enforcement. These writs had been entered at the district court in Philadelphia on 31 May, five days prior to the passage of the law permitting trial of offenders in the state courts, and required those upon whom they were served to appear before the court in Philadelphia in August. The serving of these writs under the old law provoked the incident that led to the violent phase of the Whiskey Rebellion.[31]

Lenox arrived during harvest time when farmers, gathering in the wheat fields, were wont to consume liberally the products of their own distilleries. He was able to serve all his writs in Bedford and Fayette counties on 14 July without difficulty but then retired to Pittsburgh for the night and rode out the next morning, accompanied by General Neville, to serve the remaining four or five in Allegheny County in a region that had been exposed to the influence of the Mingo Creek Democratic Society. At least one writ was served in a harvest field, and the news of the marshal's mission soon spread throughout the countryside. A mob of thirty or forty men gathered and was in hot pursuit when the marshal and the inspector stopped to serve a writ on one William Miller. Miller refused to receive it. "I felt myself mad with passion," he wrote later, ". . . to have to go to the Federal court in Philadelphia. . . . I felt my blood boil at seeing General Neville along to pilot the sheriff to my very door. He had been against the excise law as much as anybody."[32] As Lenox remonstrated with Miller, the pursuing mob approached on foot, and the marshal and the inspector prudently rode off. At least one shot was fired at them. Neville returned to his estate at Bower Hill on Chartiers Creek, but Lenox continued on to Pittsburgh. He had served all but one of his writs.

Nearby at the Mingo Creek church, a militia assembly was under way in connection with meeting Pennsylvania's quota under a federal plan for raising a select force of 80,000 militia for immediate duty in case of trouble with England. The assembly, upon hearing the news of the incident at Miller's, transformed itself into a council of war and decided to capture the marshal and bring him to the meeting place. A party of about forty armed men set off for Neville's house at Bower Hill, where they believed the marshal to be. They arrived in the early dawn of 16 July and surrounded the house in irregular fashion. Neville, determined to defend his possessions, fired on them, fatally wounding one of the group. The attackers then returned the fire, but Neville was able to beat off the assault, some observers said with the assistance of Negro slaves firing from the servants' quarters. Several other members of the mob were wounded in this exchange.

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[30] Baldwin, *Whiskey Rebels*, pp. 98-104.

[31] Hamilton was accused by his political opponents at the time of having deliberately provoked the revolt in this fashion in order to justify a show of force that would firmly establish the power of the federal government. See William Findley, *History of the Insurrection in the Four Counties of Pennsylvania in the Year 1794* (Philadelphia: Samuel Harrison Smith, 1796), pp. 73-76. See also Baldwin, *Whiskey Rebels*, pp. 111-12, and fn. p. 287. Baldwin lends at least some credence to the charge but Jacob Cooke, "The Whiskey Insurrection—A Re-evaluation," *Pennsylvania History* 30 (1963), firmly denies it.

[32] Quoted in Henry Marie Brackenridge, *History of the Western Insurrection in Western Pennsylvania Commonly Called the Whiskey Insurrection* (Pittsburgh: W. S. Haven, 1859), p. 35.

The people of the Mingo settlement were thoroughly inflamed by the bloodshed and gathered in larger numbers at Couch's Fort on 17 July. In the afternoon a body of around 500 men, this time organized as a militia formation under Maj. James McFarlane, a Revolutionary veteran, returned to Bower Hill with the avowed purpose of demanding Neville's resignation as inspector of revenue. Meanwhile, the alarmed Neville had tried without success to get militia or a sheriff's *posse* to assist him but was able to get eleven regular soldiers from Fort Fayette in Pittsburgh, a support base for Wayne's western expedition. Major Abraham Kirkpatrick of Pittsburgh, Neville's brother-in-law, also rode out to assist in the defense. By the time the militia arrived, Neville had left the house in charge of Kirkpatrick and sometime during the night had made his way to Pittsburgh. The militia leaders demanded Neville, were told by Kirkpatrick that he had departed, and then asked that a party be allowed to search the house for his papers. Kirkpatrick apparently refused this demand, and a confused fire fight ensued in which Major McFarlane was killed, several of the soldiers were wounded, and Bower Hill was burned to the ground.[33]

Meanwhile, Pressley Neville, the general's son; Major Lenox, the federal marshal; and Maj. Isaac Craig, quartermaster at Fort Fayette and a Neville connection, set out from Pittsburgh with several others for Bower Hill. They were seized by the insurgents and released only on the marshal's promise to serve no more writs west of the Alleghenies. On Lenox's return to Pittsburgh, the insurgents sent a delegation to the town to demand that he surrender the writs he had already served and that General John Neville resign as inspector of the revenue. While these negotiations hung fire, Lenox and Neville managed to escape down the Ohio in a boat furnished by the commandant at Fort Fayette, and they eventually made their way back to Philadelphia, leaving the fourth survey with the insurgents in full sway.[34]

It seems unlikely that the opponents of the excise tax ever intended to go so far as the burning of Bower Hill, but once passions were inflamed and violence launched, it was difficult to turn back. Those who had perpetrated the attack immediately sought to enlist the support of the whole western community for their actions, and since opposition to the excise tax was almost universal throughout the area, it was hard for Moderates, who regarded open and violent opposition as folly, to oppose the tide of extremism. At a meeting held at the Mingo Creek Presbyterian Church on 21 July, David Bradford emerged as an extremist leader, determined to push the affair to the ultimate. Hugh Henry Brackenridge, a Pittsburgh Moderate, was able to prevent any open endorsement of the actions of the mob only by taking an indirect approach, pretending to be sympathetic with the insurgents but eventually warning of the consequence of their mode of protest. The upshot of the meeting was a call for a meeting of elected representatives, two to five from each township in the fourth survey, at an assembly at Parkinson's Ferry on 14 August to determine what should be done. Following the Mingo Creek meeting, they arranged for armed robbery of the mail from Pittsburgh and Washington to determine the sentiments of the people of those towns toward the actions that had been taken.

Among the intercepted letters from Pittsburgh were found some condemning the actions

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[33] Kirkpatrick later claimed that he agreed but that the insurgents then demanded that the soldiers come out and ground their arms, that a fire fight developed after he refused this second demand. The preponderance of evidence appears to be that he refused to allow the house to be searched. See Baldwin, *Whiskey Rebels*, p. 119.

[34] There are many variant accounts of the events surrounding the attack on Bower Hill. The above is digested mainly from Baldwin, *Whiskey Rebels*, pp. 110–28, which is based on careful evaluation of original sources.

of the dissidents, including a letter of Pressley Neville, one of Maj. Gen. John Gibson, commander of the area's militia, and one of Maj. Thomas Butler, commandant at Fort Fayette. The extremists determined to imprison the offenders and to seize the arms and ammunition at Fort Fayette. With these designs in mind, Bradford issued a call for an assembly of the militia from the entire area at Braddock's Field on 30 July.[35] Moderates persuaded him to countermand the order, and Bradford did so, giving as his reason the fact that the ammunition was destined for use against the hated Indian enemy. But the popular pressures were so strong that Bradford had to do another about-face and deny that he had ever countermanded the call for the militia.

The militia assembly at Braddock's Field on 30 July, like Shays' appearance before Springfield in 1787, was the high tide of the rebellion. It is estimated that from 7,000 to 15,000 men attended. Some of them, notably the Pittsburgh contingent under Brig. Gen. John Wilkins, came under duress, for they feared that unless they gave a show of acquiescence in the designs of the extremists the excited country militiamen would sack their town. Wilkins and the wily Brackenridge, by agreeing to the banishment from Pittsburgh of Pressley Neville and General Gibson, were able to divert the wrath of the assembled multitude. The militia marched into Pittsburgh but made no attempt either to burn the town or to attack Fort Fayette. The only real act of vandalism was the burning of a barn that belonged to Maj. Abraham Kirkpatrick. As a sequel to the Pittsburgh affair, the collectors' offices in Westmoreland and Bedford were again attacked, one house was burned, and indeed the excise law was being defied throughout the fourth survey.[36] The moderates had managed to prevent immediate acts of overt rebellion, but during the month of August 1794 the situation remained volatile. As William Findley, a Fayette County moderate, wrote on 23 August, "The flame . . . spread with an infatuation almost incredible; for some time the voice of reason could not be heard nor durst scarce be uttered."[37]

The Federal Government Reacts

News of the "alarming outrage" at Bower Hill appears to have reached Philadelphia, the state and national capital, about a week later.[38] The reaction of the Pennsylvania authorities was relatively mild. In the absence of Governor Thomas Mifflin, on 25 July the secretary of the commonwealth, Alexander J. Dallas, sent a circular letter to the state law enforcement officers and militia brigade inspectors in the four western counties, exhorting them to see that the laws were obeyed and the offenders punished. He suggested politely to the state attorney general "the propriety of pursuing some measures to ascertain, with legal formality, the circumstances of the offense and the names of the offenders," and in a separate letter to Maj. Gen. John Gibson, the militia commander in Pittsburgh, opined "that if the civil authority can be supported by the assistance of the militia, the exercise of your discre-

[35] Braddock's Field, on the Monongahela River near Pittsburgh, was the site of General Edward Braddock's defeat by the French and Indians in 1754.

[36] Baldwin, *Whiskey Rebels*, pp. 129–71.

[37] Findley to Dallas, *Penn. Archives*, 2d ser., 4:206–07.

[38] Maj. Gen. John Gibson informed Governor Mifflin in a letter posted on 18 July "that a civil war has taken place in this country." See *Penn. Archives*, 2d ser., 4:69. The national authorities were apprised of the events by letters from officers at Fort Fayette to the War Department, see ibid., pp. 73–75.

tion for that purpose, upon the request of the magistrates, must be highly agreeable to the governor."[39]

Dallas' gingerly approach hardly suited the circumstances. Brig. Gen. John Wilkins of Pittsburgh was later to recall that he received Dallas' circular at a time when, in fear of the burning of Pittsburgh, he was preparing to go to the assembly on Braddock's Field where much of the area's militia would be gathered for a much different purpose. "I can, at present," he wrote Dallas, "say no more than our Lives, Property and all suffers the moment the Smallest attempt is made to Bringing forward any one person who Opposes the Excise law."[40] Mifflin, nonetheless, endorsed Dallas' approach and for some time afterward the Pennsylvania authorities resisted Washington and Hamilton's efforts to get them to take more strenuous measures to meet the crisis on their own.

Washington, taking a more serious view, submitted the evidence on the disorders to Associate Justice James Wilson of the Supreme Court for an opinion on whether they constituted "combinations too powerful to be suppressed by the ordinary course of judicial proceedings," a prerequisite under the law of 1792 for calling militia into the federal service to suppress them. While awaiting the judge's response, on Saturday, 2 August, he called a joint meeting of his cabinet heads and the Pennsylvania authorities. Representing the federal government were Alexander Hamilton, secretary of the treasury; Henry Knox, secretary of war; Edmund Randolph, secretary of state; and William Bradford, attorney general. Governor Mifflin, Chief Justice Thomas McKean, Attorney General Jared Ingersoll, and Secretary Dallas represented the state of Pennsylvania. Washington sought to get Mifflin to call the Pennsylvania militia on his own authority as an immediate measure, following the precedent established in the cases of violation of neutrality. The Pennsylvania officials demurred, arguing that the civil authority must first be tried, that the governor's power to issue such a call under Pennsylvania law was doubtful, that it would be "no easy task to embody the militia on the present occasion," and finally, that the militia of Pennsylvania alone would in any case be insufficient. After a long discussion, which at times seems to have become acrimonious, Washington apparently asked the governor and each of his cabinet officials to submit a written opinion on what should be done, leaving no doubt that he intended to act within the limits of his legal power to see that the laws were "faithfully executed."[41]

On the very day of the meeting, Hamilton submitted his recommendation to Washington that, if Judge Wilson should issue the necessary certificates, a "competent force of militia should be called forth and employed to suppress the insurrection." Calculating that the insurgent area might be able to place 7,000 men under arms, he suggested a force of 12,000 militia, only half to be drawn from Pennsylvania in view of Mifflin's doubts, with Maryland, New Jersey, and Virginia to furnish the rest in equal increments of 2,000 each.[42] Hamilton followed three days later with a lengthy and comprehensive report to Washington on the origins and course of the disorders, detailing chapter and verse of the prolonged frustration of

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[39] Ibid., pp. 76–78.

[40] Ibid., p. 140. See also Wilkins' letter to Maj Gen William Irvine, 19 Aug 94, ibid., pp. 168–74.

[41] Incomplete minutes of the meeting, erroneously dated 8 Aug 94, are in *Penn. Archives*, 2d ser., 4:145–46. Further deductions as to what transpired are based on: Mifflin to the President, 5 Aug 94, ibid., pp. 104–09; Hamilton to Washington, 2 Aug 94, Syrett, *Papers of Hamilton*, 17:15–19; Secy of State Randolph to Mifflin, 7 Aug 94, ibid., pp. 61–72. See also the account in Carroll and Ashworth, *George Washington*, vol. 7 of Douglas Southall Freeman's biography, pp. 187–88.

[42] Syrett, *Papers of Hamilton*, 17:15–19.

excise laws in western Pennsylvania up through the Mingo church meeting and the robbing of the mails (news of Braddock's Field had not, on 5 August, reached Philadelphia). He concluded that the declared object of these proceedings was "to obstruct the execution and compel a repeal of the laws laying duties on spirits . . . and on stills" and charged that the recent disorders were the result of a well-conceived plot.[43]

William Bradford and Knox, writing two days later, supported Hamilton's views in all their essentials. The attorney general expressed the opinion that the insurgents had committed high treason by levying war on the United States and thought the president "reduced to the melancholy necessity" of calling forth a large enough militia force to compel a speedy submission to the laws. He would, however, delay the militia call until a secret messenger had been sent west to get more accurate information.[44] Knox opined that "good consequences" would flow from "having even a superabundant force" to demonstrate that the government could execute the laws, thus aligning himself squarely with Hamilton.[45]

On 4 August Judge Wilson issued his certificate, asserting that in the counties of Allegheny and Washington in Pennsylvania the "laws of the United States are opposed, and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of Judicial proceedings or by the powers vested in the Marshal of the district."[46] The certificate apparently cleared the legal path for a federal call for militia, but Secretary of State Randolph demurred. He did not feel that the judge's certificate was sufficient, since it did not stipulate what law was being opposed. Even assuming its sufficiency, he doubted the expediency of using the militia, citing the strength of the opposition to the excise tax in the western parts of Virginia as well as of Pennsylvania, the expenses of the military expedition, and the dangers of civil war and British intervention. Apparently as a side thrust at Hamilton and Knox, he wrote,

> One motive assigned in argument for the calling forth of the militia, has been, that a government can never be said to be established until some signal display had manifested its power of military coercion. This maxim, if indulged, would heap curses upon the government. The strength of the government is the affection of the people.

Randolph proposed that the militia should not be called immediately, but that the president should first issue a "serious proclamation," setting forth his powers but announcing they would be withheld "from motives of humanity and a wish for conciliation." Commissioners should be sent west to try to effect conciliation, and if they failed in their mission, an attempt should be made to deal with offenders under the law. Only if the judicial authority were then withstood, Randolph thought, should the militia be called.[47]

Mifflin also opposed the use of military force, contending in his formal written opinion on 5 August that the state civil and judicial authority had not yet been fully tried. Like Randolph, he was afraid that the use of military force might provoke an even worse rebellion,

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[43] Ibid., pp. 24–58.

[44] The date of the letter Bradford to the president, August 1794, is uncertain but it appears to have been written about 4 August. Papers of George Washington, 4th ser., vol. 268, papers 105–06, Library of Congress Ms Division.

[45] Knox's calculations on the necessary force amounted to 12,400 men and were quite similar to Hamilton's. Knox to the President, 4 Aug 94, ibid., paper 57.

[46] *American State Papers, Miscellaneous*, 1:85.

[47] Edmund Randolph to the President, 5 Aug 94, original in Washington Papers, 4th ser., vol. 268, papers 75-77, Library of Congress Ms Division. Reprinted in H. M. Brackenridge, *History of the Western Insurrection*, pp. 147–51.



GEORGE WASHINGTON

and he concluded that it would be improper for him to "employ the military power of the State, while its judicial authority is competent to punish the offenders." He closed, however, by saying that the president must determine proper measures concerning laws of the Union and promised his cooperation in any course Washington should pursue.[48] Obviously, the governor was advising against Hamilton's course and recommending a trial of the weaker measures Dallas had initiated during the last week of July.

The cabinet held its decision meeting on 6 August and Hamilton's view, in general, prevailed, though concessions were made to Randolph. The president would issue a proclamation immediately and call up militia but would not march them westward until commissioners had attempted to effect conciliation.[49] On 7 August Washington accordingly issued the cease and desist proclamation required by the law of 1792, citing that "many persons in the . . . Western parts of Pennsylvania have at length been hardy enough to perpetrate acts which I am advised amount to treason, being overt acts of levying war against the United States" and necessitating the calling forth of the militia "in order to suppress the combinations aforesaid and to cause the laws to be duly executed." The proclamation further read,

> Wherefore . . . I, GEORGE WASHINGTON, President of the United States, do hereby command all persons being insurgents as aforesaid, and all others whom it may concern, on or before the first day of September next, to disperse and retire peaceably to their respective abodes. And I do moreover warn all persons whomsoever against aiding, abetting, or comforting the perpetrators of the aforesaid treasonable acts; and do require that all officers and other citizens, according to their respective duties and the laws of the land, to exert their utmost endeavors to prevent and suppress such dangerous proceedings.[50]

The following day three commissioners—U.S. Senator James Ross, from Pennsylvania and a native of Washington County; Associate Justice Jasper Yeates of the Pennsylvania

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[48] *Penn. Archives*, 2d ser., 4:104–09.

[49] There is no record of this meeting. See Hamilton to Knox and Washington, 5 Aug 94, Syrett, *Papers of Hamilton*, 17:21. Randolph was apparently not present at the meeting, but the inference that it was his view that resulted in the dispatch of commissioners may be drawn from the fact that this step is not mentioned in Hamilton's, Knox's, or Bradford's opinion. For a variant interpretation of the decision-making process in early August, see Richard H. Kohn, "The Washington Administration's Decision to Crush the Whiskey Rebellion," *Journal of American History* 49, no. 3 (December 1972), pp. 567–84. Kohn represents the decision to delay action while the commissioners negotiated as a reversal of Washington's earlier decision to use troops immediately. "The whole package was a compromise designed to keep options open.", page 575.

[50] Fitzpatrick, *Writings of Washington*, 33:457–61. Hamilton drafted the proclamation; see Syrett, *Papers of Hamilton*, 17:21.

Supreme Court, and Attorney General William Bradford—were appointed to go west and empowered to offer amnesty for past offenses in return for satisfactory assurances that collection of the excise tax would not be obstructed "directly or indirectly" in the future. The commissioners were urged to hasten their journey so that they might arrive in time for the Parkinson's Ferry meeting on 14 August.[51] On the same day Secretary of War Knox, on the president's authority, called on the governors of Pennsylvania, New Jersey, Virginia, and Maryland for a total of 12,950 militiamen—5,200 to come from Pennsylvania, 3,300 from Virginia, 2,350 from Maryland, and 2,100 from New Jersey—to be ready to march at a moment's warning. The force was to include 1,500 cavalrymen—500 each from Pennsylvania and New Jersey, 300 from Virginia, and 200 from Maryland—and small contingents of artillery from Pennsylvania (200), New Jersey (100), and Maryland (150).[52] While the commissioners attempted to persuade the insurgents to repent their evil ways, the militia would gather to provide the necessary force to compel them if they could not be persuaded.

Governor Mifflin fell reluctantly into line. He too issued a proclamation on 7 August, couching it in milder terms than the president's and referring to "riots" rather than "treason," and appointed two state commissioners—Chief Justice McKean and Maj. Gen. William Irvine of the Pennsylvania militia—to accompany the federal commissioners westward with similar powers of amnesty under the laws of Pennsylvania. On 8 August he instructed the state's adjutant general, Maj. Gen. Josiah Harmar, to issue general orders to bring the requisite militia into federal service and called the Pennsylvania legislature to meet in special session on 1 September to devise the necessary means of "maintaining the peace and dignity of the Commonwealth."[53]

The governor was still not entirely mollified. Throughout the month of August he carried on a long correspondence with the president, justifying his initial position. Mifflin's long, verbose letters were answered in like fashion, ostensibly by Edmund Randolph, but in reality Hamilton drafted the replies. One point in this exchange is of interest. In a letter on 12 August Mifflin held that under the 1792 law the militia could be used only for suppressing rioters, not as a continuing adjunct to civil authority to enforce the laws. "I hope . . . that it will never be contended that a military force ought now to be raised with any other view but to suppress the Rioters; or that, if raised with that view, it ought to be employed for any other."[54] Hamilton, as amanuensis for Randolph, in rebuttal pointed specifically to the provision of the Constitution (Article I, Section 8) authorizing calling forth the militia "to execute the laws of the union" and to similar language in the Calling Forth Act of 1792. "It is therefore plainly contrary to the manifest general intent of the Constitution and of this act, and to the positive and express terms of the second section of the act, to say that

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[51] *American State Papers, Misc.*, 1:86–87. The original of the instructions is in Pennsylvania Insurrection Papers, vol. 1, paper 15, Library of Congress Ms Division in the handwriting of George Taylor, chief clerk of the State Department. Taylor made the following note: "E. Randolph says that the instructions enclosed were drawn by him, not as his own sentiments but as those of the President, there being some things in them which do not accord with his views."

[52] Knox to Gov of Penn., 7 Aug 94, *Penn. Archives*, 2d ser., 4:122–23. The requisitions sent to the other state governors have not been located.

[53] Ibid., pp. 82, 110–11, 122–23, 129–31, 134–35.

[54] Quote from Mifflin to Washington, 12 Aug 94; see also Randolph to Mifflin, 7 Aug 94; Mifflin to Washington, 22 Aug 94; Randolph to Mifflin, 30 Aug 94, ibid., pp. 112–22, 148–54, 193–94, 220–27. Drafts of Randolph letters appear in Syrett, *Papers of Hamilton*, pp. 61–72, 163–67.

the militia called forth are not to be continued in service for the purpose of *causing the laws to be duly executed.*"[55]

While Hamilton and Mifflin argued, the commissioners, federal and state, carried out their mission in the West. They arrived in the area just as the meeting at Parkinson's Ferry was breaking up. Washington's proclamation was read at the meeting but with apparently little effect, because the delegates resented the implication of treason. Present were delegates from almost all the townships of Allegheny, Washington, Fayette, and Westmoreland counties; two from Bedford County; and three from Ohio County, Virginia. The sessions were held in open air before a large gallery whose violent opposition to the excise law was much in evidence. Yet moderates, with the devious Brackenridge and the more forthright Albert Gallatin carrying the main burden of argument and maneuver, toned down the resolves that had been initially designed to provide for an organization to carry on open resistance to the federal government and secured an adjournment without any dangerous confrontation between the Parkinson's Ferry assembly and the commissioners. A standing committee of sixty members was appointed, and this committee in turn chose twelve men as a conference committee to negotiate with the commissioners.

From this point onward, the trend was toward submission, as sober and moderate men gradually assumed control. But much of the populace was still inflamed, and the commissioners were unable to get the assurances required by their instructions. After three days of negotiations (21–23 August), the conference committee recommended acceptance of the government's terms. The standing committee, in a stormy session at Redstone Old Fort on 28-29 August and again before a large gallery, voted 34–23 to accept these terms in a ballot so secret that no one could possibly tell how his neighbor had voted—a symptom of the extent to which moderates were afraid to voice their views. A new conference committee then informed the commissioners of the result, but they sought concessions beyond the commissioner's power to grant and admitted they could not themselves bind the people to submit. The result was an agreement that an election be held in the four affected counties on 10 September with all those voting for submission to sign an oath pledging themselves not to oppose the excise laws "directly or indirectly." Time was short for publicizing and arranging this election in a sparsely settled country, and the results were confused. Many of the worst offenders, including David Bradford, signed the oath; others who felt they had committed no offense refused to participate (the whole county of Fayette fell into this category). In some townships the old spirit of resistance manifested itself, and armed recalcitrants intimidated those who wished to subscribe.[56]

In sum, the commissioners concluded that they had not received the required assurances. On 24 September they gave the president their final opinion that although a considerable majority of the inhabitants of the fourth survey were now disposed to submit, the excise law could still not be enforced by the "usual course of civil authority." Some "more competent force" was required.[57]

The commissioners' reports and other news received in Philadelphia from 8 August

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[55] Randolph to Mifflin, 30 Aug 94, Syrett, *Papers of Hamilton.* The Hamilton draft is in Syrett, *Papers of Hamilton,* 17:163–68. See above Chapter 1 for the exact language of the Constitution and the second section of the 1792 law.

[56] Baldwin, *Whiskey Rebels,* pp. 172–216. H. M. Brackenridge, *History of the Western Insurrection,* pp. 152–238. Findley, *History of the Insurrection,* pp. 112–36.

[57] *American State Papers, Misc.,* 1:87–90.

onward indeed were not optimistic, and Hamilton and Washington did not wait for the final report before readying the "more competent force." Henry Knox left Philadelphia on 8 August for a six-week vacation, leaving the business of the War Department as well as that of the Treasury Department in Hamilton's hands. Hamilton took the initiative to warn the commandant at Fort Fayette that he must keep the arms and stores there out of the hands of the insurgents, and in cases of necessity, he also provided for emergency reinforcement to the north of the fort from Fort Franklin.[58] The first report of the commissioners, dispatched on 17 August, painted a gloomy picture of moderates overawed by a more numerous violent faction and held forth little hope of enforcing the laws by means other than "the physical strength of the nation." It was reinforced by a personal letter from William Bradford to the president urging immediate measures to suppress the rebellion, including the assembly of a regular force to aid the militia since the latter, particularly in Pennsylvania, could not be counted on. If the militia was to be used, the attorney general recommended that men of a "similar mode of life," such as riflemen from the frontier areas of Maryland and Virginia, make up the major portion of the force, citing the insurgents' fears that Daniel Morgan, the expert commander of riflemen during the Revolution, would lead a body of woodsmen against them.[59]

The cabinet members remaining in Philadelphia—Hamilton and Randolph—considered these communications at a meeting with Washington on 24 August. Certain decisions were reached: the Virginia militia contingent would be assembled immediately without publicity, while orders for the other state contingents would await further developments; the total force was to be increased to 15,450 privates and noncommissioned officers by raising the Virginia quota by 1,500 and those of Maryland and New Jersey by 500 each; the governors of Virginia and Maryland would be asked to get as many riflemen as possible from areas contiguous to the scene of action; and Morgan would command these riflemen. Places of rendezvous were set: for the Pennsylvania troops, at Carlisle and Chambersburg; for the New Jersey troops, at Trenton whence they would march to Carlisle to join the Pennsylvania contingent; for the Maryland forces, at Williamsport; and for the Virginia troops, at Winchester and nearby Old Fort Pleasant. Eventually the Virginia and Maryland contingents would join forces at Cumberland, Maryland. Hamilton was to begin immediately to get supplies to the rendezvous points.[60]

Hamilton communicated these decisions piecemeal to the various governors involved in the days that followed, but there is no direct evidence that the executives of Maryland and New Jersey were ever asked for the additional 500 men from their respective states. Hamilton did tell Governor Henry Lee of Virginia, "Light Horse Harry" of Revolutionary fame, on 25 August that the president wanted 1,500 additional men from the state (to make a total of 4,800), as many of those as possible to be riflemen drawn from "places near the scene of action." He asked Lee to assemble the force in time to form a junction with the Maryland contingent at Fort Cumberland by the end of September, although "public orders" should

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[58] Syrett, *Papers of Hamilton*, 17:88–89. Fitzpatrick, *Writings of Washington*, 33:462, 468.

[59] Commissioners to Randolph, 17 Aug 94; Bradford to Washington, 17 Aug 94; Pennsylvania Insurrection Papers, vol. 1, papers 30–32, 74–76, Library of Congress, Ms Division.

[60] Ibid., papers 89 and 89A. Printed in Syrett, *Papers of Hamilton*, 17:135–38.

not be issued before 1 September, the deadline in Washington's cease and desist proclamation.[61]

By a separate letter on the same day, Hamilton conveyed Washington's request to Lee that he command the expedition. Lee was a man of unquestioned loyalty to Washington and an old comrade who could be expected to influence Morgan. The move was well calculated to obtain competent military leadership, to disarm the political opposition of many followers of Lee and Morgan, who had opposed the excise tax, and to deemphasize the role of Hamilton as the prime mover in the affair. Lee, who had long sought a high military commission, accepted with alacrity. "My grief for the necessity of pointing the bayonet against the breasts of our countrymen," he wrote Washington, "is equaled only by my conviction of the wisdom of your decision to compel immediate submission to the authority of the laws."[62]

Meanwhile, on 29 August 1794 Hamilton requested that Governor Thomas Sims Lee of Maryland assemble any militia ordered from the Eastern Shore at Baltimore to receive further orders and suggested Williamsport or Hagerstown as the eventual rendezvous point for these forces and detachments from other parts of the state. He also set in motion the apparatus to get supplies to the various rendezvous points working through Commissary of Military Stores Samuel Hodgdon and agents in each state—Edward Carrington in Virginia, George Gale in Maryland, and Abraham Hunt in New Jersey.[63] Finally on 9 September, noting that the measures for "an amicable accommodation" were so very doubtful "and the season for military operations wearing away so fast," Hamilton announced to Governor Mifflin of Pennsylvania Washington's regretful decision to set all of the militia force called for in motion. He asked Mifflin immediately to assemble the quota for Pennsylvania at Carlisle where the New Jersey militia would be ordered to repair without delay.[64]

The decision to dispatch the militia force had thus really been made sometime before the commissioners, in their final report on 24 September, asked for "some more competent force." The delay in the actual march of the expedition was occasioned more by the difficulties in mobilizing, assembling, and organizing a militia force from four states than from any lack of an early resolve to send it.

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[61] Hamilton to Henry Lee, 25 Aug 94, Syrett, *Papers of Hamilton*, 17:143–45.

[62] Gov Lee to Washington, 3 Sep 94, Jared Sparks, *Correspondence of the American Revolution being Letters of Eminent Men to George Washington . . .*, vol. 4 (Boston: Little, Brown & Co., 1853). Hamilton to Henry Lee, 25 Aug 94, Syrett, *Papers of Hamilton*, 17:142–43, 456.

[63] Hamilton to T. S. Lee, 29 Aug 94, Syrett, *Papers of Hamilton*, 17:161–62. Letters, Hodgdon, to Gale and Hunt, 25–31 Aug 94, ibid., pp. 142, 150–53.

[64] Hamilton to Mifflin, *Penn. Archives*, 2d ser., 4:267–68. There is no record in the Hamilton Papers of a letter to Gov. Richard Howell of New Jersey but some instructions must have been issued, for Howell began assembling the New Jersey forces early in September.

CHAPTER 3

The Whiskey Rebellion: The Military Expedition

In this uncertainty, therefore, I put in motion fifteen thousand men, as being an army, which, according to all human calculation, would be prompt, and adequate in every view; and might, perhaps, by rendering resistance desperate, prevent the effusion of blood.

——Washington's Sixth Annual Address to Congress, 19 November 1794.

Raising the Militia

The militia force called for, whether it was the 12,950 men requisitioned on 7 August or the 15,450 indicated in the increased quotas of 24 August, constituted as large an army as Washington had normally been able to muster at any one place during the Revolution and was several times the number of regulars employed contemporaneously by Wayne against the Northwest Indians. Assembling, organizing, and supplying such a force provided a test both of the militia system itself and of the federal authority under the Calling Forth Act of 1792. In the absence of a select corps such as that repeatedly recommended by Washington and Knox, governors had to parcel out service among the large, amorphous, ill-organized militia of their states. And having parceled it out, they then had to depend on the willingness of both officers and men to rally to the support of the new federal government in an expedition against their own countrymen resisting a law that many themselves opposed. In the process all of the governors were to discover a certain inadequacy in the militia laws and the organization of militia in their states and to encounter no little opposition to the purposes for which the militia was being called.

The effort commenced in each of the four states almost immediately upon receipt of the War Department's requisition of 7 August. In Pennsylvania particularly, the initial response was lethargic. On 8 August, Mifflin distributed the state's 5,200-man quota most precisely, drawing mainly from the city of Philadelphia and the surrounding counties, but assigning quotas as far west as Franklin and Dauphin counties where sympathy for the insurgents was strong. The men were to be formed into three brigades commanded respectively by Brig. Gens. Thomas Proctor, Francis Murray, and James Chambers, with Maj. Gen. William Irvine, then absent as a commissioner in the West, in overall command. Brigade inspectors in each area were to draft men for service "by the classes most convenient to the citizens and best adapted to a prompt compliance with the President's requisition."[1] Adjutant General

[1] *Penn. Archives*, 2d ser. 4:129–31.

Harmar dutifully issued the orders, but nothing much really happened. The brigade inspector for Philadelphia almost daily called at the Office of the Secretary of the Commonwealth "with representations of the embarrassment which he experienced in complying with the requisition," repeatedly expressing "his doubt of success, in consequence of the defects of the militia law."[2] On 27 August, Mifflin, worried about the "reputation" of the state and its officers, asked Harmar for a progress report, and Harmar in turn called on the brigade inspectors. The results were dismal indeed. The brigade inspector from York, with a quota of 550, reported a "too great delay" from the "unprepared state I was in to make a draft, through the former negligence or non-compliance of some Regiments with the Militia law."[3] From Franklin County, with a quota of 281, came the report that only 29 privates had reported themselves ready to march "and they without arms and equipment."[4] From Dauphin County, with a quota of 273, came the ominous word, "They say they are ready to march according to former orders against a foreign enemy but not against the Citizens of their own state."[5] Several brigade inspectors simply sent in no report.[6] Reviewing the reports, Mifflin on 8 September wrote Harmar, "It is with the greatest mortification, therefore, that I now discover in the returns you have communicated to me so great an indisposition in some of the brigades to comply with that call, or so essential a defect of power of the officers to enforce it as leave but little hope that our quota can be seasonably raised by the ordinary course of proceedings." He instructed Harmar to "resort to the spirit of patriotism of individuals to supply immediately by voluntary enrollments the deficiency of the regular drafts."[7]

Mifflin's "mortification" was vastly increased on 9 September when he received Hamilton's order for the rendezvous at Carlisle. Putting aside his earlier doubts, he launched a speaking tour of the counties on which quotas had been placed, beginning in Philadelphia on 10 September and ending in Chambersburg in Franklin County on 3 October. Mifflin appealed to state pride and national patriotism, going so far as to tell the militia officers of Philadelphia they ought either to join up or to resign their commissions. While admitting that many might legitimately disagree with acts of Congress, he argued that "no diversity of opinion can exist in an enlightened Republican community with the necessity for obeying them, while they continue."[8] Mifflin was received everywhere, according to his companion Dallas, "with the highest respect and applause."[9] Meanwhile, the Pennsylvania legislature in special session authorized the governor to engage militia for a term not exceeding four months and to organize them into companies and battalions as he saw fit; it appropriated $120,000 to be paid to volunteers and draftees alike. Patriotic citizens rallied to the cause and made contributions both to pay the bounty in advance of the state legislature's action and to provide for the dependents of those who agreed to serve.[10] By 28 September Dallas

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[2] Secy Dallas' Report to the Penn. Senate, 10 Sep 94, ibid., p. 282.

[3] Ibid., pp. 263–64

[4] Ibid., pp. 258–59.

[5] Ibid., p. 282.

[6] For a full summary, see *Report of Secretary Dallas Relative to Want to Promptness of the Militia*, 16 Jan 95, ibid., p. 506–17.

[7] Ibid., pp. 264–66.

[8] Ibid., pp. 268–69, 271–72, 369–75.

[9] George Mifflin Dallas, *The Life and Writings of Alexander James Dallas* (Philadelphia: J. P. Lippincott & Co., 1871), p. 33.

[10] *Penn. Archives*, 2d ser., 4:326–28. *An Act to provide for suppressing an insurrection in the western counties of the Commonwealth.*

found "the military rage . . . completely, inflamed, and the whole country . . . in motion."[11] By 13 October all the Pennsylvania militia had assembled at Carlisle. While the full complement of 5,200 men was not raised, the only counties that "failed materially" in meeting their quotas were Northampton and Bucks, and some quotas were oversubscribed.[12]

The Pennsylvania force reflected the hasty methods by which it was raised. It turned out to be a curious mixture of gentlemen volunteers, some in organized and uniformed companies, draftees, hired substitutes, and men attracted by the bounty. The uniformed volunteer companies tended to look down on the regular militia. The men's passions were aroused by patriotic oratory, and they descended on Carlisle in relatively undisciplined bodies ready to hang rebels indiscriminately. As evidence of the general confusion, General Irvine, originally designated by Mifflin on 8 August to command, learned of his assignment only at secondhand when he arrived in Carlisle from the west on 18 September.[13]

In contrast to that of Pennsylvania, the New Jersey contingent was raised without much fanfare. The state profited from having already embodied a force of militia under the federal scheme to ready a select force of 80,000 in case of troubles with England, whereas none of the other states involved appear to have done so. On 23 August 1794, Governor Richard Howell ordered Maj. Gen. Elias Dayton, commander of the select force, immediately "to organize and hold in readiness to march at a moment's warning" 1,500 infantrymen from his command. The rest of New Jersey's initial quota of 2,100—500 cavalry and 100 artillerymen—was to be drawn partly from Dayton's command and partly from other militia organizations in the state. Howell designated Brig. Gen. Anthony White, the state's adjutant general, as commander of the cavalry, while he himself proposed to go out with the expedition as commander of the entire New Jersey contingent.[14]

Under Howell's plan, New Jersey appears to have been the only state that exceeded its initial allotment.[15] On 1 September Howell issued orders for a rendezvous of the whole force at Trenton, no longer time to be allowed than "what will appear to be absolutely necessary for accomplishing the march." Dayton at Elizabethtown communicated these orders to the officers of his division with the admonition that this should be all that was necessary to set the corps of 1,500 men, "last detached," in motion.[16] There were evidently more difficulties than anticipated. By 19 September the New Jersey horsemen, accompanied by the governor, were at Norristown en route to Carlisle, but the first contingent of infantry did not leave Trenton until 22 September and arrived at Carlisle on 4 October. Other contingents marched later, and all the New Jersey troops had not arrived in Carlisle by 13 October. Some started out too late to take part in the expedition.[17] The spirit of vengeance among the New Jersey

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[11] Dallas, *Life and Writings*, p. 33.

[12] Ibid., p. 36.

[13] Findley, *History of the Insurrection*, pp. 146–52; *Penn. Archives*, 2d ser., 4:323–24, 338–39.

[14] New Jersey Adjutant General's Office, *Records of New Jersey Officers and Men in Wars, 1791–1815* (Trenton: State Gazette Publishing Co., 1909), p. 5.

[15] The listings in ibid., pp. 7–63, add up to around 2,200. There is no evidence that New Jersey made any effort to raise an additional 500 men as agreed in the cabinet meeting on 24 August, leading one to believe that the governor was never informed.

[16] GO of Gov Howell, 1 Sep 94, ibid., p. 5; William Gold, "Journal of Maj. William Gold of the New Jersey Infantry During an Expedition into Pennsylvania in 1794," New Jersey Historical Society *Proceedings* (1848–49), 3:176.

[17] Ibid., pp. 177–79. *Penn. Archives*, 2d ser., 1:314–15. Dallas, *Life and Writings*, p. 36. Dallas wrote his wife on 13 October: "Notwithstanding, indeed, the flashes of other states, particularly of New Jersey, the Pennsylvania Militia have been the most numerous and the most expeditious in assembly."

troops was heightened by the widespread dissemination of a satiric piece appearing in a Pittsburgh paper that referred contemptuously to "water-melon armies from the Jersey shores."[18]

In both Pennsylvania and New Jersey, supply was an even more serious problem than recruitment. Few militiamen had provided themselves with the individual arms and equipment that the militia laws required. The general solution adopted was for each militiaman to bring what he could, with the deficiencies to be supplied by state or federal authorities at one of the several successive places of rendezvous. Thus Harmar issued instructions in Pennsylvania on 11 September that each militiaman should bring with him a blanket and, if possible, a knapsack and canteen; he was also to provide his own rations en route to the first place of rendezvous and be reimbursed by the government later. State and federal officials then cooperated in providing the necessary arms, ammunition, wagons, tents, camp equipage, rations, and forage at the rendezvous points. A state quartermaster organization in Pennsylvania was hastily thrown together with Clement Biddle at its head. Hamilton, working through Samuel Hodgdon, commissary of military stores, meanwhile labored to provide a depot of supplies of all kinds, particularly arms and ammunition, at Carlisle. On 17 September he assured Mifflin that the militia did not need to be completely equipped on arrival at Carlisle, because the essential thing was to get a good collection of men there as soon as possible.[19]

The problems were not significantly different in Virginia and Maryland. Recruiting the men to fill the quotas was difficult and supplying them even more so, for the points of rendezvous were too distant for the federal authorities to render the same degree of aid. In the western parts of both states, too, reverberations of the Pennsylvania disorders created additional problems.

In Virginia Governor Henry Lee issued his initial call on 16 August, regulating the quotas, as he put it, "by the contiguity of the divisions to the point of service, by regard to the protection of the frontiers from the Indian enemy, and by attention to the seaboard in case of sudden war." Thus the force was to be recruited from brigades in counties along the James between Richmond and Norfolk, from the upper Shenandoah Valley and along the Blue Ridge, from northern Virginia and the area around Fredericksburg, and from counties in the southwestern part of the state. He named Maj. Gen. Daniel Morgan to command two provisional brigades, one under Brig. Gen. William Darke and the other under Brig. Gen. Thomas Matthews. The brigade inspectors were to try to enlist the necessary quotas from volunteers and resort to a draft only if they could not fill them by this method.[20]

As in Pennsylvania, the real work of recruiting, organizing, supplying, and putting the Virginia men in motion did not get under way until September. And when it did, problems familiar in the Pennsylvania experience arose. Daniel Morgan, taking charge of affairs around Winchester, reported to the governor on 7 September that "the men don't turn out as I expected, to quell this dangerous riot over the mountains" and that he had given orders for an immediate draft in case the quotas could not be met with volunteers.[21] From the Fredericks-

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[18] See Baldwin, *Whiskey Rebels*, pp. 191-93, on this incident.

[19] *Penn. Archives*, 2d ser., 4:272–73, 282–83, 305, 311. See invoice of clothing, arms, and accouterments, camp equipage, ammunition, etc., from Philadelphia for the use of the militia army from 11 Sep 94 to 31 Oct 94. NARA (National Archives and Records Administration), RG 107, Secy War Ltrs Sent and Recd, Box 5.

[20] Lee's General Orders of 16 Aug 94 are in *Penn. Archives*, 2d ser., 4:161.

[21] *Cal. Va. State Papers*, 7:297.

burg area on 15 September came the report that some of the regiments were ready but that, from the deranged state of the militia in some of the counties, the quota would not be ready in time.[22] The troubles were greater at points distant from the place of rendezvous at Winchester. In Surry County on the south side of the James an "old soldier" circulated a statement suggesting that militiamen might be better off paying the fines prescribed for failure to respond to the call under the law of 1792 than to try to equip themselves and undertake a difficult march of 500 miles in a "cold climate." On 12 September an alarmed local brigade inspector informed the governor with "much pain and concern" of "an apparent mutiny in my brigade." In the worst instance, it appears that when one Captain Jones assembled his company at Cabin Point to furnish his quota "a certain Benjamin Billeo stepped out of the ranks and told the Captain if he was done his speech he had something to say to the men, and then told them, all that was for liberty to follow him." All but a few stepped out and "positively forbid the captain to draw for the men that was wanting to do their duty."[23] The mutiny was eventually quelled, and some gentlemen volunteers stepped in to redeem the bad name of Surry, but the net result was that the quota from the James River area was never met, and the march to the Winchester rendezvous was seriously delayed.[24] Somewhat similar refusals to perform service occurred in some of the southwestern counties.[25]

By 19 September Governor Lee was sufficiently worried to suggest that the council give permission to call out two additional regiments of volunteers from the "upper country" and to use volunteer militia from the Monongahela District in present-day West Virginia to which no quota had been assigned. Lee hoped by these measures to meet the quota "with celerity" and to be able to "furnish General Morgan with a small useful corps, well acquainted with that part of the country." Cognizant of the problems of enforcing the excise law around Morgantown, he suggested that he might have Morgan pass through that part of the country.[26] These expedients proved unnecessary, mainly because the turnout in Morgan's area exceeded quotas initially assigned. Morgan had, in fact, assembled one brigade at Winchester by 15 September but was forced to furlough them for a week for lack of "arms, ammunition, or any kind of military stores."[27] During the last two weeks of September, as men from other areas converged on Winchester, arms were hastily assembled there. Hamilton was able to send down only 400 stand from Philadelphia so that the main reliance was on the state arsenals at New London and Columbia, which appear to have contributed a total of 4,900 small arms.[28]

In any case, the delays were serious and not until 4 October did the first Virginia contingent of 2,000 men start the march from Winchester to Cumberland to join forces with the

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[22] Ibid., pp. 311–12.

[23] Ibid., pp. 306–07.

[24] Ibid., pp. 330–31. Governor Lee wrote to one of the colonels of militia in Surry on 30 September: "I beg you tell your worthy lads that I am drafted as well as themselves, and I mean to march hand in hand with them, leaving behind me a sick wife and a very sick only son." Ibid., p. 334.

[25] Evidence on these is fragmentary. Edward Carrington, U.S. marshal and inspector of revenue in Virginia, wrote the governor on 8 February 1795 that the failure of General Martin's brigade in this area to furnish its quota on time "arose from a mutiny or mutinies which happened in one or more of the counties composing his brigade." The counties concerned appeared to have been Patrick, Franklin, and Henry. Ibid., pp. 430–31.

[26] Ibid., p. 318. Whether this instruction was an effort to carry out the scheme advanced in the 24 August cabinet meeting is conjectural. No new quotas appear to have been assigned as a result of Hamilton's request to Lee for an additional 1,500 men on 25 August.

[27] Ibid., pp. 322–23, 315–16.

[28] Ibid., pp. 315–17, 319, 322–23.

Maryland militia. And General Matthews, whom Morgan left behind at Winchester, reported at that time, "The supplies expected here for the accommodation of the troops have fallen far short of the convenient accommodation."[29] Over the next few days, contingents from the more distant points arrived. On 12 October, Matthews said they were generally deficient "in number from the apportionment made by the Executive" and equipped in a manner "extremely distressing. . . . Many of them destitute of coats, hunting shirts, shoes and blankets." Desertions were "frequent." "We shall fall far short," Matthews wrote, "of the number required from this state."[30] One contingent from the southwest, at least, did not arrive at Winchester until 22 October and was sent back home after incurring a considerable expense to the government.[31]

Meanwhile, Governor Thomas Sims Lee of Maryland was encountering similar problems, and they were complicated by the outbreak of a miniature Whiskey Rebellion in counties in the western part of his own state. The governor issued his initial orders on 14 August, using a somewhat different approach from that of Pennsylvania and Virginia. Instead of assigning quotas to specific geographic areas, he called on each regiment in the state to furnish 2 sergeants, 2 corporals, and 41 privates and each "extra battalion" 1 sergeant, 1 corporal, and 20 privates to be held in readiness for the march to rendezvous places to be designated later. Efforts were to be made first to procure the necessary men from volunteers, with the deficiency to be filled by a draft. Only volunteers would be taken for cavalry in view of the additional expense involved in providing the necessary equipment.[32]

Lee appointed Brig. Gen. Samuel Smith to command the Maryland contingent, and after some hesitation, the council agreed that rifles might be made available from the state arsenal at Frederick. Lee, however, insisted that the general government must furnish all other equipment, including pistols and swords for the cavalry, that the individual militiamen could not provide.[33]

Much of the work of enrolling the men, soliciting volunteers, and filling in deficiencies by draft had been completed by the end of August. Some counties filled their quotas with volunteers, but most had to resort to the draft. Lee waited for the national government to designate the places of assembly, and some militiamen evaded the draft by simply leaving their usual residences.[34]

By the first week in September the rendezvous points were established—for the Eastern Shore at Baltimore and for the rest of the state at Williamsport and Cumberland—and the difficult task of assembling scattered detachments of men from all over the state began. This task was seriously disrupted by the outbreak of disorders in Washington and Allegheny counties in western Maryland, inspired perhaps by the rebels in Pennsylvania. Dissidents erected liberty poles, guarded by armed men, and country orators declaimed against the excise tax. Not only was recruiting for the expedition to Pennsylvania halted in the area, but there was

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[29] Ibid., pp. 341–42.

[30] Ibid., pp. 343–44.

[31] Ibid., pp. 430–31,

[32] *Penn Archives*, 2d ser., 4:155–56.

[33] T. S. Lee to Knox, 11 and 15 Aug 94, Lee to Samuel Smith, 15 Aug 94, Council Letter-Book, 1793–96, Maryland Hall of Records, Annapolis, Md.

[34] "Many who are averse to the service may be a hundred miles off before the General rendezvous," a militia commander from Harford County wrote on 30 August. John Carlisle to the Governor, State Papers, 1794, Maryland Hall of Records. See also Lee to Lt Col Henry Hollingsworth, Cecil County, 5 Sep 94, Council Ltr Bk, 1793–96.

a distinct threat to the state arsenal at Frederick. Across the state line at Winchester, Daniel Morgan bewailed his inability to intervene because his troops lacked arms and ammunition, while other Virginia authorities feared the dissidents would prevent the movement of military supplies down from Philadelphia. But Governor Thomas Lee took quick and decisive action, first getting Brig. Gen. Mountjoy Bayley to rally the loyal militia in the area, arm them, and place a guard at the arsenal and then instructing General Smith to raise a force of 800 men separate from that destined for the main expedition, by draft if necessary, to restore order. In the end the governor hurried to Frederick in person and by 21 September could report to Hamilton that the opposition was entirely crushed, that the insurgents had dispersed without making an attempt on the arsenal, and that small bands of cavalry had rounded most of them up and turned them over to the civil authority for trial.[35]

In fact, as one observer noted, the "monster had been previously destroyed by the natural force of the place" before the militia arrived, but the trouble still forced a diversion of effort from the assembling of the militia for the Pennsylvania expedition, and indeed the governor was constrained to maintain a militia guard at Frederick for some time afterward.[36] Faced with, in addition to the disorders at Frederick, all the usual problems of assembling the militia, on 30 September Governor Lee was despondent, writing General Smith, "I have had to encounter Difficulties arising from the striking Inefficiency of our Militia Law and the unfinished state of arrangements and organization under it and in many Instances to go beyond the strict boundaries of my authority. If I have not been able to accomplish the Force required by the President the fault is not mine."[37] In the end he failed to meet the 2,350-man quota assigned on 8 August by only about 500 men, and this was largely explained by the failure of many contingents to arrive at their rendezvous on time. The governor disbanded a number of them, including the detachment of horsemen he had tried to organize from volunteers. The detachment turned out to be too small and composed of men from too many separate organizations. Some of these problems were certainly inherent in the method Thomas Lee had adopted to apply the statewide levy, making assembly and organization of the forces particularly difficult. Nevertheless, Maryland militia, in considerable numbers, were at Cumberland before the bulk of those from Virginia arrived.[38]

The assembling of the Virginia and Maryland contingents at Cumberland lagged somewhat behind that of the New Jersey and Pennsylvania militia army at Carlisle. But by mid-October the mobilization of a force of more than 10,000 men in the service of the national government had been achieved, a considerable accomplishment under the circumstances. There remained to Washington and his cabinet the task of molding the men who had been mobilized into an effective army and defining the tasks they were to perform while in the national service.

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[35] Lee to Bayley, 23 Aug and 6 Sep 94, Council Ltr Bk; Bayley to Lee, 12 Sep 94, Red Book, vol. 18, item 138; Lee to Hamilton, 12, 13, 23 Sep 94, Council Ltr Bk; Lee to Smith, 13 Sep 94, Council Ltr Bk. All in Maryland Hall of Records, *Cal. Va. State Papers*, 7:315–16.

[36] Edward Carrington to Lt Gov James Wood, 24 Sep 94, *Cal. Va. State Papers*, 7:323–24.

[37] Council Ltr Bk, 1793–96, Maryland Hall of Records. Lee wrote Hamilton in much the same vein. Syrett, *Papers of Hamilton*, 17:294–95.

[38] Lee to Roger Nelson, 25 and 30 Oct 94; Lee to Lt Col Edward Oldham and Maj Robert Morgan, 3 Nov 94, Council Ltr Bks 1793–96; Return of the Maryland Brigade of Militia Camped at Uniontown, 2 Nov 94, Red Book, vol. 17, part 2, item 184. All in Maryland Hall of Records.

Organizing the Militia as a National Force

While the militia was gathering, Washington on 25 September issued a second proclamation declaring that the government was "set at defiance" and announcing that "a force . . . adequate to the exigency, is already in motion to the scene of disaffection." He again called for adherence to the laws, promising liberal treatment for all those who recanted but "condign punishment" for any who persisted or who aided the insurgents.[39] On 30 September he set out from Philadelphia to supervise personally the preparations at Carlisle and Cumberland, yet undecided whether he should accompany the expedition in his constitutional role as commander in chief. Hamilton rode with him, convinced that it was "advisable . . . on public grounds considering the connection between the immediate ostensible cause of the insurrection . . . and my department" to go out with the troops.[40]

Washington and Hamilton arrived in Carlisle about 1100 on Saturday, 4 October, amidst much fanfare. To use his own words, Washington spent the next week "Employed in organizing the several detachments, which had come in from different Counties of the State, in a very disjointed and loose manner; or rather I ought to have said in urging and assisting Governor Mifflin to do it; as I no otherwise took the command of the Troops than to press them forward, and to provide them with necessaries for their March, as well, and as far, as our means would admit."[41]

One of his principal tasks was to subdue the vengeful spirit of the troops that gave rise to boastful threats to "skewer the Whiskey men" and to expectations that "the whole country would be given up to execution and plunder."[42] The militia had killed two men while en route to Carlisle, and while both deaths were judged accidental, the circumstances under which they occurred gave evidence of carelessness if not of malevolence. Washington was careful to see that the men involved were turned over to the civilian authorities for investigation, and he sought constantly to get Mifflin and Howell to impress on their troops the necessity for proper conduct and strict observance of their roles as assistants to the civil authority. "It is a very precious and important idea," Hamilton wrote to Mifflin on the president's behalf, "that those who are called out in support and defense of the Laws, should not give occasion, or even protest to impute to them infractions of the law."[43] These sentiments found their echo frequently in general orders at the lower echelons and had a salutary effect. There were no more killings after Carlisle, though the militia's respect for private property still left much to be desired. Washington, returning later along the route of march of the Pennsylvania troops between Carlisle and Bedford, was told that "in some places . . . they did not leave a plate, a spoon, a glass, or a knife." He found that "at *most* if not *all* the encampments . . . the fences in a manner burnt up."[44]

The president also settled the rank of the principal officers, a matter of some sensitivity since both Governor Mifflin and Governor Howell had decided to accompany the expedi-

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[39] Fitzpatrick, *Writings of Washington*, 33:507–09.

[40] Hamilton to Washington, 19 Sep 94, Syrett, *Papers of Hamilton*, 17:441–42.

[41] John C. Fitzpatrick, ed., *The Diaries of George Washington*, 4 vols. (New York and Boston: Houghton Mifflin Co., 1925), 4:212.

[42] Findley, *History of the Insurrection*, pp. 160, 162.

[43] Ibid., pp. 179, 186–89. *Penn. Archives*, 2d ser., 4:405–06.

[44] Washington to Secy of the Treasury, 26 Oct 94, Fitzpatrick, *Writings of Washington*, 34:8.



"WASHINGTON REVIEWING THE WESTERN ARMY AT FORT CUMBERLAND, MARYLAND." *In this painting by Frederick Kemmelmeyer the commander in chief is depicted reviewing the militia force that put down the Whiskey Rebellion. (Oil, c. 1794; Metropolitan Museum of Art, gift of Edgar William and Bernice Chrysler Garbisch.)*

tion, and the militia commanders down the line were jealous of their prerogatives. He named Governor Lee of Virginia commander in chief "if I do not go out myself," Governor Mifflin second, Governor Howell third, and Maj. Gen. Daniel Morgan or Maj. Gen. William Irvine fourth, depending on the dates of their militia commissions. The various brigadiers were to rank in like manner according to seniority. Major General Edward Hand was to be adjutant general of the whole army.[45]

In the midst of the military preparations at Carlisle, two emissaries from the western counties, William Findley and Hugh Reddick, came to persuade the president to halt the onward march of the militia. In a second meeting at Parkinson's Ferry on 2 October, the western leaders had agreed to accept the commissioners' terms without conditions, and they reported a "general disposition" in the area to submit to the laws. On arrival in Carlisle, they found the troops much incensed against them and some resentful that Washington should even grant them an audience.[46] But the president received them "with politeness and attention" and listened to their assurances but told them quite frankly they came too late—"as I considered the support of the Laws as an object of the first magnitude, and the greatest part of the expense

[45] Fitzpatrick, *Diaries*, pp. 212, 217. Dallas, *Life and Writings*, pp. 35-36. Dallas wrote his wife: "The great secret is at last divulged."

[46] Findley, *History of the Insurrection*, pp. 140–68.

had already been incurred, that nothing short of the most unequivocal *proofs* of absolute submission should retard the march of the Army into the Western counties."[47] He did reassure the Westerners on the conduct of the army, telling them that "every possible care would be taken to keep the Troops from offering them any insult or damage" so that those who had obeyed the laws or availed themselves of the amnesty "should not be injured in their persons or property." The army would not, he said, "act as executioners, or bring offenders to a military Tribunal," but merely aid the civil magistrates.[48] He impressed on them time and again that they should "take the utmost care that one gun should not be fired, and . . . that if one gun was fired, he would not be responsible for the consequences."[49] Findley and Reddick, still fearful of the army's temperament, departed for home to attempt to get the unequivocal assurances Washington desired, hoping to convince the president at some further point along the route of march.

On 10 October Washington gave the troops "their route and days marching" to a second redezvous at Bedford, where they would come under Lee's command and synchronize their movements with the left wing. The first column under Governor Howell, composed of Philadelphia cavalry, some artillery, and a regiment of infantry from each state, stated their march to Bedford on that day, Major James McPherson's Blues, a picturesque volunteer unit from Philadelphia resplendent in their uniforms and mounted on splendid matching gray horses, led the main body.[50] The next day "several other Corps under the Command of Govr. Mifflin Marched." General Irvine was left in Carlisle to organize and send forward the remainder of the Pennsylvania and New Jersey detachments as they arrived. At the same time Washington instructed Knox, who was now back in Philadelphia as secretary of war, to halt the march of any New Jersey militia that had not crossed the Delaware River on the twelfth.[51]

The Pennsylvania and New Jersey contingents wound their way over the mountains and down the valleys to Bedford, the first elements arriving on 17 October, and the rest coming in the next few days.[52] The mountains inspired some awe in the Easterners. From a mountaintop Dallas wrote, "Our army appeared like a race of dwarfs and our cavalry like a race of moles."[53] At Bedford the right wing paused to consolidate and await final orders for the march into the insurgent country.

As the Pennsylvania and New Jersey contingents marched out of Carlisle, Washington moved on to Cumberland to view the preparations of the left wing. He arrived on the sixteenth and found about 3,200 men encamped, the entire Maryland brigade having just arrived to join the first increment of Virginians. About 1,700 more, Washington wrote, were on their way from Virginia. Henry Lee, now as a major general, was already busily engaged in disciplining and training the men, so that Washington did not have to spend as much time on these matters as he had at Carlisle. He did, however, arrange with Lee for the organization

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[47] Fitzpatrick, *Diaries*, 4:215. Findley, *History of the Insurrection*, pp. 169–89, contains a long personal account of the mission to Carlisle and the audiences with Washington. It differs somewhat from Washington's shorter account in his diary, but the upshot is much the same.

[48] Fitzpatrick, *Diaries*, 4:216.

[49] Findley, *History of the Insurrection*, pp. 180–81.

[50] Fitzpatrick, *Diaries*, 4:216–17. Gold, "Journal of Maj. Gold," 3:179–80.

[51] Fitzpatrick, *Diaries*, 4:216–17. *Penn. Archives*, 2d ser., 4:408.

[52] Gold, "Journal of Maj. Gold," 3:180–81.

[53] Dallas, *Life and Writings*, pp. 39–40.

under Morgan's command of a "corps of light troops," consisting of 2 battalions of infantry, 2 of riflemen, a detachment of artillery, and 1 squadron of dragoons. On the nineteenth, he set out with Lee and Adjutant General Hand for Bedford, about twenty-five miles away, "to see that all the arrangements necessary for the Army's crossing the Mountns. in two columns might be made."[54]

Washington remained at Bedford for only a day, checking into the strength and state of preparation of the assembled force and preparing, in concert with Hamilton, final instructions for General Lee. Having determined that the army could be put in motion on the twenty-third and having "made every arrangement that occurred," he set out for Philadelphia "in order to meet Congress, and to attend to the civil duties of my Office."[55] The first day en route, he paused to issue one final instruction: the militia detachments "a considerable distance in the rear," most of them ill clothed, should be turned back to avoid additional expense. "The Army which is already advanced," he wrote, "is more than competent to any opposition that can be given by the insurgents."[56] He reached the capital on 27 October, after a tour of twenty-seven days, during which he arranged for the dispatch of the expedition against the Whiskey rebels.

Assuming that the straggling detachments were turned back, how many men then did remain, at Bedford and Cumberland, to undertake the final march? In his address to Congress on 19 November 1794, Washington stated that he "put in motion fifteen thousand men, as being an army, which, according to all human calculation, would be prompt and adequate in every view."[57] Historians have generally either accepted this 15,000 figure or, ignoring it, have presupposed the numbers to have been those initially requisitioned on 8 August—12,950 men. The force could hardly have been so large as either figure, in view of the evidence that only New Jersey met its original quota and that some units from all four states were turned back. While contemporary papers mention returns in profusion, not enough of these have survived to make an accurate count possible. Alexander J. Dallas, in a report to the legislature in January 1795, presented a supposed complete return for Pennsylvania but admitted that it was only "a general idea of the subject and not strictly accurate."[58] His figures show a total Pennsylvania force of about 4,300, some 900 short of the 5,200 quota. And there is no indication whether this total includes Pennsylvania contingents who were turned back. The Maryland force was 500 short of its quota to start with and a return for the brigade from Uniontown, Pennsylvania, on 2 November 1794 reported only 1,150 rank and file fit for duty.[59] Assuming Washington's estimate of 4,900 men in the left wing of the army to be correct, Virginia must have come close to meeting its original 3,300 quota, but the total force must still have been closer to the 10,000 or 11,000 men than to 12,950 or 15,000. Brigadier General Samuel Smith, commander of the Maryland brigade, in fact

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[54] Fitzpatrick, *Diaries*, 4:219–21, Leland D. Baldwin, ed., "Orders Issued by General Henry Lee during the Campaign Against the Whiskey Insurrectionists," *Western Pennsylvania Historical Magazines* (June 1936), 19:84–90 contains Lee's General Orders, 14–20 Oct 94.

[55] Fitzpatrick, *Diaries*, 4:222–23.

[56] Washington to Secy of Treasury, 21 Oct 94, Fitzpatrick, *Writings of Washington*, 34:7.

[57] Ibid., p. 32.

[58] *Penn. Archives*, 2d ser., 4:517–19.

[59] Return of Maryland Brigade Militia at Union Town, 2 Nov 94, Red Book, vol. 17, pt. 2, item 184, Maryland Hall of Records.



HENRY LEE

estimated the total army at 11,000 on 3 November after they had arrived in the insurgent country.[60]

In any case, the force now organized under national control was, to use Knox's words, "superabundant." By the time it was poised to strike, any possibility that it would meet with armed opposition had vanished, certainly in part as a result of the threat of the militia army's entrance into the western country. Given all the obstacles to recruitment, organization, and supply, accomplishing the assembly of the militia from four states at Bedford and Cumberland only three weeks past the deadline of 1 October was a tribute to the steadfastness and prestige of the president, the driving energy of Alexander Hamilton, and the diligence with which the four state governors had worked to fulfill their purposes.

The Final Orders and the March

The instructions issued by Hamilton, on behalf of the president, to General Henry Lee on 20 October were explicit and detailed. They represented Washington's studied views as to the mission and limits of the authority of the military expedition. They hold an important place in the whole history of federal military intervention in domestic disorders in the United States, for they established the vital principle that the purpose of the military was not to supplant but to support civil authority and that there should be no martial law or military trials of offenders.

The objects for which the militia have been called forth are:

1. To suppress the combinations which exist in some of the western counties of Pennsylvania in opposition to the laws laying duties upon spirits distilled within the United States and Upon stills.
2. To cause the laws to be executed.

These objects are to be effected in two ways:

1. By military force.
2. By judiciary process and other civil proceedings.

The objects of the military force are twofold:

1. To overcome any armed opposition which may exist.
2. To countenance and support the civil officers in the means of executing the laws.

With a view to the first of these two objects, you may proceed as speedily as may be, with the army under your command, into the insurgent counties to attack and, as far as shall be in your power, subdue all persons whom you may find in arms in opposition to the laws above mentioned. You will march your army in two columns from the places where they are now assembled, by the most convenient

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[60] Smith to Thomas Sims Lee, 3 Nov 94, ibid., item 184a.

routes . . . bearing in mind that you ought to act, until the contrary shall be fully developed, on the general principle of having to contend with the whole force of the counties of Fayette, Westmoreland, Washington, and Allegheny, and of that part of Bedford which lies westward of the town of Bedford, and that you are to put as little as possible to hazard. . . .

When arrived within the insurgent country, if an armed opposition appear, it may be proper to publish a proclamation inviting all good citizens, friends to the Constitution and laws, to join the United States. If no armed opposition exists, it may still be proper to publish a proclamation, exhorting to a peaceful and dutiful demeanor and giving assurances of performing, with good faith and liberality, whatsoever may have been promised by the commissioners to those who have complied with the conditions prescribed by them and who have not forfeited their title by subsequent misdemeanor.

Of these persons in arms, if any, whom you may make prisoners: Leaders, including all persons in command, are to be delivered to the civil magistrates; the rest to be disarmed, admonished, and sent home (except such as may have been particularly violent and also influential). . . .

With a view to the second point, namely, the countenance and support of the civil officers in the means of executing their laws, you will make such dispensations as shall appear proper to countenance and protect, and, if necessary and required by them, to support and aid the civil officers in the execution of their respective duties; for bringing offenders and delinquents to justice; for seizing the stills of delinquent distillers, as far as the same shall be deemed eligible by the supervisor of the revenue or chief officer of inspection; and also for conveying to places of safe custody such persons as may be apprehended and not admitted to bail.

The objects of judiciary process and other civil proceedings shall be:

1. To bring offenders to justice.
2. To enforce penalties on delinquent distillers by suit.
3. To enforce the penalties of forfeiture on the same persons by the seizure of their stills and spirits.

The better to effect these purposes, the judge of the district, Richard Peters, esq., and the attorney of the district, William Rawl, esq., accompany the army.

You are aware that the judge can not be controlled in his functions, but I count on his disposition to cooperate in such a general plan as shall appear to you consistent with the policy of the case; but your method of giving direction to proceedings, according to your general plan, will be by instructions to the district attorney. . . .

When the insurrection is subdued and the requisite means have been put in execution to secure obedience to the laws, so as to render it proper for the army to retire (an event which you will accelerate as much as shall be consistent with the object) you will endeavor to make an arrangement for attaching such a force as you may deem adequate, to be stationed within the disaffected counties in such a manner as best to afford protection to well-disposed citizens and the officers of the revenue and to suppress by their presence the spirit of riot and opposition to the laws.

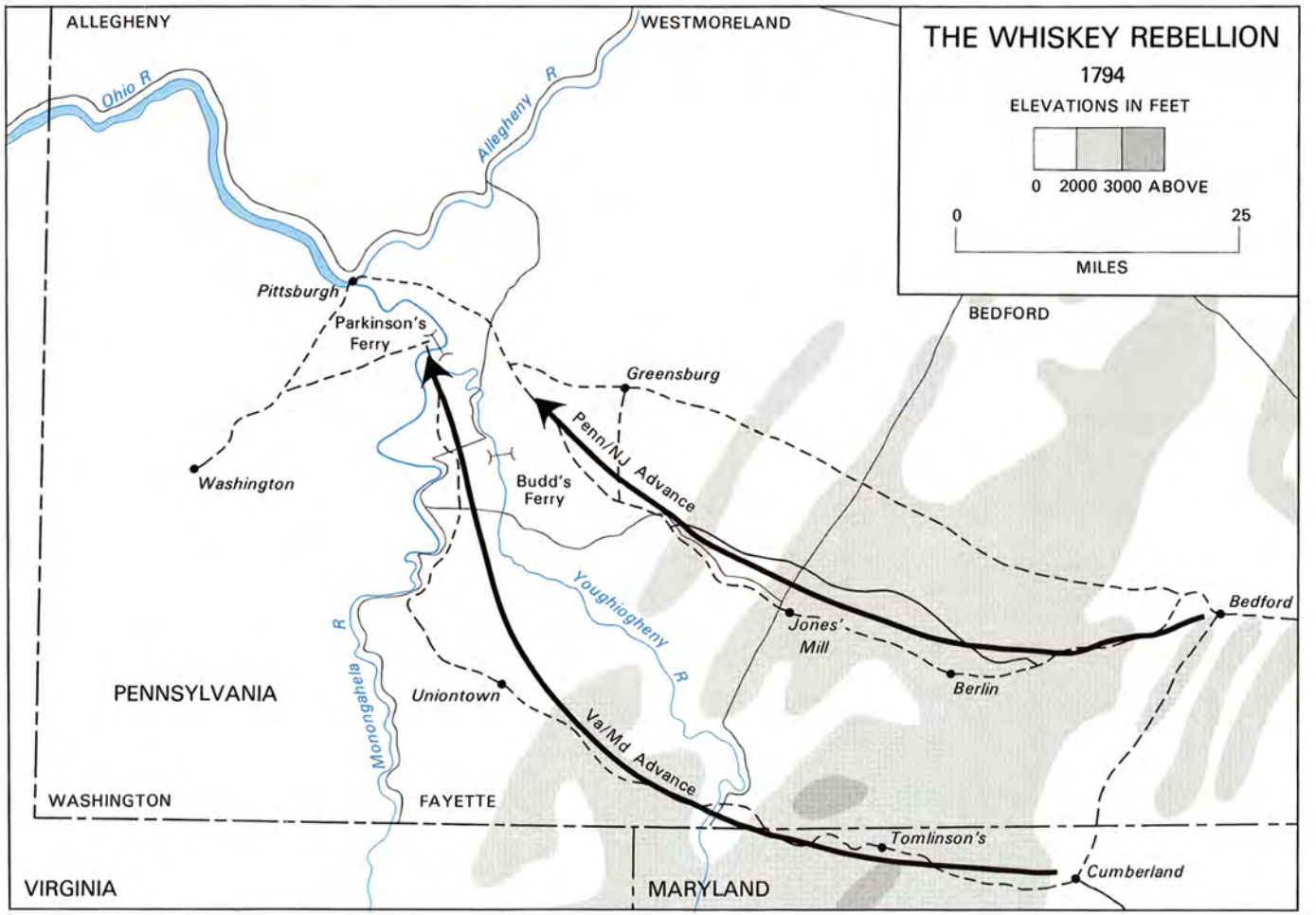
But before you withdraw the army you shall promise on behalf of the President a general pardon to all such as shall not have been arrested, with such exceptions as you shall deem proper. The promise must be so guarded as not to affect pecuniary claims under the revenue law. . . .

You are to exert yourself by all possible means to preserve discipline amongst the troops, particularly a scrupulous regard to the rights of persons and property, and a respect for the authority of the civil magistrates, taking especial care to inculcate and cause to be observed this principle, that the duties of the army are confined to attacking and subduing of armed opponents of the laws and to the supporting and aiding of the civil officers in the execution of their functions.[61]

Lee got the march under way on 22 October, with a corps of light troops from each wing moving out in advance on that day (a light corps for the right wing had been formed with Maj. Gen. Frederick Frelinghuysen of New Jersey in command) and the main body following on the next. The light corps were expected to move a day ahead, to forewarn the troops that followed of any opposition that might develop and to prepare the camps for them; the main body would camp the following night on the same ground the advance guard had used on

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[61] *American State Papers, Misc.*, 1:112–13.


THE WHISKEY REBELLION
1794
ELEVATIONS IN FEET
0 2000 3000 ABOVE
0
25
MILES
ALLEGHENY
WESTMORELAND
BEDFORD
WASHINGTON
FAYETTE
PENNSYLVANIA
VIRGINIA
MARYLAND
Ohio R
Allegheny R
Monongahela R
Youghiogheny R
Pittsburgh
Parkinson's Ferry
Washington
Budd's Ferry
Greensburg
Penn/NJ Advance
Uniontown
Jones' Mill
Bedford
Berlin
Va/Md Advance
Tomlinson's
Cumberland

MAP 1

the preceding one. Arrangements were made for the right wing to draw its rations and forage from prearranged points on one day, the left wing on the next. Each man was issued six rounds of ammunition, and the march was made in formations that would enable the troops, if necessary, to deploy and fight. The right wing was to advance almost directly westward across the Alleghenies through Bedford and Westmoreland counties, the left wing northwestward through Fayette County. They were to reach a junction around Parkinson's Ferry where the Youghiogheny River flowed into the Monongahela.[62]

The march over the Alleghenies was exceedingly arduous as heavy weather set in on 25 October. The evening of the twenty-fourth was foggy as the right wing camped at the foot of the mountains; during the night "the whole country was deluged with rain," and when the signal was given to march on the twenty-fifth, a heavy fog covered the earth occasionally "assuming the appearance of a cold penetrating sleet."[63] Major William Gold of the New Jersey infantry described what followed. "The weather being stormy and cold, roads all cut up with wagons, horses beat out, wagons mired and two turned over, men obliged to walk in mud ankle deep, and at night obliged to lie down in the mud to sleep, some with tents and some without, through a stormy night."[64] A young Pennsylvania volunteer described it as the beginning of a two-week rainy season from which flowed a "long chain of inconveniences . . . that is beyond conception to any but those who were witnesses thereto."[65]

During this most disagreeable day, the twenty-fifth, the right wing split into two columns at the top of the Allegheny Mountains, the New Jersey troops taking the Glades road through Berlin and Jones Mill. The New Jersey men, who had found no shelter in what Dallas described as "the most inclement night that I ever witnessed," showed "great backwardness in striking their tents" when the following day dawned again very stormy, but finally got going "by the threats of some officers and the persuasion of others."[66] They made sixteen miles that day, but on the twenty-seventh, with the weather continuing bad, the order to resume the march was finally countermanded.[67] The Pennsylvanians, in fact, though having had better shelter in barns, churches, and houses on the night of the twenty-fifth, had not marched on the twenty-sixth. Dallas reported that orders had been issued for the troops to advance, but the officers had declared that the situation of the men had rendered it impractical. "The language of discontent," he wrote, "has already been heard. There is no enemy to encounter, no object evident to common optics to be obtained by transporting such a force, at such a time, into such a country. Why then proceed? Or if you will proceed, why expose the men to weather and to want in a way which I say no European general would attempt in conducting a disciplined army into the field?"[68] Despite complaints,

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[62] Baldwin, "Orders by Gen. Henry Lee," 19:90–97. Gold, "Journal of Maj. Gold," 3:182. Gold gave the order of march of the Pennsylvania–New Jersey troops as follows: (1) Advance guard with dragoons in front; (2) Jersey Infantry; (3) Artillery and ammunition wagons; (4) Baggage of the Jersey Infantry; (5) Pennsylvania troops; (6) Their baggage; (7) Cavalry; (8) Rear guard, etc.

[63] Dallas, *Life and Writings*, p. 43.

[64] Gold, "Journal of Maj. Gold," 3:182.

[65] William Michael, "A Journal of the Whiskey Insurrection," in *Historical Register: Notes and Queries, Historical and Genealogical, Relating to Interior Pennsylvania*, 1:67–68.

[66] Dallas, *Life and Writings*, p. 43. Gold, "Journal of Maj. Gold," 3:182–83.

[67] Gold, "Journal of Maj. Gold," 3:183.

[68] Dallas, *Life and Writings*, p. 43.

the troops took up the march again on the twenty-eighth, and the two columns of the right wing successfully completed their crossing of the mountains; by 31 October they were converging near Greensburg in Westmoreland County in "remarkably healthy" condition.[69]

The left wing, under the personal command of General Lee, encountered the same difficulties with the weather, and they were accentuated by a great deal more sickness in the ranks—diarrhea and dysentery, remittent fever and intermittent fever in the medical language of the day. On the first stormy day—the twenty-fifth—Lee halted his troops at Tomlinson's, still within Maryland's borders, and he was not able to resume the march until the twenty-eighth.[70] Even then he left tents, baggage, wagons, and "sick and and weakly men" at Tomlinson's with a small rear guard and six days' provisions. On 31 October the rest of the left wing arrived at Uniontown after a march over the mountains, which one of the men characterized as more difficult than any expedition during the Revolution or even Hannibal's passage over the Alps. Crossing the Youghiogheny, swollen by rains, was equally difficult. Lee arrived in Uniontown with 116 more "sick and weakly" men for whom a hospital had to be established.[71]

Military Actions in the Insurgent Country

Once the two wings arrived in the insurgent country, they halted for a time before converging on Parkinson's Ferry to recuperate from the hardships of the march, to reestablish contacts, and to lay their plans for future action. It soon became apparent that the only opposition they would have to overcome was that already encountered in such full measure—the hazards of terrain and weather and the problems of supply. Apparently disgusted by the arduous passage over the Alleghenies, Alexander Dallas wrote his wife on 31 October that "fifteen thousand men have been marched three hundred miles without a symptom of opposition" and were presently in enemy country "with plenty around them of everything but armed enemies."[72] In truth most of those who deemed themselves guilty enough to merit punishment, including David Bradford, fled to the West. As early as 23 October, when the army was leaving Bedford, there were reports of "boats loaded with fugitives . . . constantly passing down the Ohio," and it appears that about 2,000 men did flee the Monongahela country as the army approached.[73]

Of those who were left, few were willing to admit to any treasonable activities, and practically all were now ready to submit even to the collection of the hated excise. Findley and Reddick, hastening back from their meeting with Washington at Carlisle, sought valiantly to accumulate the proofs of submission that the president had asked, soliciting with considerable success the male inhabitants at militia musters to sign commitments. At a final meeting

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[69] Hamilton to Washington, 31 Oct and 3 Nov 94, Syrett, *Papers of Hamilton*, 17:351.

[70] Baldwin, "Orders by Gen. Henry Lee," 19:97, "A Diary Kept by Robert Wellford, Of Fredericksburg, during the March of the Virginia Troops to Fort Pitt to Suppress the Whiskey Insurrection," *William and Mary Quarterly*, 1st ser. (1902-03), 2:10.

[71] Quote from Baldwin, *Whiskey Rebels*, p. 230; Baldwin, "Orders of Gen. Henry Lee," 19:98-99.

[72] Dallas, *Life and Writings*, p. 45.

[73] Ibid., p. 42, Baldwin, *Whiskey Rebels*, p. 242. The estimate was made on the basis of a count made later by militia officers.

at Parkinson's Ferry on 24 October, with the extremists absent and the friends of order in complete control, resolutions were passed promising complete submission, urging all suspected of committing offenses to surrender themselves, and saying that if the revenue offices were opened the citizens would enter their stills. Findley, Reddick, and two other representatives presented these resolutions to Lee and Hamilton at Uniontown on 1 November, but Lee was in no mood to accept them at face value. He attributed the new contrite spirit solely to the "universal panic which the approach of the army . . . had excited in the lower order of the people" and told them he must "hold the army in this country until daily practice shall convince all that the sovereignty of the constitution and the laws is unalterably established."[74]



SAMUEL SMITH

Following up this decision, Lee on 2 November ordered the two wings of the army to resume their advance on the fourth toward a junction in the area around Parkinson's Ferry. The main body of the left wing moved into a position between the Monongahela and Youghiogheny rivers south of Parkinson's, while Morgan's light corps crossed the Monongahela into Washington County. The right wing took up its main position to the northward with its left side near Budd's Ferry and its right toward Greensburg. From these main centers, detachments moved out in various directions, most of the left wing entering Washington County and some of the Pennsylvania–New Jersey contingents going into both Allegheny and Washington, one detachment camping about five miles south of Pittsburgh. As Hamilton put it on 8 November, "Dispositions of the various corps are making to strike at once into the most disaffected scenes," adding that "the more places they can appear in, without loss of time, the better."[75] Lee moved his headquarters to Pittsburgh, lodging at first at the home of Hugh Henry Brackenridge, whom many in the expedition, including Hamilton, regarded as a leading insurgent.[76]

The show of force was sufficiently overwhelming. "Not a bad citizen was now to be found," wrote Robert Wellford, the militia army's surgeon, and "not a man that would avow even the slightest bias toward insurgency (such was the general and complete reformation

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[74] *Penn. Archives,* 2d ser., 4:423–24, 435–9. Quote on p. 438. Findley, *History of the Insurrection,* pp. 190–99. Findley thought Hamilton, rather than Lee, was responsible for this sharp rebuff.

[75] Quotes from letters to Washington, 3 and 8 Nov 94, Syrett, *Papers of Hamilton,* 17:352–53, 361–62. Baldwin "Orders of Gen. Henry Lee," 19:99–106. Richard Taylor Wiley, *The Whiskey Insurrection* (Elizabeth, Pa.: Herald, 1912), p. 38–41.

[76] Brackenridge had, curiously enough, been Henry Lee's roommate and tutor at Princeton. See Baldwin, *Whiskey Rebels,* pp. 249–52.

produced even by the sight of the Approach of the Army).''[77] Some at least were disappointed that there were no ''whiskey men'' to ''skewer'' or ''hang.'' One group, Wellford records, visited a house and were received cordially, but they were suspicious that their host was an insurgent, whereupon ''the young gent'n proceeded to guillotine pigs & chickens, & the officers and myself went off to town & drowned our ire in Wine.''[78]

That there was a considerable amount of such sporadic plundering there can be little doubt, but Lee, following Washington's orders, was able to keep it within reasonable limits. Morgan's discipline was particularly severe, and he insisted on paying the citizens for any loss of property. He did, however, so far lose his temper as to strike a tavern keeper at Parkinson's Ferry who insisted on charging the soldiers exorbitant prices for whiskey.[79]

On 8 November, from his headquarters near Parkinson's Ferry, Lee issued the proclamation stipulated in Washington's orders in case he should meet no armed resistance. He emphasized the size of the army and the effects of the hardships of the march on the men and cited the consequent futility of resistance. He called on the people to conduct themselves peaceably and remain quietly at home, and to sell their surplus produce to the army at customary prices. The ''well-disposed,'' he recommended, should subscribe to an oath to support the Constitution and the laws, and enter into an association to aid all officers of the government in the execution of their duties. Militia regiments should be formed in each county to hold themselves in readiness to act in defense of the civil authority. To those who had subscribed to the oath on 10 September and had afterward committed no offense, he promised amnesty in accord with the commissioners' commitment.[80] The army restored General John Neville as inspector of revenue and escorted General John Gibson, the expelled militia commander, to Pittsburgh. On 10 November, Neville announced that offices of inspection would be opened on the twentieth in Washington, Allegheny, Westmoreland, and Fayette counties and that all distillers were required to come in and enter their stills.[81]

The oath prescribed by Lee went beyond Washington's instructions and was the cause of some resentment, particularly when the justices of the peace seized the opportunity to charge fees for administering it. Lee halted this practice as soon as he learned of it.[82] Meanwhile, he and Hamilton also concerted measures to arrest the worst offenders as examples. In this too they departed from the strict letter of Washington's instructions, which had been that all arrests were to be made by the civil authorities if there was no armed resistance. Hamilton, most anxious to find ''examples,'' appears to have been the principal instigator of these measures. On 8 November, he wrote the president,

> It appears evident, that to wait for preliminary investigations to apprehend the guilty upon process, would defeat the object, and produce delay beyond the patience of the troops, and the time allowed by the season for operation. With the advice of the District Attorney, the Commander-in-Chief has concluded to take hold of all who are worth the trouble in a more summary way—that is, by the military arm, and then to deliver them over to the disposition of the judiciary. In the meantime, all possible means are using to obtain evidence, and accomplices will be turned against the others.[83]

[77] ''Diary kept by Robert Wellford,'' 2:15.
[78] Ibid., p. 14.
[79] Don Higginbotham, *Daniel Morgan, Revolutionary Rifleman* (Chapel Hill: University of North Carolina Press, 1961), p. 191.
[80] ''Gen. Lee to the Inhabitants of the Four Western Counties, 8 Nov 1794,'' *Penn. Archives*, 2d ser., 4:443–46.
[81] Ibid., pp. 449–50.
[82] Ibid., p. 467.
[83] Syrett, *Papers of Hamilton*, 17:361.

If this procedure was a departure from Washington's literal instructions, it seems nonetheless to have conformed in some ways with his ideas. In Bedford the right wing had apprehended four alleged rebels—Robert Filson, Herman Husbands, John Lucas, and Robert Weisgarver—and sent them on to jail in Philadelphia. Washington learned of this fact shortly after he left the army and was displeased with the action, because, as he noted in his diary, "my intention was to have suspended all proceedings of a civil nature until the Army had united its columns in the center of the Insurgent Counties and then to have seized at one and the same [*sic*] all the leaders and principals of the Insurrection."[84] This plan could hardly have been carried out by any agency except the military.

In any case, the concept of making the arrests in one fell swoop prevailed, and though some prisoners were taken as the army entered the Monongahela region, they were soon dismissed.[85] It was impossible to seize all the "leaders and principals" for too many had fled, and while many who remained were tainted in one manner or another, few could be proved to have been involved in outright revolt. As a result, Lee and Hamilton's arrest measures had an air of arbitrary selection about them. On 9 November, the commander in chief issued his arrest orders to the various detachments, setting the hour for simultaneous action at daybreak on 13 November. Citing the need for summary military action "from the delays and danger of escapes," he forwarded to each commander a list of persons within his area who "it is understood, on good grounds, have committed acts of treason; and who may therefore be safely apprehended." This was supposed to be accompanied by two other lists, one of persons who had complied with the commissioners' terms and therefore were entitled to exemption and the other of witnesses. But these other two lists were apparently not communicated separately in all cases, and some who had signed the oath were included on the list of those to be arrested. In addition, troop commanders were authorized to seize others whom they thought had committed "like acts," such as participation in the attack on Neville's house, the interference with the marshal, participation in the assemblies at Braddock's Field and Parkinson's Ferry, the robbing of the mails, the destruction of collectors' houses, and even the planting of liberty poles or membership in the Mingo Creek Democratic Society. Indeed the definition of treasonable crimes was so broad as to constitute something of a hunting license for officers assigned to round up the culprits, and for many in the army who were incensed against the "rebels," this was the one opportunity to strike a blow.[86]

Cavalry detachments conducted the rounding up of suspects, which began as scheduled in the wee hours of 13 November and continued for a day or so afterward, for only horsemen had the requisite mobility to swoop down on the houses or hiding places of men scattered throughout the countryside. Since most of the cavalry came from Pennsylvania and New Jersey, the work was largely done by the right wing. The proceedings were such that the early hours of 13 November were long afterward known in western Pennsylvania as the "dreadful night." Without extensive preliminary investigations, which Lee and Hamilton had decided to dispense with, there was really no way of determining the guilty parties. The militia contingents rounded up some 200 people, often mixing suspects and witnesses and including men who were entitled to amnesty. While the evidence comes almost entirely from

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[84] Fitzpatrick, *Diaries*, 4:223.
[85] Findley, *History of the Insurrection*, p. 200.
[86] *Penn. Archives*, 2d ser., 4:447–48. Brackenridge, *History of the Whiskey Insurrection*, pp. 312–16.

the area's inhabitants who at the very least opposed the excise tax, it seems undeniable that many were roughly handled and denied their constitutional rights. Certainly there were exceptions, and even critics admitted that some officers acted humanely, but it was the instances of cruelty that stood out in the minds of the inhabitants. Men were routed from their beds in the middle of the night amidst threats of hanging made within hearing distance of their wives and children. Some were forced to trot in front of horses along muddy roads to military encampments, there to be incarcerated under miserable conditions. The most vindictive of the officers was black-bearded Brig. Gen. Anthony White of the New Jersey horsemen, who rounded up the suspects in the Mingo Creek settlement. William Findley reported his actions as follows,

> There were about forty persons brought to Parkinson's house by order of General White; he directed to put the damned rascals in the cellar, to tie them back to back, to make a fire for the guard, but to put the prisoners back to the farther end of the cellar, and to give them neither victuals nor drink. The cellar was wet and muddy, and the night cold; the cellar extended the whole length under a new log house, which was neither floored nor the openings between the logs daubed. They were kept there until Saturday morning (two days later), and then marched to the town of Washington. On the march one of the prisoners who was subject to convulsions, fell into a fit; but when some of the troops told General White of his situation, he ordered them to tie the damned rascal to a horse's tail, and drag him along with them, for he had only feigned having the fits. Some of his fellow prisoners, however, who had a horse, dismounted and let the poor man ride; he had another fit before he reached Washington. This march was about twelve miles. The poor man, who had the fits, had been in the American service, during almost the whole of the war with Great Britain.[87]

In addition to those seized, others willingly gave themselves up to the authorities and requested that their conduct be investigated; among them was the controversial Hugh Henry Brackenridge. Hamilton thus had many possible examples, but the difficulty lay in proving a case of treason, with its constitutional requirement for two witnesses to an overt act, for this seems to have been the only crime considered. The examinations by Judge Peters therefore proved somewhat disappointing. As Findley put it, "The presumption was that every man who was conscious of guilt had either signed the amnesty or fled, having had so favourable an opportunity to provide for their safety by flight, and in the issue it became evident that they had availed themselves of one or other of those modes of escape, with very few exceptions."[88] Hamilton took a lead role in questioning the more prominent suspects. He used all kinds of ruses to get one to testify against the other and appears to have been particularly anxious to get evidence against Brackenridge, Albert Gallatin, and William Findley, the two latter at least among his more prominent political opponents in the area. It was all to little avail. At the end of the judicial investigations, most of the prisoners were simply turned loose, the worse only for the harsh treatment they had received. Hamilton spent the better part of two days examining Brackenridge and finally had to admit that he must be exonerated of any treasonable conduct.

In the end some twenty men were selected for transport to Philadelphia for trial. Escorted by General White's cavalry, each prisoner marched between two mounted troopers, and

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[87] Findley, *History of the Insurrection*, pp. 207–08. Corroborating evidence on this incident appears in James Carnahan, "The Pennsylvania Insurrection of 1794, commonly Called the 'Whiskey Insurrection,'" New Jersey Historical Society, *Proceedings* (1853), 144–46. See also H. H. Brackenridge, *Incidents of the Insurrection*, pt. 2, pp. 68–79, and H. M. Brackenridge, *History of the Whiskey Insurrection*, pp. 316–21 for accounts of the "outrages."

[88] Findley, *History of the Insurrection*, p. 210.

White allegedly ordered the guards to keep their swords drawn to cut off the men's heads in case of an attempted rescue. The procession entered Philadelphia on Christmas Day after a month's march, and the miserable prisoners were paraded through the city in triumph. They were then sent to jail where they were to languish for six months, joined there by others who gave themselves up or were seized later by Lee or Morgan. Of the entire group arrested, only two were ever found guilty of treason—John Mitchell, who turned himself in and confessed to having robbed the mails, and Philip Weigel, an old German from Bedford who had been involved in the burning of the collector's house in Fayette. In the end Washington pardoned both of these ignorant and ill-educated men who had simply been carried along with the tide. The rest suffered and at least one died as a result of the hardships of the march and imprisonment.[89]

The Windup

The president could not legally extend the term of service of the militia beyond thirty days after the convening of Congress. This occurred on 3 November, though that body, lacking a quorum, did not get down to business until the eighteenth. The president, nevertheless, took it upon himself to instruct Lee to make arrangements for stationing a force in the disaffected counties for a longer period of time, expecting to secure the necessary authority from Congress later. On 9 November Lee began to make these arrangements, calling for the voluntary enlistment for nine months of enough officers and men for 10 companies of infantry, 5 troops of cavalry, and 1 company of artillery, a total of approximately 1,250 men following the militia tables of the day. He carefully distributed allotments between the two wings of the army, with the Pennsylvania–New Jersey contingent to furnish most of the dragoons and artillery and the Virginia-Maryland contingent to furnish six of the ten companies of infantry. If the quotas were incomplete by 14 November, he authorized the officers to make up deficiencies by "indiscriminate enlistment," a term whose meaning is not altogether clear but possibly indicates a draft. The men so enlisted were not to be subject to service "further west," such as against the Indians, without their consent.[90] General Daniel Morgan agreed to remain as commander of the force, and a few days later Lee changed the rules to permit alternate enlistments for six or nine months and assured the men of twenty days' additional pay and subsistence to provide for their journey home.[91] On 13 November, he ordered the assembly of the companies that had been completed "near Bentley's saw mill on the west side of the Monogolia [*sic*]," where a fort was to be erected and the necessary provision of food and ammunition stocked. Soldiers who enlisted were excused from all other duties except the preparation of the camp.[92]

Meanwhile, Lee was busy readying the rest of the troops for the return march. On 17 November he issued the necessary orders, and the following day the first division of the Pennsylvania troops set out under General Irvine, followed by the bulk of the New Jersey troops on the nineteenth. On the twentieth a second division of Pennsylvanians under General Cham-

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[89] Baldwin summarizes these matters in *Whiskey Rebels*, pp. 257-58.
[90] Baldwin, "Orders by Gen. Henry Lee," 19:103–06.
[91] Morgan's willingness is probably explained by the fact that his daughter was the wife of Pressley Neville.
[92] Baldwin, "Orders by Gen. Henry Lee," pp. 107–08.

bers and the light corps of the right wing under Frelinghuysen departed. All proceeded to Bedford over the "route commonly known as the old Pennsylvania Road" via Greensburg, over which the Pennsylvania troops had come. During the same period, the Maryland and Virginia brigades under Generals Smith, Darke, and Matthews departed over the route via Uniontown and Tomlinson's to Cumberland. On 19 November, before setting out for Philadelphia himself, Hamilton wrote his final report to Washington, "Nothing material remains to be said. The army is, generally, in motion homeward. . . . The judiciary is industrious in prosecuting the examination of prisoners. . . ."[93] Lee, however, remained in the West until the end of November. Before leaving, he issued on 29 November the proclamation prescribed in Washington's instructions, announcing a general pardon for the inhabitants of western Pennsylvania and of Ohio County, Virginia, but excluding those already charged, those who had fled, and a specific list of thirty-two wanted individuals. Also, Inspector of Revenue Neville had announced on 27 November that all suits that had commenced due to failure to enter stills would be discontinued against individuals coming forward and paying one year's arrearage and the cost of the suits.[94]

Washington, meanwhile, delivered his annual address to Congress on 19 November, devoting better than half of it to the Whiskey Rebellion and soliciting the support of the House and Senate for his actions. He asked for early authorization of a "small force" to be stationed "for a certain period" in the four western counties and for appropriations to cover both the military "expenditures into which we have been driven by the insurrection" and to indemnify the inspector of revenue and others who had suffered injuries and a loss of property because of the activities of the insurgents.[95] Congress responded promptly by passing a bill on 27–28 November providing for a force not to exceed 2,500 men. It was to be raised either from militia, whose term of service was not to exceed the traditional three months after arrival at the initial place of rendezvous, or from volunteers, who would serve for a period not to exceed thirty days after the commencement of the next session of Congress. The act thus simultaneously sanctioned the keeping of some militia in the country for a brief period and the recruitment of a force by voluntary enlistment for a longer term.[96]

The terms of enlistment stipulated by Congress superseded those Lee had, on his own initiative, imposed. Any militiaman who wanted to leave after his three months' service was up, it is presumed, did so, and Morgan then turned to recruiting in the insurgent country to fill the deficiency in his numbers. He wrote Washington in December, saying that the "business of recruiting was put off too late" and that he was having trouble filling this deficiency but adding that in his opinion "a great many men will be unnecessary for this service, as the alarm that these people have experienced is so great, that they will never forget it so far as to fly in the face of the law again."[97]

In any case, the force that Morgan maintained in the country through the winter appears to have numbered about 1,200 men. Morgan labored valiantly to get them properly clothed and housed. He moved his camp from the low, waterlogged ground near Parkinson's Ferry,

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[93] Syrett, *Papers of Hamilton*, 17:391. *Penn. Archives*, 2d ser., 4:455–57.

[94] *Penn. Archives*, 2d Ser., 4:479–81

[95] Fitzpatrick, *Writings of Washington*, 34:28–37.

[96] Act of 29 November 1794, 1 *Statutes at Large* 403. For the debate on the bill in the House of Representatives see *Annals of Congress*, 4:892–903, 905, 914, 932.

[97] Morgan to Washington, Dec 94, Sparks, *Letters to Washington*, 4:39–40.

which Lee had established, to higher ground at McFarlin's Ferry near Pittsburgh. Morgan, an old frontiersman himself, adopted a conciliatory attitude toward the people, strictly forbidding "violence to the person, or depredations on the property of any individual" and dealing gently with those excluded from the general pardon. His lenient attitude encouraged several proscribed men to emerge from hiding to give themselves up, among them John Mitchell, the confessed robber of the Pittsburgh mail. Most of them he released on their own recognizance and a promise to appear before the court in Philadelphia to answer charges; in the case of Mitchell, he addressed a special appeal to Washington for leniency. He encountered little further resistance to the excise tax beyond muttered discontent, though there was considerable "obstinacy" on the part of some to taking Lee's prescribed oath to the government. "I think I shall have the people of this country in better order than their fellow-citizens in and about Carlisle," he wrote Washington in December 1794.[98] Perhaps his most pressing problem arose from the inevitable incidents and irritations that occurred between citizens and soldiers, particularly when boisterous off-duty troops were in Pittsburgh. Several civil suits and criminal proceedings were commenced against soldiers on this account. In this regard, Washington's instructions continued strict. "It may be proper constantly and strongly to impress upon the Army that they are the mere agents of the Civil power; that out of camp, they have no other authority, than other citizens that offenses against the laws are to be examined, not by a military officer, but by a magistrate; that they are not exempt from arrests and indictments for violations of the law; . . . and that the whole country is not to be considered as within the limits of the camp."[99]

On 13 April 1795, Washington suggested to the secretary of war that the time had come to "reduce the force there by degrees, accompanying it by your best endeavors to discover, the real temper, and true state of things in that quarter, that it may be known when the whole may be disbanded with safety and propriety."[100] It was disbanded shortly thereafter, though no precise date can be fixed. Morgan departed in June leaving a skeleton detachment under a junior officer, and this detachment seems not to have endured very long afterward. Before leaving, he issued an appeal to the western Pennsylvanians never again to follow leaders who advocated open and violent resistance to the laws.[101] So ended the federal military intervention in the Whiskey Rebellion. Washington closed the whole affair on 10 July 1795, when he issued a general pardon for everyone concerned in the insurrection except those already convicted or indicted.[102]

The Results

The authority of the federal government had been restored in western Pennsylvania without bloodshed, but at a financial cost of nearly $1.2 million, a large sum for the time and indeed more than the excise tax on whiskey was likely to bring in from the entire country for some years to come. The important thing, in Washington's eyes, was that the principle

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[98] Sparks, *Letters to Washington*, 4:461–62. Higginbotham, *Daniel Morgan*, pp. 193–96. Baldwin, *Whiskey Rebels*, pp. 255–57.

[99] Washington to Morgan, 27 Mar 95, Fitzpatrick, *Writings of Washington*, 34:159–60.

[100] Ibid., p. 176

[101] Higginbotham, *Daniel Morgan*, pp. 197–98.

[102] Fitzpatrick, *Writings of Washington*, 34:232–34.



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had been sustained that federal laws would be enforced and that no turbulent faction could set them aside at its whim. "No money could have been more advantageously expended," he wrote, "both as it respects the internal peace and welfare of this *country* and the impression it will make on *others*."[103] And for a time after the incident, the country was united in acclaiming the president's action, though many would not accept Washington's view that the "self-created" democratic societies had been responsible for the disturbances. The House of Representatives indeed refused to include any condemnation of these societies in their address to the president congratulating him on the outcome of the affair.[104]

The political and sectional divisions among the people that were evidenced in the Whiskey Rebellion would eventually lead to the formation of distinct political parties—Federalists and Republicans—and to the victory of the latter, representing the sentiments of the democratic societies and to a degree those of the Whiskey rebels themselves, in Thomas Jefferson's election to the presidency in 1800. But by that time the precedent that the president could use troops to enforce federal law had been firmly established, and Jefferson, the Republican, would use them for this purpose even as Washington had.

The amount of force used against the insurgents was undoubtedly excessive and indeed there is some question whether military force was even necessary at all, once the moderates in western Pennsylvania had gained the ascendancy. But based on the information reaching Washington and the estimates of the armed men that might be encountered, the original size proposed was reasonable, and Washington did turn back some of the troops when he learned that armed opposition was unlikely. Even William Findley, who attempted to dissuade the president at Carlisle, could not "conclude that it was improper in the President to order the Army to advance into the country."[105] The fact that the opposition did completely collapse was certainly owing in part to the overwhelming preponderance of force marshaled. Despite its important consequences, the Whiskey Rebellion was an almost bloodless affair. The only casualties occasioned by violent action were those incurred by both sides in the attacks on Bower Hill and the two men killed by the militia en route to Carlisle. To balance the suffering of the inhabitants in the West in the relatively arbitrary arrests and imprison-

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[103] Edmund Pendleton, 22 Jan 95, ibid., p. 98. On the cost of the expedition, see *American State Papers, Finance*, 1:661.

[104] See Baldwin, *Whiskey Rebels*, pp. 259–62.

[105] Findley, *History of the Insurrection*, p. 310.

ments, about a dozen soldiers died on the expedition from sickness, disease, or accident, and many others were incapacitated from the hardships of the march.

Washington's actions in the Whiskey Rebellion set the precedents for all future use of troops in civil disturbances. As Bennett Rich put it, "There can be little doubt that Washington set up an excellent series of guideposts for later presidents faced with internal disturbances to follow. His patience over a considerable period of law violation, his attempt at conciliation and peaceful settlement, his efforts to enlist the co-operation of state officials, and his especial concern for the protection of the civil rights of the citizenry—all contribute to make Washington's role in the Whiskey Insurrection one deserving of particularly high commendation."[106] In one respect, however, the precedent set by Washington was perhaps not salutary. The characterization of the whole affair as a "rebellion" and the definition of the violations of the law as "treasonable conduct" were neither justified nor practicable. Mifflin and the Pennsylvania authorities were far closer to the truth when they characterized the Bower Hill affair as a "riot" and the participants as "rioters" who might have been far more easily punished for lesser offenses.

In his scrupulous regard for the law of 1792, Washington relied completely on the militia for the expedition, despite some suggestions that he should at least supplement them with regulars. The president was fully aware of the weakness of the reed on which he had to rely and told Congress, "In the arrangements, to which the possibility of a similar contingency will naturally draw your attention, it ought not to be forgotten, that the militia laws have exhibited such striking defects, as could not have been supplied but by the zeal of our citizens. Besides the extraordinary expense and waste, which are not the least of the defects, every appeal to those laws is attended with a doubt of success."[107] He satisfied himself, however, with a renewal of his old appeal that Congress establish a truly "well regulated militia," giving no hint that reliance on regulars might be less expensive and certainly more speedy and efficacious in instances of this sort. The public temper was still too much opposed to "standing armies." William Findley, who had reason to appreciate the "revengeful temper" of a militia recruited by passionate oratory, still thought "that if a mercenary army had been employed on that occasion in preference to a militia, instead of the puny attempts that were made, there would have been successful exertions, to sacrifice innocent victims to party spleen and personal rancour."[108]

Congress made no serious attempt to comply with Washington's request to improve the militia system. It did, however, express its approval of Washington's conduct in the Whiskey Rebellion by reenacting the Calling Forth Act of 1792, making it permanent legislation, with certain revisions to enhance the president's powers. The new act of 28 February 1795 deleted the requirement that the president obtain a judicial certificate before using the militia to deal with combinations against the laws "too powerful to be suppressed by the ordinary course of judicial proceedings" as well as the provision that he could only act when Congress was not in session.[109] By his actions in the Whiskey Rebellion, Washington had apparently dissipated the fears expressed in 1792 that these powers "could not with safety

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[106] Bennett Rich, *The Presidents and Civil Disorders* (Washington: Brookings Institution, 1941), p. 20.
[107] Address to Congress of 19 Nov 94, Fitzpatrick, *Writings of Washington*, 34:35.
[108] Findley, *History of the Insurrection*, p. 168.
[109] 1 *Statutes at Large* 422.

be entrusted to the President of the United States.''[110] The Whiskey Rebellion thus resulted in the establishment of both a permanent law and a precedent for all future use of federal military force in domestic disorders.

[110] See Ch. 1, p. 35. The progress of the bill through Congress may be traced in *Annals of Congress*, 4:826–27, 829, 832, 1126, 1229–30, 1245. The record is unfortunately scanty and does not reflect either the debate on the measure or the nature of the amendments that were offered.

CHAPTER 4

Federalists and Republicans

Whenever the government appears in arms, it ought to appear like a *Hercules*, and inspire respect by the display of strength. The consideration of expense is of no moment compared with the advantages of energy.

——Alexander Hamilton to James McHenry, 1799.

Washington's success in upholding the national authority in the face of its first major challenge went far to establish the moral authority of the new national government and the sanctity of its laws, principles the Federalist cherished so dearly. In 1799, when his successor John Adams was faced with new resistance to a federal tax, he resorted to military force with none of the hesitancy that had characterized Washington's action in 1794. Although Thomas Jefferson and his Republican followers were critical of Federalist action in both instances, Jefferson as president was to ask for and receive broader powers to use military force to back federal law than his Federalist predecessors had either explicity sought or used. It was Jefferson the Republican and Liberal, the inveterate opponent of standing armies and their use to repress the people, who obtained from Congress an explicit permanent grant of power to the president to use regulars as well as militia in domestic disorders and who was to use both in the enforcement of an unpopular embargo with little legislative restriction on his actions.

The Fries Rebellion

In 1798 the Adams administration, reacting to provocations from France, began preparations for war. To help defray the expenses, in July 1798 Congress voted to raise $2 million by a direct tax on houses, land, and slaves, apportioned among the states by population. Federal assessors were appointed in each district throughout the country to list these assets and afterward to assess their value so that each state would bear its proper proportion of the tax. Since slaves were few in the North, the burden of the tax there fell on houses and land. One section of the act provided that houses should be assessed by counting their windows and measuring their dimensions, activities that required assessors to enter each household in an officious manner.[1]

Both the nature and the purpose of the tax were ill understood, and there was widespread opposition to it throughout the country. The Republican press inveighed against it as a tyrannical measure, linked with the unpopular Alien and Sedition Acts. Many came to believe

[1] 1 *Statutes at Large* 580–91, 597–604.

it was a permanent tax (actually it was levied for a single year) and that it would fall solely on the poor (obviously it affected more those who owned considerable landed property).

In several counties of eastern Pennsylvania—Northampton, Bucks, Burks, Lehigh, and Montgomery—the opposition produced overt resistance to the assessors. The people involved were mostly farmers and tradesmen of German extraction; many, perhaps most, did not understand either English or the processes of American government. Already incensed by the Alien and Sedition Acts, they disliked the Adams administration even before the enactment of the tax law, and they were ready to believe the worst of it. Republican newspapers, the Philadelphia *Aurora* and the Reading *Adler*, the latter a German language paper, circulated widely in the area and fanned the flames of resistance.

When the assessors appeared and began to count and measure windows, Germans were inevitably reminded of burdensome direct taxes common in the states of central Europe whence they came. As one means of resistance, women poured scalding water on the assessors from upper windows; men threatened to shoot them in the legs.[2] In Northampton County resistance of this sort was so spirited and mob threats so frequent that it was difficult to persuade assessors to accept appointments or to continue their work when they did so. Much the same situation existed around the town of Milford in Bucks County, where the resistance acquired a leader of sorts in the person of one John Fries, an auctioneer or vendue crier of some renown who had commanded a militia company both during the Revolution and on the Whiskey Rebellion expedition. Fries prided himself on knowing the name of each of the bidders throughout an area where his auction cry was familiar. Boastful and glib of tongue, he was among the loudest critics of the new tax law, and his influence and standing in the community made him the natural though unofficial leader of the resistance movement around Milford.[3]

After efforts to explain the tax and mollify the inhabitants had failed, in January 1799 Jacob Eyerly, assessment commissioner for the district, persuaded Northampton County Judge William Henry to issue subpoenas to a number of recalcitrants in the county. Local authorities proved unable to serve the subpoenas, and Henry then appealed to Judge Richard Peters of the U.S. District Court in Philadelphia, the federal judge who had accompanied the troops on the expedition into western Pennsylvania in 1794. Peters examined witnesses and issued warrants for the arrest of some of the more active malcontents, requiring them to appear before him in Philadlephia. The federal enforcement authority was thus invoked, and the U.S. marshal for the district, Samuel Nichols, set out to serve the warrants early in March 1799.[4]

Meanwhile, Treasury officials in Washington, aware of the discontent and resistance caused by the window-counting provision, pushed through Congress an amendment doing away with this disagreeable practice.[5] Unfortunately, that step only produced further confusion and heightened resistance in Pennsylvania. Many thought the whole act had been repealed and questioned the authority of the assessors even more than before. Violence erupted at Quakerstown in Bucks County on the night of 6 March 1799 when a group of

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[2] John B. McMaster, *A History of the People of the United States from the Revolution to the Civil War*, 8 vols. (New York and London: D. Appleton & Co., 1921) 2:434-35.

[3] William W. Davis, *The Fries Rebellion* (Doyleston, Pa.: Doyleston Publishing Co., 1899), pp. 8–12.

[4] Ibid., pp. 38–47.

[5] *American State Papers, Finance*, 1:602; 1 *Statutes at Large* 626. Amendment signed into law 28 Feb 99.



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farmers, formed into a militia company, waylaid and made prisoner two assessors returning from a day's work in and around the troubled town of Milford. The insurgents tormented and threatened to shoot the two assessors, but eventually released them unharmed on their promise to discontinue their work.[6]

Meanwhile, Marshal Nichols was busily serving his warrants in Northampton and Lehigh counties, and he stirred up some of the same sort of opposition Marshal Lenox had encountered at Mingo Creek in 1794. There were occasional mob threats, but by 6 March the marshal had served his warrants on about seventeen men. Some were released on parole; others he placed in confinement in a tavern in Bethlehem under guard for the night, intending to take them to Philadelphia the next day to stand trial before Judge Peters. The arrest and confinement of the prisoners brought the resistance movement to a head. The followers of John Fries gathered again at Milford on 7 March and set out for Bethlehem armed with muskets, swords, pistols, and clubs. In a separate meeting the men of Northampton also decided to march toward Bethlehem, and the two groups met outside the town and joined forces. Fries assumed leadership of the entire party. The rescuers, who attempted to preserve a militia formation, numbered altogether little more than a hundred men, though the crowd of onlookers swelled the numbers present at Bethlehem. Learning of the impending attempt at rescue, Nichols gathered a *posse comitatus* of unarmed men to guard the prisoners, but the insurgents convinced him that the only way to avoid bloodshed was to release them. Nichols turned the prisoners over to Fries and the rescuers marched off in perfect order.[7]

The federal authority had been flaunted and the government was quick to react. Marshal Nichols informed Judge Peters of the rescue, and Peters sent documents in evidence of what he called "a daring combination, and treasonable opposition to the laws of the United States" to Secretary of State Timothy Pickering, stating his opinion that these tax laws could not be enforced in the county of Northampton "without military aid."[8] Pickering informed President Adams who, after a meeting with his cabinet, determined to meet the request for military force without any of the consultation with state authorities or the attempts at recon-

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[6] Davis, *Fries Rebellion*, pp. 14–37.

[7] Ibid., pp. 48–56. Nichols Report to the Secy of State, 11 Mar 99, *American State Papers, Misc.* 1:185–86; "Depositions of Jacob Eyerly, Stephen Balliot, and Valentine Fuhrer," *Annals of Congress*, 10:1299–1300.

[8] The documents included Nichols' accounts of his efforts to serve the warrants and depositions from various people concerned with the events at Bethlehem. All are reproduced in *Annals of Congress*, 10:1294–1300.

ciliation that Washington had employed in 1794. On 12 March he issued the required preliminary proclamation calling on the insurgents to cease and desist and to retire peaceably to their abodes, but prefaced it with a clear declaration that "military force" was necessary and that he had determined to use it.[9]

The "cease and desist" proclamation seems to have had the desired effect of impressing on the insurgents the serious character of their actions. Fries went back to his auctioneering, apparently fearful of the consequences of his acts, and the situation in eastern Pennsylvania quieted down.[10] But the Federalist authorities insisted on viewing the outbreak as an extremely serious affair linked with the ongoing difficulties with France and proceeded with arrangements for the use of military force without any real evaluation of the situation.

President Adams himself retired to his home in Quincy, Massachusetts, and exercised none of the close control over the employment of military force that Washington had exerted in 1794. The responsibility for controlling the action fell on Secretary of War James McHenry, no strong personality, over whom Alexander Hamilton exercised far greater influence than did John Adams. Hamilton was at this time inspector general and second in command (under George Washington) of the provisional army that Congress, in a series of acts in 1798 and early 1799, had voted to raise for the duration of the troubles with France. In sum, these acts authorized the president, within his discretion, to expand temporarily the Regular Army by twenty-four regiments (there were then only four in existence) and to accept for federal service organized companies of volunteers from the militia equipped at their own expense. The act of 2 March 1799, moreover, provided that the president could use the volunteers in any of those cases in which he could use the militia under the act of 1795, though they were not to be required to serve outside their own states for more than three months.[11]

The whole provisional army scheme was a bone of contention between the Republicans, who charged it was unnecessary, and the Hamiltonian faction of the Federalists, with President Adams, who had the discretionary power, caught in the middle. Adams stressed naval preparations and, despite Hamilton's urgent efforts to recruit, really discouraged the building of the provisional army.[12] Recruiting for about seven regiments was begun and some bodies of volunteers accepted, including the bulk of the militia cavalry of Pennsylvania, although by March 1799 none had been brought into the federal pay and service. On issuance of the proclamation, Adams and McHenry's first instinct was to employ volunteers only, specifically four troops of cavalry from the city of Philadelphia, rather than to call up regular Pennsylvania militia and disrupt the normal course of "husbandry." McHenry soon decided that he also should use some regulars "whose positions might be such, as to act forcibly on the fears of the insurgents, and cover the movement of the volunteers." He ordered a company of recruits from Frederick, Maryland, a company of artillery from Fort Mifflin near Philadelphia, and a company of artillery and engineers from Carlisle to rendezvous at Reading. On 15 March he wrote Hamilton asking him to dispatch to Newtown in Bucks County two companies of regulars from West Point, as well as recruits gathered for the provisional army

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[9] For the text of Adams' proclamation, see ibid., pp. 1300–301.

[10] See Davis, *Fries Rebellion*, p. 72.

[11] 1 *Statutes at Large* 558, 604, 725; Mahon, *The American Militia*, pp. 28–31, 57–58; Russell Weigley, *History of the United States Army*, p. 99.

[12] Stephen G. Kurtz, *The Presidency of John Adams: The Collapse of Federalism 1795–1800* (Philadelphia: University of Pennsylvania Press, 1957), pp. 308–27; Kohn, *Eagle and Sword*, pp. 243–55.

at Brunswick, New Jersey. Hamilton instead drew two companies from Fort Jay, New York, who marched to join the recruits at Brunswick before proceeding to Newtown.[13]

Hamilton, fearing that McHenry was not taking the matter seriously enough, on 17 March gave the secretary an admonition. "Beware, my dear sir, of magnifying a riot into an insurrection, by employing in the first instance an inadequate force. 'Tis far better to err on the other side. Whenever the government appears in arms, it ought to appear like a *Hercules*, and inspire respect by the display of strength. The consideration of expense is of no moment compared with the advantages of energy. 'Tis true, this is always a relative question, but 'tis always important to make no mistake."[14] A large corps of auxiliary cavalry, Hamilton suggested, might be drawn from Delaware, Maryland, New Jersey, and New York and put under marching orders to support the initial force dispatched.

Secretary of War McHenry, under pressures for speed as well as preponderance of force, made arrangements for the dispatch of military forces that really exceeded the need even though they had a certain makeshift air about them and hardly satisfied the ardent Hamiltonians. On 20 March he called on Governor Mifflin of Pennsylvania to furnish four troops of militia cavalry and two troops of volunteer cavalry from the city of Philadelphia, and one troop of militia cavalry from each of the surrounding counties of Philadelphia, Chester, Lancaster, Montgomery, and Bucks, all to be ready to march in eight days. Their commander was to be Brig. Gen. William McPherson of the Pennsylvania militia, a Federalist who as a major had led the Philadelphia cavalry on the expedition against the Whiskey rebels.[15] To supplement these cavalry forces, who would provide the necessary mobility in seizing fugitives from justice scattered through a rural region, McHenry added the regulars who had been put in motion. There is no indication that he had any hesitancy in sending regulars, despite the lack of any congressional authorization or indeed any express authorization from the president to do so. Then to provide the reserve that Hamilton had urged on him, after consulting the other members of the cabinet, he called on the governors of Pennsylvania and New Jersey to hold in readiness about 2,000 more militiamen to march in case of need. He did not inform Adams of this latter step until 5 April and received Adams' belated approbation on the thirteenth.[16]

McHenry issued his instructions directly to McPherson on 21 March, bypassing the Pennsylvania government entirely. These orders reflected more closely the philosophy of the arrest order issued by Henry Lee in western Pennsylvania in 1794 than the carefully drawn instructions Washington had initially passed to Lee at that time. McPherson was first to move into the affected area with the Philadelphia cavalry, there to be joined by the regulars coming from east and west and by the cavalry contingents from the surrounding counties. He was to place additional volunteer and militia companies on alert and was authorized "by the President," so McHenry stated, to call into service "the whole or any part of the volunteer and militia companies that have been ordered to be held in readiness in the States of Pennsylvania and New Jersey." The cavalry detachments would round up the prisoners while

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[13] See correspondence in Bernard C. Steiner, *The Life and Correspondence of James McHenry* (Cleveland: Burrows Brothers Co., 1907), pp. 432–33; and in Syrett, *Papers of Hamilton*, 22:531, 539–40, 548–57.

[14] Hamilton to McHenry, 18 Mar 99, Syrett, *Papers of Hamilton*, 22:552–53.

[15] McHenry to Mifflin, 20 Mar 79, *American State Papers, Misc.*, 1:188.

[16] McHenry to Adams, 5 Apr 99, and Adams to McHenry, 13 Apr 99, Charles Francis Adams, ed., *The Works of John Adams*, 12 vols. (Boston: Little, Brown & Co., 1853), 8:631–632n.

the regular infantry and artillery would establish defensible bases from which the cavalry would operate, these regulars to be employed "in case circumstances should require their actual cooperation with the volunteers and militia." Marshal Nichols (and Judge Peters) would accompany the expedition to provide the names, descriptions, and places of residence of the offenders; the horsemen, ranging over the area, would "assist the marshal . . . to make prisoners" of those who had either resisted the service of legal process, had been concerned in the rescue of legal prisoners, or who had been otherwise charged, and conduct these prisoners to Philadelphia. "You will be particularly careful," McPherson was admonished, "that the most criminal, or the ringleaders, be attended to, and in preference secured, and to prevent, by the most pointed orders, any insults to the inhabitants, or unnecessary rigor towards prisoners taken."

The last sentence was the only explicit caution against misbehavior of the troops, a matter on which Washington had laid such emphasis in 1794. The necessity for speedy and sudden action was by contrast reiterated. "You will perceive the propriety of applying your cavalry, in the manner best calculated . . . to secure as many of the offenders at the same moment as possible . . . and to keep constantly in mind that, if the offenders against the laws can be suddenly and unexpectedly secured, before they have time to prepare general resistance, it may extinguish the insurrection, without further expense to the United States, or call upon the patriotism or fortitude of our fellow-citizens." McPherson was given latitude to determine when the objects of the expedition had been achieved and the troops could be safely withdrawn. There was more than a hint that its whole purpose was to demonstrate to both domestic and foreign enemies of the administration how quickly an insurrection against the rightful authority of the government could be put down "at a time when its sovereignty and liberties are threatened by a powerful, implacable, and insidious nation, who have been accustomed to divide and conquer other nations."[17]

McPherson, lacking any real intelligence on the situation and fearing he faced the organized opposition of the inhabitants of four counties, was dissatisfied with the force assigned and McHenry's dispositions. "I confess," he wrote Hamilton on 25 March, "I could have wished a different mode of operation had been adopted, and which I am convinced would have made more serious and lasting impression than my scampering through the country with a few horse."[18] Had he had his way McPherson would have called out all the militia infantry in Philadelphia. Another Philadelphia Federalist, Robert G. Harper, shared his sentiments. "I shudder at the consequences which may result from attempting this business with too small a force."[19]

These fears were greatly exaggerated. There was no general or organized resistance, and McPherson's force simply served as a large *posse comitatus* to round up fugitives from justice and overawe the people. The commander first ordered the troops to march on 3 April, but only one company of regular artillery from Fort Mifflin got under way on that day. The main body of six troops of Philadelphia cavalry set out on the fourth, and McPherson established his first headquarters at the Spring House in Montgomery County that night. The next day some of the cavalry moved on to Sellersville in Bucks County, where it was joined by several more detachments of regulars. Four cavalry troops set out to scour the country for

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[17] McHenry to McPherson, 21 Mar 99, *American State Papers, Misc.*, 1:188–89.
[18] McPherson to Hamilton, 25 Mar 99, Syrett, *Papers of Hamilton*, 22:584–85.
[19] Harper to McHenry, 26 Mar 99, Steiner, *McHenry*, pp. 433–34.

the arch-rebel John Fries. He was found, bell in hand, back at his old business of auctioneering, with a large crowd in attendance. On the approach of the soldiers, Fries fled and hid in a thicket. But he was betrayed by the presence of his faithful dog Whiskey, apprehended, and taken before Judge Peters. Now quite contrite, he signed a confession admitting his misdeed. He then was sent on to Philadelphia under guard of a detachment of horsemen and lodged in the city jail to await trial for treason.[20]



JAMES MCHENRY

From Sellersville the troops marched to Quakertown on 5 April, to Spinnersville on 8 April, and to Millerstown on 9 April, the cavalry all the while sending out detachments to apprehend every man who, by resisting the assessors or joining the march to Bethlehem, had made himself conspicuous in the revolt. At Millerstown more troops joined the expedition—the five troops of cavalry from the neighboring counties and the rest of the regular infantry and artillery. The total number participating in a review at Millerstown on 10 April was about 1,000 men. McPherson found no need to call for any of the other militia units that had been alerted.[21]

While still at the Spring House in Montgomery County, General McPherson issued an address (in German) to the people of the disaffected districts, reminiscent of that issued by Henry Lee in western Pennsylvania five years earlier. He explained the house tax, pointing out how small a burden it really was, told of the repeal of the window-counting clause, warned the citizens not to aid the violators of the law, admonished them to return to their customary occupations, and promised that all precautions would be taken to see that the march of the troops was not troublesome to them. The address had little effect except further to alarm a population already heeding the admonitions and terrified by the army in its midst.[22]

The troops remained at Millerstown until 16 April and then proceeded to Allentown. By this time they had taken into custody 31 people, 15 charged with treason, 14 with misdemeanor, and 2 held as witnesses. Nineteen of the prisoners were sent on to Philadelphia on 17 April, escorted by a cavalry detachment and accompanied by Marshal Nichols and Judge Peters. The army then marched through Lehigh County by way of Hambury and Shoemakertown to Reading, arriving there on 20 April. More arrests were made and more

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[20] Davis, *Fries Rebellion*, pp. 78–81, 92–99; W. A. Newland Dorland, "The Second Troop, Philadelphia City Cavalry," *Pennsylvania Magazine of History and Biography*, 45–54 (1920–21); 48, nos. 3 and 4 (July and October 1924):270–88, 372–82, contain the account of the participation of the unit in the expedition to put down the Fries Rebellion. Charles H. Jones, *Memoir of William Rodman* (privately printed in Philadelphia, 1867), pp. 18–19. McMaster, *History of the U.S.*, 2:487–88.

[21] Dorland, "Second Troop of Philadelphia Cavalry," 48:372–73.

[22] Davis, *Fries Rebellion*, pp. 83–86.

prisoners dispatched to Philadelphia. The roundup of offenders deemed to be completed, the militia cavalry left Reading on 22–23 April. The volunteers followed soon after, but some of the regulars remained at least until August 1799.[23]

The conduct of the troops, imbued with a certain ardor against rebellion, left much to be desired. "The system of terror here, I am sorry to say," one officer wrote, "is carried far beyond what, in my opinion, the public good requires"; another said, "I can hardly persuade myself that I tread on the soil of Pennsylvania when I witness the sufferings of these poor, well meaning, but ignorant Germans. They are treated in no respect like citizens of the same country."[24] Stories of troop violence and brutality were vastly exaggerated by the Republican press, and indeed the "atrocities" easiest to verify involved attacks by outraged militiamen on newspaper editors. But allowing for exaggeration both then and afterward, it appears clear that innocent men were arrested, prisoners sometimes maltreated, and the inhabitants terrorized, partly from a natural fear of armed forces in their midst and partly from the illegal acts of the troops. It does not seem likely that the troops whipped children or assaulted women with pistols and swords as they were charged with doing. The only physical casualty from gunfire was a bull, shot while attempting to forage in a military provision wagon.

In any case, there can be no doubt that the way in which the troops were used created a bad impression in Pennsylvania. While the state legislature condemned the dissidents after Adams issued his proclamation and promised to cooperate with the federal authority, if necessary, the representatives in that body from Northampton County issued an address to the people of the state saying they had found nothing in their home county that looked like insurrection. The announcement gained widespread acceptance. Adams received no such general commendation for his actions in the Fries Rebellion as Washington did when the troops returned from the Whiskey Rebellion expedition. The areas in eastern Pennsylvania that had been the scene of the action became more solidly Republican in their sentiments than before.[25]

John Fries was tried and convicted of treason in the district court at Philadelphia in May 1799, but the verdict was set aside and a new trial ordered because one of the jurymen was found to be prejudiced. He was tried again early in 1800, this time along with two compatriots; all three were found guilty of treason and sentenced to hang. The day of execution had been set when President Adams, after long wrestling with his conscience, pardoned the three men, coupling it with a general pardon for all those who had opposed the tax law in the eastern Pennsylvania counties. On the surface these actions appear to be similar to those taken by Washington in the aftermath of the Whiskey Rebellion, but there was a fundamental difference. Adams pardoned Fries not because he felt that he necessarily deserved mercy but because he thought Fries' opposition had not amounted to treason as defined in the Constitution—the levying of war against the United States—and that the judicial authorities had been wrong in indicting and convicting him for "any crime higher than riot, aggravated by

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[23] Ibid., pp. 99–113; Dorland, "Second Troop," 48:373–74; Jones, *Memoir of William Rodman*, p. 20; Steiner, *McHenry*, p. 437. In May, McHenry entrusted the decision on withdrawal to Hamilton though he opposed it. Hamilton withdrew some of the regulars at that time but some were apparently still in Reading in August. See letters from John Adlum to Hamilton, Syrett, *Papers*, 23:178–79, 236, 280–81, 343–44.

[24] Quoted in Davis, *Fries Rebellion*, pp. 103, 111.

[25] McMaster, *History of the U.S.*, 2:438–39; Davis, *Fries Rebellion*, pp. 102–39; Rich, *Presidents and Civil Disorders*, p. 26.

rescue."[26] It was a fairer verdict than that arrived at by the judges, and in pardoning Fries, Adams helped to shape the constitutional law on treason in the United States. The pardons also served to mitigate criticism, both then and later, of the severity of his actions in the first instance.

The federal government had acted "like a Hercules," but in a situation in which the use of herculean force was more a demonstration than a necessity. Adams wrote with pride some years later that he had "suppressed an insurrection in Pennsylvania, and effectually humbled and punished the insurgents; not by assembling an army of militia from three or four States, and marching them in all the pride, pomp, and circumstance of war, at an expense of millions, but silently, without noise, and at a trifling expense."[27] The comparison with Washington's action in the Whiskey Rebellion was neither fair nor apt, for the followers of John Fries never represented anything like the threat to order and security that the Whiskey rebels or, for that matter, the adherents of Daniel Shays had. In contrast to Adams' view was that of an officer (perhaps a Republican) who was on the expedition.

> every hour's experience confirms me more and more that this expedition was not only unnecessary, but violently absurd. I can take upon me to assert that excepting in the rash act of rescuing people under arrest from the marshal, there has not been even a desire of resistance manifested, and the most marked censure of many persons now in custody. I do verily believe that a sergeant and six men might have performed all the service for which we have been assembled at so heavy an expense to the United States, and with such a loss of important time to us.[28]

There was, nonetheless, something to be said for the philosophy that once a decision to use military force had been reached, that force should be shaped to act quickly and decisively. But Adams, Hamilton, and McPherson never really investigated the need for such force before applying it, and they stretched the president's legal prerogatives by including regulars in the expedition. Hamilton in particular has been accused, both then and since, of attempting to use the troubles with France as an excuse for establishing a large standing army for internal use in suppressing just such dissent.[29] His advice to McHenry in the Fries Rebellion lends some color to this charge. If such was indeed Hamilton's intention, he failed in his purpose. John Adams negotiated a settlement with France, and extraordinary military preparations ceased. Thomas Jefferson, who became president in 1801, soon reduced the Army to a small force of about 4,000 men, mainly stationed on the frontiers.

The Burr Conspiracy and the Law of 1807

President Jefferson's first use of military force in domestic affairs—to deal with the Burr conspiracy—does not fall into the neat and regular pattern of its employment by the Federalists in the 1790s. The conspiracy of Aaron Burr was not an uprising in any particular locale to which militia could be marched but had tentacles throughout the trans-Appalachian West and in certain circles in the East; it involved intrigue and double-dealing with both England

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[26] Rich, *Presidents and Civil Disorders*, pp. 29–30.

[27] Adams, *The Works of John Adams*, 10:153. The cost was actually calculated at about $80,000 as opposed to approximately $1.2 million for the Whiskey Rebellion. *American State Papers, Finance*, 1:661.

[28] Quoted in Davis, *Fries Rebellion*, p. 139.

[29] See Kohn, *Eagle and Sword*, pp. 239–73, for a full discussion. Russell Weigley, *History of the United States Army* (Macmillan Co., 1967), pp. 98–103, has a briefer statement of the case against Hamilton.

and Spain. Historians have never been able to define Burr's intentions with any degree of precision, and it is even possible that he himself could not have done so. One thing is certain. Brigadier General James Wilkinson, then commanding general of the U.S. Army in the West, was initially involved as a fellow conspirator with Burr at the same time that he was also in the pay of the Spanish government. The conspiracy was suppressed with no great difficulty simply because Wilkinson turned against Burr, evidently for reasons of expediency, and became the ostensible agent of the revelation of Burr's designs and of his eventual arrest and trial. In so doing, Wilkinson exercised powers of arbitrary arrest not to be invoked again by any Army officer until the Civil War.

The estimate of Burr's intentions in the most recent work on the conspiracy itself would have it that the former vice president hoped to raise a force in the West and float it down the Mississippi to New Orleans, timing his arrival with an uprising of dissident elements in the city. Once having seized power in New Orleans, the principal outlet for the commerce of the entire trans-Appalachian West, he hoped, with the cooperation of Wilkinson and of either British or American naval elements, both to separate that section from the Union and to mount an expedition against West Florida and Mexico to add these Spanish domains to his realm.[30]

Burr's most recent biographer, Milton Lomask, contends to the contrary that Burr never intended anything more than a filibustering expedition against West Florida or Mexico (perhaps both) and really depended on the outbreak of war with Spain to achieve his purpose.[31] Neither view is completely convincing. Only Burr, and possibly Wilkinson, seem to have known what the grand design really was. Whatever it may have been, President Thomas Jefferson clearly did act on the assumption that Burr intended to separate the West from the Union and for this reason sought to have him convicted of treason.

There is agreement that Burr did envisage expeditions against the Spanish domains, with or without the federal government's sanction, but even this design was obscured by a lesser scheme to settle lands situated along the Washita River in present-day Texas in the territory then in dispute between the United States and Spain, lands to which he had acquired a shaky title. The seeming imminence of war with Spain at this juncture over the disputed boundary certainly persuaded some to join him in the belief they would be serving their country as well as their own interests. Others simply may have been lured by promises of land along the Washita.

In any case, Burr acquired a partner in Herman Blennerhassett, a wealthy and eccentric Irish immigrant, proprietor of a small island in the Ohio River near the mouth of the Little Kanawha, in what was then the state of Virginia. In August 1806 he made Blennerhassett's Island the base of his operations. From this vantage point, Burr enlisted supporters in the surrounding areas, extending as far south as Tennessee, and had boats built to float his expedition down the Ohio and Mississippi rivers. News of Burr's activities reached official

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[30] This is the view of Thomas P. Abernethy in *The Burr Conspiracy* (New York: Oxford University Press, 1945). See particularly pp. 54–55, 58–60, 78–79, 110–11, 159–60, 165–67, 274–75. Abernethy never proves, except through inference, that Burr's intentions were quite this explicit, but he does argue convincingly that New Orleans was his first objective, and that he hoped to separate at least part of the West from the United States. The implications of the affair, he contends, "were so portentous that it seems reasonable to say that next to the Confederate War it posed the greatest threat of dismemberment which the American Union has ever faced."

[31] Milton Lomask, *Aaron Burr* (New York: Farrar, Straus & Giroux, 1979–1982).

Washington from many sources, but the president delayed any drastic measures to deal with his former vice president. In October 1806 he did, however, dispatch an agent, John Graham, on Burr's trail with discretionary powers to consult confidentially with the governors of the states and territories affected and to arrest Burr if he made himself liable. He also asked Secretary of State James Madison to look into the laws bearing on the use of military force against insurrections.[32]

At about this juncture General Wilkinson, while maneuvering against the Spanish in the disputed territory along the Sabine River, for reasons best known to himself decided to turn on Burr. On 21 October 1806 he wrote a letter to the president enclosing an anonymous paper warning him of a discovery that "a numerous and powerful association, extending from New York through the western states to the territories bordering on the Mississippi has been formed with the design to levy & rendezvous eight or ten thousand men in New Orleans for an attack on Spanish territory."[33] Very shortly afterward Wilkinson, under the terms of general instructions issued by Jefferson earlier, negotiated an agreement with the opposing Spanish commander to make the disputed territory east of the Sabine a "neutral ground" and hurried to New Orleans to look to the defense of the city, evidently acting on what he at least believed was the Burr plan for seizing the city by an internal uprising timed to coincide with the arrival of his expedition coming down the Mississippi.[34]

On 25 November 1806, as Wilkinson was riding into New Orleans, his letter reached Jefferson. Although it probably told him nothing he did not already know or suspect, it did persuade the president to take action. A hastily assembled cabinet meeting on the twenty-fifth determined what that action should be. Two days later, on 27 November, the president issued a proclamation citing information that "sundry persons" were fitting out an expedition against Spanish territory in the absence of a declaration of war and "deceiving and seducing honest & well meaning citizens under various pretenses to engage in their criminal enterprises"; he enjoined all concerned to cease all further proceedings or "incur prosecution with all rigors of the law." The proclamation continued.

> And I hereby enjoin and require all officers civil and military, of the U.S. or of any of the states or territories, & especially all governors, & other executive authorities, all judges, justices, and other officers of the peace, all military officers of the army or navy of the U.S., & officers of the militia, to be vigilant, each within his respective department according to his functions in searching out and bringing to condign punishment all persons engaged or concerned in such enterprise and in seizing & detaining subject to the dispositions, of the law of all vessels, arms, military stores, or other means

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[32] Abernethy, *Burr Conspiracy*, p. 86. Dumas Malone, *Jefferson the President, Second Term 1805–1809* (Boston: Little, Brown, Co., 1974), pp. 245, 251–52.

[33] Quoted in Abernethy, *Burr Conspiracy*, p. 86. Wilkinson wrote the letter to Jefferson shortly after receiving a cipher letter, purportedly from Burr, which set forth some of the details of the plot, but was hardly sufficient to establish precisely what Burr's design was. This letter he sent to Jefferson later. It is printed in *American State Papers, Misc.*, 1:471 and was used at Burr's trial as one of the principal pieces of evidence that he was plotting against the United States. Recently, Dr. Mary Jo Kline, editor of the Burr Papers, discovered by handwriting anaylsis that the letter was not written by Burr, but apparently by his associate, Jonathan Dayton of New Jersey. For a detailed discussion of this whole matter of the cipher letter, see Lomask, *Aaron Burr*, pp. 116–22. Lomask maintains that Dayton rewrote a cipher letter from Burr to Wilkinson and that it was "a tissue of absurdities." This whole affair of the cipher letter is central to Lomask's case that Burr was not plotting to separate the West from the Union.

[34] See Abernethy, *Burr Conspiracy*, pp. 165–82. Wilkinson's actions when he reached New Orleans are central to Abernethy's case that Burr intended to seize the city. His assumption is that Wilkinson knew Burr's plan and acted in the manner best calculated to frustrate it.

provided or providing for the same, & in general in preventing the carrying on such expedition or enterprise by all the lawful means within their power.[35]

This was not a proclamation of the sort Washington and Adams had used in 1794 and 1799 under the terms of the Calling Forth Acts of 1792 and 1795, as a prelude to, or a warning of, the use of military force to deal with "combinations too powerful to be suppressed by the ordinary course of judicial proceedings." Whatever the overtones, Wilkinson had warned of no domestic insurrection but rather of the fitting out of an illegal filibustering expedition against Spanish dominions. And in the meantime, Jefferson had received Madison's opinion that only militia could be used against a domestic insurrection under the law of 1795, but that both militia and regulars could be used to enforce the 1794 neutrality legislation passed during the Genet affair. For these reasons evidently the proclamation was shaped in terms of the enforcement of the 1794 law and envisaged the use of both militia and regulars as a sort of grand *posse comitatus* to enforce that law. Since Jefferson seems firmly to have believed Burr's plans involved a domestic insurrection as well as a filibustering expedition, he was envoking the law permitting use of regulars against the latter to cover an action against the former.[36]

The War Department promptly dispatched orders to every point on the Ohio and Mississippi from Pittsburgh to New Orleans, enclosing a copy of the proclamation and authorizing employment of regular troops or militia to arrest all persons concerned and to suppress the further progress of the enterprise. Jefferson sent supplementary orders on 19 December to the governors of Mississippi and Orleans territories to hold their militia in readiness to cooperate with regular troops and the armed vessels under Wilkinson's command in defense of the area. The president wholeheartedly supported Wilkinson's efforts to deal with the conspiracy. He expected the general to fortify a point on the Mississippi well above the city of New Orleans for the dual purpose of defending against either Burr or the Spanish. Wilkinson, however, thinking the greater danger lay in an internal uprising, started to fortify the approaches to New Orleans and clamped what was in effect martial law on the city, though he could get neither the governor nor the territorial legislature to declare it. He ordered a curfew, set up volunteer patrols, and instituted a search of vessels coming down the river, as well as an embargo on departures from the port; he also arrested several of Burr's associates without warrants and shipped them off to Baltimore in irons aboard a naval vessel.[37]

Wilkinson's actions secured New Orleans against what he believed to be the danger of an incipient uprising timed with the arrival of Burr's contingents from up the river. Any real danger from the latter, however, was soon dissipated by actions of state and federal authorities in Ohio, Virginia, Kentucky, and Tennessee. The first legal action against Burr came in Kentucky where the young federal district attorney, Joseph H. Daveiss, attempted to have him indicted, but on 5 December 1806 the grand jury refused to return a true bill. John Graham had meanwhile been gathering evidence of Burr's preparations along the Ohio, which he

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[35] James D. Richardson, *A Compilation of Messages and Papers of the Presidents* (New York: Bureau of National Literature, Inc., 1897), 1:392–93. On the cabinet meeting, see Lomask, *Burr*, p. 180.

[36] Malone, *Jefferson the President, Second Term*, pp. 252–53. On the 1794 law, see above, Chapter 2.

[37] See Jefferson's message to Congress, 22 Jan 07, ibid., p. 402. Jefferson to Wilkinson, 3 Jan 07, Andrew A. Lipscomb and Albert E. Burgh, *The Writings of Thomas Jefferson*, 20 vols. (Washington: The Jefferson Memorial Association, 1903), 2:127–30. Abernethy, *Burr Conspiracy*, pp. 165–82.



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presented to the governor of Ohio on 1 December. The governor secured special authorization from the legislature to arrest Burr's agents and to seize his boats and stores within the jurisdiction of the state. Militia contingents were called out and posted at Cincinnati and Marietta, and on 9 December they intercepted ten of Burr's boats headed downriver; they seized others at a boatyard on the Muskingkum. This action was taken on state authority before the receipt of Jefferson's proclamation.[38]

The Ohio militia could not move onto Blennerhassett's Island since it lay within the jurisdiction of Virginia.[39] Militia from Woods County, Virginia, acting under Jefferson's proclamation, did so on 11 December but were too late to apprehend a party of Burr's adherents who escaped downriver in the remaining boats. The Virginia militiamen destroyed much property in searching Blennerhassett's house and partook so freely of liquid refreshments that they were hardly alert enough to intercept the boats farther down the Ohio. Burr's men similarly eluded the militia called out in Kentucky and Tennessee, partly because of the slowness of communications in the western country. The governor of Tennessee did not receive Jefferson's proclamation until 19 December, and by the time he had mustered a body of militia, Burr and his cohorts were beyond his reach. The contingent of boats from Blennerhassett's Island joined with another contingent Burr had arranged in Kentucky and Tennessee at the mouth of the Cumberland River on 27 December. The expedition by this time consisted of ten boats and between 60 and 103 men as opposed to the twenty-eight boats and perhaps 1,200–1,500 men Burr had hoped to have. Undeterred and still unaware of either Wilkinson's betrayal or the president's proclamation, Burr pushed on down the Ohio and into the Mississippi, attempting with little success to gather recruits as he went. On 10 January 1807, he arrived at Bayou Pierre in Mississippi Territory.[40]

The president's proclamation reached Governor Robert Williams of Mississippi Territory on 20 December 1806. On the twenty-third he issued his own proclamation calling for the seizure of Burr and his cohorts and ordered four regiments of the scattered territorial militia to muster at points along the Mississippi. At Bayou Pierre, Burr learned of Wilkin-

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[38] Abernethy, *Burr Conspiracy*, pp. 88–110, Lomask, *Burr*, pp. 142–49, 186–91. The proclamation reached Pittsburgh on 2 December 1806. See Jefferson's message to Congress of 22 January 1807.

[39] It is worthy of note that this would not have been true had Jefferson called out the militia under the act of 1795.

[40] Abernethy, *Burr Conspiracy*, pp. 88–118. Lomask, *Burr*, pp. 191–97.

son's action and his proscription by Jefferson. Faced with the unpleasant choices of a clash between his small contingent and the Mississippi militia or a move south into the clutches of Wilkinson, he chose to surrender to the civil authority in Mississippi. By the time he was brought before the grand jury in the territorial superior court, he had managed to convince the Mississippians that he had no design except to attack Spanish territory, an enterprise with which most of the people of the territory were in sympathy. The grand jury not only refused to indict him, but also deplored the calling out of the militia as foolish and unnecessary, characterized Burr's arrest as unwarranted and unjusitifable, and had harsh words to say of Wilkinson's arbitrary arrests in the neighboring territory of Louisiana.

No charges remained against Burr, but one of the judges insisted on holding him to his bond. Wilkinson, meanwhile, sent a detachment of soldiers north to apprehend Burr, but Governor Williams hesitated to turn him over. While the negotiations were under way, Burr dismissed his men and fled, hoping to find refuge in Spanish territory, for he feared that if Wilkinson got him into his hands he would summarily execute him under the extraordinary powers the general had assumed. Governor Williams now offered a $2,000 reward for his apprehension and arrest, and Burr was finally taken by a military detachment from Fort Stoddert under Lt. Edmund Pendleton Gaines. Gaines sent him under military guard, not to Wilkinson in New Orleans, but east to stand trial for treason.

During the summer of 1807, the celebrated trial was held in the U.S. District Court in Richmond, Virginia, with Chief Justice John Marshall presiding. Despite the utmost executive pressure, Burr was acquitted. Marshall ruled that the government must present evidence of an overt act of treason within the jurisdiction of the district court for the state of Virginia, and that the only locale actually a scene of Burr's activities in Virginia was Blennerhassett's Island. The prosecution, when thus limited, was unable to present sufficient evidence to convince the jury. The government then prosecuted Burr in the same district court for "high misdemeanors" under the 1794 Neutrality Act but again failed to win a conviction. After these disappointments the administration dropped the case that might have been brought against Burr in the district courts of Ohio and Kentucky.[41]

Meanwhile, Wilkinson's arbitrary arrests created much embarrassment to Jefferson and something of a furor in Congress. Jefferson defended Wilkinson's actions, perhaps reluctantly, but he did write on one occasion to the governor of the territory of Louisiana, "Your situations have been difficult, and we judge of the merits of our agents there by the magnitude of the danger as it appeared to them, not as it was known to us. On great occasions every good officer must be ready to risk himself in going beyond the strict line of law, when the public preservation requires it; his motives will be justification as far as there is any discretion in his ultra-legal proceedings, and no indulgence of private feelings."[42]

In order to legalize Wilkinson's actions, on 23 January 1807 the Senate passed a bill suspending the writ of *habeas corpus* for three months, but the House overwhelmingly rejected the bill. And the courts soon released the prisoners whom Wilkinson had sent east,

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[41] The above is based on accounts in Malone, *Jefferson the President*, pp. 292–359; Lomask, *Burr*, pp. 211–98; Abernethy, *Burr Conspiracy*, pp. 199–249. The proceedings of Burr's trial are printed in *American State Papers, Misc.*, 1:486–645.

[42] Jefferson to Gov W. C. C. Claiborne, 3 Feb 07; Lipscomb and Burgh, *Writings of Jefferson*, 12:151.

on the grounds that they should have been tried in Louisiana where their alleged crime had been committed.[43]

There was then little of the "condign punishment" of the conspirators that Jefferson had threatened in his proclamation, but the conspiracy, if such it was, was effectively suppressed. The administration dismantled the temporary military structure that had been established to cope with Burr, discharging in February 1807 the militia that had been stationed along the Ohio and Mississippi.[44] In any case, Jefferson attributed the suppression of the conspiracy to the action of the people, not the military arm. He wrote his old friend Lafayette, "The people rose in mass wherever Burr was, or was suspected to be, and by their energy the thing was crushed in one instant, without its having been necessary to employ a man of the military, but to take care of their respective stations."[45] In this rather romanticized view Jefferson was completely ignoring the role that "tarnished warrior," General James Wilkinson, had played in the whole affair.



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In terms of the history of the use of federal military force in domestic disorders, the most important result of the Burr conspiracy was the passage of a law, signed by Jefferson on 8 March 1807, authorizing the use of regulars as well as militia in these affairs. Troubled by his lack of authority to use regulars in a domestic insurrection, which he really deemed the Burr conspiracy to be, in mid-December 1806 the president sent the draft of a law permitting their use to a friendly congressman from Virginia, John Dawson. The bill passed by Congress in March 1807 was phrased in language almost the same as Jefferson's draft, positive proof that it was Jefferson, the Republican, who dictated this reversal of the philosophy of 1788. The law provided "that in all cases of insurrection or obstruction to the laws, either of the United States or of any individual State or Territory, where it is lawful for the President of the United States to call forth the militia for the purpose of suppressing such insurrection or of causing the laws to be duly executed, it shall be lawful for him to employ, for the same purposes, such part of the land and naval force of the United States as shall be judged necessary, having first observed all the prerequisites of the law in that respect."[46] It was not long before Jefferson found an occasion to use the new law.

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[43] See Malone, *Jefferson the President*, pp. 273–88. Malone maintains that Jefferson did not sponsor the Senate bill and made no effort to have it passed in the House.

[44] Ibid., p. 287.

[45] Ltr of 14 Jul 07, Lipscomb and Burgh, *Writings of Jefferson*, 12:279.

[46] 2 *Statutes at Large* 443. Malone, *Jefferson the President*, pp. 252–53, has the only known account of the genesis of this law. There is no record of any debate in Congress.

The Embargo Troubles

On 22 December 1807, Congress at the instigation of the president passed the first of a series of embargo acts aimed at cutting off trade with the outside world completely. The purpose of the embargo was to induce England and France to cease their depredations on American commerce by denying them American goods and carrying services. Jefferson sought to avoid war with either country by testing in a "fair experiment . . . the power of this great weapon, the embargo."[47] The first Embargo Act of December 1807 applied only to registered vessels normally engaged in foreign trade; the second act of 9 January 1808 prescribed heavy penalties for violators and extended surveillance to coasting and fishing vessels who were to be put under bond not to proceed to any foreign port; the third act of 12 March 1808 made some allowances for hardship cases but specifically extended the embargo to exports by any means, land or sea, subject to a fine of $10,000 for each offense and forfeiture of the goods.[48]

The embargo threatened the livelihood of many citizens, mostly merchants in the seaboard cities but also small farmers and others along the Canadian frontier who were accustomed to sell their produce and purchase their finished goods in trade with Canada. To enforce the law was an enormous problem, but Jefferson was determined to do so. To Secretary of the Treasury Albert Gallatin he wrote, "I do not wish a single citizen in any of the States to be deprived of a meal of bread, but I set down the exercise of commerce, merely for profit, as nothing when it carries with it the danger of defeating the objects of the embargo."[49] Since many thought the embargo was depriving them of their bread, and merchants were reluctant to forgo their profits even at the risk of seizure of their ships and cargoes by Britain or France, schemes for evasion flourished.

The main burden of enforcement fell on the Treasury Department headed by Albert Gallatin, and the collectors at the various ports and along the land frontiers were the principal enforcement officials. Commanders of revenue cutters and naval vessels had authority to stop a vessel on suspicion, even on the high seas. The Navy was thus almost from the start employed in the enforcement of the law, as Congress in April 1808 authorized the commanders of public armed vessels and gunboats, as well as revenue cutters, to stop and examine any American vessel and to send it into port under custody if found open to suspicion.[50] Gallatin and Jefferson had the secretary of the Navy send all the frigates and gunboats that he could spare from other duty to patrol off the coast of New England, the principal center of discontent and evasion.[51]

The most difficult problem of enforcement lay along the long land frontier with Canada from Passamaquoddy Bay in Maine to Detroit. The embargo came as a serious blow to the citizens along this border; in some areas practically their only means of obtaining hard cash had been the production of potash, which was sold in Canada. Moreover, the relatively greater ease of smuggling along the Canadian border as opposed to the ports along the eastern seaboard brought into these areas adventurers intent on making quick profits from the

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[47] Ltr to Albert Gallatin, 6 May 08, Lipscomb and Burgh, *Writings of Jefferson*, 12:52-53.
[48] 2 *Statutes at Large* 451, 453, 473.
[49] Ltr to Albert Gallatin, 27 May 08, Lipscomb and Burgh, *Writings of Jefferson*, 12:66.
[50] 2 *Statutes at Large* 499.
[51] White, *The Federalists*, pp. 459-60.

illegal trade. The smugglers were likely to be armed and to resist arrest with force. The first instance of this sort occurred in the Kennebec district of Maine when a revenue inspector was wounded by rifle fire in January 1808. The sheriff immediately called out 400 militiamen to police the area, and no further outbreaks were reported in the region.[52]

Once the land embargo was declared, however, trouble erupted almost immediately around Lake Champlain, New England's main natural outlet to Canada. On receipt of the land embargo law on 1 April 1808, the revenue collector for the district of Vermont wrote Secretary Gallatin saying that it would be impossible to enforce the law without military force.[53] Gallatin referred the matter to Jefferson, who consulted members of the Vermont delegation in Congress. The delegates expressed the opinion that the local collector could obtain gunboats and ammunition and that Governor Israel Smith of Vermont would be willing to call out the militia. Following this conference, Jefferson drew up an elaborate plan for enforcement of the embargo acts in the Lake Champlain region.

According to the president's scheme, the secretary of the treasury would instruct the Vermont revenue collector to arm and equip vessels for patrol duty on Lake Champlain and to engage volunteers to aid him in law enforcement. If these measures proved insufficient, the secretary of state would request the local marshal to raise a *posse*. If resistance continued, the secretary of war would instruct the governor of Vermont to issue a presidential proclamation prepared in advance and call out militia to enforce the laws.[54]

Neither of the first two expedients worked, and on 5 May 1808 the governor ordered out a small detachment of the 1st Regiment of Vermont militia from Franklin County, consisting of about twenty-five men, stationing them at Windmill Point on Lake Champlain, near Saint Albans. In something of a reversal of the normal process he issued Jefferson's proclamation five days later. The proclamation was this time clearly issued under the law of 1795, citing "combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshals" and enjoining all those "concerned . . . in any insurrection" to cease and desist. It did not specifically call for military force to execute the laws but required and commanded "all officers having authority, civil or military, and all other persons, civil or military, who shall be found within the vicinity of such insurrections or combinations" to aid and assist in quelling them "by force of arms or otherwise" and "to seize upon all those concerned who shall not instantly and without delay disperse and retire to their respective abodes, and to deliver them over to the civil authorities in the place to be proceeded against according to law."[55]

The procedure was unusual, and it produced no salutary results. Throughout the Lake Champlain area, town meetings were called and resolutions passed denouncing the use of troops and the charge of insurrection. Typical was a memorial from the citizens of Saint Albans, Vermont, to the president saying that they had to trade with Canada or starve, that they could not understand the land embargo, and that they were not in a state of insurrec-

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[52] Louis M. Sears, *Jefferson and the Embargo* (New York: Octagon Books, 1966), p. 167.

[53] *Records of the Governor and Council of the State of Vermont*, 8 vols. (Montpelier: J. & J. M. Poland, 1873–1880), 5:472.

[54] Jefferson to Gallatin, 19 Apr 08, in H. A. Washington, ed., *The Writings of Thomas Jefferson*, 19 vols. (Washington: Taylor and Maury, 1853–54), 5:27–72.

[55] Text in Richardson, *Messages and Papers of the Presidents*, pp. 438–39.



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tion.[56] Indeed there was no evidence of insurrection, only of a continuing evasion and violation of the embargo laws. The militia detachment at Windmill Bay was ordered to stop all travel along the roads to Canada and to cut off the smugglers' rafts on the lake, but it proved unable to do so. Rafts and wagons continued to cross the international boundary with goods for the Canadian markets. The governor sent an additional force from neighboring Rutland County on 31 May, only to incur the wrath of the Franklin County militia who considered it an insult.

Jefferson issued no further proclamations and indeed sought, as he had in the Burr conspiracy, simply to make the militia and regulars a part of the whole federal law enforcement machinery. As the problems of evasion swelled along the borders of Maine, Vermont, and New York, he sought to delegate the authority to use military force to the secretary of the treasury working with the secretaries of war and of the Navy. On 12 July 1808, he wrote Gallatin that the military secretaries should "yield the aid of their departments without waiting the delay of consulting me."[57] On 16 July he instructed the secretary of the Navy that "during the summer all the gun boats, actually manned and in commission, should be distributed among as many ports and bays as may be necessary to support the embargo."[58]

To handle the problem around Lake Champlain, Gallatin was convinced by the end of May that "a company of regulars and two armed gunboats will be necessary." Early in June Secretary of War Henry Dearborn dispatched the first regulars, a detachment of artillery, to the Lake Champlain area. Once they arrived, Governor Smith of Vermont was ordered to discharge all but seventy-five of the Vermont militia.[59] The months from May to October 1808 saw a series of skirmishes in the region with regular troops, militia, and revenue officers pitted against the smugglers. By various devices the smugglers were able to continue to push exports through. Bands of them would immobilize militia patrols while supplies went by another route. At Alburg, Vermont, smugglers attacked and captured a garrison of soldiers, and carried off twelve barrels of potash that the troops had previously confiscated. There were divisions among the citizens themselves, and some cooperated with the troops despite

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[56] *Records of the Governor and Council of Vermont*, 5:474.

[57] Washington, *Writings of Jefferson*, p. 308. See also Jefferson to Gallatin, 20 and 27 May 08, ibid., pp. 292, 296–97.

[58] Lipscomb and Burgh, *Writings of Jefferson*, 12:93.

[59] Henry Adams, ed., *The Writings of Albert Gallatin*, 3 vols. (Philadelphia: 1879), 1:393.



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the widespread opposition to the embargo. The citizens of Franklin County, for instance, on 30 July 1808 issued a memorial in support of the president and the local customs collector, pledging their loyalty to the administration in the face of an alleged threat on the part of local potash merchants to take up arms in defiance of the embargo. Townsmen and troops fought side by side early in August in the capture of a most notorious smuggling vessel, the *Black Snake*. A revenue cutter with fourteen militiamen aboard chased the *Black Snake* up the Winooski River. The smugglers abandoned their ship, took refuge on shore, and opened fire on the militia. In the ensuing exchange, two militiamen and one townsman were killed and several others wounded. The villagers then helped the troops arrest the smugglers, and the entire band was apprehended, later tried, and convicted. The leader was executed for murder, and three others of the group served ten-year prison terms for manslaughter.[60]

The New York–Canadian boundary, particularly around Oswego, was another area of widespread smuggling. The collectors were inefficient, and the Federalists allegedly encouraged the smugglers. Early in July, Gallatin informed Jefferson that the militia would probably be needed around Oswego, that the people were unalterably opposed to the embargo and the judiciary uncooperative. "We must have a little army," he wrote, "along the Lakes and the British lines generally."[61]

Soon afterward the collector at Oswego appealed to Gov. Daniel D. Tompkins of New York for militia detachments, asserting that opposition to the embargo amounted to armed insurrection. Tompkins promptly passed the word on to Jefferson, announcing an insurrection and asking for a proclamation and federal authorization for the use of militia. But just as Jefferson had shifted the power to call for regular military forces to his cabinet heads, now he shifted the responsibility for calling the militia back to the governor. He wrote Tompkins that since according to the laws of New York no proclamation was necessary, he should go ahead and call the militia himself. He promised that the United States would bear the expense and that the militia called out would be considered to be in the federal service.[62] The idea was not so novel as it has been described. Washington evidently had essentially the same system in mind when he issued his circular letter to the governors in 1794 relating to the enforcement of a thirty-day embargo.[63]

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[60] McMaster, *History of the U.S.*. 3:306. *Records of the Governor and Council of Vermont*, 1:475.
[61] Ltr of 29 Jul 08, Adams, *Writings of Gallatin*, 1:397–98.
[62] Ltr of 15 Aug 08, Washington, *Writings of Jefferson*, 5:343.
[63] See above, Chapter 2. Cf. Rich, *Presidents and Civil Disorders*, p. 33.

In any case, Governor Tompkins duly ordered out two companies of militia. Part of the force was stationed at Oswego and part at Lake Champlain, with the remainder emplaced along the Saint Lawrence River to guard bridges and fords. The War Department, apparently uninformed of Jefferson's arrangement, suspended the accounts of the New York militia when they were first presented, insisting that the federal government had not authorized their use. The president had to issue special instructions to the secretary of war to straighten the matter out.[64]

The danger of war had led Jefferson to ask for an increase in the size of the Regular Army, and Congress authorized the addition of 6,000 men in April 1808. As the recruits became available, Jefferson and Gallatin determined to use them in the enforcement of the embargo. Writing to General Wilkinson, still the senior officer of the Army, on 30 August Jefferson said that service by the militia was "irksome to them, expensive, troublesome, and less efficacious," and he directed the general to deploy to the northern borders the three companies of regulars from the northern states that were forming in New York. They were to be evenly divided among Sackets Harbor on Lake Ontario, Oswegatchie on the Saint Lawrence, and Plattsburg on Lake Champlain. By mid-September the militia had been replaced by regular troops everywhere except in some areas in Vermont. One reason for this policy was clearly that many militiamen tended to be sympathetic to their smuggling neighbors. But the regulars did not prove entirely immune to this influence either.[65]

Meanwhile, along the coast of New England trouble flared as the administration sought to halt evasions by coasting vessels. Governors were authorized to issue certificates to permit coasting vessels to depart and bring in flour, and Gov. John Sullivan of Massachusetts issued these certificates generously. Many of the coasters, each armed with a certificate from the governor, subsequently evaded the embargo laws. Gallatin protested to Jefferson, and the president wrote to Sullivan requesting that he issue no more certificates. The Federalists in Boston then threatened insurrection if their supply of flour was cut off, and on 19 August Jefferson issued instructions to Secretary of War Dearborn to be ready at any minute to put down an insurrection with military force. Happily the insurrection did not develop, but New England became more and more disaffected as the embargo stagnated its lucrative trade.[66]

The increasing problems led Gallatin to the conclusion that "Congress must either invest the Executive with the most arbitrary powers and sufficient force to carry the embargo into effect, or give it up altogether."[67] Jefferson agreed, and opting for a continuation of his embargo experiment as the only alternative to war, told the secretary of the treasury that "Congress must legalize all *means* which may be necessary to obtain its *end*."[68] The upshot was the passage by Congress on 9 January 1809 of the so-called Force Bill. The collectors were given almost unlimited authority to control the loading and sailing of vessels and it was declared "lawful for the President . . . , or such other person as he shall have empowered

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[64] Adams, *Writings of Gallatin*, 1:406–07, 415. Lipscomb and Burgh, *Writings of Jefferson*, 12:149.

[65] Jefferson to Wilkinson, 30 Aug 08, Lipscomb and Burgh, *Writings of Jefferson*, 12:154–55. Jefferson to Gallatin, 14 Sep 08, Adams, *Writings of Gallatin*, 1:417. Alexander C. Flick, ed., *History of the State of New York*, 10 vols. (New York: Columbia University Press, 1933–37), 5:199.

[66] Jefferson to Dearborn, 19 Aug 08, Washington, *Writings of Jefferson*, p. 334. Leonard Dupee White, *The Jeffersonians* (New York: Macmillan, 1891), p. 439–43.

[67] Gallatin to Jefferson, 29 Jul 08, Adams, *Writings of Gallatin*, 1:398–99.

[68] Letter to Gallatin, 11 Aug 08, Ford, *Works of Jefferson*, 11:41.



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for that purpose, to employ such part of the land and naval forces or of the militia . . . as may be judged necessary'' to support the collectors in enforcing the embargo.[69] In sum, Jefferson was empowered to use the full military force of the United States to enforce the law and was given the right to delegate the authority for calling that force to whomever he desired. It was the broadest delegation of this sort ever made to any president.

Jefferson decided to use the normal channels through the governors in exercising these powers. On 17 January 1809, he addressed a circular letter to all the governors, requesting each to ''appoint some officer of the militia, of known respect for the laws, in or near to each port of entry within your State, with orders, when applied to by the collector of the district, to assemble immediately a sufficient force . . . and to employ them efficaciously to maintain the authority of the laws respecting the embargo.''[70] It seems Republicans, as well as Federalists, could insist on entrusting delicate law enforcement missions to commanders who sympathized with their views.

The arbitrary enforcement act stirred up a storm in New England and was the death blow for the embargo laws. In Massachusetts, Governor Levi Lincoln appointed militia officers at the ports as requested by Jefferson, selecting carefully those whom he thought reliable. The 1809 session of the Massachusetts General Court, however, passed a resolve calling Lincoln's orders ''irregular, illegal, and inconsistent with the principles of the constitution . . . subversive of the militia system, and highly dangerous to the liberties of the people.'' The legislators contended that no new method of calling forth the militia had been established and that therefore the government had to adhere to the established procedure, complete with the proclamation as set forth in the law of 1795. No insurrection existed, they said, to justify such a proclamation, no combination too powerful to be suppressed by the ordinary course of judicial proceedings, no resistance to the marshals. For Congress to invest the president and any deputy he might appoint with such powers over the militia, they held, was tyranny.[71] The governor's orders nevertheless remained in effect, and a few militia officers loyally supported the federal government. But one company was haled into court for trespass for obeying the summons of a collector, the local justice taking it upon himself to declare the embargo laws unconstitutional.[72]

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[69] 2 *Statutes at Large* 506.

[70] Lipscomb and Burgh, *Writings of Jefferson*, 12:232–33.

[71] See *The Patriotic Proceedings of the Legislature of Massachusetts During Their Session from Jan. 26 to March 4, 1809* (Boston: J. Cushing, 1809).

[72] *American State Papers, Claims*, pp. 382–83.

Governor Johnathan Trumbull of Connecticut refused to comply with Jefferson's circular, telling the president he had no constitutional power to make such a request. The state legislature approved his action, directing state officials to refrain from aiding in the enforcement of the embargo. Militia in Rhode Island, called out by the governor to prevent the freeing of a schooner seized by the collector at Providence, refused to comply. They met, but only to "assert their hatred of the Force Act and their determination not to serve."[73] The vessel was freed, and the Rhode Island legislature censured the governor, declaring his acts in calling out the militia irregular, illegal, and inconsistent with the principles of the Constitution.[74]

While the governments of most states outside New England complied at least nominally with the terms of the Force Bill and Jefferson's circular, the uproar was so great that Jefferson, with retirement imminent, gave up the fight and made no real attempt to use his vast powers. Congress ended the embargo experiment on 1 March 1809 and substituted nonintercourse with France and England, a measure that required no military measures of enforcement.

The use of military force to execute the embargo was in the end unsuccessful. It was, in almost all its aspects, an atypical chapter in the story of the use of such force in domestic disorders. It was not a case, like the Whiskey or Fries Rebellion, where a force could be raised, marched to the scene of action, and, after all resistance had been dealt with, disbanded. It involved, rather, the use of military force in the continuing enforcement of civil law, and in this respect it was contrary to the American tradition. It was for this interpretation of the 1792 law that Hamilton had in 1794 contended with Governor Mifflin of Pennsylvania.[75] Indeed, the major significance of this episode in the use of federal troops in civil disorders was that it proved an avowed antimilitarist president would not shrink from military enforcement of federal law when he felt all other expedients had failed. Jefferson, it must be admitted, was reluctant to use the dictatorial powers placed in his hands and ended up more a baffled and frustrated Republican than a tyrannical usurper of civil authority enforcing an unpopular embargo. Yet it was Jefferson who legitimized the use of regular military forces in domestic disorders, securing congressional sanction to exercise a power the makers of the Constitution had not dared to make explicit.

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[73] McMaster, *History of the U.S.*, 3:352.
[74] White, *The Jeffersonians*, pp. 469–70.
[75] See above, Chapter 2.

CHAPTER 5

The Jacksonian Era

Notwithstanding all their tyranny and blustering conduct, until some act of force is committed or there is an assemblage of armed force . . . to resist the execution of the laws of the United States, the Executive of the United States has no power to order the militia into the field to suppress it, and not then, until his proclamation commanding the insurgents to disperse has been issued.

——Andrew Jackson to Joel R. Poinsett, 7 February 1833.

For more than twenty years after the expiration of the embargo in 1809, there was no significant use of troops under federal control, either militia or regulars, in the suppression of civil unrest or the enforcement of federal law. They were used, or were at least moved into position to be used, with some frequency in the period 1831–1842. Recent research, inspired by the civil disorders of the 1960s, has revealed that the period was one of widespread urban rioting and violence that continued in somewhat diminished volume until the outbreak of the Civil War. One study in 1969 found that at least thirty-five major riots occurred in the four cities of Philadelphia, Baltimore, Boston, and New York in the antebellum period; another revealed that between 1828 and 1833 there were twenty incidents of riot, in 1834 at least sixteen, and in 1835, the year of greatest unrest, thirty-seven. These riots were of various types—antiabolitionist, anti-Negro, anti-Mormon, and anti-bank demonstrations, labor riots and factional fights, particularly at election time. There were also instances of slave revolt, most notably the Nat Turner Rebellion in Virginia in 1831. The common denominator to most of them was that, except for the slave revolts, they generally were not riots involving the lower classes of society seeking redress of grievances, but demonstrations inspired by "gentlemen of property and standing" to deal with unpopular elements of society such as abolitionists, Mormons, and free Negroes.[1]

Federal troops were little used to control the domestic violence of the 1830s. The only cases of overt federal intervention were in Nat Turner's Rebellion and in a rather obscure riot of Irish laborers along the Chesapeake and Ohio Canal in 1834. The really important instances where troops were used or placed in position for use were the Nullification Crisis of 1832 and the Patriot War of 1837–1841. Both of these were questions of maintaining federal authority, not of suppressing disturbances. To be sure, there were a number of cases not all of which can be positively identified, where intervention was requested, either from local commanders or the national government, that raised important issues of authority to

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[1] Hugh David Graham and Ted Robert Carr, eds., *Violence in America: Historical and Comparative Perspectives*, A report submitted to the National Commission on the Causes and Prevention of Violence, New York *Times* edition (New York: Bantam Books, 1969), pp. 53–55, David Grimsted, "Rioting in Its Jacksonian Setting," *American Historical Review*, no. 2 (April 1972), pp. 361–97; Leonard L. Richards, *"Gentlemen of Property and Standing": Anti-Abolition Mobs in Jacksonian America* (New York: Oxford University Press, 1970).

intervene. And certainly in some cases troops were positioned to intervene should they be ordered by the War Department to do so. But in general control of riots was left to local and state authority and, as far as a military instrument was used to control them, it was the militia under state control.

Of the instances of federal intervention in the 1830s and 1840s, none except the Nullification Crisis, where troops were mustered but not used to meet the first challenge by a state itself to the enforcement of federal law, assumed the national importance of the Whiskey Rebellion or the Embargo. Of no small import, nonetheless, were the first instances of appeals by state authorities for federal aid, the handling of which set important precedents.[2]

In meeting the various challenges that did arise in the domestic arena, presidents came to rely increasingly on units of the small Regular Army under the law of 1807, shifting units from post to post to deal with threatened disorders. These units were too few, however, and the whole Army too small and too involved with Indian wars to permit it to become the sole reliance. The militia had to continue as the main reserve to be called into the federal service in any large emergency. And as noted, the militia, acting under state and local control, provided the military force to handle most of the instances of rioting and disorders.

Slave Rebellions, 1830–1831

Until after the Civil War, Negro slavery was sanctioned and protected by the federal Constitution and laws. For the most part, local and state authorities maintained the system of slavery through enforcement of rigid slave codes. In the years 1830 and 1831, however, there was some federal military intervention to suppress slave revolts, both actual and incipient. In those years, when the impulse to revolt was apparently strongest among the slaves and rumors of dark plots were rampant throughout the South, the War Department and local military authorities responded to requests for aid in a number of instances. In each case the soldiers acted in effect as a *posse comitatus* aiding the civil authorities, for in none of the cases was the president's authority under the laws of 1795 and 1807 invoked.

On 19 December 1830, two of the six artillery companies then stationed at Fortress Monroe, Virginia, were quietly moved to Wilmington, North Carolina, "to be prepared to meet any insurrectionary movement which may take place in Wilmington or its vicinity about the period of the Christmas holidays." The reasons for the movement were kept secret, and when no outbreak took place, the two companies returned to their home post on 14 May 1831. A somewhat similar movement took place in Louisiana in the spring of 1831 when two companies from outlying posts were moved into the city of New Orleans and an extra quantity

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[2] The use of federal troops in the Black Hawk War in 1832, in handling the problem of intruders on Cherokee lands in 1833, in the removal of the Cherokees in 1837–38, and in connection with the call for militia concerning border troubles with Mexico in 1836 were included by Wilson in *Federal Aid* as instances of federal military force in internal disorders (see pp. 59–62). Marvin S. Reichley, "Federal Military Intervention in Civil Disturbances," Ms., Ph.D dissertation (Georgetown University, 1939), pp. 67–69, also briefly discusses them and includes them in his overall list of such incidents. I do not believe these were true incidents of the use of federal military force in civil disorders, but are rather part of the story of the use of armed force to carry out the Indian policy of the national government and to patrol the borders. Although militia was brought into federal service under the terms of the Calling Forth Act of 1795 in each of these instances, no proclamation invoked the clauses of that act relating to domestic disturbances.

of arms was placed there to be distributed among the militia in case of slave revolt.[3] The outbreak of Nat Turner's Rebellion in Southampton County, Virginia, on 21 August 1831 seemed to confirm the worst fears and apprehensions of whites. On Monday, 23 August, the mayor of Norfolk relayed to the military command at Fortress Monroe an urgent request for federal aid.

"Information has been received by express from Suffolk . . . that an insurrection of slaves commenced in the lower part of the county of Southampton on Sunday night; that about 50 persons were murdered; that some skirmishes have taken place between the militia and the insurgents, but without any decisive effect. . . . The imminent and pressing necessity of the occasion seems to justify on our part all formal scruples in applying to you for aid, and we trust that the same considerations will induce you to afford it promptly without regard to the informality of the measure."[4] Colonel James House, commandant at Fortress Monroe, received the request at 0300 on Friday, 24 August, and responded quickly, dispatching a detachment of three artillery companies under Lt. Col. William J. Worth by steamboat to Suffolk two hours later with four days of provisions, 1 field piece, and 100 stand of spare arms and extra ammunition for the militia. The Navy added approximately forty-three marines from the schooners *Natchez* and *Warren.* House gave orders to Worth "to consult with the civil authorities and to be governed in his movements (with a view to the object of the expedition) according to the circumstances and his best judgment," and reported the whole matter to the War Department promptly.[5]

Worth's detachment arrived in Suffolk at 1300 on 26 August, and his initial report to Colonel House was gloomy: "Affairs have a bad aspect here. The Country is in the greatest state of alarm. 58 persons, mostly women and children, have been murdered. The Negroes are well mounted and managed by an adroit leader."[6] By the time the troops arrived in Southampton County, local authorities with the aid of some militia from outside the county had the situation under control. The governor of Virginia, who received the news of the revolt by a courier who arrived in Richmond on Sunday night, 21 August, immediately called out all the militia of the eastern counties of the state and forced into service all horses and wagons convenient to bear arms and ammunition to the scene. By Thursday, 25 August, more than 3,000 militiamen were on the way to Southampton. In actuality a troop of cavalry hastily assembled in Richmond that arrived on Wednesday night provided about all the force that was really needed to supplement militia of the Southside counties, and the troops from farther away soon returned home.[7] Worth's regular detachment remained for only a short time, returning to Fortress Monroe on 3 September. They evidently did spend some time assisting in the roundup of Turner's followers, for Worth reported that they had "accomplished forced marches, exposed alternately to intense heat and heavy rains, encountering fatigue and hunger

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[3] Quote from Robert Arthur, *History of Fort Monroe* (Fort Monroe: Printing Plant of the Coast Artillery School, 1930), p. 69. *Report of the Major General for 1831*, accompanying *Report of the Secretary of War for 1831*, 22d Cong., 1st sess., H. Doc. 2, ser. 216, p. 55.

[4] Wilson, *Federal Aid*, app., Doc. 2, p. 261.

[5] House to AG (Adjutant General), 24 Aug 31, ibid., Doc. 1, p. 261. House to Lt Richard Bache, Asst AG, Eastern Dept, 15 Sep 31, NARA, RG 393, Records of the U.S. Army Continental Commands. Log books of *Natchez* and *Warren*, RG 24, Navy, Bureau of Personnel.

[6] House to AG, 26 Aug 31, quoting extract from report of Worth, NARA, RG 94, AGO (Adjutant General's Office) Ltrs Recd.

[7] On the mobilization of the Virginia militia see William Drewry, *The Southampton Insurrection* (Washington: Neale Co., 1900), pp. 81–83.

without repining & observing at all times, the most exact discipline."[8] Meanwhile Colonel House's "promptitude" received the enthusiastic approval of the secretary of war and the president.[9]

Nat Turner's brief but bloody course inspired terror throughout the surrounding country. The governors of both Maryland and North Carolina also called out militia to deal with any threat of slave revolt. Colonel House lent muskets and ammunition to the militia of Hampton, Virginia, on 30 August in response to "representations . . . of the exposed and defenseless situation of the village."[10] On orders of the secretary of war he also dispatched an artillery company to Newbern, North Carolina, on 9 September, answering the pleas of the citizens of that town. At the same time House had Colonel Worth check on the condition of the Belhouse Arsenal near Richmond. Other troop movements followed. On 12 September the secretary of war ordered an artillery company from Washington Camp in Alexandria to proceed to the arsenal on Greenleaf Point to guard the 1,000 stand of arms there. And on 13 October he directed the commanding officer at New Castle, Delaware, to send a detachment of one subaltern and twenty men to Wilmington, the state capital, where the inhabitants were "greatly excited and alarmed by the apprehension of mischief, especially as there is no organized police force or other force in the place to resist the blacks, should they attempt insurrection."[11] The commanding general of the Army, Maj. Gen. Alexander Macomb, moved five companies of artillery from coastal fortifications along the northern seaboard to Fortress Monroe, that site being, as he explained it, "so situated as to possess all the requisite facilities for promptly entering into any part of the country, where there was any probability that . . . a military force might be necessary."[12]

The furor soon died down. The company in Newbern, North Carolina, for instance, was withdrawn toward the end of September 1831 on the representation of its commanding officer that the leading citizens of the town no longer desired soldiers and that occupying a position in a "populus town" was "highly prejudicial to . . . discipline and moral efficiency" of the men.[13] Nat Turner was eventually captured and executed, and the Southern states generally tightened slave codes and their enforcement. Although some Southerners still may have looked on the presence of federal troops nearby as added insurance against slave revolt, there were no more frantic requests for federal assistance. Federal troops had been deployed in an emergency without following the legal procedures laid down in the statutes of 1795 and 1807. It was perhaps some measure of the universal dread of slave revolt that the action stirred no word of protest, for the slaves had no political constituency.

The Nullification Crisis, 1832–1833

The Nullification Crisis was of a different order, the first real challenge offered by a state government itself to the enforcement of federal law, and a harbinger of the sectional conflict

[8] Extract from Worth's report in Hq, 1st Regt of Arty, Ft. Monroe, 3 Sep 31, Order No. 72, Incl, House to Bache, 15 Sep 31, cited. Worth's full report, listed also as an enclosure to this letter, was missing from the Archives file.

[9] AG to Col House, 26 Aug 31; Wilson, *Federal Aid,* app., Doc. 4, p. 262.

[10] House to AG, 30 Aug 31, ibid., p. 262.

[11] Quote from AG to Bvt Maj Pierce, 13 Oct 31; AG to Col House, 6 Sep 31. House to AG, 10 Sep 31; AG to Bvt Maj Mason, 12 Sep 31. All in NARA, RG 94, AGO Ltrs Sent and Recd, 1800–1890.

[12] Report of the Major General for 1831, H. R. Doc. 2, p. 55.

[13] Capt F. Whiting to AG, 26 Sep 31, Wilson, *Federal Aid,* app. Doc. 7, pp. 263–64.



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that would lead to the Civil War. The point at issue was the protective tariff. A tariff as a measure of protection for domestic industry and not for revenue was first passed in 1816 to meet the threat of dumping of European goods in America following the War of 1812. Because of the clamor of domestic manufacturing interests, the rates of 1816 were progressively increased in 1820, 1824, and 1828, the tariff of the last year earning the sobriquet of "tariff of abominations" because of the many special rates introduced by vested interests. In 1832 a new law eliminated most of the "abominations" of 1828 but added a duty of 50 percent *ad valorem* on all woolen goods and retained practically all the levies originally designed for protection rather than revenue. Domestic industry was largely in the North, and Southerners, who sold cotton and other staples abroad and imported heavily, found it a discriminatory measure. The standard argument was that the protective tariff was unconstitutional, a regulation of domestic industry by the federal government when this power properly belonged to the states.

South Carolina took the lead in the protest. Its most prominent statesman, John C. Calhoun, developed the doctrine of Nullification, the theory that a state acting in its sovereign capacity could declare a law passed by Congress null and void within its borders. An intense struggle within the state itself existed between those known as Nullifiers, who wanted to put the doctrine to test against the tariff, and Unionists, who placed allegiance to the United States above state interest. The South Carolina protest came to a head after an election in October 1832 in which the Nullifiers gained clear control of the legislature. Outgoing Governor James Hamilton, himself a Nullifier, called a state convention that met duly on 24 November and passed an Ordinance of Nullification by an overwhelming vote. The ordinance declared the tariff of 1832 null and void within the borders of South Carolina and proposed that the state secede from the Union rather than submit to its collection by federal force. To the new legislature that assembled on 27 November, Governor Hamilton recommended legislation to put teeth into the ordinance, including raising of a volunteer force and the purchase of arms and supplies, to counter any federal effort to enforce the law. He suggested that the state request the federal government to vacate the Citadel, a fortress constructed by South Carolina located on the outskirts of Charleston.[14]

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[14] See *Congressional Debates*, app. to pt. 2 (Washington: Gales & Seaton, 1833), 9:162–63, 175. The best treatment of the entire Nullification episode is William W. Freehling, *Prelude to Civil War, the Nullification Controversy in South Carolina*, 1816–1836 (New York and London: Harper & Row, 1965).

President Jackson was thus faced with a challenge of potential use of military force by a state to block enforcement of a federal law with which it did not agree. Jackson had no large resources at his immediate disposal with which to enforce the federal will. There were naval installations in Charleston manned by a handful of sailors, and naval ships could be quickly shifted from the larger base at Norfolk. The Treasury could muster a small force of revenue cutters that, with naval support, might be used to control incoming ships. But the total number of troops in the entire Eastern Department, commanded by Bvt. Maj. Gen. Winfield Scott and scattered from Michigan Territory to Saint Augustine, Florida, amounted to 2,610 at the end of 1831. Of these, three companies of artillery, a total of 139 men commmanded by Bvt. Maj. J. F. Heileman, were stationed at coastal fortifications in Charleston—distributed among federal installations at Fort Moultrie and Castle Pinckney on islands in the harbor and the state fortress at the Citadel within the city itself. The nearest point from which to draw sizable reinforcements was Fortress Monroe, Virginia, where, with the additions during the slave troubles, the garrison consisted of eleven artillery companies.[15]

Jackson had been eyeing the situation in South Carolina with some concern even before the passage of the Nullification Ordinance, keeping in close touch with the leader of the Unionist faction there, Joel R. Poinsett, a close friend and confidante. In September 1832 Jackson received reports that the Nullifiers were trying to win over military personnel in Charleston, and he told the secretaries of war and Navy to take proper steps to prevent it. Secretary of War Lewis Cass shortly thereafter ordered two of the artillery companies at Charleston to Augusta, Georgia, and replaced them with two companies from Fortress Monroe whose loyalty was presumed to be less questionable. The naval squadron at Norfolk was, at the same time, put on the alert.[16] The question of the loyalty of the troops and other federal personnel in South Carolina was to remain a problem, nevertheless, throughout the crisis.

Immediately following the Nullifiers' victory in the October election, Poinsett warned Jackson that he might expect a Nullification Ordinance, followed by possible imprisonment of the collector, ransacking of the customs house, and attacks on federal garrisons, particularly that in the Citadel. He said that many federal employees in the customs house and post office were sympathetic to the Nullifiers, and he urged the president to send troops and arms to strengthen the defenses.[17] Jackson promptly instructed the secretary of war that the federal forts must be guarded with "vestal vigilance" and any attack promptly repelled. Confidential orders went out to Major Heileman on 29 October to place the garrisons at Fort Moultrie and Castle Pinckney on the alert against any surprise attack, and on 6 November two more companies of artillery were dispatched from Fort Monroe to strengthen the Charleston garrison. But Jackson did not follow Poinsett's recommendation to defend the Citadel. In response to a pointed inquiry from his subordinate, on 12 November Major General Macomb, commanding general of the Army, told Major Heileman to turn the Citadel over to the South Carolina authorities should they request it, along with all property belonging

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[15] Rpt of Maj Gen Macomb for 1831, H.R. Doc. 2, table p. 67.

[16] Jackson to Levi Woodbury, Secy Navy, 11 Sep 32, John Spencer Bassett, ed., *Correspondence of Andrew Jackson*, 7 vols. (Washington: Carnegie Institute of Washington, 1926–35), 4:492.

[17] Poinsett to Jackson, 16 Oct 32, ibid., p. 481.

to the state. All federal property should be removed to Castle Pinckney or Fort Moultrie.[18]

Jackson also sent a special secret agent to Charleston, ostensibly as a post office employee, to detect Nullifiers among the federal officers in the post office and customs house, and the Treasury Department issued strict instructions to the collectors at Charleston, Beaufort, and Georgetown to enforce the law at all odds. Nine revenue cutters were concentrated in Charleston and the number of inspectors increased. The collectors were told to place inspectors on board all incoming vessels and to keep them there until customs duties were paid. If payment was not forthcoming, cargoes should be seized and held at Castle Pinckney; if the collector found himself in danger, he should transfer the customs house to Castle Pinckney or some other secure place under military protection. The U.S. district attorney in Charleston was instructed to aid the collectors in retaining custody of all vessels and cargo on which the payment of duty was refused.[19]

The special measures for enforcement of the tariff were thus taking shape even as the South Carolinians prepared to defy it. Initially, federal military force would be used to repel any attacks against federal installations and to protect the customs agents in the performance of their duty. Jackson had General Winfield Scott proceed to Charleston, ostensibly on a routine inspection tour, but actually with special instructions from the secretary of war to oversee military preparations. Scott was to inspect the forts and strengthen the harbor defenses and, if necessary, to reinforce the latter with troops drawn from other posts. He was to work closely with the customs agents and the district attorney, to "take no step, except in what relates to the immediate defense and security of the posts, without their order and concurrence." He was to have no discretion in the use of troops. "Should . . . a crisis arise when the ordinary power in the hands of civil officers shall not be sufficient . . . the President shall determine the course to be taken and the measures to be adopted."[20]

Jackson counted heavily on the Unionist faction in South Carolina to cooperate with the regular military forces and the customs officials in case of an actual confrontation. The Unionists held a convention of their own in Columbia, South Carolina, at the same time as the Nullification Convention, and issued an address to the people declaring that though they were as much opposed as the Nullifiers to the tariff, they would fight, if necessary, to preserve the Union. Poinsett had already written Jackson on 16 November asking for arms to be placed in the federal forts at his disposal, and Jackson responded early in December by dispatching 5,000 stand of muskets to be delivered to Poinsett on order in case of emergency. Because of uncertainty as to the loyalty of the post office employees in Charleston, a special courier service was arranged to handle communications with Poinsett. The schooners *Experiment* and *Natchez* were sent from Norfolk to Charleston to protect the revenue cutters. The naval officers' orders were similar to those given Scott. "Your acts are to be confined entirely to the defensive—giving relief to those in distress and to those under attacks from illegal force, and vigilantly cooperating with the commanders of the forts in that neigh-

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[18] Poinsett to Lewis Cass, 29 Oct 32, ibid, p. 483. Macomb to Heileman, 29 Oct 32, *American State Papers, Military Affairs*, 5:158.

[19] Jackson to George Breathitt, 7 Nov 32, Jackson to Poinsett, 7 Nov 32, Bassett, *Correspondence*, 4:484–85. Secy Treas Louis McLane to James K. Pringle, 6 Nov 32, McLane to Robert B. Gilchrist, 19 Nov 32, *Congressional Debates*, app. to pt. 2, 9:189–90.

[20] Secy of War to Maj Gen Scott, 18 Nov 32, *American State Papers, Military Affairs*, 5:159.

borhood in defending the public works and public property from aggression, injury, or capture by any violent and illegal assaults from any quarter whatsoever."[21]

Meanwhile, General Scott arrived in Charleston on 26 November and set about quietly strengthening the federal defenses. Five additional artillery companies were brought down from Fort Monroe, increasing the total strength in Charleston to ten companies and about 700 men. The troops brought along four 24-pounder howitzers and four 12-pounder and eight 6-pounder fieldpieces, with fifty rounds of ammunition per gun. Lieutenant Colonel James Bankhead, who came with the new arrivals, replaced Major Heileman in command. All regular officers were asked to renew their oaths of allegiance, and the few whose loyalty Scott questioned were transferred elsewhere. Having taken these steps, Scott proceeded to Augusta, Georgia, and thence to Savannah on his supposed inspection tour, but at the latter station he remained, on orders of the secretary of war, on the pretext that an accidental injury to his ankle prevented his going on to Saint Augustine, Florida.[22]

Having so far proceeded with his preparations, on 10 December Jackson issued a long proclamation directly challenging the South Carolina authorities. He denied the right of a state either to annul a federal law or to secede from the Union and charged that disunion by armed force constituted treason for which its perpetrators would be held responsible.[23] "The Union must be preserved," he told his secretary of state, "without blood if this be possible, but it must be preserved at all hazards and at any price."[24]

South Carolina's reply to Jackson's proclamation was defiant. The state's new governor, Robert Y. Hayne, issued a counterproclamation on 20 December, and the legislature passed resolves deploring that "a President of the United States dare venture upon this high handed measure," denouncing the "concentration of a standing army on our borders," and pledging that the state would repel "force by force."[25] The legislature also passed a series of laws aimed at setting the nullifying process in motion, but in a devious way that would force the federal government to interfere with state law and state courts to enforce its will. A Replevin Act, to be effective 1 February 1833, provided that those whose goods were seized by the federal customs collector could recover them by act of replevin in the state courts. If the replevin could not be executed, then the local sheriff was authorized to seize goods of the customs collector to twice the value of the goods being held. Any appeal of replevin cases from state to federal courts was forbidden. The Test Oath Act required all civil and military officers of the state of South Carolina to swear to obey and enforce the Ordinance of Nullification and all laws implementing it, including the Replevin Act. A new Militia Act "to Provide for the Security and Protection of the State of South Carolina" empowered the governor to call any or all of the state militia into service, drafting them when necessary, and to accept the services of volunteers to oppose "combinations" (i.e., by federal officials) against enforcement of state laws too powerful to be suppressed by the state civil authorities.

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[21] Levi Woodbury, Secy Navy, to Cmdrs, *Natchez* and *Experiment*, and to Cmdr, Naval Station at Charleston, S.C., 12 Dec 32, ibid., pp. 156–57. Poinsett to Jackson, 16, 24, 29 Nov 32, Jackson to Poinsett, 2 Dec 32; Bassett, *Correspondence*, 4:488–94.

[22] Charles W. Elliot, *Winfield Scott, the Soldier and the Man* (New York: Macmillan Co., 1937), p. 279. *American State Papers, Military Affairs*, 5:159. Lewis Cass to Scott, 3 Dec 32, *Congressional Debates*, app. to pt. 2, 9:199.

[23] Richardson, *Messages and Papers*, pp. 640–42.

[24] Jackson to Edward Livingston, 4 Dec 32, Bassett, *Correspondence*, 4:495.

[25] 1 *Statutes at Large of South Carolina*, 1:356–57.

He was also empowered to purchase arms and ammunition for the militia and volunteers, and the legislature appropriated $200,000 for this purpose.[26] Although the body of legislation to support nullification thus provided a means of resistance to the federal government, the legislature backed away from the complete defiance expressed in the Nullification Convention, which had forbidden the collection of duties in South Carolina after 1 February 1833. Under the legislation, merchants could continue to pay duties if they wished, but they were to be protected by the state courts if they refused.[27]



WINFIELD SCOTT *(in a Civil War photograph).*

In any case, as the new year 1833 dawned, the recruiting of men for a South Carolina army to oppose the federal authority proceeded apace, though the force was not, in the terminology of the day, "embodied." The state asserted its control over the militia, except in some of the northern and eastern districts where Unionist sentiment predominated, by using the Test Oath to weed out Unionists. Governor Hayne organized the state into twenty-five districts, appointed an aide as organizer for each district to recruit volunteers and organize them into companies, and issued a call for 12,000 volunteers. Of these men 2,500, one hundred from each district, were to form corps of mounted minutemen who could be moved anywhere within the state in three or four days—this to provide an elite force that could concentrate in Charleston quickly.

The Unionists also organized, but in secret except in those few areas where they were a majority. A party convention in Columbia in December set up a central committee with Joel Poinsett as commander in chief. "Washington Societies" were formed with branches in all parts of the state, so organized as to become military companies in case of an emergency. Officers were selected, rendezvous assigned, and men drilled at night. The Unionists, while driven underground, had the advantage of access to the federal arsenals for arms, while the Nullifiers suffered severely from lack of equipment. By the courier service, Poinsett received advice and encouragement from Jackson and plans were drawn for the coordination of the Unionist forces with the federal garrisons in Charleston.[28]

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[26] Ibid., 1:371–74; 6:480–81; 8:562–64.

[27] See Freehling, *Prelude to Civil War,* pp. 271–74.

[28] J. Fred Rippy, *Joel R. Poinsett, Versatile American* (Durham, N.C.: Duke University Press, 1935), pp. 153–54, Charles J. Stille, "The Life and Services of Joel R. Poinsett," *Pennsylvania Magazine of History and Biography* (1888), pp. 267–68. James O'Hanlon to Jackson, 20 Dec 32, Bassett, *Correspondence,* 4:503. *Congressional Debates,* app. to pt. 2, 9:196.

The stage was set for a federal-state confrontation. Jackson was determined to preserve the Union, but neither he nor anyone else was sure of the extent of his power to do so. The idea that the "force of the union" could be explicitly used against a state had been rejected in the Constitutional Convention.[29] It appears that Jackson first contemplated calling forth the Unionists in South Carolina not as militia, but as a *posse comitatus* to assist the U.S. marshal in the enforcement of the law if the Nullifiers defied it. Twice in December he wrote Poinsett outlining this concept and stating that if the civil power "with your aid as a *posse comitatus*" would not suffice, Poinsett could call on the federal government for aid. This he would furnish by using the regular forces and calling on the states for volunteers. On 17 December the president called on Secretary Cass for a precise report of the Army equipment ready for the field and indicated that he wanted additional artillery ready for movement from New York to Charleston. But his main reliance for reinforcements in any real confrontation would be on volunteers called from other states in the Union, perhaps simply as an enlargement of Poinsett's *posse*. "In forty days," he wrote Poinsett on 9 December 1832, "I can have within the limits of South Carolina fifty thousand men, and in forty days more another fifty thousand."[30]

Jackson was not boasting idly. From every state in the Union came offers of volunteers, as well as a parade of resolutions from state legislatures, some encouraged by administration pressure, supporting his stand. Although several of the Southern states urged compromise and Georgia and Alabama joined South Carolina in urging a national convention to settle the issue, the state legislatures condemned nullification, and South Carolina found herself isolated. By 24 January 1833, Jackson could give further reassurance to Poinsett that his Unionist forces in the state would be supported by 200,000 men in forty days. "I repeat to the union men again, fear not, *the union will be preserved.*"[31]

Poinsett and his men insisted that the president should call them out as members of the militia, not as a *posse*, indicating that only as militia could they be expected to respond.[32] There was much to be said for Poinsett's position, but the matter never came to issue. Governor Hayne made it clear that he would not call his volunteers to active service until the federal government had acted to enforce the tariff against state resistance—after 1 February when the Replevin Act would go into effect—and Jackson waited for some move on the part of state forces. He evidently intended, should they interfere with the enforcement of the tariff, to issue a second proclamation calling on the South Carolinians to "cease and desist" and to embody his *posse* should they fail to do so.

In Charleston, the focal point of the confrontation, tensions ran high. Late in December the state reclaimed the Citadel, and the customs house was moved to the safety of Castle Pinckney. The heavy artillery in Castle Pinckney and the guns of the *Natchez* and *Experiment* were trained on the city, and a body of Nullifier artillery in the city trained theirs on Castle Pinckney. Both Unionists and Nullifiers in the city armed and organized. Some incidents occurred, but surprisingly few, as both sides exercised a measure of restraint. The only shot

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[29] See above, Chapter 1.

[30] Jackson to Poinsett, 2, 9 Dec 32; Jackson to Cass, 17 Dec 32. Bassett, *Correspondence*, 4:493, 498.

[31] Bassett, *Correspondence*, 5:11; Marquis James, *Andrew Jackson, Portrait of a President* (New York: Bobbs Merrill Co., 1937), p. 318.

[32] Poinsett to Jackson, 22 Jan 33, Bassett, *Correspondence*, p. 10.

fired seems to have been that of a Unionist who fired into a group of Nullifiers but missed his target.[33]

In any case, on 16 January 1833, Jackson, watching the critical 1 February date approach, finally asked Congress for legislation that would give him explicit authority to deal with the crisis. He asked for power to move the customs houses and ports of entry, to place them on ships when necessary and store seized goods there, to collect all impost duties in cash, to institute actions *de novo* in federal courts when the South Carolina courts would not cooperate, and to use military force when necessary, without the preliminary proclamation. He coupled this proposal with one for tariff reform, going somewhat beyond the suggestions for reduction he had made in his annual message to Congress in December 1832.[34] A long debate in Congress over these measures ensued that was to endure for over a month.

Meanwhile, a mass meeting in Charleston on 21 January, dominated by men who had been members of the Nullification Convention, eased the situation by passing a resolution suspending the enforcement of the Ordinance of Nullification until 3 March. A mediator from Virginia, Benjamin Watkins Leigh, appeared in Charleston to argue for compromise and convocation of a new convention in March. But as the debates over the compromise tariff and Jackson's "Force Bill" reverberated in the halls of Congress, the two armed camps in South Carolina continued to recruit, arm, and confront each other. General Scott returned to Charleston late in January, under orders of the secretary of war to repel any attacks on the federal forts but to exert every effort to avoid any resort to force.[35] Scott tried valiantly to lessen the probability of violence, mingling freely with the Nullifiers and giving orders to his subordinates to avoid the slightest appearance of hostility while maintaining a position of preparedness. Jackson himself parried Poinsett's requests for distribution of more arms to the Unionists and emplacement of a thousand regulars in Charleston for the Unionists to rally around. He now seemed to accept the fact that he would call militia, not a *posse*. He wrote Poinsett on 7 February 1833.

> Notwithstanding all their tyranny and blustering conduct, until some act of force is committed or there is an assemblage of an armed force by orders of your Governor under the ordinance and Replevin laws to resist the execution of the laws of the United States, the Executive of the United States has no legal and constitutional power to order the militia into the field to suppress it, and not then, until his proclamation commanding the insurgents to disperse has been issued. But this you may rely on will be promptly done by the president the moment he is advised by proper affidavits that such is the condition of your state.[36]

On 14 February 1833, Henry Clay offered his compromise tariff in the Senate and after stormy debate it was passed on the twenty-sixth and signed by the president on 2 March. Simultaneously, Congress passed a Force Bill that gave Jackson ample power, if he did not already possess it under the laws of 1795 and 1807, to deal with the crisis. The bill authorized the president to move the customs house to a secure place whenever, in his judgment, it might be impracticable to collect the duties on imports "in the ordinary way," to detain

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[33] Stille, "Life and Services of Poinsett," p. 268.

[34] Richardson, *Messages and Papers*, 2:173–95.

[35] Secy War Cass to Scott, 26 Jan 33, *American State Papers, Military Affairs*, 5:160–61.

[36] Poinsett to Jackson, 30 Jan 33, Jackson to Poinsett, 7 Feb 33, Bassett, *Correspondence*, 5:13–15. Elliot, *Winfield Scott*, p. 283.



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vessels or their cargo there until all duties were paid, and to use such part of the land and naval forces or the militia as he deemed necessary to prevent removal of such a vessel or cargo, or to protect customs officers in the performance of their duty. He could delegate this power to call troops in the same manner allowed to Jefferson in 1809. The jurisdiction of federal courts was extended to all cases arising under the revenue laws, including suits brought against customs officers as a result of actions taken in enforcing these laws. Finally, the president was authorized to use military force under the laws of 1795 and 1807, when he was officially informed by officials of any state or by a district court judge that the laws of the United States were being obstructed "by the use of military force."[37]

Most authorities have held that, for all the fanfare attendant, Jackson received no new powers to use military force under the Force Bill that he did not already possess.[38] Yet the bill gave Jackson the specific powers he needed to enforce federal will in the South Carolina crisis; and the authority to oppose "military force" that could only be presumed to be raised by a state, with military force under the control of the federal government, on application of a district judge, was clearly something that the laws of 1795 and 1807 did not contemplate. Indeed it was a matter that the constitution-makers themselves had regarded as too controversial to be included in that document. The Force Bill represented, on the part of a majority in Congress, "determination that the supremacy of the federal government should in any case be recognized and sustained," and gave Jackson clear legislative sanction for the policy he was following.[39]

In the event, the provision never had to be used. Concession went hand in hand with compulsion, for the Clay tariff yielded much of what South Carolina demanded. Another session of the South Carolina Convention met 11–18 March 1833, accepted the compromise tariff, and repealed both the Ordinance of Nullification and the enforcing acts except for the new Militia Act which remained on the statute books. The Force Bill came in for its share of invective, James Hamilton proclaiming that "a military despotism is placed at the disposal of the Executive." The convention, on its last day, performed a final act of defiance by nullifying the Force Act and calling on the legislature to pass laws to prevent its execu-

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[37] 4 *Statutes at Large* 634.

[38] Rich, *The Presidents and Civil Disorders*, p. 48, argues that the bill gave the president no new powers except that to move the customs houses; Freehling, *Prelude to Civil War*, p. 285, says it "possessed little but symbolic importance."

[39] David F. Houston, *A Critical Study of Nullification in South Carolina* (New York: Longmans, Greene & Co., 1896), p. 127.

tion. It was a futile gesture, for the federal government would have no occasion to enforce it once the nullification of the tariff was withdrawn.[40]

So this dress rehearsal for civil war passed into history with only a preliminary marshaling of a federal force. The outcome could be viewed as either a victory for the Nullifiers or as a compromise as far as the tariff was concerned, but certainly its most important aspect was the determination of President Jackson to use such military force as would be necessary to enforce federal law in the face of the recalcitrance of a state and to preserve the Union at any cost.

Chesapeake and Ohio Canal Riots, 1834

In the year following the Nullification controversy, Jackson used federal troops to suppress riots along the Chesapeake and Ohio Canal in the vicinity of Williamsport, Maryland. The incident long passed unnoticed by historians, though it appears to have been a precedent-setting event in two important respects: It marked the first use of federal troops at the request of state authorities to suppress a domestic disorder and their first use in connection with a labor dispute.[41]

The Chesapeake and Ohio Canal, designed to connect the waters of the Chesapeake Bay with those of the Ohio River, was one of the great internal improvement projects of the Jacksonian era. The project was jointly sponsored by the federal government and the states of Maryland and Virginia and financed by a combination of public and private funds. Its construction and operation were the tasks of the Chesapeake and Ohio Canal Company, of which John H. Eaton, Jackson's close friend and former secretary of war, became president in mid-1833. The company was beset by financial difficulties almost from the start, and by early 1834 was in the throes of an acute crisis, unable to pay cash wages to its labor force and faced with considerable retrenchment in its operations. The canal company employed imported Irish labor. One faction of Irish laborers from Cork, organized in a secret society, sought to enforce a "closed shop" policy by barring other Irish laborers from Longford from competing with them for jobs. Tensions between the Corkonians and the Longfords, the former working near Dam 4 above the town of Williamsport and the latter on Dam 5 below the town, mounted for some months and finally broke into violence on 16 January 1834, when a Corkonian assaulted and beat to death one John Irons, a Longford laborer. Practically all work on the canal stopped, and on the following day there was a serious clash between the two factions in which many men were hurt and perhaps some killed.[42] The local citizens of Williamsport organized themselves into two volunteer militia companies and remained

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[40] See *Journal of the Convention of the People of South Carolina* (Columbia: A. S. Johnston, 1833); *Speeches Delivered in the Convention of the State Carolina, held in Columbia, in March, 1833* (Charleston: E. J. Van Brunt, 1833), p. 41.

[41] It is not recorded in either Wilson, *Federal Aid*, in Rich, *The President and Civil Disorders*, or in any of the several biographies of Andrew Jackson. Richard B. Morris brought the incident to light in the article "Andrew Jackson, Strikebreaker." See *American Historical Review*, vol. 55, no. 1 (October 1949), pp. 54–68. Much of this account is based on Morris' article.

[42] *Niles' Weekly Register* (25 January 1834), 45:366, reported several Irish killed in this skirmish. Thomas Williams in *History of Washington County, Maryland* (Frederick, Md.: Titworth & Co., 1910), p. 223 claims that many were wounded but no lives lost.

under arms to protect themselves during the rioting. Two additional militia companies arrived from Hagerstown on the twentieth and stayed until the next day. The four companies together were able to restore order of sorts by patrolling the aqueduct between the two dams, though the Irish on both sides continued to accumulate weapons.

The departure of the Hagerstown militia was the signal for a renewal of rioting by the Corkonians. And on 24 January a band of about 700 Longfords armed with guns, clubs, and axe helves attacked, on challenge, about 300 Corkonians on a hill near Dam 5. (The armed citizens had let a group of them pass the aqueduct on assurances that they only wanted to make a show of force.) With superior numbers the Longfords put the Corkonians to flight, killed and wounded a number of them, and destroyed some of their shanties. Their day's destructive work done, the Longfords passed quietly through Williamsport and returned to their own shanties.[43]

Alarmed by the extent of the disturbances, the sheriff of Washington County, Col. William H. Fitzhugh, hurried to Williamsport with two militia companies from Hagerstown and one from Clearspring. The two Williamsport volunteer companies turned out again in full force.[44] While intermediaries such as Thomas P. Purcell, resident manager for the canal company, and General Otho Williams, local militia leader, sought to persuade the two groups to settle their differences, the citizens of Williamsport addressed an appeal to the state authorities for a regular force to preserve order and to provide protection. The intermediaries had some success. In a meeting held on 27 January, presided over by Williams and attended by citizens and fourteen elected representatives from each of the Irish factions, both sides agreed to sign a pledge, drafted by Purcell, that they would not interfere with anyone working on the canal because of local differences or national prejudice, and that they would endeavor to settle all differences peaceably and assist in bringing to justice any who violated the pledge. Each of the representatives gave his bond in the sum of $20 to the state of Maryland that he would "keep the peace towards the citizens of the state."[45] General Williams warned them that in case the agreement was violated, it was "the determination of the citizens and the military to unite with the opposite side and drive entirely from the county the party who were guilty of the infraction."[46]

Upon hearing of the agreement, a reinforcing party of Corkonians agreed to lay down their arms. The prisoners were released from Hagerstown jail on their own recognizance, and an uneasy peace settled over the canal. Meanwhile, on 28 January Dr. Wharton, a delegate from Washington County, presented the Williamsport citizens' plea for protection to the Maryland House of Delegates and offered a resolution requesting the president of the United States to intervene. The Maryland legislature actually passed two separate resolutions on that day, one calling on the president for military aid and the other requesting him to call out militia of the state as necessary for the "immediate suppression" of the "riot among the laborers."[47]

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[43] *Niles' Weekly Register* (1 February 1834), 45:382.

[44] Williams, *History of Washington County*, p. 224.

[45] Text in *Niles' Weekly Register* (February 1834), 45:399.

[46] Quoted in Morris, "Andrew Jackson, Strikebreaker," p. 58.

[47] *Laws of Maryland, 1833* (Annapolis, Md., 1834), Res. nos. 11 and 56. See Morris, "Andrew Jackson, Strikebreaker," p. 60.

"Be it resolved," read the legislature's plea, "That the President of the United States, be and he is hereby requested to order on to Williamsport, such portion of the Military of the General Government as in his opinion may be necessary to protect our citizens and prevent any injury to the public works and property of individuals in that neighborhood." Governor James Thomas of Maryland immediately sent the resolution to the president, asking for "prompt attention." On 29 January Jackson endorsed the request to the secretary of war. "The Secretary of war will forthwith order such military as will be able to aid the civil authority of Maryland to put down the riotous assembly named within—at least two companies of regulars with as much expedition as possible."[48]

The request from the Maryland legislature was fully in keeping with the Constitution and the laws of 1795 and 1807, but many later presidents were to hesitate long before meeting such requests. Jackson acted immediately and he failed to comply with one legal requirement, for he issued no "cease and desist" proclamation before ordering the troops out. The adjutant general immediately issued orders for Company B, 1st Artillery, at Fort McHenry and Company F, 1st Artillery, at Fort Washington to proceed to Williamsport. Captain M. A. Patrick of Company B was to go "by way of the railroad, in cars to Frederick, thence to Hagerstown by way of the turnpike and thence to Williamsport, where he will find quarters prepared to receive his men." Brevet Major Milo Mason was to march his company from Fort Washington by way of Frederick and to assume the command on arrival. The instructions were simple—Patrick was "to receive the instructions of the civil authority, and aid that authority in the execution of the law."[49]

Patrick's company arrived in Williamsport on 31 January and Mason's on 2 February, much wearied by the long march. Their total strength amounted to about ninety-two officers and men. They remained until 22 March, but it does not appear that they were required to repress any riotous assemblies. Mason reported on 3 February that there was much "alarm and excitement in the town," and that as many as thirty Irish immigrants might have been killed, some of whose bodies had been found in the Potomac River. But he also reported that "tranquillity is restored, and the inhabitants appear much gratified at the presence of the troops."[50] A month later he reported that "it appears that the laborers on the Canal in this neighborhood are not disposed to molest the citizens provided they can be allowed to settle their difference in their own way." There were, however, fears of an outbreak on Saint Patrick's Day, and Mason asked for instructions whether, if asked by the civil authorities to disperse a riotous assembly, he could cross the line into Virginia with this object.[51] There is no record of any War Department reply to this difficult legal question, nor does it appear that Mason was required to decide it for himself. By one account the troops apprehended some thirty rioters and lodged them in the Hagerstown jail, but there is no corroboration of this to be found in Mason's reports.[52]

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[48] Thomas to Jackson, 28 Jan 34, w/Pres Ind, OSW (Office of the Secretary of War) Ltrs Recd, Unregistered Series, 1789–91, T–1834, NARA. Also quoted in full in Morris, "Andrew Jackson, Strikebreaker," p. 61.

[49] AG to Bvt Col John B. Walbach, 1st Arty, CO, Fort McHenry, 29 Jan 34, AGO Ltrs Sent 1800–98, vols. 9–10, no. 66, RG 94, NARA. Orders to Bvt Maj Mason and Lt A. D. Mackey are also in this file.

[50] Mason to AG, 3 Feb 34, AGO Ltrs Recd, M–23, RG 94, NARA.

[51] Mason to AG, 3 Mar 34, ibid, M–45.

[52] See Williams, *History of Washington County*, pp. 223–24 and Morris, "Andrew Jackson, Strikebreaker," p. 64. Not all of Mason's correspondence with the War Department appears to have survived.

It was not a large troop commitment at Williamsport, but it was symbolic, and the troops undoubtedly helped to stabilize the situation on the canal at a particularly critical time. Richard B. Morris contends that they helped to bail Jackson's friend, John H. Eaton, out of a difficult situation. At least Eaton wrote to a friend that the presence of the troops would enable the company to proceed with widespread dismissals of laborers without fear of uncontrolled rioting. The canal authorities apparently did use the presence of Mason's and Patrick's companies to seek to get rid of the worst of the rioters.[53] Yet if the design was to end labor unrest, the effort was singularly unsuccessful. Rioting involving hostilities between Corkonians and Longfords, and the labor unrest it evidenced, resumed within a year after the troops left and continued sporadically until 1839. In each of these new cases, local or state militia had to be called in, but there were no further requests for federal troops. And indeed it was the local militia rather than the federal troops who played the more important role in bringing the riots under control in 1834.

The use of troops to quiet Irish contract laborers resembled in some respects their use in the slave revolts of 1831, except in that Jackson directly ordered their use in this instance in response to a completely legal appeal from the state authorities. In dispatching the troops to Williamsport, Jackson set a precedent, but it was one that neither then nor later generated any considerable publicity. This was probably because the scale of intervention was so small and the target an alien group without real political influence.

An Election Riot, Mormons, and the "Buckshot War"

In the various city riots and other disturbances of the 1830s, military commanders at posts near the scenes of these disorders often received requests for aid from state or local officials, just as Colonel House had received and honored such a call in Nat Turner's Rebellion. In most of these cases the officers were not altogether certain where their duty lay, or under just what circumstances they might furnish arms or men to aid state authorities without prior approval from Washington. As a case in point, in New York City in April 1834 a large riot occurred during an election when thousands of Whigs and Jacksonian Democrats confronted each other on Broadway. The mayor declared the city in a state of insurrection and applied to the local Navy Yard for a company of marines to assist in suppressing it. The Marine commander replied that he would be glad to help, but all the marines assigned to the yard were on board ships. Applications to both the commander of the Navy Yard and the Army commander on Governors Island got a different response; both said they had no authority to interfere. Failing to obtain any federal assistance, the mayor turned to the commander of the city militia, who provided a force to restore order.[54]

An episode of a different nature, involving a request directly to Washington and not to the local authority, occurred in Jackson County, Missouri, in April 1834. The members of the Church of Jesus Christ of Latter Day Saints, commonly called Mormons, moved into

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[53] See ibid., pp. 62–63.

[54] See Joel Tyler Headley, *The Great Riots of New York* (New York: E. B. Treat, 1873), p. 77. Of the numerous other riots in New York that Headley recounts, the only other one in which he mentions a call for federal assistance was the great draft riot of 1863. See below, Chapter 12.

Jackson County in large numbers in the early 1830s. They aroused the opposition of the older inhabitants who by threats of and actual use of violence drove the Mormons out of the county, incidentally gaining control of their property by forced sales at low prices. The state's governor professed sympathy for the Mormons but held it beyond his power to use military force to aid them, suggesting that they seek redress through the courts. In reality such legal redress was precluded, for as the governor himself admitted, "conviction for any violence against a Mormon cannot be had in Jackson County."[55] In the midst of their difficulties, the Mormons appealed directly to the president of the United States for protection, citing the "many ignorant and lawless Ruffians, who are already congregated and determined to nullify all law that will secure your petitioners the peaceable possession of their lands in Jackson County."[56] There was no precedent for such a direct appeal to the president by private citizens over the heads of the state authorities. Jackson gave it short shrift referring the petition to the secretary of war to answer, ruling that "it belongs to the civil powers of the State to grant relief by prosecution against the offenders. The Executive of the Union cannot interfere without an appeal to him by the Executive of the State." The War Department accordingly responded to the Mormon petitioners in this vein.[57]

Troubles between Mormons and Missourians did not end with the Saints' departure from Jackson County. They settled predominantly in Daveiss and Caldwell counties farther north where the same sort of troubles between the sect and the older inhabitants erupted. Here the Mormon leadership took the initiative itself, formed a military organization, and actually defeated a contingent of Missouri militia in a battle on 23 October 1838. Governor Lillian Boggs then rallied an overwhelming force of Missouri militia, issuing orders that the members of the sect should either be exterminated or expelled from the state. The militia commanders appealed to Lt. Col. A. B. Mason, commanding officer at Fort Leavenworth, for a loan of arms to assist in putting an end to the Mormon "depredations." Mason refused, saying that his task was to protect the frontier against the Indians, not to take sides in fights between citizens groups. But he referred the matter to his superior, Brig. Gen. H. Atkinson, acting commander of the Department of the West, at Jefferson Barracks, Missouri, asking for guidance should he get a request for arms directly from the county court or the governor of the state. Atkinson in turn queried the adjutant general in Washington, citing the "delicate situation" into which the whole affair placed officers stationed in the area. "I presume," he wrote, "it will be proper to furnish the Executive with arms upon his official call to enable him to execute the laws & preserve the peace in so pressing an emergency."[58] And without receiving any instructions from Washington, he informed Mason at Leavenworth that if requested by the governor he should "furnish both arms and Ammunition to preserve the peace," and indeed "afford a Strong detachment for the object." The troops were not to be deployed on either side "but merely to aid the Civil Authority in execut-

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[55] Quote from William A. Linn, *The Story of the Mormons* (New York: Macmillan Co, 1902), p. 184. Linn's treatment of the Mormons is not sympathetic.

[56] A. S. Gilbert, W. W. Phelps, and E. Partridge to the President of the United States, Apr 34, NARA, RG 104, OSW Ltrs Recd, M-20(35), 1834.

[57] Ind on petition initialed A. J. [Andrew Jackson] Secy of War Lewis Cass to Gilbert, Phelps, and Patridge, 2 May 34, NARA, RG 104.

[58] Atkinson to AG, 6 Nov 38, w/related papers in NARA, RG 94, AGO Ltrs Recd 1822-60, A-279. See Linn, *Story of the Mormons*, p. 200-204 for the nature of the conflict.

ing the laws & preserving the peace should the state authorities in the opinion of the Governor be inadequate to effect the object."[59]

If one is to judge by the position taken by the War Department in a number of later cases, Atkinson was giving Mason instructions that normally would have to come from the War Department with presidential authority behind them. It made little difference, for it does not appear that Mason ever furnished any aid to the state militia. And that militia did defeat the Mormons and drive them from the state to a new refuge in Nauvoo, Illinois, where they were to make their final stand east of the Mississippi. The records reveal no answer from the War Department to General Atkinson's query whether he should or should not extend aid in response to a governor's request.

The War Department did take a positive position on a similar issue arising out of the so-called Buckshot War in Pennsylvania in the same year, 1838. The "war" involved a political dispute over the control of the state legislature, between a Whig–Anti-Mason coalition and the Jacksonian Democrats.[60] In 1835, owing to a split in Democratic ranks, an Anti-Mason, Joseph Rittner, was elected governor. Three years later, in a bitterly contested election, it appeared that the Democrats had won both the governorship and the house of delegates, while the Whigs maintained control of the state senate. But the secretary of the commonwealth, an Anti-Mason, sent in a set of returns certified by the Whig minority rather than that endorsed by the Democratic majority in the house of delegates. As a result, each side proceeded to elect its own speaker and to organize its own house. To compound the problem, disputes arose over the seating of members from Philadelphia County in the state senate. On 4 December 1838 angry citizens, supporting their own candidates, invaded the chamber and the session got completely out of control. Thomas Penrose, the Whig Speaker, was forced to escape through a window. The lame duck governor, Joseph Rittner, characterized the affair as an insurrection, issued a proclamation, and asked both state and federal military commanders for assistance. He called first on Maj. Gen. Robert Patterson, commanding the state militia in Philadelphia, to march a force to Harrisburg immediately. Anticipating a delay, he also applied to Capt. Edwin V. Sumner, commander of the U.S. dragoons at nearby Carlisle Barracks, for troops to protect the "constitutional authorities" and to suppress this "insurrection." Sumner refused, "as the disturbance at the capital . . . appears to proceed from political differences alone." Had it been otherwise, he said, he should have offered his services immediately, indicating that he did believe he had the authority to do so.[61] Rittner, meanwhile, had decided to appeal to higher authority, writing President Martin Van Buren on 7 December that "such a state of domestic violence exists at this place as has put an end, for the present, to all the exercise of the regular functions of the State Government" and asking the president to invervene under the Fourth Article of the Constitution. He alleged that neither branch of the legislature could meet with "freedom and safety" and therefore that he could not convene them to meet the requirement of

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[59] Atkinson to Mason, 5 Nov 38, AGO Ltrs Recd 1822–60, A–279, RG 94.

[60] For the story of the war see William H. Eagle, "The Buckshot War," *Pennsylvania Magazine of History and Biography*, vol. 23, no. 2 (July 1899), pp. 137–56. Rich, *Presidents and Civil Disorders*, pp. 51–55, treats Van Buren's actions in the affair.

[61] Rittner to Sumner, 5 Dec 38; Sumner to Rittner, same date, H. Ex. Doc. 28, 25th Congress, 3d sess., *Message of President Transmitting Correspondence between the Executive government of the United States and the Governor of Pennsylvania*, ser. 345, p. 5. A renewal of Rittner's appeal to Sumner two days later brought much the same response. See exchange, ibid., p. 12.

the law.[62] Van Buren also refused to intervene. His secretary of war, Joel R. Poinsett, who had gained some experience in this sort of thing in the Nullification controversy, told the governor that the trouble did not seem to arise out of any opposition to the laws but out of a political contest that it ill behooved the federal government to enter. And it did not seem impossible, Poinsett added, for the governor to convene the legislature.[63]

By the time Poinsett's reply was written, General Patterson's Philadelphia militia had arrived in Harrisburg. They did have some federal assistance. Captain George D. Ramsey, commanding the Frankford Arsenal near Philadelphia, furnished Patterson with a considerable quantity of ammunition, including some buckshot cartridges. These cartridges gave the name to the "war." Ramsey thought himself obliged to honor a requisition from state authorities under a law of 1808 providing for some federal equipment for the militia. It made little difference, for Patterson refused to use the militia to force obedience to any political orders of the governor to support the Whig–Anti-Mason organization of the house, and the governor soon returned his militia contingent to Philadelphia. He then called up a contingent from Carlisle under a different commander, and it stayed in Harrisburg for a week. In the middle of their stay the whole controversy was resolved when three Whig members of the house joined the Democrats in organizing that body. The Whig senate then gave up its opposition and recognized the Democratic house, ending the Buckshot War."[64]

The Buckshot War did produce some rulings from the War Department on the authority of local commanders when their assistance was requested by state officials. Secretary of War Poinsett commended Sumner on his action in refusing aid and laid down the general rule, "In doubtful cases, similar orders must be transmitted by direction of the President of the United States; and in all cases where the seat of government is near the theater of the disturbance, the necessity must be very urgent and palpable to justify an officer commanding a detached post in marching his forces to repress an insurrection without authority to do so from this department."[65]

In keeping with this philosophy, Poinsett admonished Captain Ramsey of the Frankford Arsenal that "Under the law of 1808, the States are not entitled to receive any munitions of war, other than arms and equipment; and no issue even of these ought to be made by an officer in charge of military stores, but on the order of the Department."[66] Similary, two naval officers who had also embroiled themselves in the affair in an effort to secure military support for the governor received reprimands from the Navy Department.[67]

None of this policy was enshrined in any general orders or regulations, but most officers who had to confront situations like those in Missouri and Pennsylvania after 1838 seem to have been well aware of the necessity of getting War Department approval before they could take any action.

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[62] Rittner to Van Buren, 7 Dec 38, ibid., pp. 6–7.
[63] Poinsett to Rittner, 11 Dec 38, ibid., pp. 8–9.
[64] Ibid., pp. 13–15. Eagle, "Buckshot War," pp. 151–57. Rich, *Presidents and Civil Disorders*, pp. 53–54.
[65] Poinsett to Sumner, 8 Dec 38, H. Ex. Doc. 25, pp. 5–6.
[66] Ibid., p. 14.
[67] Ibid., pp. 16–18.

CHAPTER 6

Patriot War and Dorr Rebellion

When citizens of the same state are in arms against each other and the constituted authorities unable to execute the laws, the interposition of the United States must be prompt or it is of little value. The ordinary course of proceedings in courts of justice would be utterly unfit for the crisis. And the elevated office of President, chosen as he is by the people of the United States, and the high responsibility he could not fail to feel when acting in a case of so much moment, appear to furnish as strong safeguards against a willful abuse of power as human prudence and foresight could well provide. At all events, it is conferred upon him by the Constitution and the laws of the United States, and must, therefore, be respected and enforced in its judicial tribunals.

——Chief Justice Roger Taney in *Luther* v. *Borden.*

The administrations of Martin Van Buren (1837–1841) and John Tyler (1841–1845) saw two principal instances of the use, or threatened use, of federal troops to control internal disorders.[1] The two were quite dissimilar in nature, the first involving a prolonged effort to prevent filibustering expeditions to aid Canadian rebels and the second the first instance of conflict within a state between two rival governments in which federal intervention was sought.

The Patriot War, 1837–1841

The rebellion against British authority that broke out in Canada in the autumn of 1837 attracted widespread sympathy among Americans along the northern border. The northern frontier was peopled mainly by small farmers and tradesman, Jacksonian Democrats for the most part, who believed strongly in individual liberties and looked on the British as traditional enemies. Many were unemployed during the winter months and the Panic of 1837 added to the ranks of idle men easily tempted to join ventures where they might earn money, win fame and glory, or acquire good land in Canada. Canadian refugees who fled across the border found ready sanctuary and together with their American supporters formed makeshift armies, organized secret societies, and undertook filibustering expeditions. The turmoil along the border made it difficult for the national government to preserve neutrality in Canada's internal conflict, while preventing British incursions into the United States to deal with these rebel activities.

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[1] It is to be noted that the Buckshot War and some of the Mormon troubles recounted in the last chapter also took place during Van Buren's administration rather than Jackson's. Another instance included in Wilson, *Federal Aid,* pp. 64–65, involved the call-up of territorial militia in Iowa in 1838 in connection with a boundary dispute with the state of Missouri. Since the militia was never paid for federal service in this instance, it does not seem proper to include it as a case of use of federal military force in an internal disorder. See H. Rpt. 371, 28th Cong., 1st sess., Iowa—Pay of Militia, ser. 446, and Cyrenus Cole, *Iowa Through the Years* (Iowa City: State Historical Society of Iowa, 1940), pp. 144–46.

The supporters of the Canadian revolt called themselves Patriots, hence the name Patriot War. In December 1837 and again in February 1838 these Patriots attempted to carry out invasions of Canada from American territory, planning in each case a three-pronged effort with the main centers around Niagra and Buffalo, Detroit, and Lake Champlain. Driven underground to some degree after the failure of these efforts, they organized secret societies—the largest of these being the Canadian Refugee Relief Association, the Sons of Liberty, and the Hunters. Local, state, and even federal officials were sometimes members of these societies. Members of the Canadian Refugee Association attacked and destroyed the British vessel *Sir Robert Peel* in American waters on 28 May 1839, and in June mounted another futile attempt to invade Canada. The Hunters were responsible for the last ambitious efforts at filibustering, mounted at Prescott and Detroit in November and December 1838. There were smaller ventures in 1839, but enthusiasm and popular support had waned. Not until 1841 did the agitation finally die down.

President Van Buren strove manfully to preserve American neutrality without sacrificing American rights, and to this end he eventually employed the military to enforce the neutrality law. This law, originally passed in 1794 during the Genet affair and invoked by Jefferson against Aaron Burr, was recodified in 1818 with only minor changes. The law made it a "high misdemeanor to mount an expedition or enterprise on American soil" against any state or territory with which the United States was at peace, and authorized the president to use either militia or regular armed forces in enforcement. But its emphasis was on punishment after the fact rather that prevention of enlistment of men or assembling of equipment by leaders of filibustering expeditions. Van Buren considered the law a weak reed on which to rely, but it was not until a crisis arose that he moved to get it strengthened or indeed to take positive measures to invoke federal authority against Patriot activities.[2]

The administration first sought to rely on state and local authorities and on federal officials along the border; many of both groups were themselves Patriot sympathizers or they found it impossible to buck the tide of popular sentiment. On 7 December 1837, Secretary of State John Forsythe addressed identical letters to the governors of Michigan, Vermont, and New York, warning them that attempts might be made to violate American neutrality, and urging that they use all their influence and powers to prevent them. Forsythe on the same day also wrote all the federal district attorneys in Michigan and northern New York, warning of possible neutrality violations by Patriot sympathizers, and urging that they prosecute all overt breaches of neutrality. On 19 December, Secretary of the Treasury Levi Woodbury sent out instructions to all frontier customs collectors to observe strict neutrality and to cooperate with other federal officials in enforcing the law.[3]

None of these officials was in any position to stem the popular fervor finding expression in public meetings, and in the active recruiting, arming, and drilling of men for filibustering expeditions. Governor Silas H. Jenison of Vermont, responding both to Forsythe's letter and to a petition from the citizens of the town of Burlington, who asked for a pronouncement to end illegal recruiting and arming of Patriots, issued a proclamation on 13 December 1837 warning all citizens of Vermont to refrain from violations of neutral-

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[2] *Statutes at Large* 447–50. See above, Chapters 2 and 4.

[3] *Canada, Mexico, Texas, Correspondence on Neutrality*, H. Ex. Doc. 74, ser. 323, pp. 29–30, 75th Cong., 2d sess.



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ity.[4] The next day a delegation of citizens from the towns of Swanton and Saint Albans called on Jenisen, requesting arms and ammunition to defend themselves against raids from the Canadian side. The governor reported on these matters to the secretary of state on 16 December, pointing out that the state lacked arms and could not control the situation. "The General Government," he went on, "must judge the propriety and expediency of placing a detachment of troops in that neighborhood to allay the fears of the inhabitants."[5]

Meanwhile, the Patriots were centering their activities in Erie County, New York, around the city of Buffalo. On 13 December Mayor Josiah Trowbridge of Buffalo and General Potter of the New York militia issued an open letter to the people of the county, warning them to stop their arming and drilling. On the same day New York Governor William L. Marcy dutifully issued a proclamation asking the people to observe neutrality. Neither had any marked effect. A week later Mayor Trowbrige wrote directly to Van Buren, detailing widespread Patriot activity in the city that he was unable to halt. At the president's behest, Secretary Forsythe on 21 December instructed Nathaniel S. Benton, U.S. district attorney for northern New York, to proceed to Buffalo accompanied by U.S. Marshal Nathaniel Garrow, to arrest all those who had violated federal neutrality laws. Benton's and Garrow's reports, rendered over the next week, gave ample cause for alarm. The Patriot activities in Buffalo, they said, were too widespread and too popular to permit the civil authorities to deal with them effectively. Arms had been seized from the state arsenal at Batavia, and Patriot forces were overtly operating on Navy Island, a piece of British territory in the Niagara River about two miles above the falls, receiving supplies and reinforcements from the American side. Both indicated that only an armed force could deal with the difficulties.[6]

Van Buren did not act until matters came to a head in the so-called *Caroline* affair. As Benton and Garrow reported, by late December 1837 a group of Canadian refugees and American borderers had quite overtly established a base on Navy Island. There they set up a provisional government, offered Canadian land to volunteers, and organized a military force with one Rensselaer van Rensselaer, a profligate member of an old New York patroon family, in command. To support this base, the Patriots cut out of the ice at Buffalo a steamer,

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[4] Jenisen was the most cooperative of the governors along the northern frontier. See Albert B. Corey, *The Crisis of 1830–42 in Canadian-American Relations* (New Haven: Yale University Press, 1941).

[5] H. Ex. Doc. 74, p. 32.

[6] Corey, *Crisis of 1830–42*, p. 32: H. Ex. Doc. 74, pp. 32, 43, 51; *Presidential Message on Enforcing Neutrality of Northern Frontiers with Canada*, H. Ex. Doc. 64, ser. 322, p. 2, 25th Cong., 2d sess.

the *Caroline*, with which they began, on 29 December, to ferry recruits, supplies, and even sightseers from the American shore to Navy Island. Naturally, these activities attracted the attention of the Canadian authorities who positioned at Chippewa, opposite the island, an artillery battery and a force of 2,500 militia from Upper Canada under Col. Allan McNab. McNab was determined to cut the Patriot supply line from the United States and on the night of the twenty-ninth commissioned Comdr. Andrew Drew of the Royal Navy to lead a nocturnal expedition to destroy the *Caroline*, expecting to find it at Navy Island. Drew set out with a force of about fifty men in rowboats. He did not find the *Caroline* at Navy Island, but at anchor on the American side at Schloser, New York. There Drew's men boarded the vessel, overcame its crew, then towed it into the middle of the Niagara and set it on fire. At least one American was killed, and perhaps four or five others.[7]

The *Caroline* incident threw the entire northern frontier into an uproar at this open violation of American sovereignty. Recruiting for the Patriot cause received a shot in the arm, militia companies rallied voluntarily to avenge the insult, and local authorities were in a state of confusion. The sheriffs of Erie and Niagara counties took it upon themselves on 30 December to call out the 47th Brigade of the New York militia to guard the frontier; Governor Marcy approved on the grounds that the state should post a military force until the federal government took action. But two days later 2,000 more militiamen came marching into Buffalo, men who had gathered voluntarily, not to guard the frontier, but to avenge the *Caroline*. They were restrained with difficulty from joining the insurgents on Navy Island. The state district attorney for Erie County took depositions from witnesses and sent his material on to the president with the observation that "Our whole frontier is in commotion, and I fear it will be difficult to restrain the citizens from revenging by a resort to arms, this flagrant invasion of our territory."[8]

Word of the *Caroline* affair reached Washington on 4 January 1838. That evening the president had planned a dinner party for about ten guests, including Maj. Gen. Winfield Scott, commander of the Eastern Department. The president was detained at a cabinet meeting, discussing the situation and planning the government's response. When he reached the White House, he took Scott aside to tell him: "Blood has been shed; you must go with all speed to the Niagara frontier. The Secretary of War is now engaged in writing your instructions."[9]

The next day the president issued a "cease and desist" proclamation calling on all who had violated the neutrality law to return peaceably to their homes, warning of "arrest and punishment" under U.S. laws, and promising "no aid or countenance" should they get into trouble with the Canadian authorities.[10] Simultaneously he sent a message to Congress asking for new and stronger neutrality legislation.

The laws in force provide sufficient penalties for the punishment of such offenses after they have

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[7] Accounts of the *Caroline* affair vary widely as to the details and the number of casualties. See Corey, *The Crisis of 1830–42*, p. 36–37; MacMaster, *History of the U.S.*, 6:439–41; Edwin C. Guillet, *The Lives and Times of the Patriots* (Toronto: University of Toronto Press, 1968), pp. 79–81; Charles Lindsey, *The Life and Times of William Lyon MacKenzie*, 2 vols. (Toronto: P. R. Randall, 1862), 2:149; Henry K. Brooke, *Book of Pirates* (Philadelphia: J. B. Perry, 1841), pp. 198–200.

[8] *Burning of Steamer* Caroline *by Canadians*, 25th Cong., 2d sess. H. Ex. Doc. 73, ser. 323, p. 2; Orrin E. Tiffany, *The Relations of the United States to the Canadian Rebellion of 1837–38* (Ann Arbor: University of Michigan Press, 1905), p. 89; Samuel M. Welch, *Recollections of Buffalo* (Buffalo: Peter Paul & Bro., 1891), p. 281.

[9] Winfield Scott, *Memoirs of Lieut.-General Scott, L.L.D.* (New York: Sheldon & Co., 1864), p. 307.

[10] Richardson, *Messages and Papers of the Presidents*, 4:1698.



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been committed, and provided the parties can be found, but the Executive is powerless in many cases to prevent the commission of them, even when in possession of ample evidence of an intention on the part of evil-disposed persons to violate our laws. . . . I recommend a careful revision of all the laws now in force and such additional enactments as may be necessary to vest in the Executive full power to prevent injuries being inflicted upon neighboring nations by the unauthorized and unlawful acts of citizens of the United States or of other persons who may be within our jurisdiction.[11]

Meanwhile, Secretary of War Joel R. Poinsett completed his instructions to Scott.

You will repair, without delay, to the Canada frontier of the United States, and assume the military command there.

Herewith you will receive duplicate letters to the Governors of the States of New York and Vermont, requesting them to call into the service of the United States such a militia force as you may deem necessary for the defense of that frontier of the United States.

This power has been confided to you in the full persuasion that you will use it discreetly, and extend the call only so far as circumstances may seem to require.

It is important that the troops called into the service should be, if possible, exempt from the state of excitement which the late violation of our territory has created; and you will therefore impress upon the governors of these border States the propriety of selecting troops from a portion of the State distant from the theatre of action.

The Executive possesses no legal authority to employ the military force to restrain persons within our jurisdiction, and who ought to be under our control, from violating the laws, by making incursions into the territory of neighboring and friendly nations, with hostile intent. I can give you, therefore, no instructions on that subject; but request that you will use your influence to prevent such excesses, and to preserve the character of this Government for good faith and a proper regard for the rights of friendly Powers.

The militia will be called into the service for three months, unless sooner discharged; and in your requisitions you will designate the number of men, and take care that the officers do not exceed a due proportion.

The disposition of the force with regard to the points to be occupied is confided to your discretion, military skill, and intimate knowledge of the country; and the amount of that force must depend upon the character and duration of the contest now going on in Canada, and the disposition manifested by the people and the public authorities of that colony.

The President indulges a hope that outrages similar to that which lately occurred at Schlosser will not be repeated; and that you will be able to maintain the peace of that frontier without being called upon to use the force which has been confided to you.[12]

The letters to the governors of New York and Vermont asked simply for cooperation with Scott in calling forth the militia desired, leaving to the general's discretion their numbers,

[11] Ibid., p. 1616.
[12] H. Ex. Doc. 73, pp. 4–5.

disposition, and organization. The War Department, meanwhile, drew up hasty estimates of the expense, basing them on the supposition that 3,000 militiamen would be required for an average of three months' service.[13]

The breadth and ambiguity of Scott's instructions reflected the lack of any reliable military force to deal with the situation. Nine of the Army's thirteen regular regiments, including all of the artillery, were in Florida dealing with the Seminoles, and the other four were scattered along the western frontier. Garrisons at Forts Mackinac, Howard, and Gratiot in Michigan, at Fort Dearborn in Illinois, and at Fort Niagara and Sackets Harbor in New York had been withdrawn one by one over the preceding years and the posts practically abandoned. The only garrisons remaining along the northern border at the end of 1837 consisted of less than 200 men at Forts Winnebago and Brady in Michigan. Regular officers to conduct the "administrative branch" were in short supply too, and some would have to do double duty while others, recuperating from sickness in Florida, would have to be rushed north. About the only regular enlisted men Scott could count on were two or three hundred recruits being gathered in New York, and these men lacked training.[14] The militia Scott was authorized to call out, as his instructions recognized, might be difficult to restrain from rash actions.

Scott's instructions, narrowly interpreted, simply gave him the mission of guarding the frontier against further British incursions, and this was not a mission of handling civil unrest or enforcing federal law. Nonetheless, since the British made no more overt incursions, this real role proved to be that of attempting to prevent open breaches of American neutrality that would provoke such a British response. For this reason the military role in the Canadian border incidents must be counted as an instance of the use of federal military force in civil disturbances. In carrying out this role the military commander found it necessary to rely more on rhetoric and diplomacy than on the actual use of military force.[15]

Scott left Washington on 5 January 1838. He stopped in Albany long enough to persuade Governor Marcy and the New York adjutant general to accompany him, and the three arrived in Buffalo on 12 January. En route, Scott ordered the recruits gathered at various points to rendezvous at Fort Niagara to reconstitute the garrison there. At Buffalo he assumed control of a considerable body of militia called into state service and had the governor call up some additional companies; he does not seem to have asked for any militia from more remote sections of the state. Shortly after arriving in Buffalo he received supplementary instructions from Poinsett (dated on 11 January) urging him to make every attempt to halt filibustering despite the weakness of the laws covering such activities.[16]

On the thirteenth, Scott and Marcy paid a brief visit to the falls and the site of the *Caroline* incident at Schlosser. On the same day, Col. William J. Worth, one of the general's most trusted subordinates, arrived and Scott sent him out to Navy Island to see Van Rensselaer. The latter was by this time in a difficult military situation, under constant bombardment by Colonel McNab's force, now swelled to around 4,000 men. The Patriot chief asked Worth for an interview with Scott and the latter granted it, lecturing Van Rensselaer on the

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[13] Ibid., p. 5. *American State Papers, Military Affairs*, 7:901–02.

[14] *American State Papers, Military Affairs*, 7:594–603. *National Intelligencer* (Gales & Seaton, 1 February 1838), p. 2.

[15] See Scott, *Memoirs*, p. 308.

[16] Poinsett to Scott, 11 Jan 38, Records of OSW, NARA, Ltrs Sent, Mil Affairs, 18:220–21. Scott to Poinsett, 11 and 12 Jan 38, War Dept Register of Ltrs Recd by Secy War, 1800–1860, NARA, RG 107.



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rashness and unsound character of his enterprise. Whether because of Scott's admonitions or simply because he could hold out on Navy Island no longer, Van Rensselaer withdrew his bedraggled forces on 14 January 1838. Scott meanwhile had chartered every steamboat in the area on behalf of the federal government, forestalling Van Rensselaer's hopes of moving west to the Detroit area by water. When the Patriot commander arrived on the American shore, Scott was waiting with the U.S. marshal and a body of militia. The Patriots' arms and cannon were seized, Van Rensselaer arrested, and his troops dispersed. The Patriot "general" was, however, quickly released on bail, to resume his activities elsewhere.[17]

Scott then demonstrated that he was as determined to uphold American rights as he was to stop filibustering expeditions. He chartered a vessel, the *Barcelona*, very similar to the *Caroline*, by outbidding the Patriots, and manned her with regular soldiers. He then ran the vessel past the British batteries on the Niagara on 16 January. He had not told the British that the ship was in government service, only that any shot fired on her would be construed as "an act seriously compromising the neutrality of the two nations."[18] The British, though apprehensive that the *Barcelona* contained Patriot supplies, let it pass.

After the *Barcelona* incident, tensions eased somewhat and Scott turned to an arduous effort by "rhetoric and diplomacy" to calm the aroused passions of the people, arranging for public meetings where he could address them. He kept Colonel Worth in the Buffalo area as his immediate subordinate there, while he sent Col. John E. Wool to Vermont with delegated authority to call on the governor for militia if necessary. In Michigan, he placed Brig. Gen. Hugh Brady in command. Scott moved around constantly to all the points of danger, insisting in his addresses that though the people might resent British actions, only the national government could take legal and proper measures to deal with them. Colonel Worth used the chartered steamers, manned by recruits, to establish a patrol on Lake Erie.

Meanwhile, in Vermont, on 23 January after a tour of the border Wool reported that the area was quiet and no militia need be called. In Michigan Brady faced more serious difficulties. Governor Stephen T. Mason seemed sympathetic to the Patriot cause, and his cooperation could not be counted on; militia were unreliable, allowing their arms on one occasion "accidentially" to fall into the hands of a Patriot faction. But the Patriot leadership here was also inept and the invasion attempt at Bois Blanc late in January was as much a fiasco as Van Rensselaer's had been. Brady used the same tactic of chartering steamers that Scott had used

[17] Elliot, *Winfield Scott*, pp. 339–40.
[18] Ibid., p. 341. Scott, *Memoirs*, p. 317.

at Buffalo to hamstring the filibustering expedition, and the Canadians easily defeated the attempt. While Brady received authority from Poinsett and Scott to call Michigan militia into the federal service, he complained to Scott that the militia were disaffected and asked for regulars. The Michigan legislature also urged Governor Mason to request regulars to protect the frontiers. Scott accordingly, with the Buffalo area quiet, dispatched Colonel Worth to Detroit with 250 regulars on two of his steamers. Worth's contingent arrived on 29 January, and the men were stationed at the various posts and forts in the area. Worth reported back to Scott that the Patriots had been dispersed, and he soon returned to join Scott at Buffalo, the steamers resuming their patrol on Lake Erie.[19]

With the whole frontier seemingly quiet by the end of January, Scott returned to Albany on 8 February and proposed, with Poinsett's consent, to return to Washington. But he got no farther than New York City before the reports of a new Patriot offensive, timed to coincide with Washington's birthday, brought him quickly back to Buffalo. At Scott's request Governor Marcy recalled two militia battalions into service, and at Colonel Worth's direction these troops were posted at Clayton and Cape Vincent on the Saint Lawrence frontier to prevent excursions across the line from either side. The War Department, feeling a new sense of urgency, ordered a sizable detachment of the 2d Artillery from Florida to Buffalo. But Van Rensselaer, in charge of the advance in the central sector, proved as inept as before and the whole expedition collapsed. Scott then hurried by sleigh to Michigan, where Brady was facing another Patriot effort to invade Canada, a detachment of 150 men having moved across the ice to Fighting Island in the Detroit River on 24 February. Brady first informed the Canadian authorities of the occupation and then had his men mark the boundary line on the ice with small red flags. The Patriots were defeated in a series of skirmishes, and as they retreated, militia under Scott and Brady disarmed them. As they scattered, Scott attempted to enlist some of them in the U.S. Army, to divert their fighting energies into more constructive channels.[20]

Meanwhile, trouble broke out in Vermont as a third section of the Patriot army prepared to attack Canada. On 25 February 1838 a Patriot force raided the arsenal across the state border at Elizabethtown, New York, and escaped with 1,000 muskets. The keeper of the arsenal applied to Wool for aid, and Wool had Governor Jenison call out three companies of militia infantry and thirty or forty mounted men. Wool deployed these troops carefully along the frontier intercepting several loads of munitions and taking the Patriot leader into custody. Other Patriots, however, broke into state arsenals at Batavia and Watertown, New York, and with these arms managed to cross the border on 28 February and proclaim the Independent Republic of Lower Canada. But they retreated next day in the face of a superior force of British regulars and Canadian militia; Wool met them at the border with his militia and allowed them to enter the United States only if they would surrrender themselves and their arms. About 600 men surrendered to Wool at Altburg, Vermont, on 1 March 1838; three cannon, a large amount of ammunition, and 1,500 stand of small arms were returned to the state arsenals in New York. The two ringleaders were turned over to the state authorities for violation of the neutrality laws, and Wool disbanded all the militia except for two companies.[21]

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[19] War Dept Register of Ltrs Recd, 1800–1860, RG 107, NARA. *Niles National Review*, 53:353, 386.

[20] Correspondence in War Dept Register of Ltrs Recd, 1800–1860, NARA, RG 107.

[21] Ibid., H. Rpt. 126, p. 2.

With the collapse of this ambitious undertaking, Scott left the area to commence a new task, the removal of the Cherokees. When the border flared up again as a result of the sinking of the *Sir Robert Peel,* a British steamboat, on 28 May 1838 and a simultaneous effort to reoccupy Navy Island, the War Department dispatched Maj. Gen. Alexander Macomb, commanding general of the Army, to the scene. By this time he had a new neutrality law, passed on 10 March 1838 at Van Buren's behest, to enforce. While the new law did not meet Van Buren's wishes in their entirety, it did strengthen the law against filibustering and provide for specific penalties, including seizure of property, for persons involved. It also specifically authorized the president to use both regulars and militia to stop expeditions from crossing the border. It granted no powers, however, to federal officials to halt enlistments in projected expeditions, and cumbersome legal requirements restricted the powers of civil authorities to deal with these matters.[22]

Much of the work of dealing with the flare-up in mid-1838 had to be handled by New York militia called out by Governor Marcy, though additional regular recruits from New York City and Fort Monroe were rushed to the area. Many of the Patriot bands dispersed into the Thousand Islands and the militia had difficulty finding them. An investigation by Governor Marcy pointed again to the unreliability of the militia and the need for regulars to enforce the neutrality laws. The cry for additional regulars was heard all along the border, and to accomodate it Van Buren asked for an increase in the size of the Regular Army. Congress again granted him half a loaf, passing a compromise bill on 5 July 1838 that increased authorized strength from 8,069 to 12,379 men, largely by expanding existing organizations, but also by providing for the 8th Infantry Regiment, a new one to be stationed along the northern frontier.[23]. And in mid-July additional companies of the 1st and 2d Regiments of Artillery were moved from Georgia to the northern frontier. By August 1838 Macomb had a force of some 2,000 regulars along the border, and deployment on this scale was to be continued until 1842.[24]

Poinsett instructed Macomb on 11 June, while he yet had only scattered detachments of regulars, to distribute his forces at the most exposed points, to maintain American neutrality, and to clean out the "pirates." Later Poinsett directed him to station a guard of regulars at each river ferry and each port of entry on the lakes to stop further outrages against the Canadians. In practice the troops were concentrated along the Niagara and Detroit frontiers and around Sackets Harbor, detachments being used for whatever duty was required.[25] There were never enough regulars to end the reliance on the militia on certain occasions, but from mid-1838 onward the regulars did carry the main load of enforcing the neutrality laws.

Macomb returned to Washington in August 1838, leaving Worth and Brady in charge of the frontier. In November Worth had to deal with the Hunters' attempt to invade Canada at Prescott. He arrived at Ogdensburg opposite Prescott with two companies of U.S. troops on 12 November, accompanied by the U.S. marshal. He at once confiscated all the vessels

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[22] *5 Statutes at Large* 212–14. The duration of the law was limited to two years but it was later to be periodically renewed and was still on the books when the *Revised Statutes* were first assembled and published in 1874.

[23] 5 *Statutes at Large* 256.

[24] Corey, *Crisis of 1830–42,* p. 103.

[25] *Correspondence on Attack on the British Steamboat* Sir Robert Peel *and American Steamboat* Telegraph, in *Consequence of Disturbances in Canada,* 25th Cong., 2d sess., H. Ex. Doc. 440, ser. 331, pp. 22–25; *Report of the Secretary of War for 1839,* pp. 70–71.

the Patriots had been using and cooperated with the British by using these vessels to patrol the river and prevent reinforcements from reaching the Patriots. The British easily drove back the invasion attempt, and the Patriot bands were, as usual, dispersed. Worth's troops then turned their attention to cleaning out the pirates in the Thousand Islands, this time with some success.

This new attempt, however, alarmed Van Buren and on 21 November he issued a new and stronger proclamation condemning all interference in Canadian affairs and again warning those involved not to look to the United States for protection. This time he called on every officer, civil and military, as well as each individual citizen, "to use every effort in his power to arrest for trial and punishment every offender against the laws providing for the performance of our obligations to the other powers of the world."[26] Secretary of War Poinsett also immediately dispatched an express to Winfield Scott, ordering him back to the Canadian border, and Scott arrived on 6 December 1838, in time to get to Detroit to assist Brady in suppressing the last serious attempt at invasion in that area. The general then undertook another whirlwind tour in an effort to restrain the volatile border population and to preserve American neutrality. Using government funds, he also helped to establish a secret service, a system of spies who penetrated the Hunter lodges and reported news of Patriot plans. And he adopted a standard procedure whereby the British officials in Canada were informed of what was afoot.[27]

These methods were largely successful in keeping the efforts of 1839 at a minimum, though Scott found it necessary to make additional tours during the year, and the troop deployments were maintained despite some impulse to reduce them. From December 1839 until April 1841 the northern frontier remained relatively tranquil. Then there was a final outbreak of Patriot activity in 1841 in connection with the trial of Alexander McLeod, a deputy sheriff of Niagara, Canada, who openly boasted in a border tavern of having killed an American aboard the *Caroline*. In consequence of his boast, he was seized on 12 November 1840 and held at Lockport, New York, without bail to await trial for murder. Rumors began to circulate of an attempt by the Hunters to capture and kill McLeod, something that might easily precipitate war. Other rumors predicted an attempt by Canadians to rescue him. The federal government once again moved to institute measures of extreme vigilance as the date of McLeod's trial in October approached. Scott made another tour in September, President John Tyler issued a new proclamation, and military detachments were prepared to guard McLeod. But in the event the trial passed quietly and McLeod was acquitted when it became apparent that his boast had been idle. The last feeble display of Patriot sentiment was over. Militia called for in the emergency were disbanded, and early in 1842 the regular troops, except for skeleton forces, were moved to the western frontier.[28]

The Dorr Rebellion, 1842

President John Tyler thought the Dorr Rebellion in Rhode Island to be the "first occasion so far as the government of a State and its people are concerned on which it became necessary to consider the propriety" of federal military intervention under the constitutional

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[26] Richardson, *Messages and Papers of the Presidents*, 4:1699–1700.

[27] Elliot, *Winfield Scott*, p. 357.

[28] Tyler proclamation is in Richardson, *Messages and Papers of the Presidents*, 4:1925–26. Scott to Secy War Bell, 15 and 25 Sep Sep 41, War Dept Confidential and Unofficial Ltrs Recd, 1832–1841, NARA, RG 107.



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guarantee of a republican form of government and protection against domestic disorder.[29] Actually it was not, for President Jackson had responded to a state request in the Williamsport affair in 1834 and Van Buren had "considered the propriety" of responding in the Buckshot War. Yet the Dorr Rebellion involved issues of far greater import than either of these instances, and President Tyler's actions in the affair set a precedent that was confirmed by judicial decision in the case of *Luther* v. *Borden.*

The Dorr Rebellion in 1842 was a product of agitation against the outmoded system of government in that state. Rhode Island was still governed under a charter granted by Charles II in 1663, no state constitution ever having been written. Only freeholders, persons possessing property worth at least $134, and their eldest sons, were permitted to vote, and representation in the state's General Assembly was highly inequitable. The General Assembly was almost omnipotent, exercising virtually complete control over the executive and the judiciary. The agitation for reform reached a peak in 1841 and the assembly was obliged to call a constitutional convention for November of that year to draw up a new constitution for the state. The suffragists, as the reformers were called, fearing that any convention called under the aegis of the existing assembly would fail to provide the sweeping reforms they desired, issued their own call for a People's Convention to meet a month earlier.

Both conventions met as scheduled and drew up constitutions providing for the extension of the suffrage and for reapportionment of the legislature. There was in fact little difference between them, though the "Landholders' " proposals retained more restrictions on voting. Without sanction from the existing government, the People's Constitution was submitted to a vote of all male citizens over twenty-one on 27 December 1841 and won an overwhelming majority of those voting. The assembly refused to accept the results of this unsanctioned election and proceeded to submit the Landholders' Constitution to a vote on 23 March 1842 in which all who would be granted the franchise under the new document were permitted to vote. In this election the suffragists united with the ultraconservatives to defeat the proposed constitution by a small majority. Both factions then called for elections to choose new state governments, the suffragists setting their date as 18 April, the existing or charter government, 20 April. Meanwhile, the existing assembly passed a so-called Algerine Act on 28 March providing for fine and imprisonment of any who participated in the unsanctioned election, and declaring that any person assuming office under the People's Constitution would be deemed guilty of treason and punished by life imprisonment. Governor

[29] Tyler to Gov of Rhode Island, 11 Apr 42, H. Ex. Doc. 225, 28th Cong., 1st sess., *Presidential Message on Employment of Troops in Rhode Island,* ser. 443, p. 11.

Samuel W. King issued a proclamation on 4 April proscribing the efforts of the suffragist group.[30]

On the same day the proclamation appeared, Governor King also addressed the first of a series of requests to President Tyler for federal intervention in Rhode Island to prevent domestic violence and dispatched a three-man delegation to Washington to present his case more fully. King argued that Tyler should take precautionary measures in order to ensure the protection stipulated under the Constitution, including the issuance of a "cease and desist" proclamation and the dispatch of "a military officer to act under the authority of the United States." "The Government of the United States," King argued, "has the power to *prevent*, as well as to defend us from, violence."[31]

The three commissioners presented the governor's views to the president in greater detail, and apparently won some assurances that he would intervene if necessary to uphold the Rhode Island charter government. But Tyler, in his formal reply to King, refused to take any immediate action, "no power is vested in the Executive of the United States to anticipate insurrectionary movements against the Government of Rhode Island, so as to sanction the interposition of military authority." He promised that if an insurrection should actually take place and a requisition should be made to him in proper form by "that government which has been recognized as the existing government of the State through all time past" he would furnish the protection promised under the Constitution.[32] And the War Department ordered the federal garrison stationed at Fort Adams near Newport, Rhode Island, to place a guard on all exposed arms or ammunition depots in the vicinity.[33]

King was sufficiently encouraged by Tyler's reply, in any case, to attach it to a new proclamation issued to the people of Rhode Island, and it seems likely that the president's recognition of the charter government brought over to its side many who were wavering. The suffragists, nevertheless, proceeded to hold their elections on 18 April and Thomas Wilson Dorr was elected governor. At the regular election on 20 April, in which only freeholders could participate, Samuel W. King was again chosen governor. From 20 April to 3 May the state remained in the strange position of having two opposing governments, each claiming to be the legitimate state authority and each ignoring the other. The charter government made no arrests under the Algerine Law though the assembly passed an act authorizing Governor King to protect public property and fill militia vacancies, and King saw to it that arms and ammunition were secured and the loyal militia at least partially prepared for action.[34]

Meanwhile, the federal government took certain precautionary measures. On 26 April the War Department ordered two artillery companies from Fort Monroe, Virginia, to Fort Columbus in New York harbor, and on 2 May ordered two of the original companies at Fort Columbus to Fort Adams. This step raised the total force at Fort Adams from two compa-

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[30] This brief account is based on Arthur M. Mowry, *The Dorr War* (Providence: Preston & Rounds Co., 1901), pp. 94–165. Mowry was for many years the standard work on the Dorr Rebellion and is still the principal source for the facts of the rebellion. Two modern works, Marvin E. Gettlemen, *The Dorr Rebellion: A Study in American Radicalism 1833–1849* (New York: Random House, 1973) and George M. Dennison, *The Dorr War, Republicanism on Trial* (Lexington: University of Kentucky Press, 1976), offer a good deal more interpretation on economic, social, and constitutional issues involved.

[31] King to Tyler, 4 Apr 42, H. Ex. Doc. 225, p. 9–10.

[32] Tyler to King, 11 Apr 42, ibid., p. 11.

[33] W. G. Freeman, Asst AG to Maj M. M. Payne, CO, Fort Adams, 11 Apr 42, ibid., p. 54.

[34] Mowry, *The Dorr War*, p. 144. Francis Bowen, *The Recent Contest in Rhode Island* (Boston: Otis Broaders & Co., 1844), p. 33.

nies (10 officers and 109 enlisted men) to four (21 officers and 281 enlisted men). While no explanation accompanied the orders, it was obvious to everyone in Rhode Island that the purpose of the move was to support the charter government. And General Winfield Scott, now commanding general of the Army, directed Maj. M. M. Payne, the commander of Fort Adams, to obtain such information as he could about the situation in Rhode Island by making daily inquiries in Newport and by sending a trusted observer, preferably a civilian, to watch the situation in Providence. Payne was instructed to report daily to the secretary of war and General Scott.[35] Then on 5 May Scott ordered Col. James Bankhead from Fort Columbus to Fort Adams, there to "remain until all appearance of domestic violence shall have disappeared."[36]

Inauguration ceremonies for the two sets of state officials took place early in May—the Dorrite officials were invested in ceremonies at Providence, the state capital, on 3 May, while the charter government authorities took office the next day with ceremonies at Newport. A portion of the state militia, about 500 men, turned out in uniform for the swearing in of Dorr and the members of his assembly. The Dorrites made no attempt to seize the locked state house, and the assembly met for only two days in an unused foundry building. It passed a resolution announcing formation of the new government, instructed Dorr to transmit the news to Washington, and then adjourned, leaving the entire responsibility for the Dorrite government on Dorr himself.

Meanwhile, the newly elected charter government assembly, in session at Newport, passed a resolution declaring "that there now exists in this State, an insurrection against the laws and constituted authorities thereof," and making a requisition on the president "forthwith to interpose the authority and power of the United States to suppress such insurrectionary and lawless assemblages, to support the existing government and laws, and protect the State from domestic violence."[37] Governor King sent this resolution on to Tyler on 4 May, adding his own plea for intervention, and dispatched a new two-man delegation to Washington to argue his case.[38]

Tyler ignored the notification from Dorr, but refused to intervene in response to King's plea, saying that from information reaching him he believed that "the lawless assemblages . . . have already dispersed, and that the danger of domestic violence is hourly diminishing, if it has not wholly disappeared." There is good reason to believe that Tyler was relying on the information furnished the War Department by Payne and Bankhead. In any case he again assured King he would act in case of a real insurrection, which he thought only a "remote possibility."[39] And in a private letter to the governor, Tyler urged that King ask the charter assembly to issue a general amnesty and pardon on condition of a return to allegiance, and follow it up with a call for a "new convention upon somewhat liberal principles."[40]

King agreed to follow the course recommended by Tyler, and did so in the end, but neither side at this point was willing to compromise. Dorr made a trip to Washington, where

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[35] Asst AG to Col James Bankhead, 26 Apr 42; War Dept GO no. 33, 2 May 42; Asst AG to Maj Payne, 25 and 26 Apr 42, H. Doc. 225, pp. 55–58.

[36] R. Jones, AG, to Col J. Bankhead, 5 May 42, ibid., p. 57.

[37] R. I. General Assembly, May sess., 1842. H. Doc. 225, p. 25.

[38] King to Tyler, 4 May 42, ibid., p. 25.

[39] Tyler to King, 7 May 42, ibid., pp. 26–27.

[40] Tyler to King, 9 May 42, ibid., p. 28.



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he found little support, and then moved on to New York City, where he was at least promised quite a bit, including two companies of New York militia to provide an armed escort back to Providence. Encouraged by his reception in New York, he returned to Rhode Island on 16 May, where he was welcomed by a crowd of about 3,000 in Providence. There he issued a proclamation saying he would appeal to his friends in both Rhode Island and New York for aid "so soon as a soldier of the United States shall be set in motion, by whatever direction, to act against the people of this state."[41] The following day he was able to gather together a body of militia who seized several old cannon, relics of the Revolution, from a local armory. That night they marched on the Providence arsenal where loyal militia had been gathered as defenders and demanded its surrender. When the militia commander refused, Dorr gave the order to fire the cannon, but the old pieces simply would not fire. Within a day or two his whole force dispersed, and the suffragist leader, discouraged and disheartened, returned to New York. Governor King issued a warrant for his arrest and asked the governors of the neighboring states to do likewise. Governor William H. Seward of New York and Governor John Davis of Massachusetts complied, but the governors of Connecticut and New Hampshire refused. In any case, Dorr moved around between Connecticut, New York, and New Hampshire and was not apprehended. Rumors soon reached Rhode Island that he was enlisting men and collecting arms in the neighboring states in order to challenge once more the authority of the charter government.

Alarmed by these reports, on 25 May King penned a third request to Tyler for federal aid, expressing confidence that Rhode Island militia could handle any opposition within the state, but saying that should "the bands now organizing in Massachusetts, Connecticut, and New York . . . make the incursion which they threaten, we have reason to apprehend a civil war of the most destructive and vindictive character." He asked Tyler to station a "sufficient body of troops" at Fort Adams "to be subject to the requisitions of the executive of this State whenever, in his opinion, the exigency should arise to require their assistance."[42] Tyler again refused to honor King's request, not believing an invasion from outside the state imminent. At the same time he had Secretary of War John C. Spencer instruct Colonel Bankhead at Fort Adams, Brig. Gen. John E. Wool in New York, and Brig. Gen. Abraham Eustis in Boston to employ "a private or confidential person or persons" to find out the true

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[41] Ibid., pp. 31–32. William A. Mowry, "Thomas Wilson Dorr," *Rhode Island Anniversary 1909* (Providence: Thomas W. Bicknell, 1909), pp. 64–67.

[42] King to Tyler, 25 May 42, H. Doc. 225, p. 33.

state of affairs in their respective areas and to report to the secretary of war. But in the confidence that King was merely an alarmist, the garrison at Fort Adams was reduced by one company.[43] Further information gathered at Tyler's request by Daniel Webster appeared to confirm this belief. "Under all circumstances," wrote Webster's confidential informant, "I think you will come to the opinion entertained by seven-eights of all the people of Providence, that, deserted by his followers at home, and disgraced in the estimation of those who sympathized with him abroad, Mr. Dorr has it not in his power to do any further serious mischief."[44]

The estimate turned out to be wrong, for Dorr had not yet shot his bolt. By 10 June bodies of suffragist militia were again gathering in various Rhode Island towns, and they began a serious campaign to collect weapons and ammunition. Several cannon disappeared mysteriously from unguarded depots; someone stole powder from a militia arsenal; and rumors spread of the arrival of both men and arms from other states. Dorr himself returned to the state on 22 June and sent out orders to convene a council of his militia officers at Crepachet to decide whether to employ armed force.[45] Four men captured by the insurgents at Crepachet on 23 June (two had in fact been sent by the governor to gather information) and then released returned to Providence badly frightened, reporting that by nightfall Dorr expected to have 2,000 men at Crepachet and Woonsocket, that cannon were expected to arrive from New York, and that an additional force in Connecticut was ready to come to the aid of the suffragists on receipt of a secret signal.[46] Though much of this was unfounded rumor, it created a near-panic among the citizens of Providence. Colonel Bankhead, who had been on the way to Fort Columbus, New York, hastily returned to Newport, reporting the dangerous situation in some alarm to the secretary of war.[47]

Governor King, meanwhile, mobilized his militia for the defense of the capitol at Providence, calling for companies from all parts of the state to report there. Simultaneously, he appealed for the fourth time to Tyler, reporting between 500 and 1,000 Dorrite troops around Crepachet and Woonsocket with the civil authorities in that area powerless to cope with the situation, "the crisis has arrived when the aid demanded by the Legislature of the State from the Federal Government is imperatively required."[48]

For the fourth time, Tyler refused to intervene, relying on a technicality that appears to have been simply a subterfuge for delay. He insisted that since the May session of the Rhode Island Assembly had adjourned and the legislature had now reconvened and was in session, a new requisition from the assembly was required under the Constitution and the laws. He held to his position in the face of an urgent appeal from Rhode Island's representatives in Congress on 27 June that pointed out that the legislature legally was in continuous session and hence its original request was valid.[49]

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[43] For the president's instructions and those of the secretary of war to Colonel Bankhead and General Eustis see ibid., pp. 34–35.

[44] [Unknown] to Webster, 3 Jun 42, ibid., pp. 37–38.

[45] Col Bankhead to Secy War, 22 Jun 42, ibid., p. 38–39, Jacob Frieze, *A Concise History of the Efforts to Obtain an Extension of Suffrage in Rhode Island* (Providence: B. F. Moore, 1842, p. 102); Mowry, *The Dorr War*, p. 208.

[46] See depositions of Charles F. Harris, Samuel W. Packham, Charles J. Shelley, and John C. Keep in H. Ex. Doc. 225, pp. 41–44.

[47] Bankhead to Spencer, 23 Jun 42, H. Doc. 225, p. 44–45.

[48] King to Tyler, 23 Jun 42, ibid., p. 41.

[49] Tyler to King, 25 Jun 42; James F. Simmons, Williams Sprague, and Joseph L. Tillinghast to Tyler, 27 Jun 42, H. Doc. 225, pp. 41–42. See Rich, *Presidents and Civil Disorder*, p. 61.

On that same day, however, Colonel Bankhead at Fort Adams reported the alarming news that Dorr had 800 to 1,000 armed men at Crepachet, with about ten or twelve cannon, and 1,500 more without arms; that the governor had raised a force of 2,000 at Providence to oppose them; and that "it seems impossible to avoid a conflict between the contending parties without the interposition of a strong regular force." Bankhead thought a force of 300 regulars would ensure success, "probably without bloodshed."[50] Evidently Tyler decided that the time for action had come, but still he moved with the greatest caution. He dispatched Secretary of War Spencer to Rhode Island with a "cease and desist" proclamation to be issued if a further request for intervention was received "in conformity with the laws of the United States" and with authority to call on the governors of Massachusetts and Connecticut for militia if necessary to end the insurrection. As far as the regulars were concerned, "the troops in the vicinity of Providence may with propriety be placed in such positions as will enable them to defend that city from assault."[51]

As it turned out, the issue had been decided even before Tyler issued his instructions. Dorr's council decided on immediate action, but contrary to the rumors he never was able to rally more than 250 men. This small force gathered at Crepachet and fortified a rise known as Acote Hill. Meanwhile, Governor King assembled at Providence a force of around 3,000 including, ironically enough, a company of riflemen from New York City. The assembly proclaimed martial law in Rhode Island on 26 June, and on the twenty-seventh, orders were given to the militia to march on Crepachet. When they arrived they found it deserted. Dorr had finally come to the conclusion that the people of Rhode Island would not support violence; he disbanded his forces and fled to Connecticut. Dorr's rebellion was over without either side firing a shot. Secretary Spencer arrived in Providence about 1 July, finding that he only had to inspect King's militia and congratulate the people on the excellence of their troops and the happy outcome of the whole affair.[52]

Under the martial law proclaimed by the assembly on 26 June, there were mass arrests and reprisals, though in the end the trials dragged on for months and, as passions cooled, the cases against most of the defendants were dismissed. Dorr was an exception. He returned to Rhode Island in October 1843, where he voluntarily surrendered himself and was convicted in April 1844 of treason with its mandatory sentence of life imprisonment. After a year in prison, he was pardoned by the state legislature, and several years afterward his civil and political rights were restored. But his imprisonment had broken his health and he died in 1854 at the age of 49. Meanwhile, Rhode Island got a new constitution, approved in November 1842, providing for practically universal manhood suffrage.

President Tyler was vigorously attacked by Dorr's supporters, including Democrats in Congress, for his role in supporting the charter government despite his fourfold refusal to honor Governor King's requests for troops. He defended himself with equal vigor, but it remained for the Supreme Court, in the case of *Luther* v. *Borden*, to put the final stamp of approval on Tyler's actions.[53]

On 29 June 1842 a band of militiamen under command of Luther M. Borden broke into

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[50] Bankhead to Secy War, 27 Jun 42, H. Doc. 225, p. 46.

[51] Tyler to Secy War, 29 Jun 42, with text of proclamation, ibid., pp. 46–47.

[52] Mowry, *The Dorr War*, pp. 208–09, *Niles' Register* 62 (16 July 1842): 307.

[53] *Memorial of Democratic Members of Legislature of Rhode Island on the Interference of the Executive in the Affairs of Rhode Island*, 28th Cong., 1st sess., H. Rpt. 546, ser. 447.

the house of one Martin Luther, a Dorr partisan, under the martial law proclaimed by the assembly. Luther had fled, but the militiamen did much damage in searching his house and insulted his wife. Luther later brought suit for trespass against Borden. The case was eventually carried to the U.S. Supreme Court, where the decision of the lower court against the plaintiff was upheld in an opinion rendered by Chief Justice Roger B. Taney. The government of a state, Taney said, had the power to protect itself from destruction by armed rebellion by declaring the necessary exigency. Facing the question of which was the legitimate government in Rhode Island, he cited the constitutional guarantee of "a republican form of government" and ruled that it rested with Congress to decide "what government is the established one in a State," since it must do so "before it can determine whether it is republican or not." Its decision would then be binding on other branches of the federal government and could not be questioned by the judiciary. But Congress had, he added, by the act of 28 February 1795, delegated to the president the power to intervene to fulfill the other constitutional guarantee to protect the states against domestic violence on the application of the legislature or the executive. Consequently, the president must decide whether the exigency had arisen "upon which the Government of the United States is bound to interfere." To exercise this power he "must determine what body of men constitute the legislature, and who is the governor, before he can act."

> If there is an armed conflict, like the one of which we are speaking, it is a case of domestic violence, and one of the parties must be in insurrection against the lawful government. And the President must of necessity, decide which is the government and which party is unlawfully arrayed against it before he can perform the duty imposed on him by act of Congress.

The judiciary, Taney said, had no right to interfere with the president's decision in this type of case.

> It is true that in this case the militia was not called out by the President. But upon the application of the governor under the charter government the President recognized him as the executive power of the State, and took measures to call out the militia to support his authority if it should be found necessary for the General Government to interfere; and it is admitted in the argument that it was the knowledge of this decision that put an end to the armed opposition to the charter government and prevented any further efforts to establish by force the proposed constitution. The interference of the President, therefore, by announcing his determination, was equally as effectual as if the militia had been assembled under his orders; and it should be equally authoritative, for certainly no court of the United States, with a knowledge of this decision, would have been justified in recognizing the opposing party as the lawful government, or in treating as wrong doers or insurgents the officers of the government which the President had recognized and was prepared to support by armed force. . . . When citizens of the same state are in arms against each other and the constituted authorities unable to execute the laws, the interposition of the United States must be prompt or it is of little value. The ordinary course of proceedings in courts of justice would be utterly unfit for the crisis. And the elevated office of the President, chosen as he is by the people of the United States, and the high responsibility he could not fail to feel when acting in a case of so much moment, appear to furnish as strong safeguards against a willful abuse of power as human prudence and foresight could well provide. At all events, it is conferred upon him by the Constitution and the laws of the United States, and must, therefore, be respected and enforced in its judicial tribunals.[54]

The Patriot War led to active federal military intervention to enforce neutrality, in much the tradition of Washington's intended use of military force in 1793 and 1794. In the end

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[54] *Luther* v. *Borden*, 7 Howard 1.

it produced a stronger law to enforce and a clearer authority for the president to use military force in such instances—an authority Washington had lacked. The Dorr Rebellion in Rhode Island, on the other hand, produced no active use of military force to support a state government against threatened violent opposition, but the threat of its use clearly played a role in the demise of Dorr's partisans. And it led to a clear enunication by the Supreme Court of the right of the president, under the Constitution and the laws of 1795 and 1807, to decide in case of conflict between two competing governments within a state and to use military force to support his choice. This dictum was to prove an important tool in the hands of future presidents, particularly during the Reconstruction period. The neutrality legislation, on the other hand, was to be used only once again—in a similar threat of filibustering expeditions into Canada in 1866–1867.

CHAPTER 7

Fugitive Slaves and Vigilantes: The Army as *Posse Comitatus*

A Marshal of the United States, when opposed in the execution of his duty, by unlawful combinations, has authority to summon the entire able-bodied force of his precinct, as a *posse comitatus*. The authority comprehends, not only bystanders and other citizens generally, but any and all organized armed forces, whether militia of the state, or officers, solders, sailors, and marines of the United States.

—— Opinion of Attorney General Caleb Cushing, 27 May 1854.

The Mexican War brought a vast extension of American territory, and along with it, controversy over the spread of slavery into the lands newly acquired, an issue that would eventually lead to the Civil War. The main instances that required intervention of federal military force in domestic matters in the 1850s involved either problems engendered by the slavery question or difficulties in maintaining order or federal supremacy in the territories. In one case, Kansas, it was a mixture of both.

Enforcing the Fugitive Slave Law

The struggle over the slavery issue in the territories that began with the Wilmot Proviso in 1848 culminated in the so-called Compromise of 1850, which was, in fact, five laws passed separately by Congress. One admitted California as a free state; two others provided for the organization of Utah and New Mexico as territories under the doctrine of popular sovereignty, permitting their admission to the Union as slave or free states as their people might decide; a fourth abolished the slave trade in the District of Columbia; and the final one, the biggest concession to the Southern slave holders, was a stringent Fugitive Slave Law. This law, signed by President Millard Fillmore on 18 September 1850, put teeth into an original enactment of 1793 that fulfilled the constitutional provisions (Article 4, Section 2, Clause 3) that any person held to service or labor in one state escaping to another "must be delivered up on the claim of the party to whom such services or labor may be due." The law set up commissioners to be appointed by the U.S. circuit courts within their respective jurisdictions empowered (as were also the federal judges themselves) to issue certificates for the return of fugitive slaves on presentation of simple proofs of ownership. United States marshals were then bound to see that the fugitives were returned. The fugitive could not himself testify nor did he have the right of *habeas corpus*. The commissioners or judges were authorized to appoint special officers and call out the *posse comitatus* to assist as required.[1]

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[1] 9 *Statutes at Large* 462–65.

The Fillmore administration knew the law would be difficult to enforce because of widespread opposition in the free states, yet felt a heavy moral commitment to enforcing it because of concessions made by the Southerners in Congress to secure its passage. Very shortly after the law went into effect, open opposition did assert itself in Pennsylvania where the execution of a warrant was forcibly resisted and the *posse* summoned to aid the commissioner refused to act. The federal judge in the district wrote directly to President Fillmore "inquiring whether upon the recurrence of an obstruction to his process he will be entitled to call for the aid of such troops of the United States as might be accessible."[2] Fillmore held two cabinet meetings in the week following receipt of this letter "on the authority and duty of the President to use the Military force in the aid of the civil officer to execute the fugitive slave law." There was a unanimous agreement that it should be done, but some disagreement on how. Fillmore himself concluded that he had "an inherent executive power" to use troops "enforced by the Constitution, when it made the President commander-in-chief of the Army and Navy, and required him to take care that the laws be faithfully executed." By his interpretation, he did not have to rely, in calling out regulars, on the law of 1807 that required him first to issue a "cease and desist" proclamation. Not all the cabinet agreed with Fillmore's interpretation; some felt that the marshals might themselves call on members of the Army as citizens to form part of the *posse comitatus* authorized under the law. The cabinet decided upon an apparent mixture of the two views—to give the authority to U.S. marshals and their deputies to call for troops when a district judge or justice of the Supreme Court "should certify that in his opinion it was necessary." This direction, Fillmore wrote, was given to the commanding officer of the marines in Philadelphia.[3]

The major crisis arose in Boston, the center of abolitionist agitation, rather than around Philadelphia. There, on 15 February 1851, a group of blacks forcibly freed a fugitive slave known as Shadrach from confinement and spirited him away to Canada. The case created an uproar that embarrassed the administration greatly. On 17 February, Secretary of War C. M. Conrad sent explicit instructions to the commander of the troops in Boston Harbor.

> It is possible that the civil authorities may find it necessary to call in military force to aid in the execution of the law. If such should be the case, and the marshal or any of his deputies shall exhibit to you the certificate of the circuit or district judge of the United States in the State of Massachusetts, stating that in his opinion the aid of a military force is necessary to insure the due execution of the laws, and shall require your aid and that of the troops under your command as a part of the *posse comitatus*, you will place under the control of the marshal yourself and such portion of your command as may be deemed adequate to the purpose. If neither the circuit or district judge shall be in the city of Boston when the exigency above referred to shall occur, the written certificate of the marshal alone will be deemed sufficient authority for you to afford the requisite aid.[4]

On the next day Fillmore issued a proclamation calling upon all well-disposed citizens to rally to the support of the laws and commanding all officers of the government, civil and military, to aid and assist in quelling this combination against them in Boston, or any similar combinations in other places. He further instructed officers of the court to cause all persons involved in the rescue of Shadrach to be arrested.[5]

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[2] Fillmore to Secy State Daniel Webster, 20 Oct 50, *Millard Fillmore Papers*, ed. by Frank H. Severance, 2 vols. (Buffalo: Buffalo Historical Society, 1907), 1:334–35.

[3] Fillmore to Webster, 28 Oct 50, ibid., 1:335–36.

[4] Msg quoted in Wilson, *Federal Aid*, pp. 62–63.

[5] Richardson, *Messages and Papers*, 6:2645–46.

Meanwhile, the Senate passed a resolution asking the president for any information he might possess about the freeing of Shadrach, to set forth what means he had used to "meet the occurrence," and to state whether in his opinion any additional legislation was needed to execute the law more vigorously. In response Fillmore communicated to the Senate his proclamation and orders to the military commander in Boston. He accompanied these with a further elaboration of his theory of the inherent power of the president to use regular troops to enforce the laws. He set forth what he conceived to be a fundamental legal difference between the power to use regulars and militia in such exigencies. The Army and the Navy, he said, "are by the Constitution placed under the control of the Executive; and probably no legislation of Congress could add to or diminish the power thus given but by increasing or diminishing or abolishing altogether the Army and Navy." On the other hand he felt that the calling forth of the militia was governed by the law of 1795 and required a preliminary proclamation, not required in the case of regulars. He lightly dismissed the law of 1807 authorizing the president to use regular forces under the same provisions as the militia, saying that it "ought not be construed as envincing any disposition in Congress to limit or restrain this constitutional authority" of the president to use the Army and Navy to enforce the laws. He did ask for some clarification of the law by explicit acceptance of this doctrine; he also suggested that the president be relieved of the requirement of the proclamation before using militia to enforce federal law. And he pointed out that

> It is supposed not to be doubtful that all citizens, whether enrolled in the militia or not, may be summoned as members of a *posse comitatus*, either by the marshal or a commissioner according to law. . . . But perhaps it might be doubted whether the marshal or commissioner can summon as the *posse comitatus* an organized militia force, acting under its own appropriate officers, without the consent of such officers.

Fillmore thought Congress might consider legislation to make this possible.[6]

The Senate debated the president's message for two days before accepting Henry Clay's motion to refer it to the Judiciary Committee. The debate was acrimonious, revolving more around Southern aggrievement at the failure to enforce the law in Boston than the legal issues the president had raised. The Judiciary Committee in fact skirted these issues, the majority deciding that the executive officers of the government already had adequate power to enforce the law without further legislation. The marshals, the committee said, could summon the *posse comitatus*, and both militia and regulars in organized bodies could be used in it. "The committee are not aware of any reason that exempts the citizens who constitute the military and naval forces of the United States from like liability to duty. Because men are soldiers or sailors, they cease not to be citizens; and while acting under the call and direction of the civil authority, they may act with more efficiency, and without objection, in an organized form, under appropriate subordinate command." If the civil power, using militia and regulars as part of the *posse comitatus*, could not maintain the law, the committee report stated, then the president might have to resort to the laws of 1795 and 1807 to call forth the militia and active forces. Evidently they had in mind, in the latter instance, a larger type of disturbance in which local militia or active forces posted in the vicinity of the trouble would not suffice to restore order. The committee majority simply did not comment on Fillmore's claim to inherent power under the Constitution to call on the Army and Navy to enforce federal laws

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[6] Ibid., 6:2637–42.



FANEUIL HALL. *The historic assembly building in Boston was the scene of much of the abolition agitation surrounding the Fugitive Slave Law and the Thomas Sims case.*

without the restrictions imposed by the law of 1807.[7]

One member, Senator A. P. Butler of South Carolina, did comment. In a one-man minority report, he denied the inherent constitutional right to use regular troops that Fillmore claimed, contending that the president's powers were limited to those set forth in the laws of 1795 (militia) and 1807 (regular forces), and that in either case he had to issue the preliminary "cease and desist" proclamation. He opposed waiving the proclamation requirement in either case. "Justice and the occasion require me to say," he wrote, "that I do not believe the power contended for would be abused by the present Executive." But he warned, "The precedent for the direction of a mild and just President may be the rod of power for a military despot."[8] Butler's view would appear to be more in keeping with the intent of the framers and the legislative history of the acts of 1795 and 1807. They also conformed to the views Madison expressed to Jefferson at the time of the Burr Conspiracy, that he possessed no explicit powers to use regulars to suppress a domestic insurrection.[9]

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[7] S. Rpt. no. 320, 31st Cong., 2d sess., *Report on the Message of the President on the Case of Forcible Resistance to Execution of the Laws in Boston,* ser. 593. Congressional *Globe*, 31st Cong., 2d sess., vol. 23:660 and app. 292–324.

[8] Ibid.

[9] See above, Chapters 1, 2, and 4.

The Senate had really left the question moot, and no case arose that challenged Fillmore's interpretation of the law. His successor, Franklin Pierce, was to proceed along generally the same lines as Fillmore had laid down initially in enforcing the Fugitive Slave Law; that is, to authorize the use of troops on the request of a judge or commissioner. Meanwhile, Pierce's attorney general, Caleb Cushing, gave the *posse comitatus* doctrine enunciated by the Senate committee the sanctity of his legal blessing. In holding that the federal government was responsible for expenses incurred by U.S. marshals in employing local police, state militia, or others in the apprehending and safeguarding of fugitive slaves, Cushing went on to define formally the right of the marshal to use organized bodies of either militia or regulars as part of the *posse comitatus* on his own authority.

> A Marshal of the United States, when opposed in the execution of his duty, by unlawful combinations, has authority, to summon the entire ablebodied force of his precinct, as a *posse comitatus*.
>
> The authority comprehends, not only bystanders and other citizens generally, but any and all organized armed forces, whether militia of the state, or officers, soldiers, sailors, and marines of the United States.

The fact that the latter might be organized as military bodies, under the immediate command of their own officers, did not, he ruled, "in any wise affect their legal character. They are still the *posse comitatus*."[10]

Cushing based his opinion on the doctrine laid down by British Chief Justice William Mansfield in a case arising out of the Lord Gordon Riots in 1780. It was essentially a doctrine of British law that had previously not been recognized as applying in America, at least as far as the use of federal military force was concerned.[11] And if Fillmore's doctrine would permit the use of troops by the president to enforce the law without regard to congressional restriction, the Cushing Doctrine would allow a U.S. marshal to call on federal military forces in his district without any reference to the president whatsoever. That this seemed to encourage widespread use of the Army and Navy as police forces passed with little notice at the time and indeed the doctrine was to be little honored in practice until after the Civil War. But it did leave the questions of legality and procedure in the use of troops in civil disorders in a state of uncertainty that endured until the passage of the Posse Comitatus Act in 1878. It is one of the ironies of history that these quite loose doctrines about the legality of troop use were formulated to serve Southern interest in enforcing the Fugitive Slave Law; they would in the end be challenged by Southerners because of their widespread use in the post-Reconstruction epoch.

In fact, the use of troops to enforce the Fugitive Slave Law, either militia or regulars, was not extensive.[12] In Detroit, in October 1850, federal troops did assist the U.S. marshal

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[10] C. C. Andrews, ed., *Opinions of the Attorneys General of the United States* (Washington: Robert Farnham, 1856), pp. 272–74.

[11] For a contrary view, see Engdahl, "Soldiers, Riots, and Revolution . . . " *Iowa Law Review*, vol. 57, no. 1–73. Engdahl maintains that the Mansfield doctrine was known and recognized in America, that the makers of the Constitution and the laws of 1792, 1795, and 1807 assumed its existence as a premise. Under the doctrine, he says, "military troops . . . were used . . . as civilian assistants to civil officers in the enforcement of civilian laws until the time of the Civil War." There seems little support for this assumption in the actual history of the use of federal military force in domestic disorders set forth in the pages of this volume.

[12] This conclusion is based on the summary of cases in Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850–1860* (Chapel Hill: University of North Carolina Press, 1968, 1970). Campbell contends that the enforcement of the law in the North was quite good in those cases where slave owners

to prevent rescue of a recaptured slave by a mob. And in September 1851 when a riot broke out in Christiana, Pennsylvania, following an attempt by federal officers to capture a group of fugitive slaves, fifty marines were dispatched to the town. There they assisted in maintaining order while federal civil officials investigated the matter.[13] The only really important use of federal troops to enforce the Fugitive Slave Law was the Anthony Burns case in Boston in May 1854. This case apparently led Attorney General Cushing to issue his opinion on the use of federal troops as a *posse comitatus*, and it holds an important place in the history of the use of federal military force in domestic disorders.[14]

In the aftermath of the Shadrach case, five of his rescuers were put on trial but the jury could not agree and they were not convicted. The entire incident revealed that in Massachusetts the Fugitive Slave Law could be enforced only with difficulty. But the city and state authorities, as well as the U.S. judges, commissioners, and marshals, were put on notice that the national administration, in deference to Southern sentiment, expected herculean efforts to enforce the law in Boston. In early April 1851, one Thomas Sims was seized on a warrant issued by the U.S. commissioner and confined in the courthouse as Shadrach had been. An effort to rescue him failed, but during his hearing a large crowd gathered and an outbreak was feared. The entire city police force was put on duty, and a large body of militia placed in reserve in Faneuil Hall to render aid if necessary. After the commissioner had ordered his rendition, Sims was taken from the courthouse at 0500 in the morning in the center of a hollow square of 300 policemen while the militia stood by ready to assist. This large local effort (for which the federal government would pay) succeeded; Sims was placed on board a vessel bound for Savannah without any resistance. On 16 April 1851 Fillmore could write Webster congratulating him on the "triumph of law in Boston" without any assistance from federal troops.[15]

Three years later came the really serious eruption in the Anthony Burns case. Burns was a slave of Charles F. Suttle of Virginia who, while working as a laborer on the docks in Richmond, had stowed away on a ship and reached Boston where he found a job in a clothing store. Suttle was able to trace Burns through a letter written to his brother, and on 23 May 1854 he appeared in Boston with his agent William Brent and applied to U.S. Commissioner Edward G. Loring for a warrant for Burns' arrest under the Fugitive Slave Law. Commissioner Loring issued the warrant on 24 May on the false charge of jewel theft. Once Burns was lodged in the courthouse, as Shadrach and Sims had been, he was confronted by U.S. Marshal Watson Freemen with Suttle and Brent and he purportedly admitted that he had been Suttle's slave. This was really all the law required for his forcible return, but Boston abolitionist groups began to agitate against it. They obtained eminent legal counsel for Burns, the most notable being Richard Henry Dana, and set out to prepare a legal defense. Loring agreed to postpone a hearing, originally scheduled for 25 May, until Saturday the twenty-seventh. During the recess, with Burns under the guard of special deputies at the

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actually presented proof of ownership to judges or commissioners, and that the incidents of violence were the exception rather than the rule.

[13] On these episodes see Campbell, *Slave Catchers*, pp. 100, 114 and Jane H. Pease and William H. Pease, *The Fugitive Slave Law and Anthony Burns* (Philadelphia: Lippincott, 1975), p. 19.

[14] The Cushing opinion was issued on 27 May 1854 in the midst of the Burns affair. On the connection see Pease and Pease, *Fugitive Slave Law and Burns*, pp. 74–75.

[15] Severance, *Fillmore Papers*, 1:341. For an account of the Sims case see Thomas W. Higginson, *Cheerful Yesterdays* (Boston: Houghton Mifflin & Co., 1898), pp. 143–44.

courthouse, tension mounted. A vigilance committee composed of many prominent citizens of Boston made an attempt on Friday, 26 May, to free Burns by force. The effort was ill-organized and Marshal Freeman managed to stand it off with the assistance of about fifty special aides armed with cutlasses. One of the defenders was killed, and at least one of the attackers wounded. The arrival of the police and, incidentally, of a militia unit, the Boston Artillery, marching into the courthouse square on a nightly drill, really ended the attempt to free Burns. More importantly, the rescue attempt led to the active intervention of military force. Boston Mayor J. V. C. Smith, at the behest of the chief of police, called out Companies A and B of the Massachusetts Volunteer Militia. The companies arrived before midnight of the twenty-sixth and assisted in dispersing the crowd that remained. The mayor then stationed one of them in the courthouse and the other in the city hall. Their purpose, he said, was to keep the peace, not to aid in the return of the slave. They were thus, at first, not a part of the marshal's *posse comitatus*.[16]

While the mayor was summoning militia, Marshal Freeman sought the aid of regular military forces, following the formula prescribed by the secretary of war in 1851. He first got a statement from the federal judge of the district of Massachusetts, P. Sprague, that "an efficient posse comitatus" was necessary to assist in enforcing the laws of the United States in the case of Anthony Burns. He presented the certificate to the commander of the U.S. troops at Fort Independence in Boston Harbor, referring to Conrad's order of 17 February 1851 and requesting "all the military force at your disposal as soon as possible."[17] The commander promptly sent two batteries of the 4th Artillery (approximately 120 men under the command of Bvt. Maj. S. C. Ridgely) who were stationed at the courthouse by 0630 on the twenty-seventh, the day the hearing was scheduled to resume. Freeman sent a similar request to the commander of the Charlestown Navy Yard who dispatched approximately fifty marines. Feeling the need for high-level sanction, the marshal telegraphed President Pierce directly, asking approval for what he had done and the president promptly replied, "Your conduct is approved. The law must be executed."[18] At this point Attorney General Cushing enunciated his *posse comitatus* doctrine, in a long delayed reply to a query by the Secretary of the Interior (to whom the opinion was addressed) about a fugitive slave case that had arisen in Chicago some four months previously. A recent study of the affair characterizes it in reality as "a speedily drawn document designed to justify both the measures which Marshal Watson Freeman had already taken and subsequent steps which Pierce either ordered or approved."[19] It must be noted, however, that it was simply a reiteration, fully developed in legal language, of the pronouncement of the Senate committee in 1851.

In any case, on the morning of the twenty-seventh when the hearing resumed the courthouse was overflowing with soldiers, marines, militia, and police. The three companies of regular troops and marines guarded the doors and halls with loaded guns and fixed bayonets, while police and militia scattered around the square guarded the approaches. Anyone entering the courtroom had to pass three cordons of police and two of soldiers. The

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[16] Higginson, *Cheerful Yesterdays*, pp. 146–62. Charles E. Stevens, *Anthony Burns, A History* (Boston: John P. Jewett & Co., 1856), pp. 44–46. *The Boston Slave Riot and Trial and Anthony Burns* (Boston: Fetridge & Co., 1854).

[17] Wilson, *Federal Aid*, p. 77.

[18] Copies of both telegrams in Stevens, *Anthony Burns*, p. 305.

[19] Pease and Pease, *Fugitive Slave Law*, p. 75.

artillerymen from Fort Independence set up a fieldpiece loaded with grapeshot in the square. Marshal Freeman created a special civilian guard of 120 men, all deputized, drawn from onlookers. According to Defense Attorney Dana, most were of the lower orders of society. In this atmosphere the hearing resumed at 1000 on 27 May but was again recessed until 1100, Monday, 29 May.[20]

Troops, marines, the two companies of Massachusetts militia, and Boston police remained on duty at the courthouse over the weekend, weathering a barrage of stones from a mob that gathered on Saturday night. Between 2100 on Friday and midnight Saturday fifty people were arrested, of whom seventeen were jailed. Burns' trial resumed on Monday, 29 May, and continued for three days. It was adjourned on the third day, Wednesday, 31 May, until Friday, 2 June, when the commissioner was to announce his verdict. There was a great deal of doubt as to what action Loring would take, and the authorities, fearing another outbreak, increased their precautionary measures, with the three companies of Army regulars and marines remaining on duty. Feeling the need for a greater force, on 30 May District Attorney Benjamin F. Hallett and Marshal Freeman wrote Mayor Smith urging that Maj. Gen. Thomas F. Edmands' entire brigade of the Massachusetts Volunteer Militia be posted in Boston. They claimed they were not asking for militia to execute the Fugitive Slave Law, but only to preserve the peace of Boston and to suppress organized rebellion. They argued that the expenses incurred by the militia would be met by the federal government. On 31 May they repeated their request, urging that the entire police force of Boston, plus the full brigade of militia, be called out to preserve order. After some vacillation, on 31 May Smith did ask Edmands to call out his whole brigade of twenty-two companies of militia to keep order in the city. The units were now incorporated into the marshal's massive *posse comitatus*, thus enlisting the militiamen, in fact though not in form, in the service of the United States.

Meanwhile, Freeman and Hallett sought to enlist the aid of more regulars, telegraphing General Winfield Scott, commanding general of the Army, at his New York headquarters on 29 May, saying that a larger force was necessary to "execute the laws of the United States." They requested that he forward forthwith all troops he could spare to Fort Independence to report to the marshal. Neither Scott nor any officer in New York had received any instructions that he should furnish troops to Boston on the request of a U.S. marshal; and the *posse comitatus* doctrine that had just been announced by Cushing, even had Scott known about it, hardly covered troops that were not in the marshal's area of jurisdiction. Scott felt he had no authority to act without the president's orders and referred the request to the secretary of war. Meanwhile, a force of the 4th Artillery at Fort Hamilton, New York, was readied for dispatch. Scott received no direct answer from Washington. Instead, on 31 May President Pierce ordered Adjutant General Samuel Cooper to Boston, and from that point Cooper telegraphed Scott telling him to hold the troops in readiness pending orders from Washington.[21]

The call never came, for the existing forces gathered in Boston, bolstered by the additional militia, proved adequate to see Anthony Burns delivered safely to the ship that was to take him back to slavery. The drama was played out to its end on 2 June when Loring rendered

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[20] Diary of Richard H. Dana in Charles Francis Adams, *Richard Henry Dana, a Biography* (Boston: Houghton Mifflin Co., 1980), 1:272, 273, 305.

[21] See exchanges in H. Ex. Doc. 30, 44th Cong., 2d sess., 1878–79, *Use of Federal Troops in Certain Southern States*, pp. 89–91, ser. no. 1755.

his decision at 0900 that Burns must be returned to his master, since he had admitted he had been his slave. Whether or not with advance knowledge of what the decision would be, the preparations for carrying out the verdict were lavish, coordinated by District Attorney Hallett, Marshal Freeman, and General Edmands. At 0700 the 1st Brigade of Massachusetts Militia began assembling on Boston Common; troops involved included two cavalry companies of the 1st Battalion of Light Dragoons, eight companies of the 5th Regiment of Artillery, eight companies of the 5th Regiment of Light Infantry, and three companies of the 3d Battalion of Light Infantry, plus the Independent Company of Cadets—a total of twenty-two companies and about 1,000 men. At 0730 the three companies of regulars (Army and Marine Corps) took their position in the courthouse square. Following the decision at 0900 to render Burns, he remained under heavy guard in the courthouse while preparations were made to escort him to the harbor. At 0930 when Loring's decision was made known to the crowd outside, the Boston police cleared the square and posted a force at each of the avenues leading to it. At 1000 a detachment of regular artillery went through "dry run" practice of loading and firing the cannon in the square. At about the same time, Mayor Smith issued a proclamation that was posted throughout the city, declaring that General Edmands and the chief of police had full discretionary power to uphold the laws and would station their troops for this purpose. In effect the directive put the city under martial law. Its legality was later seriously questioned.

The mayor had hoped to keep the military inconspicious by using the police to clear the anticipated route of march through Court and State streets to the docks, but the police proved unequal to the task. At 1100 the militia, gathered on the Common, received orders to move down into Court and State streets to assist the police. Each man was issued eleven rounds of powder and ball and the men loaded their guns before moving. General Edmands ordered them to fire on the crowd without warning whenever anyone passed the police line in a turbulent or disorderly way. The police and militia proceeded slowly in clearing the streets. As the huge crowd, estimated at 50,000, was forced back, the police and militia formed lines to keep the carriageways clear. A solid line extended down both sides of Court and State streets from the courthouse to the harbor; side streets were blocked off by detachments of militia and police. The whole task of clearing the streets was not accomplished until 1400, and happily without casualties, through there were some near tragedies. Few of the militia had any experience in riot duty; they were generally undisciplined and unsure of themselves. There were two occassions when groups were ready to fire into the mob but were stopped by their officers. Richard H. Dana, hardly an unprejudiced observer, thought it a miracle that no shootings occurred.[22]

While the streets were being cleared by the militia and police, the three companies of regulars continued to guard the courthouse square while Marshal Freeman assembled his 120 special aids to guard Burns. At about 1400 the column of escort troops began to form in the square. First came Major Ridgely's two companies of artillery, then a platoon of U.S. Marines, next the special guard formed into a hollow square with the marshal and Burns in the middle. Following the *posse* were two platoons of marines, then the cannon from the square, with another platoon of marines as a rearguard. As the column moved out, two companies of militia cavalry joined it as vanguard and rearguard. As the escort proceeded down State Street to the wharf, the militia and police detachments from the side streets fell in behind the column. The crowd that lined the streets was intensely hostile. All business

[22] See Dana's account of Burns' rendition in his diary in Adams, *Dana*, 1: 280.

houses along the route had closed for the day, and many homes and shops were draped in mourning. Flags were flown upside down and at one point a coffin was suspended above the street with the inscription, "The Funeral of Liberty." Only one real incident occurred. As the column slowed to make a turn, some spectators were forced into the street by pressure from those behind. To the militiamen it looked like an assault, and some began to hack at the crowd with sabers; a detachment of infantry charged with fixed bayonets. Some citizens were bruised or cut, at least two of them seriously, but there were no fatalities And at about 1500 Burns was put aboard a steamer in the harbor along with six of the marshal's *posse* who were to escort him to Virginia. At 1520 the steamer moved out to a rendezvous with a revenue cutter that was to take the recovered fugitive to Norfolk. Shortly thereafter Marshal Freeman discharged all the troops employed in the rendition. In toto, it appears that about 1,600 men were employed in the incident—1,000 militia, 180 soldiers and marines, 120 members of Freeman's civilian *posse*, and 300 Boston police. It seems likely that it was the largest *posse comitatus* in the nation's history, even if it does not appear to have been completely under the marshal's control or at his disposition.

The Case of the San Francisco Vigilantes

Only two years after the Anthony Burns affair, the Pierce administration made it clear that the *posse comitatus* doctrine developed by Attorney General Cushing did not apply where state and not federal law was involved. In fact it was Cushing who, in this instance, formulated the strict doctrine that any use of federal troops to aid state authorities must follow strictly the constitutional provisions and those of the laws of 1795 and 1807.

The case arose out of lawlessness in San Francisco, the principal metropolis on the West Coast. In the early 1850s San Francisco was in the midst of a tremendous expansion brought about by the gold rush. The influx of the goldseekers brought increasing violence and crime, and the state and city governments, often corrupt themselves, were unable or unwilling to cope with it. To combat the criminal element in San Francisco, the first vigilante committee was organized in June 1851. Three hundred of the wealthiest and most respectable citizens banded together in an association to maintain peace and order and preserve the lives and property of the people of the city. The vigilantes arrested, tried, sentenced, and executed people they judged to be criminals. In a brief flurry of activity they were successful in restoring peace and order in the city and disbanded in September 1851.

The vigilante operations were clearly extralegal and in violation of state laws but they enjoyed the support of the great majority of San Francisco's inhabitants. And in 1856, as the city drifted back into a state of lawlessness with a corrupt city administration controlled by the criminal element, the vigilante committee was revived. The immediate occasion was the fatal wounding of James King, editor of the *Evening Bulletin,* who had been naming dishonest merchants and officials and giving particulars of their crimes. King was shot on the street on 14 May 1856 by a well-known gambler and politician, James Casey. Casey surrendered to the sheriff and was lodged in the same jail with another gambler, Charles Cora, then awaiting retrial on a murder charge. By 18 May the vigilantes had completely reorganized their committee. They established a headquarters called Fort Vigilance, near the jail, and organized a force of about 3,500 men, armed, officered, drilled, and established

in armories throughout the city. Many of the units in the vigilante force were in reality reorganized volunteer militia companies. Despite the efforts of mayor and governor, in a well-planned confrontation the vigilantes overawed the sheriff and supporting loyalist militia and took Casey and Cora from the jail. When King died on 19 May, the vigilantes tried Casey and Cora and summarily hanged them. The committee then proceeded on a city-wide cleanup, banishing corrupt officials and criminals after summary trials. The vigilante military force continued to swell and by 9 June comprised about 6,000 men organized into three infantry regiments, one artillery battalion, one cavalry battalion, and one French legion. It was supported, according to one commentator, by at least seven-eights of the population of San Francisco.[23]

As the vigilantes took over control of the city, the "law and order" partisans also attempted to organize. They were handicapped because few would respond to the official call for militia, and because they lacked arms and ammunition for those who did. The head of the state's militia was Maj. Gen. William T. Sherman, of later Civil War notoriety. Governor J. Neely Johnson, working with Sherman, sought to organize a counterforce to the vigilantes and regain control of the city for the normal political apparatus. Sherman hoped to secure arms from the U.S. arsenal at Benecia, California, then under the supervision of Maj. Gen. John E. Wool, commander of the Department of the Pacific. He also hoped to get from Capt. David G. Farragut, commander of the nearby Mare Island Navy Yard, a naval vessel to transport the arms. With this much federal assistance, Sherman thought he could nip the vigilante movement in the bud. Johnson and Sherman visited Wool on 31 May and thought they had his promise of arms, but they could get no naval vessel from Farragut. The captain did agree, however, to let the sloop *John Adams,* under Comdr. E. M. Boutwell, move down and anchor near the city for psychological effect.

On 1 June, the authorities started the counterattack on the vigilantes with a legal move. Judge David Terry of the Supreme Court of California issued a writ of *habeas corpus* on William Mulligan, one of the prisoners of the committee. The committee refused to receive service, and on 3 June Governor Johnson issued a proclamation declaring the county of San Francisco in a state of insurrection and ordering all volunteer militia companies within the county to report to General Sherman for the purpose of putting it down.[24]

Having proclaimed an insurrection against the state government, on 4 June Johnson wrote Wool, requesting that he furnish arms and ammunition to the state forces on Sherman's order. Wool, meanwhile, had had second thoughts and replied the following day that only President Pierce could authorize the issue of arms for this purpose. He did promise to make available to the state the arms due it under the yearly quota system for the militia. Despite Johnson's and Sherman's further pleas and citation of what they conceived to be an earlier promise,

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[23] H. H. Bancroft, *Popular Tribunals,* 2 vols. (San Francisco: The History Co., 1887), 2:349–51. Theodore H. Hittell, *History of California,* 4 vols. (vols. 1–2, San Francisco: Pacific Press Publishing Co. and Occidental Publishing Co., 1885; vols. 3–4, New Jersey: Stone & Co., 1897), 3:328, 496, 500. William T. Coleman, "San Francisco Vigilance Committee," *Century Magazine* (November, 1891) 43:133–50. "Sherman and the San Francisco Vigilantes," 43:296–309.

[24] Proclamation in S. Ex. Doc. 101, 34th Cong., 1st sess., *Presidential Message with Correspondence on Proceedings and Alleged Usurpation of Power by Self-Styled Vigilante Committee of California,* ser. 824, p. 6. See also S. Ex. Doc. 43, 34th Cong., 3d sess., *Additional Correspondence of Proceedings of Vigilante Committee in California,* ser. 881, p. 24.

Wool was adamant, insisting that "Your application should be made to the President of the United States, who, and no one else, is authorized to grant it."[25]

The only supplies of arms and ammunition in the state were either in Wool's hands or in those of the vigilantes. Sherman, bitterly disappointed, later wrote that "there is not a shadow of a doubt that General Wool did deliberately deceive us."[26] Wool, nonetheless, remained adamant in his conviction that he lacked authority to release arms, that he must await instructions from the War Department. Indeed, Farragut had, from the beginning, refused to take action without instructions from the Navy Department. On 7 June Wool issued orders to the commander of the Presidio to remain "perfectly neutral," not to issue arms or ammunition to any party whatsoever without orders from him. On 10 June he ordered Army engineers in the city to guard the guns in the harbor to assure that they did not fall into the hands of either of the contending parties.[27]

In the wake of his failure to obtain arms from Wool, Governor Johnson rejected a compromise offered by the vigilantes and determined to go ahead with a confrontation. Sherman, who supported the compromise, resigned in disgust and Maj. Gen. Wolney E. Howard assumed command of the loyalist California militia.[28] While Howard sought to build up the militia, Johnson finally undertook a direct appeal to the president for aid. On 18 June the governor sent to Pierce two emissaries directed to ask for "the use and services of such arms and ammunition, together with the aid of the military and naval forces of the United States" that would be needed to suppress the "existing insurrection in the city of San Francisco." They carried with them a letter from Johnson to Pierce citing the circumstances of the vigilante "insurrection" and requesting that Wool be directed to issue arms and ammunition to the state authorities. The letter, in contrast to the verbal commission to the emissaries, made no mention of the need for federal troops or naval vessels.[29]

Pierce referred the governor's letter to Attorney General Caleb Cushing for legal advice and Cushing obliged with a long report on 19 July 1856 that has become one of the landmarks in the history of federal responses to state requests for military aid in the enforcement of civil law. Cushing granted that the acts of the vigilance committee constituted a lawless usurpation of the powers of the state government of California, but could find no act of resistance to the Constitution and laws of the United States. Therefore, the request fell under the laws of 1795 and 1807 governing state requests for aid and not under the constitutional provision that the president should take care that the laws be faithfully executed, the rationale of action in enforcing the Fugitive Slave Law. According to both statutes (and the constitutional provision under which they were passed) the president could act to suppress insurrection (or domestic violence) within a state only on the request of the state legislature or of the executive if the legislature could not be convened. In this case, Cushing said, the governor had requested aid without demonstrating or even alleging that the legislature could not be convened. According to the terms of the governor's letter he was not asking for a federal

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[25] See S. Ex. Doc. 101, p. 5; S. Ex. Doc. 43, pp. 4–7, 14, 28, 29.

[26] William T. Sherman, *Memoirs of General William T. Sherman* (New York: Charles L. Webster & Co., 1891), 1:157–59. Wool's later explanation was that he did not familiarize himself with the law until after speaking with Sherman.

[27] S. Ex. Doc. 43, pp. 7–8, 17–18.

[28] Sherman, *Memoirs*, 1:158–59.

[29] S. Ex. Doc. 101, p. 2–6.



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call-out of militia or of the land and naval forces of the United States, but only for arms. He thought the president might, in certain circumstances, furnish arms without furnishing men at the same time but felt that any application of this "high power of the President to intervene in state disputes, ought to be reserved for circumstances of the most exigent emergency, . . . for instance a case of indisuptable *bellum flagrans* in a given state in which all the constitutional power of the state shall have been exerted in vain to prevent or suppress domestic war." Since there had been no actual clash of arms in San Francisco, he perceived no such "superlative exigency" in this case, and concluded that "the circumstances do not afford sufficient legal justification for acceding to the actual requests of the governor of the State of California."[30]

Pierce accepted Cushing's opinion, and Secretary of State William L. Marcy immediately notified Governor Johnson of the decision. Johnson was consequently left to his own resources in dealing with the vigilantes and these proved quite inadequate. A new crisis arose when General Howard succeeded in arranging with Wool for the delivery of the arms due the state militia under its annual quota. When state forces attempted to bring the munitions into San Francisco by boat, a party of vigilantes seized the cargo as well as the agent in charge, one James R. Maloney. Maloney was freed shortly afterward and promptly filed charges of piracy in the nearest U.S. District Court. The vigilantes then determined to recapture Maloney. They followed him to the room of Dr. Gordon Ashe, federal naval agent, where Maloney had been ordered to report to General Howard. Howard was not there, but Ashe and Judge Terry were. In a scuffle with the vigilantes, Terry stabbed one of them, Sterling A. Hopkins, in the neck. Ashe, Maloney, and Terry then fled to the loyalist armory in the city where they were soon surrounded by a vigilante force of 3,000 to 4,000 men. The vigilantes overran the armory, seized all the arms there, and took its few defenders as prisoners to Fort Vigilance. All were soon released except for Ashe, Maloney, and Terry. While Hopkins fought for his life, the vigilantes let it be known that they intended to try Terry for murder.

The capture of these prisoners brought a new threat of federal intervention, this time by the naval authorities in the area. Lieutenant Boutwell, commander of the *John Adams* in the harbor, and Captain Farragut, his superior, promptly placed enough pressure on the vigilantes to induce them to release Doctor Ashe, a naval official, on "parole." Boutwell also made

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[30] Cushing to President Pierce, 19 Jul 56, S. Ex. Doc. 101, pp. 8–12. Also printed in Wilson, *Federal Aid*, pp. 289–93.

some effort to get Terry released, acting on the appeals of Governor Johnson and of Judge Terry himself. On 28 June he wrote the vigilance committee suggesting that Terry be treated either as a prisoner of war or as a lawbreaker. In the first instance he should be placed on board the *John Adams* for safekeeping; in the second he should be turned over to the state authorities for trial. Not receiving anything more than an acknowledgment, three days later Boutwell wrote a stronger missive, telling the committee he would do everything in his power to secure Terry's release or a lawful trial. The vigilantes interpreted this to mean that if they did not comply with his demands he would bombard the city, and accordingly they turned the correspondence over to Farragut. Farragut told the committee he agreed with Boutwell that Terry should either be released or tried fairly, but he did not endorse or condone Boutwell's threatening posture. He pointed out to his junior the constitutional requirements for federal intervention and said it was his duty to prevent Boutwell from doing anything to aggravate the situation until instructions were received from Washington. "Although I agree with you in the opinions expressed, in relation to constitutional points, I cannot agree that you have any right to interfere in this matter."[31]

So the drama was played out to the end without overt federal intervention. The *John Adams* remained in the harbor and two other schooners were also kept in readiness near the city to carry out, in Farragut's words, "any system of coercion that the government may see fit to adopt." Their primary purpose actually was to guard the United States mint but many people believed that they were there to support Terry, and Farragut saw no reason to "undeceive" them.[32] Whether influenced by this type of pressure or not, the vigilantes decided to release Terry on 7 August and he immediately took refuge on the *John Adams,* whence he was transported by steamer to Sacramento. It might be noted that Hopkins had meantime recovered, and although Terry's trial produced a verdict of attempted murder, the vigilantes had no punishment for this crime.

After Judge Terry's release, the vigilante committee rapidly wound up its affairs and disbanded amidst great ceremony on 18 August 1856. The state arms that had been seized were returned to the authorities in November and Fort Vigilance was dismantled. However, the executive committee continued in being, watchful and ready to act should the situation require it. But the active phase had come to an end.

Not until September, some time after the crisis had abated, did the Army and Navy commanders in the San Francisco area receive instructions from the War and Navy Departments. Both were disclosed to be roughly similar in nature. In the absence of Capt. William Mervine, commander of the Pacific Squadron, the Navy Department informed Farragut that he should not intervene without orders from the president but should take "judicious but firm steps" to protect federal property and federal officers. And Secretary of War Jefferson Davis instructed General Wool to concentrate all available troops at Benecia Arsenal and Fort Point to protect the federal government's property. "It is of course expected," Davis wrote, "that you will in no wise be connected with the domestic disturbances of the people of San Francisco, unless it should become necessary to interfere for the protection of the property and

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[31] Loyal Farragut, *The Life of David Glasgow Farragut* (New York: D. Appleton Century, 1879), pp. 24-27, 105, 179, 189; S. Ex. Doc. 101, p. 21-23.

[32] Farragut to J. C. Dobbins, 17 Jul 56 and 19 Aug 56, S. Ex. Doc. 101, pp. 185, 188.



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officers of the United States against lawless violence or revolutionary aggression.''[33]

These instructions in effect confirmed the rightness of the course both Farragut and Wool had chosen. The Navy's part in stationing vessels in San Francisco Harbor to help protect government property has already been noted. At the request of the customs collector also, General Wool ordered Lt. H. G. Gibson, commanding the U.S. troops at the Presidio, to furnish a guard if necessary for the protection of the mint and other United States property. And three companies of troops were moved from stations farther away to the Presidio and Benecia.[34]

With the waning of the crisis, these precautionary measures were relaxed. The whole affair, then, did not produce federal intervention or punishment of the vigilantes for their defiance of constituted state authority. And there was an instructive epilogue: The piracy charge filed by the state agent, James R. Maloney, against several vigilantes for the seizure of the state arms on 21 June led to a trial of the alleged culprits in the federal district court in California. Thus it produced a case in which federal law and authority were involved. The local federal officials feared a disturbance when the case was brought to trial. On 5 September U.S. Marshal James Y. McDuffie asked General Wool for military protection in the event of an effort to rescue the accused vigilantes. Wool replied that he could do nothing until the court called on him for a military force to protect it in the discharge of its duties. Four days later Judge M. Hall McAllister and Judge Ogdon Hoffman politely queried Wool whether he had any orders that would permit him to provide the protection requested by the marshal. The general replied that he had none ''whatever applicable to the subject in question.''[35] Wool was in fact quite doubtful what his authority was in such a case. When he finally received Davis' instructions on 30 September 1856, he noted that the secretary had said he should protect ''officers of the United States against lawless violence or revolutionary aggression,'' and on 4 October Wool asked Davis for ''more definite instructions'' on this point. Were judges, justices, and marshals of the United States included, and if so, would he have authority to interfere to protect them in the discharge of their legitimate duties when ''interfered with by riot, insurrection, or revolutionary aggression?'' Or should he await orders from the president under the laws of 1795 and 1807? Wool really got no answer to his pointed query. Jefferson Davis cryptically acknowledged receipt of the general's letter and told him that he would

[33] Secy Navy J. R. Dobbins to Adm William Mervine, 2 Aug 56, S. Ex. Doc. 101, 34th Cong., 1st sess. pp. 13–15; Davis to Wool, 3 Sep 56, ibid., p. 15.

[34] S. Ex. Doc. 43, pp. 9, 15.

[35] Correspondence in S. Ex. Doc. 43, p. 10–12.

duly forward any further communication the president might wish to make to him on the subject.[36]

In the meantime, the jury quickly acquitted the vigilantes on the grounds that they had acted in self-defense, and the tension attending the trial eased. The question of what Wool or any other Army officer might do to carry out the orders of a federal court without orders from Washington remained unanswered. And it is interesting to note that the answer that might have been given, that the U.S. marshal could invoke the Cushing Doctrine and summon the military force in his district as a *posse comitatus*, was not forthcoming from the secretary of war in the administration under which that doctrine had been enunciated.

In any evaluation of the question of federal intervention in the San Francisco vigilante affair, some consideration must be given to the military capability to intervene. Washington was a whole continent away from California, with the sea routes running all the way around South America and the long overland routes traversing deserts and mountains in an era of horse and wagon transportation. The vigilante armies by all accounts numbered in the thousands. The very failure of the California legal authorities to get local militia into the state service to oppose them indicates that no comparable counterforce could have been raised even though the federal arsenals at Benecia had been opened to arm them. The regular military force in the area was negligible even after Wool moved three companies into the Presidio and Benecia. The regular garrison of these points consisted of only forty-three officers and men of the 3d Artillery. The Navy, of course, had some ships in the area and might have bombarded the city, but such an action was hardly appropriate to the occasion. Very probably, the lack of any real military capability to oppose an immensely popular movement distant from the seats of federal power explains the contrast between Pierce's alacrity in enforcing the Fugitive Slave Law and his unwillingness to support constituted state authority in California. The federal authorities really did about all they were capable of doing; that is, they successfully protected federal installations and personnel. Anything more was perhaps impossible and certainly unwise practically, in the face of the overwhelming pro-vigilante sentiment in San Francisco.[37]

In the history of the use of federal military force in civil disorders, the most important results of the episodes discussed in this chapter lay in two legal doctrines developed by Caleb Cushing, President Pierce's attorney general. They were in fact legal opinions only, since they were not tested in any court. In the first case, developing out of the problem of enforcing a federal fugitive slave law, Cushing enunciated a doctrine, afterward to be identified with his name, that federal marshals (and by implication local sheriffs also) could call on organized bodies of either regulars or militia in their districts to serve as a *posse comitatus* in the enforcement of federal law. If the Cushing Doctrine was to be applied literally, local commanders could use their forces to support local law enforcement officials at their discretion without any explicit authorization from the War Department. However, as the use of troops in both Kansas and Utah was to attest, there is no evidence that this doctrine was ever applied literally before the Civil War. Indeed there is no evidence that either marshals or commanders in the field were ever aware of its existence. At least it was never promulgated in any War Department official orders or regulations,

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[36] Wool to Davis, 4 Sep 56, Davis to Wool, 4 Nov 56, S. Ex. Doc. 43, p. 15–16.

[37] Rich takes this view in *The Presidents and Civil Disorders*, p. 71.

and does not appear ever to have been communicated separately to a commander in the field with instructions that he should follow it. Only after the Civil War was the doctrine to be openly invoked by both the attorney general and the War Department as a means to permit use of troops to support civil authority in the South without previous approval from Washington.

In the other case, that of the San Francisco vigilantes, Cushing's opinion greatly restricted the use of federal troops to control domestic violence within a state. In cases involving federal aid to state governments, even merely the issue of military supplies, he ruled that the Constitution and the laws of 1795 and 1807 must be rigorously followed; that is, the state legislature or the governor, if the legislature could not be convened, must request the aid directly of the president. And the president should satisfy himself that all the state's resources had been used to suppress the disorders before granting any federal aid. This particular doctrine was to have a more permanent standing than that relating to the *posse commitatus.*

CHAPTER 8

Trouble in Kansas: First Phase

In my best judgment I cannot comply with your call. If the Army be useless in the present unhappy crisis, it is because in our constitution and law civil war was not foreseen, nor the contingency of a systematic resistance by the people to governments of their creation, and which, at short intervals, they may either correct or change.
——Lt. Col. Philip St. George Cooke to Acting Governor Daniel P. Woodson, 2 September 1856.

Even as the Pierce administration wrestled with the problem of intervention in the vigilante affair in California, a new and potentially far more dangerous crisis had arisen in the territory of Kansas, one that was to involve the Army in one of its most difficult and delicate missions in domestic disturbances. The Kansas-Nebraska Bill, making way for settlement in these territories, was passed by Congress and signed by the president on 22 May 1854. The bill was sponsored by Senator Stephen A. Douglas of Illinois and was supported by the administration. Douglas' primary interest was in opening up the two territories to a transcontinental railroad to be built westward from a terminus in Chicago. Since both territories would normally exclude slavery by the terms of the Missouri Compromise, to gain Southern support Douglas' measure provided that the slavery question should be settled by popular sovereignty—that is, by vote of the people themsleves when the population of either territory was sufficient to qualify it for statehood. The opening of Kansas to settlement under these terms led to competition between pro-slavery and freestate partisans for control. To compound the problems thus created, the territory was opened to settlement before there was any land available for sale or any established land office at which to file claims. Historians today believe that much of the conflict and turmoil that ensued was a product of rival land claims, struggles over patronage, and other such mundane matters, rather than a pure contest of slavery and anti-slavery parties.[1] Yet it was the ideological conflict that produced warring factions in the territory and indeed a great national political crisis that eventually led to civil war.

The Path to Military Intervention

Once Kansas was opened to settlement, pro-slavery men from adjacent Missouri rushed in to establish themselves in places like Leavenworth and Atchison, just across the Missouri River. Meanwhile freestate settlers, a majority from the Middle West but including a number

[1] See particularly James C. Malin, *John Brown and the Legend of Fifty Six,* American Philosophical Society Memoirs, vol. 17 (Philadelphia, 1942) pp. 498–508, and Paul W. Gates, *Fifty Million Acres: Conflicts over Kansas Land Policy, 1854–1900* (Ithaca, N.Y.: Cornell University Press, 1954), pp. 2–7.

from New England, moved in to stake claims mainly in the valley of the Kansas River, establishing towns at Lawrence and Topeka. The New Englanders were encouraged and aided by the Emigrant Aid Society, an abolitionist organization. In other places the countryside was dotted with mixed settlements and everywhere there were conflicting land claims. President Pierce appointed Andrew J. Reeder, a Pennsylvania Democrat, as governor of Kansas Territory, and Reeder assumed office in October 1854. The governor proceeded to hold elections in a sparsely settled territory where it was easy for transients from Missouri to vote and return home. In November 1854 the voters chose pro-slavery Delegate John W. Whitfield, to Congress. In March 1855 they elected a solidly pro-slavery legislature in a vote predominantly cast by transient Missourians. Reeder was shocked by the frauds and ordered new elections in several districts in which he knew freestaters predominated. But the pro-slavery legislature, meeting in Pawnee Springs where Reeder had established the seat of government, refused to seat any freestate men whatsoever. And against Reeder's wishes, in July 1855 the legislators moved the meeting to Shawnee Mission, only a few miles from Westport in Missouri. There the legislature proceeded to pass a series of pro-slavery laws, among them one that would have made even anti-slavery talk a crime. Reeder vetoed all these enactments, but the legislature promptly overrode his vetoes. The governor, meanwhile, compromised his position by land speculation and in August 1855 was removed from office by President Pierce, ostensibly for that reason. It seems more likely, however, that the real reason was his conflict with the pro-slavery legislature, which Pierce had determined to support.[2]

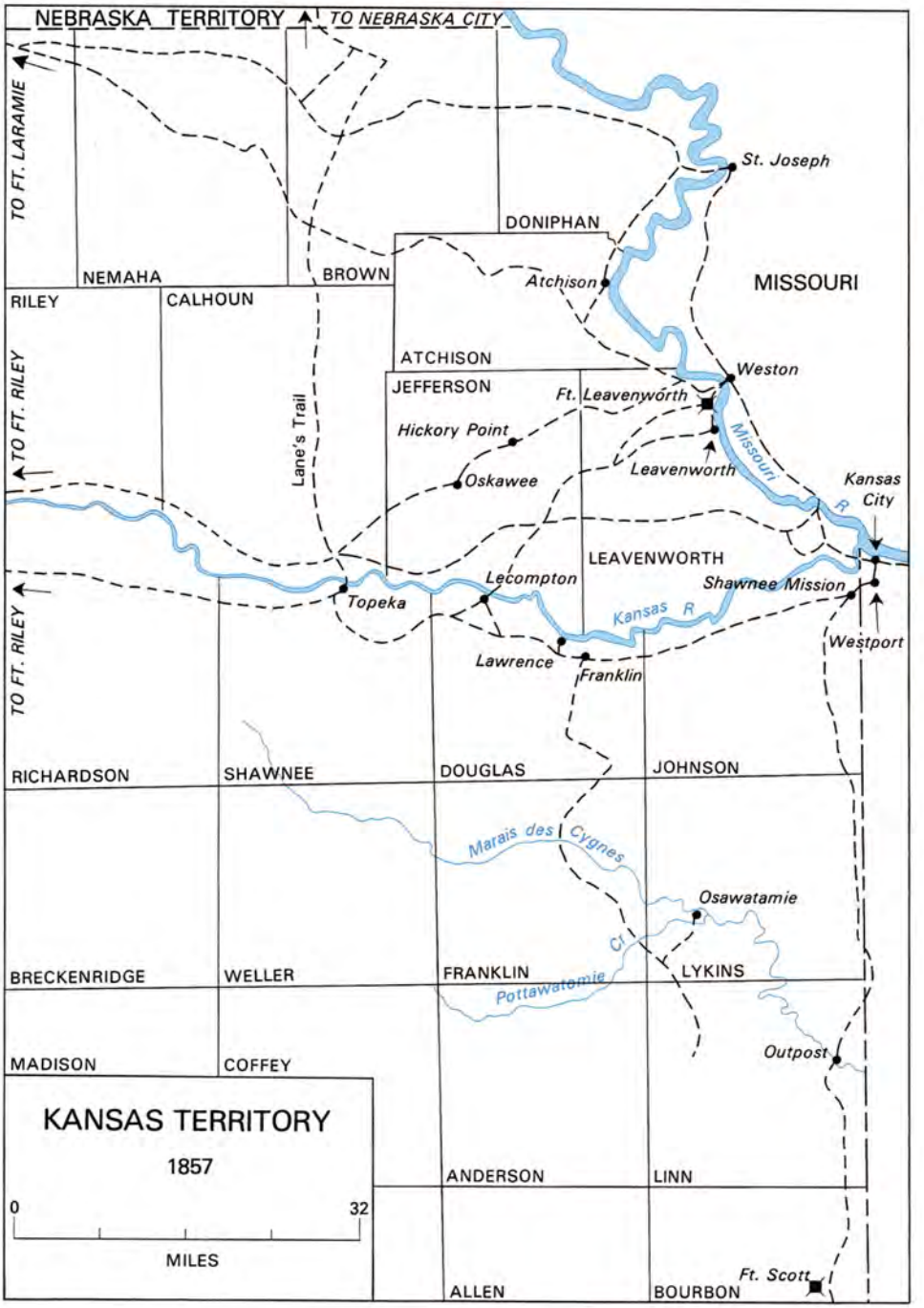
Meanwhile, the freestate men retaliated by declaring the territorial legislature to be an illegal "bogus" organization, whose laws need not be obeyed. Under the leadership of New Englanders Charles Robinson and Seth Pomeroy, and the swashbuckling midwesterner James H. Lane, in the summer and fall of 1855 they created their own governing bodies, including complete sets of local officials. A free soil constitutional convention at Topeka in September 1855 drew up a constitution for the "Free State of Kansas," prohibiting slavery after 4 July 1857. The constitution was approved by an overwhelming vote on 15 December and the free soil leaders promptly forwarded it to Congress asking admission to the Union. In elections held on 5 January 1856, Charles Robinson was elected governor and state legislators were chosen. Andrew Reeder, who upon his dismissal by Pierce had joined the freestate elements, was chosen as their delegate to Congress. In none of these elections did the pro-slavery elements participate. The 34th Congress that assembled in December 1855 was to spend the greater part of the next six months debating the Kansas question with the House, where the New Republican party had more members than the Democrats, voting to admit Kansas under the Topeka Constitution and the Senate, where the Democrats had a majority, opposing it.[3]

In the eyes of the Pierce administration, the pro-slavery legislature was the legal body and the freestate government was accorded no standing. Pierce dispatched Ohio Democrat Wilson Shannon to succeed Reeder as governor, and Shannon, reflecting the administration's attitude, accepted the authority of the territorial legislature as legitimate. He soon had to face the problem of maintaining its version of law and order in a bitterly divided territory, setting

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[2] On these events, see Allan Nevins, *Ordeal of the Union*, vol. 2, *A House Dividing, 1852–57* (New York: Scribner's Sons, 1947), pp. 382–90.

[3] Again see Nevins, *Ordeal*, pp. 391–414.


NEBRASKA TERRITORY
TO NEBRASKA CITY
TO FT. LARAMIE
TO FT. RILEY
TO FT. RILEY
St. Joseph
DONIPHAN
NEMAHA
BROWN
Atchison
MISSOURI
RILEY
CALHOUN
ATCHISON
JEFFERSON
Weston
Ft. Leavenworth
Hickory Point
Lane's Trail
Missouri R
Leavenworth
Oskawee
Kansas City
LEAVENWORTH
Lecompton
Shawnee Mission
Topeka
Kansas R
Westport
Lawrence
Franklin
RICHARDSON
SHAWNEE
DOUGLAS
JOHNSON
Marais des Cygnes
Osawatamie
Cr
BRECKENRIDGE
WELLER
FRANKLIN
LYKINS
Pottawatomie
MADISON
COFFEY
Outpost
KANSAS TERRITORY
1857
0
32
MILES
ANDERSON
LINN
Ft. Scott
ALLEN
BOURBON

MAP 2

the stage for military intervention.

The Army's presence in Kansas at the time consisted of garrisons at Fort Leavenworth, a post along the Missouri River, and Fort Riley, farther west at the fork of the Republican and Kansas rivers. The garrisons, totalling around 1,000 men, were about equally divided between the two posts. The 1st Cavalry Regiment was at Leavenworth, commanded by Col. Edwin V. "Bull" Sumner, a Yankee from Massachusetts; troops of the 2d Dragoons and the 6th Infantry were at Riley under Lt. Col. Philip St. George Cooke, a Virginian, but one who would remain with the Union in the Civil War. Kansas was part of the Army's Department of the West, commanded in early 1856 by Col. and Bvt. Brig. Gen. Newman S. Clarke, with headquarters at Saint Louis. To patrol a vast department that extended north to the Canadian border, Clarke had a total of 4,000 officers and men scattered at some eighteen posts, their main task being to protect settlers moving west against the plains Indians. This mission, in the case of the troops at Forts Riley and Leavenworth, was to be interrupted by the necessities of keeping the peace among the whites themselves.[4]

The incident that touched off the first crisis came in November 1855 in Douglas County where the town of Lawrence was located. One Jacob Branson, a freestater, was arrested by the county's pro-slavery sheriff, Samuel J. Jones, but Branson, assisted by a group of friends, escaped and found refuge in Lawrence. Jones proposed to go to Lawrence and arrest both Branson and his rescuers, but aware of the danger of massive resistance asked Governor Shannon for 3,000 militiamen to assist him in impressing upon the citizens of Lawrence that the territorial laws would be enforced. On 27 November the governor called on the commander of the territorial militia, Maj. Gen. William P. Richardson, to raise as large a force as he could to aid the sheriff. What Richardson was able to raise was in the main a force of Missourians intent on maintaining the supremacy of the pro-slavery faction. These Shannon incorporated into a *posse* to aid Sheriff Jones. Meanwhile, the freestaters had formed their own militia and prepared to defend their town.

The threat of civil strife alarmed Shannon and on 28 November he wrote Pierce, warning that in the territory a secret military organization existed, having for its object "resistance to the laws by force." He issued a proclamation against the offenders but shied away from a direct clash between the Kansas "militia" and the freestaters of Lawrence. Instead he called on Colonel Sumner at Fort Leavenworth for a contingent of regular troops to assist in serving the warrants in Lawrence and stayed the hand of Sheriff Jones and his militia *posse*. The Cushing Doctrine might well have justified such a demand, but it was never invoked, and Sumner replied that he had no authority to take any action without orders from Washington. On 3 December Shannon wired the president asking for the necessary authority to use troops to "protect the sheriff of Douglas County, and to enable him to execute the legal process in his hands," saying that if the laws could not be enforced, "civil war is inevitable." The particulars, he said, would follow by letter. Pierce promptly replied that all the power vested in the executive would be exerted "to preserve order and enforce the laws," and that on receipt of Shannon's letter the "preliminary measures necessary to be taken before calling out troops would be promptly executed."[5]

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[4] *Report of the Secretary of War for the Year 1856,* p. 240. Hereafter cited as *SW Rpt,* 1856.

[5] This exchange is in Wilson, *Federal Aid,* p. 80, and in S. Ex. Doc. 23, 34th Cong., 1st sess., *Presidential Message Communicating Correspondence . . . in relation to Kansas Territory,* ser. 820, p. 26. Other documents are in H. Ex. Doc. 1, 34th Cong., 3d sess., *Papers accompanying President's Annual Message to Congress, 1856,* ser. 893.



JAMES H. LANE

There is no record of any letter written to the president containing these particulars until 11 December. And whether because of this delay, or because of Pierce's reluctance to use troops, no orders issued from the War Department to Sumner authorizing him to comply with Shannon's request. On the strength of Pierce's wire, on 5 December Shannon urgently requested Sumner to march his regiment and meet him near Lawrence. Sumner first indicated he would comply and then on "mature reflection" decided he could not move without orders from the government. In this position he held fast in the face of Shannon's urging the next day "the absolute pressure of the crisis is such as to justify you with the President and the world in moving your forces to the scene of difficulty."[6] Faced with the unpleasant prospect of a confrontation between the sheriff's irregular *posse* and the freestaters in Lawrence and without any aid from Sumner's troops, Shannon hastily negotiated a compromise with the freestate leadership, ending what became known as the "Wakarusa War" (so named for the small river on which the militia had gathered). On 11 December he did write a long letter of particulars to Pierce, recounting his experiences in the whole affair and renewing his request for advance authority to use federal troops in any new emergency. He could not rely on the militia, he said, "to preserve the peace in these civil party contests, or where partisans are concerned," for any call for them would bring "conflict between the two parties."[7]

Pierce's reluctance to comply with Shannon's request was evident in his annual message to Congress on 31 December 1855. He said that while acts prejudicial to good order had occurred, there had been nothing to justify the interposition of federal force in Kansas. For him to order troop intervention, there must be "obstruction to Federal law or . . . organized resistance to Territorial law," neither of which he anticipated.[8] Shannon, knowing well that organized resistance to the laws of the pro-slavery legislature surely did exist in the territory, hurried to Washington to explain the situation. He was preceded by letters from Lane and Robinson of the "Executive Committee, Kansas Territory," to the president claiming that "an overwhelming force of citizens of Missouri are organizing on our borders, amply supplied with artillery, for the avowed purpose of invading this territory, demolishing our

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The Kansas State Historical Society *Collections* (hereafter cited as KSHS *Collections*), 17 vols. (Topeka: 1881–1928), 3:291–301, has reprinted all these documents. The KSHS *Collections*, vols. 3–5, contain reprints of nearly all the documents printed in various congressional collections, as well as some additional documents on the period.

[6] Shannon to Sumner, 6 Dec. 55, H. Ex. Doc. 1, pp. 59–61.

[7] Shannon to Pierce, 11 Dec 55, H. Ex. Doc. 1, pp. 63–64.

[8] Richardson, *Messages and Papers*, 6:2881–83.

towns, and butchering our unoffending free state citizens." They demanded that the troop commander in the area "be immediately instructed to interfere to prevent such an inhuman outrage."[9]

Whatever merits the House of Representatives may have found in the freestate government, Pierce felt the whole movement bordered on treason, and he offered no succor to Lane and Robinson. In a special message to Congress on 24 January, he came down completely on the side of the existing territorial government, contending that it was not the duty of the president to impose federal force "to preserve the purity of elections," but only to ensure the enforcement of the laws of the territorial government once it was legally constituted. The territorial government should place at the disposal of the U.S. marshals "any public force of the United States which happens to be within the jurisdiction, to be used as a portion of the *posse comitatus*"; and if that did not suffice to maintain order, then the militia of one or more states would be called forth to achieve the desired end. He heaped the blame for the turmoil in Kansas on the first governor, Andrew Reeder, and on the activities of outside agitators, notably the New England Emigrant Aid Society. He was far milder in chastising citizens of states contiguous to Kansas (Missouri was the only one) for interfering in territorial elections and sending unauthorized military units into the territory. He ended with a request for legislation providing that the qualified voters of Kansas, when it had sufficient population to constitute a state, should elect a constitutional convention and prepare for admission to the Union by regular and lawful means.[10]

After consulting with Shannon, now in Washington, and Secretary of State William L. Marcy, responsible for territorial affairs, Pierce issued his proclamation on 11 February 1856 calling on "all persons engaged in unlawful combinations against the constituted authority of the Territory of Kansas, or of the United States, to disperse and retire peaceably to their respective abodes." He warned that an attempted insurrection in the territory or aggressive intrusion into it would be resisted by the local militia and if necessary "by any available force of the United States." He called on citizens of "both adjoining and distant states" to cease interference in local concerns of the territory and promised "condign punishment" for individual acts of interference and firm opposition to any "endeavor to intervene by organized force."[11]

Four days later, on 15 February 1856, Secretary of War Jefferson Davis sent the orders to Colonel Sumner and Colonel Cooke that Shannon had long awaited. Citing the presidential proclamation, Davis instructed the two commanders that if the governor of the territory, "finding the ordinary course of judicial proceedings and powers vested in the United States marshals inadequate for the supression of insurrectionary combinations or armed resistance to the execution of the law, should make requisition upon you to furnish a military force to aid him in the performance of that official duty, you are hereby directed to employ for that purpose such part of your command as may in your judgment consistently be detached from their ordinary duty." In executing this "delicate function," the commanders were to exercise utmost caution to avoid "collision even with insurgent citizens" and to try to suppress

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[9] Ltr of 21 Jan 56, copy in Wilson, *Federal Aid*, p. 278. A second message on 23 January asked Pierce to issue a proclamation forbidding the invasion. The freestaters evidently had in mind the requirements of the laws of 1795 and 1807.

[10] Richardson, *Messages and Papers*, 6:2885–2893.

[11] Ibid., pp. 2923–24.

opposition to enforcement of the laws by moral force. They were to consult the War Department in case of doubt.[12]

On 16 February, Secretary of State Marcy followed with a letter of instructions to Shannon. Although the president was unwilling, he said, to believe there would be occasion for the use of troops in Kansas, he was authorized to requisition on the commanding officers at Fort Riley and Fort Leavenworth for "such assistance as might be needed in executing your duties as governor. . . . " He was to use his power only in an "extraordinary emergency" and only when he found "resort to it unavoidable in order to insure due execution of the laws and to preserve the public peace."[13]

Certainly the net effect of both these instructions was to caution against the use of federal troops for any light or transitory purpose. At the same time they left a great deal of discretionary power in the hands of the governor. Clearly some discrepancy existed between the instructions of Davis to the military commanders and those of Marcy to the governor. Davis would have the governor requisition troops only when the ordinary course of judicial proceedings and the powers vested in the marshals had failed; Marcy appeared to give Shannon a great deal more latitude in using troops when he deemed it necessary in the execution of his "duties as governor of the Territory of Kansas." In any case, the proclamation and instructions quite clearly authorized the use of the Army against the freestaters to overcome their resistance to territorial laws, but both were quite ambiguous with regard to halting incursions from Missouri. Indeed, Pierce's proclamation called for the use of "local militia" first to overcome resistance to the laws, ignoring the representations of Shannon in December that any use of the militia would lead to civil strife. And left unsaid by Shannon was the fact that the "Kansas militia" really consisted mainly of Missourians.

Reflecting some concern on the score, on 8 March Sumner queried the War Department as to whether its intention was "that all armed bodies, coming either from Missouri or from a distance, north or south, are to be resisted whatever their proposed objects may be, and made to relinquish their military organizations, and pass into the territory as peaceful citizens." He thought this measure "indispensably necessary to secure the peaceful organization of the Territory." He also thought that any organized military body "not under the law," should be made to disband. Sumner obviously wanted to use military force to prevent disorder by breaking up armed bodies before they could do damage, and he would use it against Missourians as well as freestaters. Militia in the territory, he pointedly told the War Department, could never act without one side coercing the other.[14] Davis very quickly quashed any idea of such a broad policing policy:

> The question of where they may come from, and whether armed or unarmed, is not one for the inquiry or consideration of the Commanding Officer. It is only when an armed resistance is offered to the laws and against the peace and quiet of the territory, and when, under such circumstances, a requisition for a military force is made upon the Commanding Officer by the authority specified in his instructions, that he is empowered to act.[15]

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[12] Ltr, Secy War Davis to Col Sumner and Col Cooke, reprinted in Wilson, *Federal Aid*, p. 280; also in S. Ex. Doc. 23, pp. 36–37.

[13] Ltr, Marcy to Shannon, 16 Feb 56, S. Ex. Doc. 23, pp. 37–39.

[14] Sumner to AG (Adjutant General), 8 Mar 56, S. Ex. Doc. 10, 34th Cong., 3d sess., *Letters . . . on Kansas Affairs, not before communicated*, ser. 878, pp. 1-2.

[15] AG to Sumner, 26 Mar 56, ibid., p. 2.



EDWIN V. SUMNER

Obviously the secretary wanted to limit the mission to the narrow range of supporting territorial officials in the enforcement of the laws the freestaters had no intention of obeying, and he desired no action against the Missouri "border ruffians."

Shannon, Sumner, and the Sack of Lawrence

It was some time after the authorization before Shannon found it necessary to call for troop assistance. The meeting of the freestate "legislature" in Topeka early in March 1856 passed peaceably. Shannon was concerned, nonetheless, by the flow of arms and ammunition into the territory from the north "in small quantities."[16] Then, on 19 April Sheriff Jones went to Lawrence to arrest one S. N. Woods for larceny and for having assisted in the rescue of Branson. Jones found Woods, but almost immediately twenty freestaters rescued him. The sheriff then obtained additional warrants for the rescuers and returned to Lawrence with a civilian *posse* of five to make the arrests. He met organized resistance and was unable to do so. The following day, Shannon called on Sumner to furnish a military *posse* to assist Jones, and Sumner detached a detail of one officer (Lt. James MacIntosh) and ten men to report to the governor at Lecompton, a town situated on the Kansas River between Topeka and Lawrence, where the capital had been moved from Shawnee Mission. Sumner instructed MacIntosh that he was to sustain the sheriff "in the legal exercise of his authority," but to avoid violence if it was at all possible. At the same time he wrote the mayor of Lawrence, urging him to yield without resort to violence. And he urged on Shannon great prudence. "If they should resist this detachment," Sumner wrote, "you see where it will place me; I should be compelled to act instantly with my whole force."[17]

There was in fact no opposition to the troops when they marched into Lawrence on 22 April; although Woods was not to be found, Sheriff Jones did arrest, "in the presence of the troops," six others. Then on the following day at the troops' camp, someone took a shot at the sheriff while he was drawing water; and later in the night someone shot through Jones' tent, seriously wounding him. Sumner immediately moved toward Lawrence with two squadrons of the 1st Cavalry, simultaneously wiring news of his action to the War Department saying that he would follow with the rest of his force if necessary. "If it is in the power of man, I will settle this difficulty without further bloodshed." He took the precaution at the

[16] Shannon to Marcy, 11 Apr 56, H. Ex. Doc. 1, pp. 66–67.

[17] Sumner to Shannon, 22 Apr 56; Sumner to Mayor of Lawrence and to Lt MacIntosh, 22 Apr 56, Shannon to Sumner, 10 Apr 56, Sumner to Shannon, 21 Apr 56, S. Ex. Doc. 10, pp. 3–5.

same time of urging Shannon not to call the militia.[18]

Shannon soon determined that all the men against whom the sheriff had writs had fled Lawrence. To avoid a clash, on 25 April he stopped Sumner outside Lawrence and had him return to Leavenworth. The governor retained a detachment of thirty men under Capt. Thomas J. Wood at Lecompton to be used should a new emergency arise. Both Shannon and Sumner perceived that the policy of the freestaters would be not to openly resist a peace officer when accompanied by troops, but to do so when he was unaccompanied and to evade arrest even when the troops were present. Shannon wrote Marcy that if territorial officers had to have a military escort to serve every writ, territorial government would be "nullified." Sumner fired off another telegram to the War Department asking if the citizens of Lawrence were "to be forced to comply at all hazards" if they continued to resist the county officers.[19]

There is no record that Sumner received any response to his urgent inquiry, and events soon overtook it. The federal judiciary in the territory was also controlled by the pro-slavery element, and the partisan chief justice of the Territorial Supreme Court, Judge Samuel D. Lecompte, convened a grand jury and urged it to indict the leading freestaters for "constructive treason." The grand jury did indict Lane, Robinson, and some others and issued a subpoena for ex-governor Reeder to come to Lecompton and testify. The jury even went further and recommended that the Free State Hotel in Lawrence, built of stone for defensive purposes, and the two freestate newspapers in the town be abated as public nuisances. Expecting opposition to the arrests, U.S. Marshal J. B. Donaldson, also a strong pro-slavery man, called for all law-abiding citizens to join him in Lawrence to aid in executing the laws. In response, Missouri "border ruffians" and adventurers who had been recruited in other Southern states rallied to the cause, forming a Kansas "militia" even more menacing to Lawrence than that involved in the Wakarusa War. A committee of Lawrence citizens called on Sumner for military protection, a request Sumner could only pass on to the governor. At the same time he did urge on Shannon that the militia be restrained and his regulars used to support the service of any writs in Lawrence. "I said . . . I would arrest and hold subject to orders of civil authority any men in town against whom writs were issued," Sumner reported to the War Department on 12 May, "and further, that in order to preserve the peace of the country, I would place my entire regiment immediately at any point he might designate." Specifically he would "impose a large and commanding force" midway between Leavenworth and Lecompton.[20]

Shannon was aware of the danger of setting the marshal's *posse* upon Lawrence and preferred to rely on regular troops, but in the crisis he vacillated, insisting that he could not take it upon himself to decide what kind of *posses* civil officers should use. He did request that once the arrests were made, Sumner should post three companies of cavalry at the governor's service, one near Lawrence, another near Lecompton, and a third near Topeka, to preserve the peace and to secure due execution of the laws.[21] On 21 May, however, when the *posse*

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[18] Telg, 0900, Sumner to AG, 24 Apr 56; Sumner to Shannon, 24 Apr 56. S. Ex. Doc. 10, pp. 6, 9.

[19] Sumner to AG, Ltr and Telg, 28 Apr 56; Sumner to AG, Telg, 0900, 24 Apr 56. S. Ex. Doc. 10, pp. 6–7; Sumner to Shannon, 24 Apr 56; Shannon to Sumner, 25 Apr 56; Shannon to Sumner 25 Apr 56; S. Ex. Doc. 17, 35th Cong., 1st sess., *Pres Message communicating corres of John W. Geary . . . not heretofore communicated,* ser. 923, pp. 2–5, 9.

[20] Sumner to AG, 12 May 56; Citizens of Lawrence to Sumner, 11 May 56, S. Ex.Doc. 10, pp. 7–8.

[21] Shannon to Sumner, 21 May 56, *SW Rpt,* 1856, pp. 37–38; Sumner to Shannon, 12 May 56, S. Ex. Doc. 10, pp 7–8.

marched on Lawrence, only a small detachment under Lieutenant MacIntosh, stationed closer to Lecompton than to Lawrence, was actually in the field. MacIntosh simply stood by as five to seven hundred "armed men on the proslavery side organized into companies" marched on Lawrence. Prophetically he warned that it was "very doubtful if such a body of excited men" could be checked by the marshal in Lawrence.[22]

Sometime during the day on the twenty-first, Shannon notified Sumner that the writs had been successfully served and that he should now deploy the three companies as requested. What had actually happened was that writs had been served on a number of freestate leaders, but some had left town, including ex-Governor Reeder who, in any case, claimed immunity to arrest as a member of Congress. Those remaining in Lawrence offered no resistance and, after the arrest had been made, the U.S. Marshal disbanded his militia *posse*. But Sheriff Jones, seeking vengeance for past wrongs, immediately gathered a large portion of the same men, and on the grounds that judicial process had been frustrated, proceeded to destroy the Free State Hotel, two newspaper offices, and, accidentally it was claimed, the home of "Governor" Charles Robinson.[23]

The sack of Lawrence had immediate repercussions. It brought to the fore the more violent faction of the freestaters who sought to retaliate, and virtual civil war broke out in Kansas. In Washington it embittered the debate on Kansas and brought embarrassment to the Pierce administration, already under attack for pro-slavery policies. The president himself seemed bewildered by it all. On the morning of 23 May, Pierce telegraphed Shannon, asking whether military force had been found necessary to support civil government in serving the writs in Lawrence and, if so, whether he had relied solely on Sumner and Cooke's regulars. Then later in the day after seeing Sumner's letter of 12 May to the War Department detailing his proposals to Shannon, he wired the governor again saying that Sumner's suggestions on the use of preventive force seemed "wise and prudent." "My knowledge of the facts is imperfect," he said, "but with the force of Colonel Sumner at hand, I perceive no occasion for the use of the posse, armed or unarmed, that the marshal is said to have assembled at Lecompton. . . . Sufficient power has been commited to you and you must use it."[24] This advice, unfortunately, came too late for Shannon to profit by it.

Secretary Davis' reply to Sumner's 12 May dispatch was more equivocal. "You have justly construed your instructions," wrote Davis, "and your course is approved." Yet in what followed Davis stressed a good deal more his approval of Sumner's refusal to protect the freestaters than his proposed preventive deployment.[25]

Sumner Polices the Territory

Whatever Davis' tortuous message may have authorized, Shannon, now thoroughly alarmed, belatedly adopted Sumner's recommendations. On 23 May, he requested that one company of the 1st Cavalry be posted near Lawrence, two near Lecompton, and one near

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[22] MacIntosh to Sumner, 21 May 56, *SW Rpt*, 1856, pp. 39–40.

[23] Shannon to Sumner, 21 May 56, *SW Rpt*, 1856, pp. 38–39. On the sack of Lawrence, see Malin, *John Brown*, pp. 51–52. Shannon's report of it to the president, 31 May 56, is in S. Doc. 17, pp. 16–19. For the freestaters' outraged reaction see *Memorial to the President from Inhabitants of Kansas*, 22 May 56, H. Ex. Doc. 1, pp. 73–85.

[24] Telgs, Pierce to Shannon, 23 May 56, S. Ex. Doc. 17, p. 15.

[25] Ltr, Davis to Sumner, 23 May 56, *SW Rpt*, 1856, p. 28.

Topeka. Hardly had Sumner deployed these troops, than on the night of 24 May occurred the famous massacre of five pro-slavery settlers by John Brown and his followers along Pottawatomie Creek in Franklin County. At Governor Shannon's behest, on 27 May Sumner hastily dispatched the company at Lawrence south to the scene of the massacre and deployed two more companies of the 1st Cavalry to Lawrence. On 28 May he reported to the Department of the West, "From the present appearances, it looks very much like running into a guerrilla warfare. If the matter had been taken in hand at an early date, as I earnestly advised the governor, the whole disturbance would have been suppressed without bloodshed."[26]

Sumner's prophecy of guerrilla warfare was not far off. Armed bodies of freestate men, angered at the sack of Lawrence, attacked and harassed known pro-slavery settlers; armed bodies of Missourians rushed into the fray to protect their friends; disorderly elements with no political axes to grind profited from existence of disorder to perpetrate criminal deeds. On 1 June Shannon asked Sumner for two more companies, one to strengthen the force at Lawrence and the other to reinforce that in Franklin County. "Both these commands," he wrote, "are too weak to deal with the armed bodies of men by which they are surrounded."[27] On 4 June Shannon followed his deployments with a proclamation requiring all armed bodies to disperse or else to be "dispersed by the military force placed by the President . . . at my disposal." On the same day he gave Sumner a plan, instructing him to place detachments at five different points and to disperse all armed bodies not acting under the law, to force them to release prisoners and captured horses. In carrying out these instructions, "No distinction or inquiry is to be made as to party; but all parties and persons are to be treated alike."[28]

In undertaking this mission of policing the territory, rather than of assisting civil officers when they could not enforce laws, Sumner was quite clearly going beyond Davis' original instructions. In dispersing armed bands, often the individual detachments of troops had neither federal nor territorial civil officials with them; when they did the officials seldom held warrants for the arrest of specific individuals. Even Shannon expressed some doubts about the way he was using Sumner's troops, in a letter to Pierce on 31 May, but exonerated himself by saying that Sumner agreed with him.[29] Meanwhile, Pierce, before he received this letter, wired the governor on 6 June that "confused and contradictory accounts of scenes of disorder and violence in Kansas" were reaching Washington. "If the civil authorities," he said, "sustained by military force under Sumner and Cooke placed at your disposal, are not sufficient to maintain order . . . you should have advised me at once. . . . Maintain the laws firmly and impartially, and take care that no good citizen has just cause for complaint of want of protection."[30] Shannon commented to Sumner that evidently the president expected "the most energetic measures . . . to preserve order in the territory," and both he and Sumner seem to have accepted the president's telegram as an endorsement of the course that they were following.[31]

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[26] Sumner to AG, 28 May 56; Sumner to Maj Sedgwick, 22 May 56; Shannon to Sumner, 27 May 56. All in *SW Rpt*, 1856, pp. 40–41.

[27] Shannon to Sumner, 1 Jun 56, *SW Rpt.*, 1856, p. 42.

[28] Shannon to Sumner, two Ltrs, 4 Jun 56, *SW Rpt*, 1856, pp. 45–46, 48.

[29] Shannon to Pierce, 31 May 56, S. Doc. 17, pp. 16–19.

[30] Telg, Pierce to Shannon (c/o Sumner), 6 Jun 56, ibid., p. 24.

[31] Shannon to Sumner, 14 Jun 50, *SW Rpt*, 1856, p. 50.



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That course was at least a modified success in restoring some semblance of order in the territory. Sumner's detachments faced down numerous bodies of armed men, forcing them to disperse at least temporarily. No effort was made to disarm them. In general, there was no resistance to the federal troops, although the armed men often reassembled somewhere else. On one occasion troops encountered hostile fire. On 30 May 1856 Capt. Edward W. B. Newby received a report of an attack on a family near Lawrence, and he sent three enlisted men to investigate. As they approached the scene, they were fired upon and one soldier fell wounded. Two horses were also hit. When this news reached Newby, he took ten men to the area only to find that fire from a house had wounded the soldier and horses and that the assailants had fled the scene. However, Newby was able to apprehend one of them and placed him in close confinement. Freestate papers later claimed that the soldiers had been mistaken for pro-slavery attackers.[32]

The most serious confrontation occurred in the first week of June. Reporter for the Saint Louis *Republican* Henry C. Pate, indignant over the Pottawatomie massacre, gathered a force of twenty-five men to move into Brown's territory to retaliate. The Browns, father and son, attached themselves to a larger freestate force headed by Samuel T. Shore and the two together so overawed Pate that he surrendered after a confrontation at Black Jack Point in southeastern Douglas County. Pate and his men were taken prisoner. Informed by Shannon of this development, Sumner himself took the field with fifty men, acting under the terms of the governor's proclamation. The cavalry galloped into the Brown-Shore camp, ordered the freestaters to disperse, and freed the Pate group. Oddly enough, the deputy sheriff who accompanied the military party had no warrants, and John Brown escaped arrest for his crimes. Sumner could not tarry, for he learned that a party of two or three hundred pro-slavery Missourians was approaching. With his fifty men he galloped on to confront the pro-slavery men, headed by no less personages than John W. Whitfield, the pro-slavery selection for Congress, and "General Coffee of the militia."

"I said to these gentlemen," Sumner reported, "that I was there by order of the President, and the proclamation of the governor, to disperse all armed bodies assembling without authority; and further, that my duty was perfectly plain and would certainly be done." The pro-slavery men, like the freestaters, agreed "not to resist the authority of the general government" and moved off. "Whether this is a final dispersion of these lawless armed bodies," Sumner opined, "is very doubtful." [33]

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[32] Newby to Shannon, 31 May 56, *SW Rpt*, 1856, pp. 43–44. Malin, *John Brown*, p. 76.

[33] Sumner to AG, 8 Jun 56, *SW Rpt*, 1856, pp. 44–45.

Sumner was right in that neither the pro-slavery nor freestate bands dispersed entirely, as remnants of both were involved in a clash near Osawatamie on 7 June. But most seem to have broken up shortly afterward, at least temporarily, and the "serious commotion" that Sumner feared petered out into minor clashes here and there. John Brown apparently hid in the countryside and eventually fled the territory to find haven in the north. James H. Lane also went north to recruit fighting men for the freestate cause. Sumner called out the last two of his companies of the 1st Cavalry and stationed most of his force near Westport to block the entry into Kansas of armed bodies coming from Missouri or other southern states. The rest he used in an effort to break up roving bands of freestaters. In order to provide a peace-keeping force near Lecompton, Shannon now called on Lt. Col. Philip St. George Cooke at Fort Riley to come down with a contingent of the 2d Dragoons.

Cooke hastened down from Riley with 134 men, 124 horses, and 1 artillery piece, covering the ninety-odd miles in two days and encountering "no excitement on the road." On arrival at Lecompton he listened to a lecture from ardently pro-slavery Territorial Secretary Daniel P. Woodson (Shannon was temporarily absent), who told him the reason for the call was now past, and complained that the Army was powerless for good, but did harm by "malefactors taking advantage of the protection in their vicinity to commit midnight outrages." Woodson was obviously dissatisfied with the policy of dispersing pro-slavery as well as anti-slavery bands. Cooke, who thought the disorders in the territory had "changed their character, and consist now of robberies and assassinations, by a set of bandits whom the excitement of the times has attracted hither," also thought the involvement of his troops unnecessary. When Governor Shannon returned, Cooke pleaded that the trial and punishment of the numerous prisoners already in hand would accomplish more than military deployments, and despite Shannon's reluctance to release them, he marched his men back to Fort Riley.[34]

After turning back armed parties of men coming from Alabama and Missouri, Sumner returned to Leavenworth on 22 June, reporting to his superiors that he did not think "there is an armed body of either party now in the territory, with the exception, perhaps of a few freebooters." [35] Meanwhile, in Washington, Pierce, repudiated in early June by his own party convention, struggled manfully to comprehend what was going on in Kansas and to evolve some policy to meet it. One group of his advisers led by James Buchanan, the Democratic nominee chosen by the convention, proposed to impose more military force and to send the commanding general of the Army, Winfield Scott, to Kansas as he had earlier gone to Charleston and Canada. The other faction, led by Secretary of War Davis, proposed to withdraw Sumner's troops from police duty in Kansas entirely and send them under Brig. Gen. William S. Harney on an expedition against the Cheyenne Indians. The War Department in fact issued orders for the 1st Cavalry's redeployment. President Pierce, faced with growing charges from the new Republican party that he had entirely botched the Kansas affair, overruled Davis. Sumner, it was decided, should go on leave and the orders placing the 1st Cavalry under Harney for the Indian campaign were countermanded. Pierce could hardly send Winfield Scott to Kansas since he was a Whig and not on speaking terms with Secretary Davis. Instead he ordered his old Mexican War comrade in arms and fellow Dem-

[34] Cooke to AG, 18 Jun 56, *SW Rpt*, 1856, pp. 48-49.
[35] Sumner to AG, 23 Jun 56, *SW Rpt*, 1856, p. 50.

ocrat, Brig. Gen. Persifor F. Smith, to take over command of the Department of the West with station at Fort Leavenworth rather than Saint Louis. Davis' orders to Smith, however, simply reiterated those given to Sumner and Cooke earlier: his troops were to accompany civil officers who held processes and to aid them in making arrests and conducting prisoners to the incarceration point. There was no mention of dispersal of armed bands as a preventive measure, the policy Shannon and Sumner had been pursuing, evidently with the president's approval, since the sack of Lawrence.[36]

Before Smith arrived at his new post on 7 July, Sumner, still expecting to deploy his troops against the Cheyenne in the immediate future, had his last act to play in the Kansas drama. The freestate "legislature" was scheduled to assemble in Topeka on 4 July to pass a code of territorial laws quite different from those of the "bogus" pro-slavery legislature. Shannon was very much alarmed. Just before leaving for Saint Louis on a business trip on 23 June, he left instructions with Sumner to continue to deploy his forces to preserve the peace and most particularly to station two companies at Topeka before the fourth of July to prevent the meeting of the freestate "legislature," arguing that if the illegal legislature met and passed its code of laws "the peace and quiet which now prevail throughout the whole territory" would be destroyed. "You will disperse them," he told Sumner, "peaceably if you can, forcibly, if necessary." [37]

Without referring the question to his superiors in Washington or Saint Louis, Sumner proceeded to carry out the governor's instructions under the aegis of Daniel Woodson, the ardent pro-slavery territorial secretary, who acted as governor in Shannon's absence. On 28 June he sent Maj. John Sedgwick with two companies to Topeka. Then at Woodson's insistence that the commanding officer be present and with a stronger force, he personally brought up three more companies to the edge of town by 3 July. On Sumner's insistence that civil authority take the lead, Woodson issued a proclamation proscribing the freestate assembly as an illegal organization that should be dispersed under the terms of the president's proclamation of 11 February 1856. Sumner endorsed it and declared his intention to act. As he described the ensuing events,

> On the morning of the 4th the proclamation . . . was read to the people by the marshal, and also that from the President. A part of the members complied with them, and did not assemble; but a number of both houses determined to meet at all hazards, and I was obliged to march my command into the town and draw it up in front of the building in which the legislature was to meet. I then went into the house of representatives, which had not organized, and said to them that, under the proclamation of the President and the governor, the Topeka legislature could not assemble and must disperse. They had the good sense to yield at once, and to say that they should not array themselves against the authorities of the United States. I then went into the upper house, or council, and made a few remarks to them, and they at once coincided with the lower house; and thus the Topeka government was brought to an end. There were about five hundred men present, and it was a most delicate affair from the fact that it happened amidst the festivities on the 4th of July. I consider myself very fortunate in having accomplished my object without using an angry word or receiving one in the slightest degree disrespectful.[38]

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[36] Nichols, *Franklin Pierce, Young Hickory of the Granite Hills* (Philadelphia: University of Philadelphia Press, 1931), p. 473-74. Davis to Smith, 27 Jun 56, *SW Rpt*, 1856, pp. 28-29.

[37] Shannon to Sumner, 23 Jun 56, *SW Rpt*, 1856, pp. 51-53.

[38] Quote from Sumner to AG, 7 Jul 56; Proclamation by Daniel Woodson, Actg Gov, and Sumner's Ind, 4 Jul 1856; Sumner to Woodson, 28 Jun 56; Woodson to Sumner, 30 Jun 56. All in *SW Rpt*, 1856, pp. 53-58.

Sumner came back to Fort Leavenworth convinced that he had done right, that his course would be approved, and that the major crisis in Kansas was over. On all these counts he was wrong. Dispersion of a peaceable assembly of freestaters by military force stirred a hornet's nest of protest in Congress against the Army serving pro-slavery interest. The House of Representatives refused to pass the Army appropriations bill. And Secretary Davis disavowed Sumner's action, coldly reprimanding him for exceeding his instructions. In a heated exchange that carried on into August, Sumner vehemently defended his acts as in keeping with the president's proclamation and his instructions to comply with requests from the governor for troops to disperse illegally organized combinations. Davis denied that anything in the president's proclamation or his instructions to the military commanders justified dispersing a political assembly that had committed no overt act. Sumner pleaded that he had acted impartially and had offended pro-slavery men as well as freestaters.

> From beginning to end, I have known no party in this affair. My measures have necessarily borne hard against both parties, for both have, in many instances, been more or less wrong. The Missourians were perfectly satisfied so long as the troops were employed exclusively against the free State party; but when they found I would be strictly impartial, that lawless mobs could no longer come from Missouri, and that their interference with affairs in Kansas was brought to an end, then they immediately raised a hue and cry that they were oppressed by United States troops.[39]

Davis found this reference to the Missourians irrelevant and apparently distasteful, and his view remained that only some overt act resulting from the meeting of the "illegal assembly" could justify military intervention. Yet it was just this policy of waiting for an overt act that had precipitated the sack of Lawrence and the chaos that followed. But to Pierce as well as to Davis, the furor among the freestaters in Washington seemed to require the repudiation of Sumner. Indeed, Shannon was soon to follow him into limbo. On 28 July President Pierce appointed John W. Geary, erstwhile governor of Pennsylvania, to succeed him as governor of the troubled territory.

General Smith and the August War

General Smith arrived at Fort Leavenworth on 7 July 1856 to take charge, and Colonel Sumner departed on leave the following week. For about a month after his arrival Smith could report the situation relatively quiet but "emigrants coming in armed." About thirty men under Major Sedgwick remained deployed near Lecompton and others near the Missouri border, but active patrolling stopped with most of the 1st Cavalry at Leavenworth and all of the 2d Dragoons at Riley. During this period of relative military inactivity, the freestate forces gained strength as both men and arms flowed from the North, coming in now largely over new routes opened through Iowa and Nebraska, the so-called Lane trail, as pro-slavery forces closed the normal Missouri River route to freestate traffic. The emigrants of the summer of 1856 were, in the words of one authority, "partly legitimate emigrants and partly young adventurers sent out by the North, and advertised by the sensational exaggerations of Lane."[40]

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[39] Sumner to AG from Oneida Lake, N.Y., 11 Aug 56, *SW Rpt*, 1856, pp. 58–59. The rest of the Davis-Sumner exchange, carried on through the adjutant general, is on pp. 56–61. On the political repercussions in Washington, see Nichols, *Pierce*, p. 478–80.

[40] Malin, *John Brown*, p. 600. See Smith's reports to the War Department, *SW Rpt*, 1856, pp. 65–68.

In any case, they shifted the balance of power in the territory sufficiently toward the freestaters that only invaders from Missouri could alter it.

One of the tasks of the military during the summer, and an unwelcome one, was guarding five prominent freestate men, including "Governor" Charles Robinson, seized at various times under writs issued by Judge Lecompte and charged with treason. The plight of these "treason" prisoners could be at least the pretext for a possible freestate march on Lecompton to rescue them; the prisoners were also at issue in the debate in Congress. Meanwhile, Capt. Delos B. Sacket of the 1st Cavalry kept them under a rather loose guard boarding at the home of a Mrs. Gains Jenkins near Lecompton, where they appear to have corresponded quite freely with their compatriots in Lawrence and Topeka, under a policy established by Sumner. The military guards fraternized freely with the prisoners, and indeed there is some evidence that some of the officers commanding the troops at Lecompton, including Major Sedgwick, gave some assurances that the Army would not actively oppose the advance of freestate forces toward Lecompton to rescue them.[41]

In any case, the freestaters did take advantage of their new strength and the relative inactivity of the Army to undertake an offensive in mid-August. And General Smith resisted Governor Shannon's requests for military aid to oppose it until an attack on Lecompton had almost become a reality. On 1 August, Smith deployed a company of the 1st Cavalry to Doniphan County at the governor's request to meet a reputed threat to Judge Lecompte's holding court there, but he resisted frantic requests from Shannon during the first two weeks of August to deploy his "whole disposable force" to meet the threat of incursions by "Lane's party," insisting that the governor's information was "exaggerated and incorrect." Indeed complaints about poor intelligence dot Smith's correspondence during this period, leading to some question as to whether Sedgwick may have been keeping him in the dark.[42]

The pro-slavery men had established a series of strongpoints between Lecompton and Lawrence as bases for their operations. Between 12 and 16 August, freestate forces directed by Lane and under the immediate command of "Colonel" Samuel Walker, attacked and overcame the village of Franklin and two blockhouses known as Fort Saunders and Fort Titus. In the course of these operations they killed one man, wounded several others, and captured a number of prisoners, including Col. H. T. Titus, whom they regarded as the main pro-slavery guerrilla chieftain. Fort Titus was within two miles of Lecompton, and Governor Shannon rushed Major Sedgwick with his thirty men to the scene. Sedgwick found the action finished and the prisoners taken away to Lawrence. The governor then ordered Sedgwick to Lawrence to free the prisoners, instructing him in case of refusal to "take them by force, firing on the resisting party." Shannon proved to be much less bellicose when, accompanied by Sedgwick, he went to Lawrence. There he negotiated another truce under the guns of the freestate men based on a mutual exchange of prisoners and the return to Lawrence of the cannon taken during the sack of the town in May. Impressed by what he saw, Sedgwick reported to his commander that the force in Lawrence was composed of about 800 armed men who could be increased to 1,200 very quickly—"in a state of high excitement, almost uncontrollable," ready to attack and destroy Lecompton if their terms were not met. Sedg-

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[41] See Malin, *John Brown*, pp. 608–09 and Charles Robinson, *The Kansas Conflict* (New York: Harper & Bros., 1892), pp. 300–303.

[42] Smith to AG, 1, 6, 11 Aug 56, *SW Rpt*, 1856, pp. 66–68.

wick complained to Smith that he had "no instructions on how to act in a conflict with citizens, or when an officer is authorized to fire upon them."[43]

On 17 August, using Sedgwick's report for corroboration, Governor Shannon warned Smith that Lecompton was "threatened with utter extermination by a large body of Free State men" and again asked the commander to send from the fort "all his available forces."[44] This time Smith complied, accepting Sedgwick's estimates, if not Shannon's.

He ordered Lt. Col. Joseph E. Johnston to Lecompton with all the remaining force at Leavenworth except one company, and Colonel Cooke from Fort Riley with all the troops there except for a small garrison. By 24 August about 500 men had gathered near Lecompton under the command of Cooke as the senior officer present. The troops, Smith instructed Cooke, were "to aid civil authority in suppressing insurrection" and to protect the inhabitants from "lawless violence of armed bodies." He directed that the force be kept concentrated, with no detachments made except for small patrols. In reporting the alarming state of affairs to the War Department, he lamented that his troop strength was slender and the dragoons short of horses. To compensate he ordered all companies of the 6th Infantry and all the recruits at Jefferson Barracks in Saint Louis sent to Kansas. "A large force," he said, "may prevent any violence; a small one might tempt to the commission of it."[45]

While Smith deployed his troops, Governor Shannon, learning of his impending relief, hastily left Kansas, complaining that he had neither the "moral or military" means to do his duty, and the agreement he negotiated in Lawrence was never fully carried out. The governorship again rested temporarily in the hands of the territorial secretary, Daniel Woodson. Under Woodson's leadership, the pro-slavery element reacted violently to the recent attacks, and very soon the danger of a new clash arose. On 18 August, Maj. Gen. William P. Richardson, titular commander of the territorial militia, asserting that "a state of actual war" existed in Douglas County, called out the Kansas militia to rendezvous at designated points. Woodson soon followed with a proclamation declaring the territory to be in a state of open insurrection. The confrontation between territorial militia and the armed and organized bodies of freestaters loomed ahead once more. It presented the same dilemma for Smith that it had for Sumner earlier, but Smith felt his instructions would not permit him to interfere with the militia's actions. He reported to Washington that

> In the force thus called out, and which will be acting under the regular government of the territory, will undoubtedly be incorporated all the parties that come armed from Missouri . . . and when they feel themselves strong enough they will, undoubtedly, attack their opponents, who are prepared to resist them. As the Army can only act in aid of, and subordinate to, civil authority, and cannot array itself against the representatives of that very authority . . . I see no way in which it can prevent a collision brought about by the government of the territory itself, and in the exercise of its functions.[46]

Smith did issue orders to Cooke on 28 August that if he should find that either side was

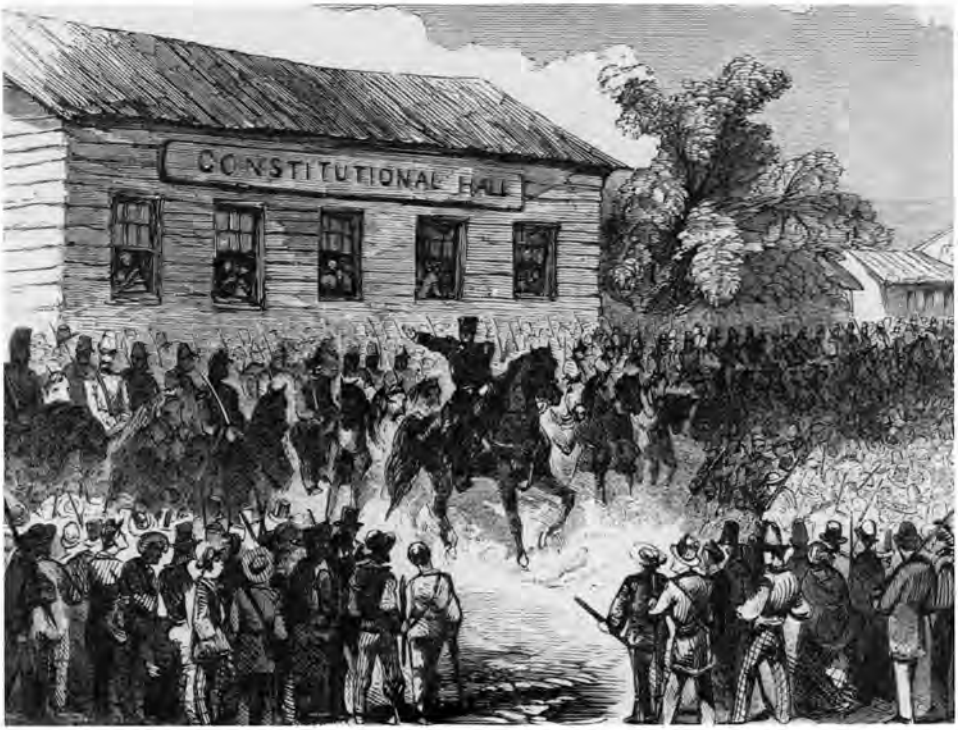
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[43] Sedgwick to Asst AG, Dept West, 17 Aug 56, *SW Rpt*, 1856, pp. 71–72. For an account of a freestate leader see Shalow W. Eldridge, *Recollections of Early Days in Kansas*, Publications of Kansas State Historical Society, vol. 2 (Topeka: Kansas State Printing Plant, 1920), pp. 93–95. Eldridge remarks: "As Major Sedgwick's sympathies were with the freestate cause, he executed his orders in the least offensive manner, and just so far as the military code compelled him."

[44] Shannon to Smith, 17 Aug 56, *SW Rpt*, 1856, p. 71–72.

[45] Smith to AG, 22 Aug 56. Dept West Instructions for Officer in Comd of Detachment of Troops ordered to assemble in the neighborhood of Lecompton, 19 Aug 56, ibid., pp. 69, 73–74.

[46] Smith to AG, 29 Aug 56; Richardson to Smith, 18 Aug 56; Proc of Actg Gov of Territory of Kansas, 25 Aug 56, all in *SW Rpt*, 1856, pp. 75–80.



TOPEKA. *An artist's rendition for* Frank Leslie's Illustrated Newspaper *of federal troops under Col. Edwin V. Sumner breaking up the freestate convention on 4 July 1856.*

moving to attack the other, he should "observe their movements and prevent such hostile collisions." At the same time it was not to be "in the province of the troops to interfere with persons who have come from a distance to give protection to their friends . . . and who may be behaving themselves in a peaceable and lawful manner."[47] Just what this meant as far as restraining either side was concerned is not clear. Two days later Smith definitely instructed Cooke that "the troops under your command will not be used in any manner to interfere with the operations of the militia, whatever they may be, acting as they will under the constituted authority of the territory,"[48] but did advise that he send out detachments to get information on the actions of all armed bodies of men. During the waning days of August, Cooke reported that the homes of freestaters had been burned, and openly speculated that "my presence emboldens the militia and *others* to these outrages."[49] Thus, while Pierce struggled with a special session of Congress called to pass an Army appropriations bill, in Kansas Smith

[47] Hq, Dept West, to Cooke, 28 Aug 56, ibid. p. 85.
[48] Asst AG, Dept West, to Cooke, 30 Aug 56, ibid, p. 88.
[49] Cooke to Asst AG, Dept. West, 31 Aug 56, ibid., p.89.

found himself bound to support the territorial government, the position that had led the House of Representatives to refuse to pass the appropriations in the first place.

Meanwhile, the acting governor asked Cooke for military support for the U.S. marshal in serving writs in Lawrence—two to free the last two persons captured at Franklin and the other two for the arrest of the most prominent freestate military leaders—James Lane and Samuel Walker. Cooke at first proposed to use his whole force but then decided it would "lead to the evasion of the criminals." So he sent a squadron of seventy-five dragoons under Capt. Henry H. Sibley to the town while maintaining the rest of his force in a supporting position. Cooke soon learned, as Sumner had earlier, that the freestaters would not openly oppose a federal military force, but would pursue tactics of evasion. Sibley rode into town to find a large crowd gathered to meet him—"an excess of five or six hundred men over the permanent population." The freestaters politely turned over the two captives, but Walker and Lane, who had evidently been in the crowd, simply disappeared.[50]

Militia, meanwhile, including pro-slavery Kansans and Missourians to a reported total of about 700 men, gathered close to Lecompton in what seemed to be preparations to attack Lawrence. Woodson, in what may very well have been a ploy to prevent federal interference with such a move, on the night of 1 September demanded of Cooke that he proceed with his entire command "at the earliest possible moment to invest the town of Topeka, and disarm all the insurrectionists or aggressive invaders against the organized government of the territory to be found at or near that point, retaining them as prisoners, subject to the order of the marshal of the Territory," and leveling all their "breastworks, forts, or fortifications." He should too, if possible, deploy forces to "intercept all aggressive invaders" on the road known as "Lane's Trail" leading from the Nebraska line to Topeka.[51] All this Woodson would justify on the basis of a report from the U.S. marshal that the powers vested in him were inadequate for the suppression of "insurrectionary combinations known to exist throughout the extent of the territory."

This call to enlist the regular troops to join the militia in a general assault on the freestaters Cooke rejected out of hand, pointing out that his instructions limited military assistance to execution of the laws or judicial processes in the face of overt resistance and that the citizens of Topeka had committed no such overt act. "In my best judgment I cannot comply with your call," he wrote Woodson the following morning.

> If the Army be useless in the present unhappy crisis, it is because in our constitution and law civil war was not foreseen, nor the contingency of a systematic resistance by the people to governments of their own creation, and which, at short intervals, they may either correct or change.[52]

General Smith strongly endorsed Cooke's refusal, and in informing the War Department noted that to have complied with Woodson's request might have entailed the death of two or three hundred citizens and would have ensured the absence of the troops from the neighborhood of Lawrence when the Missourians and Kansas militia, under Woodson's authority, proposed attacking it. Jefferson Davis also approved without substantial comment.[53]

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[50] Cooke to Asst AG, Dept West. 30 Aug 56; Sibley to Cooke, 30 Aug 56, *SW Rpt*, 1856, pp. 86–88.

[51] Woodson to Cooke, 1 Sep 56, *SW Rpt*, 1856, pp. 90–91.

[52] Cooke to Woodson, 2 Sep 56, ibid., pp. 91–92.

[53] Smith to AG, 10 Sep 56, w/Ind by Davis. See also Asst AG, Dept West, to Cooke, 3 Sep 56, ibid., pp. 80–83, 95–97.

"The position of the troops between Lawrence and Lecompton," Smith reported on 10 September, "while concentrated, is such as to keep the main bodies of both parties in check." With this philosophy, Smith sent no patrols roving the country to disperse armed bands and made no move to interfere when militia and freestate bands clashed with numerous casualties in the Marais des Cygnes–Pottawatomie Creek area, where John Brown had returned to stir up trouble.[54] While expressing no regret that the freestaters had had numerous men killed in these clashes, Smith, as well as Cooke, was becoming disenchanted with the aggressive policy of the acting governor. An episode involving one of the freestate leaders was illustrative. On 29 August a party led by one George W. Hutchinson, a leading citizen of Lawrence, appeared at Cooke's camp near Lecompton, "seeking redress or assistance for alleged wrongs on their property and persons of their employed hands." Cooke sent Hutchinson and his party into Lecompton to see Woodson, and the latter promptly seized them as spies, calling Hutchinson "the grand general of the secret military organization of outlaws in this territory." Since the Hutchinson party had come in openly, Cooke felt their seizure was a violation of a flag of truce and an affront to his military honor. Smith agreed, but Woodson initially refused Cooke's request for their release, and it was not until 4 September that Cooke was able to get assurances from the militia commander, General Richardson, that they would in fact be let go.[55]

Meanwhile, on 3 September, as tension mounted, Cooke received a request from H. Miles Moore, secretary of the self-designated Kansas State Central Committee, that he "disperse the band of house-burners, horse thieves, and men-scalpers from Missouri, known as the Kansas Militia," promising that if he did so, the freestaters, represented as all bona fide inhabitants armed only to protect their homes, would disband.[56] Cooke, with Smith's approval, refused to answer on the grounds that no part of the general government recognized any state of Kansas. Cooke did, in early September, honor requests for protection from the Delaware Indians, evidently harassed by marauders from both sides, and from the town of Tecumseh where the freestate settlers had committed outrages against pro-slavery men and property. And on 4 September a detachment of troops under Colonel Johnston accompanied the marshal to Lawrence to serve writs but reported the usual failure. Otherwise the force outside Lecompton remained concentrated and intact.[57]

In early September, while resentment mounted among the freestaters at Woodson's taking the Hutchinson party prisoner, the "Kansas militia" began to disintegrate because of supply problems and the anxiety of the Kansas pro-slavery men about their homes and families during their absence. In this situation Samuel Walker took the initiative and on 5 September moved toward Lecompton with a force of about 800 men and two cannon, with the ostensible purpose of freeing the prisoners. Cooke was warned of their approach at 1530 by the alarmed citizens of Lecompton. Very shortly afterward he received a note from acting Governor Woodson asking for protection. Cooke mustered his entire force of cavalry and dragoons and rode out to confront Walker's advance party not far from Lecompton. After much parley-

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[54] Smith to AG, 10 Sep 56, cited previous note. On the clash see Malin, *John Brown*, pp. 619–30.

[55] Cooke to Woodson and Woodson to Cooke, 1 Sep 56; Asst AG, Dept West to Cooke, 3 Sep 56, Cooke to Asst AG, 4 Sep 56. All in *SW Rpt*, 1856, pp. 92–93, 95–97, 100.

[56] Moore to Cooke, 3 Sep 56, *SW Rpt*, 1856, p. 98.

[57] Cooke to Asst AG, Dept West, 3 and 5 Sep 56, w/Incls; Asst AG, Dept West, to Cooke, 5 Sep 56; ibid., pp. 97–101.

ing, in which Cooke pointed out that the release of the freestate prisoners was already authorized and that the militia had mostly gone home, the freestate leadership agreed to withdraw on the condition that prisoners on both sides be released. Cooke rode back to Lecompton in the company of three prisoners taken and released by Walker's force. He found only about 200 militia in the town, a quite insufficient force to have opposed the freestaters. He prevailed on Woodson to release the free state prisoners immediately, and dissuaded him from any immediate effort to send a military force to arrest Lane. Cooke rejoiced that he had "stayed the madness of the hour, and prevented . . . the fratricidal onslaught of countrymen and fellow citizens."[58]

Cooke's exultation was premature. Kansas remained in a state of turmoil. Woodson's proclamation and mobilization order was still in effect, and Missourians and pro-slavery Kansans were gathering for a final effort. In Lawrence and Topeka, Lane was reputed to be gathering a formidable army of his own. Both pro-slavery and freestate armed bands roved the countryside, with, as the arriving Governor Geary reported, "no man's life safe," Smith's interventions had abated, but had not concluded, the "August war."[59]

Geary's Pacification of Kansas

General Smith's dispatch to the War Department of 22 August, detailing the threat of a massive freestate attack on Lecompton, and the very weak state of his own command in the face of it, vastly alarmed the officials of the Pierce administration. The first reaction was to strengthen Smith's hand by using Kansas militia, not as previously under the control of the territorial authorities or the U.S. marshal, but of the federal military commander. On 2 September Marcy instructed the governor-designate, John W. Geary, that he should have the militia of the territory "completely enrolled and organized" so that they could be quickly brought into the service of the United States on General Smith's call. On the following day Davis informed Smith of this decision and told him that if the Kansas militia was insufficient for the purpose, additional militia should be drawn from Illinois and Kentucky. The War Department, on 3 September in the name of the president, sent requisitions to these states for the organization by each of two regiments of "foot militia," ten companies each, to be ready to respond. Davis would use this augmented force to crush the freestate "rebellion."

> The position of the insurgents . . . is that of open rebellion against the laws and constitutional authorities . . . patriotism and humanity alike require that the rebellion be promptly crushed, and the perpetration of crimes which now disturb the peace and security of the good people of Kansas should be effectually checked. You will, therefore, energetically employ all means within your reach to restore the supremacy of law, always endeavoring to carry out your present purpose to prevent the unnecessary effusion of blood.[60]

Meanwhile, Pierce had called Congress back into special session in late August and was able to persuade the House to pass the military appropriations bill, albeit on the grounds of

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[58] Cooke to Asst AG, Dept West, 5 Sep 56, *SW Rpt,* 1856, pp. 101–04.

[59] See Geary's letter to Secy State Marcy on his arrival in Kansas, 9 Sep 56. H. Ex. Doc. 1, pp. 88–89.

[60] Davis to Smith, 3 Sep 56; Smith to AG, 22 Aug 56; see War Dept to Govs of Kentucky and Illinois, 3 Sep 56. *SW Rpt,* 1856, pp. 29–31, 69. Marcy to Geary, 2 Sep 56, Wilson, *Federal Aid,* p. 281.

frontier defense needs, not the policing of Kansas. Nevertheless, it did free him to strengthen Governor Geary's and General Smith's hands in dealing with the Kansas problem. His motives in so doing appear to have been somewhat different from those of Jefferson Davis. On 9 September, citing the fact that the freestate attacks had seemingly stimulated "unlawful acts of the same character on the borders of Missouri," Secretary of State Marcy instructed the new governor,

> The President expects you to maintain the public peace and bring to punishment all acts of violence and disorder by whomsoever perpetrated and on whatever pretext, and he relies on your energy and discretion and the approved capacity, decision, and coolness of character of General Smith to prevent or suppress all attempts to kindle civil war in . . . Kansas.[61]

On the same day, Davis was also constrained to inform Smith that

> it is the purpose of the President to secure to you all the military force necessary to maintain order and suppress insurrection, and that no military operations shall be carried on in the territory of Kansas otherwise than under your instructions and orders. You will not permit the employment of militia, or of any armed bodies of men unless they have been regularly mustered into the service of the United States.[62]

In essence, this gave Smith the authority, under the governor, to control all armed bodies.

The new governor arrived at Leavenworth on 9 September 1856 and that night put up at the headquarters of General Smith. Geary was six feet five inches tall, an impressive figure who was to give an impressive performance. He came to Kansas determined to pursue an even-handed policy toward the two factions, with the main goal to restore peace and order, not to punish or suppress "rebellion." Federal control over the militia gave him the instrument to do so. The main theme of Governor Geary's inaugural address was that the bona fide residents of the territory should determine its laws, not outsiders. Of the freestaters he asked obedience to the existing territorial laws, with a promise that they could be changed by the next legislature, elected by the bona fide residents.[63]

In their first meeting, the new governor and General Smith decided not to call on the militia of the other states and to disband and reorganize the territorial militia of Kansas. The regulars on hand, with the arrival of four companies of the 6th Infantry on 8 September, would suffice to put their plans into effect, if remounts could be obtained for the cavalry and dragoons and new and larger pieces for the artillery. With these resources, Smith told the War Department on 10 September, he was hopeful that, working in close concert with the new governor, they could "overcome the temporary reign of violence and disorder."[64]

Davis answered promptly, promising the field artillery guns and the remounts needed, but seemed somewhat dissatisfied with the decision to disband and reorganize the Kansas militia which he felt would cause delay in vindicating the supremacy of the laws. And he responded to a long analysis by Smith of the various parties in the territory with the following,

> The only distinction of parties which, in a military point of view, it is necessary to note, is that which distinguishes those who respect and maintain the laws and organized government from those who combine for revolutionary resistance to the constitutional authorities and laws of the land. The

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[61] Marcy to Geary, 9 Sep 56, H. Ex. Doc. 1, p. 104. The message was received by Geary at Lecompton on 16 September, and may be considered a confirmation of a policy he was already following.

[62] Davis to Smith, 9 Sep 56, *SW Rpt*, 1856, p. 31.

[63] Geary's address is reprinted in *SW Rpt*, 1856, pp. 116–19.

[64] Smith to AG, 10 Sep 56, *SW Rpt*, 1856, pp. 80–93.

armed combination of the latter class come within the denunciation of the President's proclamation, and are proper subjects upon which to employ military force.[65]

The only difference then between Davis' policy and that of Woodson was that Davis would authorize military action only against freestate military bands that had committed an overt act of resistance to the territorial laws. Lane's and Walker's forces had clearly done so during the August war.

Geary instead pursued a course of reconciliation. His first official act was to release three freestate prisoners captured by a militia company near Leavenworth, and (in accordance with a promise made by Pierce) he had the "treason prisoners" finally admitted to bail. He followed with a proclamation ordering the discharge of the "volunteer militia" and the enrollment anew of territorial militia made up of only bona fide Kansas residents. "And I command all bodies of men," he proclaimed, "combined, armed, and equipped with munitions of war, without authority of the government, instantly to disband or quit the territory, as they will answer the contrary at their peril."[66] This was the policy Sumner had wanted placed in effect just before the sack of Lawrence.

Geary next moved in the immediate crisis to avert the threatened clash between the factions. Hearing rumors of a large gathering of armed men prepared to attack Lawrence, on 12 September he sent a confidential agent, Theodore Adams, to the town to gather intelligence. Almost immediately after arriving in Lawrence, Adams, in considerable alarm, confirmed the rumors, sending a dispatch to Geary saying he found the people arming to repel an attack from forces coming from Missouri. Scouts reported it to be only three miles distant. Geary received the dispatch at 0130 on 13 September and at once called on Colonel Cooke to "send immediately to Lawrence a force sufficient to prevent bloodshed." Cooke marched from his camp near Lecompton with 400 men, mainly from the 1st Cavalry, at 0220, the governor joining the force en route to Lawrence. They arrived in the town at sunrise. Cooke reported only two or three hundred men in town and defenses "quite ridiculous." Geary persuaded most of the freestaters to return to their homes on his assurances that the Missourians would disband.[67]

Geary had already set in motion the machinery for disbanding the opposing force, following his proclamation with specific orders to territorial Adjutant General H. J. Strickler to that purpose. Strickler set out on the fourteenth along with the territorial secretary (Daniel Woodson, now forced to countermand his earlier order) and Geary's confidential agent, Theodore Adams. They found about 300 men encamped at Franklin, three miles from Lawrence, with four pieces of artillery, and one mile to the right, along the Wakarusa, "a very large encampment of 300 tents and wagons" containing an estimated 2,500 more men. Adams pressed Geary to come in person if he expected his orders to be carried out.[68]

Meanwhile, Geary was bedeviled by reports of robbery and pillage by freestaters north of the Kansas River around Osawakee and Hickory Point. On the afternoon of the fourteenth, the new governor called on Cooke for a military *posse comitatus* to accompany a deputy mar-

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[65] Secy War Ind of Smith's 10 Sep Ltr, 23 Sep 56, ibid., p. 83.

[66] H. Ex. Doc. 1, pp. 86–87, 93–95.

[67] Cooke to Asst AG, Dept West, 13 Sep 56, *SW Rpt*, 1856, pp. 113–14. Geary to Cooke, 13 Sep 56; Ex. Mins, Territory of Kansas, 13 Sep 56; Geary to Marcy, 16 Sep 56. H. Ex. Doc. 1, pp. 99–100, 105–108. For a rather differing version of Geary's mission to Lawrence, see letter of Charles Robinson in Malin, *John Brown*, p. 634.

[68] Adams to Geary, 14 Sep 56, H. Ex. Doc. 1, p. 102.

shal to the area, and Cooke dispatched Capt. Thomas J. Wood with two companies, about eighty-two men of the 1st Cavalry. By sundown, receipt of news from Adams convinced Geary that the greater emergency lay in the other direction, and he called on Cooke to march with his whole remaining force to Lawrence to prevent an impending clash with the Missourians. Cooke, temporarily ill, dispatched Colonel Johnston with a light battery, five companies of the 1st Cavalry, and a squadron of the 2d Dragoons. Next morning, Cooke and the governor followed these forces to Lawrence, arriving around 1000. As Cooke described what followed,

> I found my forces distributed in strong positions near the town; beyond about two miles on the Franklin road, the advance of a large force was to be seen, banners flying. After a momentary communication with Colonel Johnston, I pushed on with the governor to meet it. It was a mounted company uniformed and well armed, which at a word accompanied our carriage as a guard of honor to the main body at Franklin. Here about twenty five hundred men, armed and organized, were drawn up, horse and foot, and a strong six-pounder battery. The generals and principal officers were collected in a large room, and very ably and effectively addressed by Governor Geary. Eloquent speeches were made by General Atchinson and General Reed, and calculated to produce submission to the legal demands made upon them. Some other inflammatory addresses were also made; so that I felt called upon to say some words myself, appealing to these militia officers as an old resident of Kansas and friend to the Missourians to submit to the patriotic demand that they should retire, assuring them of my perfect confidence in the inflexible justice of the governor, and that it would become my painful duty to sustain him at the cannon's mouth. Authority prevailed, and the militia honorably submitted to march off to be disbanded at their place of rendezvous.
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> I returned then to the town of Lawrence, which was in great excitement, and the governor spoke to the principal men, and thence to the bivouac of the troops, who slept under arms after two night marches with scant provisions.[69]

Meanwhile, Captain Wood had carried out a difficult mission with his two companies. Advancing toward the scene of the disorders north of the Kansas River, he learned that the "large band of marauders," estimated at 350 men, was composed of freestaters under a certain "Colonel" James A. Harvey. He was able to capture about 25 of this band before coming on the main body near Hickory Point. There he surrounded Harvey's camp and surprised its occupants, whereupon "the marshal arrested all of them in the name of the United States and required them to lay down their arms, which I enforced," While Harvey and some of his band escaped, Wood brought in a total of 101 prisoners as well as horses and arms.[70]

These two steps—disbanding the "Kansas militia" and breaking up the largest band of freebooting freestaters—went far to restore peace in the territory. Once the menace of the old "militia" was removed, the freestate settlers could provide little justification for maintaining their own armed forces. In carrying out his mandate to enroll and organize a genuine Kansas militia, Geary brought three militia companies into the service and assigned them to General Smith's command. Two were commanded by pro-slavery officers from the old militia and the other by freestate guerrilla leaders Samuel Walker and James A. Harvey. He also appointed the pro-slavery guerrilla leader Col. H. T. Titus as a special aid and sought to reconcile the old enemies of the August war, Titus and Walker, in a meeting in his office.[71]

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[69] Cooke to Asst AG, Dept West, 16 Sep 56, *SW Rpt*, 1856, pp. 121–22. See also Geary's account in Geary to Marcy, 16 Sep 56, H. Ex. Doc. 1, pp. 105–08. Charles Robinson, however, thought the whole thing was a "farce," staged so that the governor could pretend to have saved the freestaters. See Malin, *John Brown*, pp. 634–35.

[70] Wood to Cooke, 16 Sep 56, *SW Rpt*, 1856, pp. 123–26.

[71] Malin, *John Brown*, p. 687, provides a summary of these actions. Original documents are in KSHS *Collections*, vol. 4, and *SW Rpt*, 1856.

Beyond these three companies, the enrollment and organization of the Kansas militia did not proceed very far.[72] The companies that were called into service were used mainly to guard prisoners and not in the military pacification of the territory.

Geary, exasperated by the lack of cooperation from the regular territorial officials, on 16 September wrote Marcy that he might have to take recourse to martial law. Marcy immediately telegraphed back that the only people to whom he might apply it would be militia called into federal service. "You have not power to proclaim martial law. You must get along without doing so."[73] And in the event, Geary did. Making full use of troops General Smith had placed at his disposal, the governor slowly but surely began to clean up the bands of marauders roaming the land, mostly freestaters who had come in to fight and could find little other profitable occupation. As a follow-up to the Hickory Point expedition, on 16-17 September Colonel Johnston with 200 dragoons escorted a deputy marshal to Topeka where about a dozen additional arrests were made. Smaller contingents of troops accompanied marshals as a *posse comitatus* in making arrests of "strolling bands of marauders," whom Geary on 22 September represented as the major remaining problem. In none of these cases was any resistance made to the executions of writs as long as the marshal was accompanied by regular troops.[74]

Geary also called on Smith to use troops to keep open the roads between Leavenworth and towns farther west where the inhabitants complained that provisions were not reaching them. And the governor had troops stationed in several small towns early in October to police elections in an effort to convince the freestaters that under his regime they would be fairly conducted.[75]

Late in September, Geary decided that the major emphasis should shift to the northern border of Kansas to prevent the entry into the territory of the "army" Lane was reputed to have recruited in the north. Geary's spies in the area sent in such alarming reports that on 26 September he had Cooke send Colonel Johnston with four companies of the 1st Cavalry north via Topeka with orders to intercept and arrest any armed bodies falling under the ban of the governor's 11 September proclamation. Geary followed on 28 September, on the basis of "reliable information that James H. Lane with a large armed force . . . is now about to invade the territory," with a request that Cooke proceed with the force he deemed necessary to arrest Lane, capture his arms and men, and bring them before the governor to be dealt with according to law.[76] Cooke proceeded north with the main portion of the force stationed near Lecompton and joined Johnston near the Nebraska border on 6 October, bringing the total force there to about 500 men. On his way north he narrowly missed capturing the "notorious Ossawatomie outlaw" John Brown, who was moving north out of the territory along the "Lane trail" while Lane was trying to sneak his forces southward.[77]

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[72] Ltrs, AG Strickland to Geary, 25 Dec 56 and 21 Jan 57, S. Ex. Doc. 17, pp. 98, 132–33.

[73] Telg, Marcy to Geary, 27 Sep 56; Geary to Marcy, 16 Sep 56. H. Ex. Doc. 1, pp. 108, 155.

[74] Cooke to Asst AG, Dept West, 20 Sep 56, *SW Rpt*, 1856, pp. 134–35. Ex. Mins., Territory of Kansas, 18 Sep 56; Geary to Marcy, 22 Sep 56; Marshal Donaldson to Geary, 25 Sep 56, H. Ex. Doc. 1, pp. 112, 117–18, 123, 126–27, 138–40.

[75] Geary to Cooke, 21 Sep 56, H. Ex. Doc. 1, p. 123; Cooke to Asst AG, 24 Sep 56; Geary to Smith, 4 Oct 56; Glen D. Todd, Dep Sheriff, to Capt Sturgis, 6 Oct 56. *SW Rpt*, pp. 130, 135–36.

[76] Spec Orders 134, Hq, Dept West, 22 Sep 56; Orders, no. 11, Hq, Camp near Lecompton, 26 Sep 56; Cooke to Asst AG, Dept West, 27 Sep 56; Geary to Cooke, 28 Sep 56. All in *SW Rpt*, 1856, pp. 131–32, 139.

[77] Cooke to Asst AG, Dept West, 28 Sep and 3, 7 Oct 56, ibid., pp. 135–36, 139–40.

Before Cooke arrived, Johnston had halted a party under James Redpath from whom he gained a good deal of information about other parties coming in. Cooke also sent out spies to join emigrant parties moving south. With information gained, on 8 October he confiscated from a fortified house along the trail an excess of muskets, bayonets, powder kegs, and lead. On 10 October he captured his biggest prize—a party of about 240 men led by Shalow W. Eldridge and Samuel C. Pomeroy. This expedition contained only five women of marriageable age and very little of the equipment ordinary emigrants would carry—only one tool box, no furniture, and no agricultural implements. In contrast there were 242 muskets and rifles, 63 sabres, 50 Colt revolvers, and 4 boxes of cartridges. With Cooke's soldiers in control, U.S. Deputy Marshal William J. Preston arrested the entire group for violation of Geary's proclamation. Major Sibley escorted the prisoners to Lecompton where Governor Geary, after delivering a severe lecture, released them, and permitted them to go on to Lawrence. While Lane himself, like John Brown, successfully eluded the federal net, the capture of the Eldridge party seems to have discouraged any further efforts on his part to infiltrate freestate fighters into Kansas. It put the final touch on Geary's pacification program.[78]

On 17 October Geary, under the escort of a squadron of dragoons commanded by Major Sibley, undertook an extensive observation tour of the territory. Returning to Lecompton on 7 November, he reported everything peaceful. And on 11 November he informed General Smith that he could dispense with all the troops placed at his disposal, except for one squadron of dragoons and one company of infantry. With some relief, Smith announced to the War Department and the president the success of the measures they directed taken "without the shedding of blood or the exertion of any force beyond the ordinary arrest of persons accused of crimes." The Army could now, Smith advised, turn its attention to punishing the Cheyenne Indians, a task long delayed by the troubles in Kansas.[79]

Smith left two companies of the 1st Cavalry and one company of the 6th Infantry deployed near Lecompton to support the governor, and withdrew the rest of his forces to their permanent stations at Forts Leavenworth and Riley. A few weeks later, at Geary's request, the force available to the governor was reduced to a single company of the 6th Infantry under Capt. Edward Newby, consisting of thirty-one enlisted men. The militia companies called into the active service of the United States were also paid off and dismissed.[80]

Besides military pacification, Geary took other steps to improve conditions in Kansas. He saw that land claims were at the root of much of the trouble, and he opened up the Delaware trust lands for sale, making available for patenting most of the area north of the Kansas River. He also attempted to reopen the normal avenues of trade between the Missouri river

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[78] Cooke to Asst AG, Dept West, 7, 8, 10 Oct 56, Asst AG to Cooke, 8 Oct 56; Preston to Cooke and Cooke to Preston, 10 Oct 56; Smith to AG, 14 Oct 56, ibid. pp. 126, 139–43. Geary to Marcy, 15 Oct 56, H. Ex. Doc. 1, p. 169. Eldridge, in *Recollections*, pp. 114–17, contains an interesting account of this incident. He maintains that Geary was "in hearty sympathy with our motives," and that he even promised to restore the arms taken from them when his "delicate situation" would permit.

[79] Smith to AG, 11 Nov 56; Geary to Smith, 11 Nov 56, *SW Rpt*, 1856, p. 144–46. Journal of the tour is in S. Ex. Doc. 7, 34th Cong., 3d sess., *Presidential Message communicating extract from letter of 22 November from Governor of Kansas*, ser. 878, pp. 4–11.

[80] GO 14, Hq, Dept West, 12 Nov 56; *SW Rpt*, p. 146. Geary to Smith, 20, 25, 26, and 28 Nov 56, S. Ex. Doc. 17, pp. 73–75, 79. Expenses of the militia are shown in War Department statement of 10 Jan 56, in H. Ex. Doc. 34, 34th Cong., 3d sess.(?).

towns and the Kansas settlers and both the trade and emigration routes leading westward that roaming brigands had effectively closed. Proud of his achievements, in his letter to General Smith on 28 November he characterized Kansas as being in the "best possible condition," and he wrote Secretary Marcy at year's end, "Crime, so rife and daring at the period of my arrival, is almost entirely banished. . . . I can truthfully assure you that, in proportion to her population and extent, less crime is now being committed in Kansas than in any other portion of the United States."[81]

True, Geary was to find later that the territory had not been so well pacified as he at first thought, and to regret that he had relinquished control of the troops so quickly. Yet the pacification achieved by the Army under Geary's aegis was a considerable achievement and the territory was not again to have the general disorders that characterized the period from May through October 1856.

In achieving the relative pacification of Kansas Territory, Governors Shannon and Geary had employed troops more in keeping with instructions given Shannon by Secretary of State Marcy than those of Secretary of War Davis to the military commanders. For Marcy had told Shannon in the beginning that he should requisition troops of the military commanders to provide assistance "in executing his duties as governor," whereas Davis limited the mission to providing *posse comitati* on request to assist in executing the laws. In Davis' view, it would appear, the troops were to be used only to escort marshals and sheriffs to make specific arrests, or to overcome armed resistance to the enforcement of laws passed by the constituted territorial governments of Kansas, a government that the freestaters insisted did not merit obedience. Indeed, Davis' conception, and originally that of President Pierce also, was that the Army would assist the militia of the territory in putting down resistance to the territorial government's authority. But the freestate settlers formed their own governments and their own militia to resist the authority of what they called the "bogus" territorial government at Lecompton. And the "Kansas militia" turned out to be preponderantly an agglomeration of pro-slavery men from Missouri and other Southern states determined to subdue the freestate elements by force. In this situation the military commander, Colonel Sumner, quickly perceived that a policy of simply supporting the territorial government's authority amounted to taking sides in an incipient civil war. To prevent such an outbreak he advanced the proposition that the Army should police the territory, breaking up all armed bands, regardless of whether they represented freestaters or pro-slavery men.

In the end, Shannon adopted Sumner's policy as the only means of dealing with the situation after the sack of Lawrence. Geary was to carry it out with much greater force and finesse, based on a new mandate from the president that his mission was to suppress civil war in Kansas. In giving Geary this mandate, Pierce was, of course, much influenced by the considerable constituency the freestaters enjoyed in Congress. Under this mandate, the Army in Kansas became a relatively impartial police force, with its main mission to prevent civil strife, whatever its origins. The freestaters, much incensed by Sumner's actions in dissolving the Topeka assembly, however, were hardly ready to admit of the Army's impartiality.

Although marshals and territorial sheriffs, or on some occasions the governor, continued to accompany troops on their missions, the military task really became one of policing the

[81] Geary to Marcy, 31 Dec 56, S. Ex. Doc. 17, p. 101.

territory rather than of furnishing *posse comitati* on request to protect civil officers in making arrests or serving writs. Policing the territory involved mainly breaking up all armed bodies not operating under the aegis of the governor or troop commander, including those masquerading as the Kansas militia. Part of the new mandate to Geary in September 1856 was authorization to disband the Kansas militia and then to reorganize it, and General Smith was instructed to federalize any units called into the field and to exercise command over them. With this dispensation, the Army, under the guidance and authority of Governor Geary, was able to dissolve pro-slavery as well as freestate bands and prevent a genuine civil war in Kansas.

It is ironic that a policy of use of military force to preserve the peace in Kansas, at least ostensibly designed to enforce the laws of the federally recognized territorial government against the opposition of the freestaters, in the end worked to the benefit of the latter. For as the freestate settlers came to predominate in the territory, the pro-slavery men could maintain the balance of irregular forces only by bringing in men from other states. And it soon became evident that any fair application of the doctrine of popular sovereignty would mean freestate control of the territory. If the Army acted to prevent armed freestaters as well as Missourians from entering the territory, on balance this policy favored the freestaters. With the "Kansas militia" out of the way, and the Army employed to guarantee free and fair election, the freestaters had only to bide their time before they would eventually triumph. If the purpose of the use of the Army in Kansas in 1856 was to prevent civil war in the territory, it was eminently successful. That in doing so it helped to guarantee the eventual triumph of the freestate cause was more by accident than design. In any case, there remained one more act in the drama before these results would become apparent.

CHAPTER 9

The Last Phase in Kansas and Its Sequel

There is imminent danger unless the territorial government is sustained by a large body of troops of the United States, that, for all practical purposes, it will be overthrown or reduced to a condition of absolute imbecility.

——Robert J. Walker to Lewis Cass, 20 July 1857.

Events soon proved that although the worst kinds of disorder had ended, Kansas remained far from completely pacified, and its basic problem—the conflict between the pro-slavery and freestate elements—continued unabated in one form or another. Governor Geary soon found that he could not really enforce his policies without military protection, and his successor Robert J. Walker was to demand military support in full measure.

New Storm Clouds

Geary's pacification program was never really completed in one area, southeast Kansas, John Brown's old stamping ground. In October 1856 Geary had sent an investigating team into Franklin and Lykins counties, areas where brigandage was rampant and many of Brown's old followers were alleged to be hiding. The investigating team, headed by Commissioner J. W. Hoagland and a deputy, was escorted by a squadron of the 1st Cavalry. The team took affidavits, made five arrests, and recovered a good deal of stolen property. Apparently the majority of Brown's followers hid or escaped. The investigation had only fairly begun when the cavalry squadron received orders to return to garrison, and the investigating team decided it could not operate without military escort.[1]

The freestaters stirred up most of the trouble in southeast Kansas, but very early in the new year, 1857, a virulent pro-slavery opposition to the governor began to assert itself in Lecompton as the territorial legislature convened. This legislature, rather than the governor, controlled the territorial officials and the machinery for conducting elections. And the pro-slavery faction continued to control the legislature. In June 1857, over the governor's veto, it passed a measure providing for an election of delegates to a convention to frame a constitution under which Kansas could be admitted as a state. The freestaters refused to participate in any election conducted under the "bogus" legislature's rules, continued to ignore

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[1] *Rpt of Commission dispatched to Southern Part of Territory*, 29 Nov 56, S. Ex. Doc. 17, pp. 80–81. Malin, *John Brown*, pp. 335, 655–83.



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the territorial officials and to maintain their own shadow government, and agitated for the acceptance of their own Topeka Constitution.

In December 1856, Sheriff Samuel Jones of Douglas County resigned. The board of county commissioners, composed of pro-slavery men, chose one of his friends, William T. Sherrard, a well-known pro-slavery roughneck, to succeed him. Geary refused to issue his commission, whereupon Sherrard appealed to the legislature for support and petitioned Judge Lecompte's court to force the governor to accept his appointment as sheriff. While these matters were pending, Sherrard threatened several members of the governor's entourage, insulted the governor in public, and evidently sought to assassinate the governor himself. Sensing greater trouble in the offing, Geary asked General Smith for two additional companies of dragoons to report to him without delay. Smith refused, saying that only overt acts, not insults or probable breaches of the peace, could justify the use of troops. Besides, all the forces at his disposal, he said, had been designated by the secretary of war for other service. Even Newby's company, which had been left in Lecompton in the general withdrawal late in 1856, would soon have to join them. "The contingency under which the troops were acting," Smith wrote, "I consider to have ceased." The garrison to remain in the territory would be available only if the president directed their employment anew.[2]

The Sherrard affair ended in a violent confrontation in which Sherrard wounded two men of the governor's entourage and was in turn shot and killed by one of them. Geary had to use Newby's company to maintain order. In the wake of this affair he wrote in desperation to Secretary of State Marcy that he must have a sufficient number of troops at his disposal to police the elections in October for the territorial legislature. On 2 March, in one of his last official acts as governor, with some bitterness he wrote Smith, protesting his interpretation that the contingency had ended. The removal of Newby's company, he thought, would be attended by "serious, and, perhaps calamitous results."[3]

Meanwhile, Geary had become embroiled in a dispute with Judge Lecompte, whom he removed as territorial chief justice. The territorial legislature appealed to the president to reinstate Lecompte, and the administration seemed to be leaning in that direction. On 4 March, frustrated and discouraged, Geary submitted his resignation to new President James

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[2] Smith to Geary, 11 Feb 57; Geary to Smith, 9 Feb 57, w/Incls, S. Ex. Doc. 17, pp. 156–58, 188–89. On the Sherrard affair see KSHS *Collections*, 5:276–87.

[3] Geary to Smith, 2 Mar 57, Geary to Capt Newby, 18 Feb 57, Geary to Marcy, 21 Feb 57, S. Ex. Doc. 17, pp. 172, 178–79, 194–95, KSHS *Collections*, p. 276.

A. Buchanan and departed the territory a week later, fleeing much as his predecessors had, in fear of his life. Meanwhile, General Smith, in "feeble health," had also left for Saint Louis even before receiving Geary's 2 March letter. He left instructions that Newby's company should remain near Lecompton as long as there seemed a necessity, but provided little other guidance for his temporary successor, Colonel Sumner, who had returned to his command of the 1st Cavalry.[4]

With Geary's departure, the governor's office was once again left in the hands of Daniel Woodson until a new governor should be appointed by Buchanan. Woodson was soon asking for military aid, not at Lecompton, but in the troubled area of southeast Kansas where "Dutch Henry" Sherman was murdered on 2 March and where on 19 March Anderson County officials reported that disorders were preventing any census, assessment, or investment of new county officers. Woodson requested a company of dragoons, saying any attempt to enforce the law without U.S. troops would result in bloodshed. Sumner demurred, citing his lack of authority, since Smith had superseded him in charge of "military affairs in Kansas" and had left no instructions. There would therefore be a short delay, he said, and suggested it would be safer to pause a little in military matters until the policy of the new administration was known. For himself, he thought, "If difficulties should arise similar to those of last year, I do hope that the government will either put an iron grasp on the territory that will secure every man in all his rights (and this is practicable) or else withdraw every soldier from the Territory, and let the people settle their own difficulties in their own way."[5]

Robert J. Walker and the Elections of October 1857

The set of officials selected by Buchanan included Lewis Cass of Michigan as secretary of state, John B. Floyd of Virginia as secretary of war, and Robert J. Walker, Pennsylvania-born but a former senator from Mississippi and secretary of the treasury under Polk, as governor of Kansas. Frederick P. Stanton of Tennessee, Walker's choice, succeeded Woodson as territorial secretary, and proceeding to the territory ahead of Walker, acted as governor from 15 April until 27 May 1857. Both Stanton and Walker had natural pro-slavery sentiments, but they came to the territory determined that the will of the bona fide settlers should govern. Walker sensed that in any fair settlement through free elections, the freestaters would prevail since neither climate nor geography suited Kansas for slavery. But he was equally insistent that the freestaters must proceed by strictly legal means and would countenance no governments established outside the legal territorial framework. As a good Democrat and loyal supporter of both Douglas and Buchanan, he sought to create in Kansas a dominant Democratic party composed of moderates on both sides who would accept the verdict that "popular sovereignty" was about to render.

Walker accepted the governorship, he later recalled, only on the condition that he have an adequate military force to support him and that Brig. Gen. William S. Harney be brought from Florida and placed in command of the troops in Kansas subject to his direction.[6] Har-

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[4] Asst AG, Dept West, to Geary, 4 Mar 57, Terr Council Mins, 12 Mar 57. Geary to Buchanan, 4 Mar 57. S. Ex. Doc. 17, p. 196–99. KSHS *Collections*, 5: 288–89.

[5] Sumner to Woodson, 27 Mar 57, Clerk and Probate Judge, Anderson County, to Woodson, 19 Mar 57, Woodson to Smith, 25 Mar 57, S. Ex. Doc. 17, p. 205–08.

[6] See Walker to Cass, 15 Jul 57, S. Ex. Doc. 8, 35th Cong., 1st sess., *Presidential Message Communicating Correspondence between Exec Depts and Kansas*, ser. 918, pp. 26–34.



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ney was appointed to this command on 8 May, 1857, with the title of Commander of Troops in Kansas. Although he remained theoretically subject to the authority of Persifor F. Smith, who continued as commander of the Department of the West despite his ill health, the War Department dealt directly with Harney on affairs in Kansas. Instructions issued by Secretary of War Floyd on 1 April removed any doubts that Harney's troops would be subject to the requisition of Governor Walker for peace-keeping missions as Smith's had been to that of Geary during the summer and fall crisis of 1856,

> If the governor of the territory, finding the ordinary course of judicial proceedings and the powers vested in the United States marshals and other proper officers, inadequate for the preservation of the public peace and the due execution of the laws, should make requisition upon you to furnish a military force to aid him, as a *posse comitatus,* in the performance of that official duty, you are hereby directed to employ for that purpose the whole or such part of your command as the situation may require.
>
> In executing this delicate function of the military power of the United States, the responsibility will be on the governor of the territory, and you will implicitly obey his orders.[7]

Floyd made it clear to Harney that these instructions superseded any previous ones issued either by President Pierce or Secretary Davis. They gave Walker greater authority over the military forces in Kansas than either Shannon or Geary had possessed, and clearly contradicted Smith's earlier contention that the contingency under which the troops had been used had ended. If they still authorized the use of troops only as *posse comitati* to assist in enforcing the laws and "the preservation of the public peace," obviously this latter phrase could cover a multitude of uses.

At the same time, troop deployments made by the War Department, actual and proposed, threatened to reduce to a minimum the forces available to the governor. Colonel Sumner, with the bulk of the 1st Cavalry and several companies of the 6th Infantry, departed on the long-delayed campaign against the Cheyenne along the Platte River in Nebraska; Colonel Johnston with another contingent of the 1st Cavalry went on a surveying mission on the southern border of Kansas Territory. The expedition meanwhile being planned for Utah threatened to absorb most of the rest of the troops at Leavenworth and Riley. Six companies of the 2d Dragoons at Riley were initially scheduled to form its cavalry component, a move that would leave Kansas with a cavalry force of only the two remaining companies of dra-

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[7] AG to Bvt Maj Gen P. F. Smith, CO, Dept West, Baltimore, Md, 1 Apr 57; AG to BG William S. Harney, 8 May 57, *SW Rpt*, 1857, pp. 99–101.

goons. And perhaps most important of all to Walker, General Harney was appointed by Winfield Scott to command the Utah expedition.[8]

With extraordinary powers but diminishing troop strength, Walker set forth on his duties. His first requisition on Harney for troops came in early July for a *posse comitatus* to aid the sheriff of Leavenworth County to prevent the rescue of freestate prisoners charged with murder. Walker's main concern, however, was with the revival of the movement for a separate freestate government which the radical faction of the freestaters, now members of the New Republican party, were sponsoring. Walker's agenda called for the freestaters to take part in territorial politics. He was unable to persuade them to participate in the election for the constitutional convention in June, but did hope to get them to vote in the territorial elections in October, which he promised them would be fairly conducted and limited to bona fide residents. At his urging the Topeka convention of freestaters, meeting in 9 June 1857, decided to pursue a moderate course, and not to try to pass of code of laws or organize a military force as the radical faction led by James H. Lane asked.

Walker was soon confronted, nonetheless, by a strong move on the part of the Radical faction to found a town government in Lawrence that could impose assessments and taxes free of the territorial authority. He felt this move would be imitated by other towns controlled by the freestaters, and on 14 July he called on Harney for a regiment of dragoons to proceed to Lawrence to deal with a "dangerous rebellion." Harney immediately ordered Colonel Cooke with seven companies of 2d Dragoons from Fort Riley to report to the governor as a *posse comitatus*. Walker issued a "cease and desist" proclamation to the people of Lawrence on 15 July, and Cooke moved the troops into the town. They remained there until mid-August guarding the main avenues and inspecting all those who entered or left town. The people did "cease and desist" while the troops were there, even claiming, for Walker's benefit, that the whole thing had been a voluntary association merely to remove nuisances from the streets. There is no record of arrests by civil authorities accompanying this supposed *posse comitatus*.[9]

Walker's use of the 2d Dragoons in Lawrence made it impossible for the six companies scheduled for Utah to depart with the first increment of the expedition in mid-July and led the War Department to issue orders for Sumner's 1st Cavalry to join with the column en route. Meanwhile, Walker vigorously protested directly to Buchanan: "It will never do to send General Harney to Utah until the difficulties in Kansas are settled. He is a terror to the black republicans and just the man for the occasion." And Buchanan promised that Harney would remain in Kansas until Walker was "out of the woods." Kansas, the president said, "is vastly more important at the present moment than Utah."[10]

Meanwhile, a convention of freestate men meeting at Topeka in mid-July did decide that the freestaters should participate in the October elections for the territorial legislature. And acting on the warning that Missourians would again come over to cast votes in the election, the convention authorized Lane to organize the people in the several districts to protect the

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[8] See below, Chapter 10. *SW Rpt*, 1857, p. 4–6.

[9] Walker to Harney w/Incls, 6 Jul 57; Harney to Walker, 15 Jul 57, Walker to Cass, 2 Jun and 15 Jul 57, *Walker's Proclamation*, 15 Jul 57, all in S. Ex. Doc. 8, pp. 34–37, 43–44. *Walker's Address to People of Kansas, SW Rpt*, 1857, p. 118.

[10] Walker to Buchanan, 28 Jun 57; Buchanan to Walker, 12 Jul 57, H. Rpt. 648, 36th Cong., 1st sess., *The Covode Investigation*, pp. 112–13, 119. On the orders to the 1st Cavalry see below Chapter 10.



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ballot boxes. Lane accordingly issued "General Orders No. 1" from his "Headquarters, Kansas Volunteers" requesting the people of Kansas to form volunteer companies to be registered with his headquarters. Captains of companies were to make a registry of all who refused to enroll. Walker was much alarmed when he heard of his movement, fearing that taking names of those who refused enrollment would "terrify freestate conservatives into submission." To counter the Lane forces, he foresaw the need for a massive troop presence at the time of the October elections. On 20 July he protested strongly to Cass about the reduction of troops in Kansas, insisting not only that he had been promised that Harney would remain as commander, but that he needed at least 2,000 troops, mainly dragoons who could move with celerity from place to place, to maintain order in Kansas. "There is imminent danger," he warned, "unless territorial government is sustained by a large body of troops of the United States, that, for all practical purposes, it will be overthrown or reduced to a condition of absolute imbecility." He rejected the use of militia: "Experience has proved that to order out the local militia is simply to renew the civil war in Kansas. Indeed from whatever state you might order militia, they would, to a great extent, take sides with one or the other of the two parties here, and the result would prove disastrous."[11]

The War Department hastily made arrangements for Walker to have a sufficient force at his disposal, despite the expense to the expedition to Utah. Orders sending Harney to Utah were countermanded and Col. Albert Sydney Johnston designated to command in his stead. The six companies of the 2d Dragoons were, however, restored to the Utah force to depart in mid-September, while Sumner's Indian fighting command would return to Leavenworth, along with the troops under Lt. Col. Joseph E. Johnston conducting the survey in south Kansas. Various other units of the 6th Infantry and 4th Artillery were ordered to Kansas, along with a miscellany of additional units. By 1 September Cass was able to tell Walker that thirty-two more companies were on the move to Kansas to join the four remaining there, and he expressed hope that a sufficient force would be on hand for the October elections.[12]

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[11] Walker to Cass, 20 Jul 57; Hq, Kansas Volunteers, GOs 1 and 2, 18, 20 Jul 57. S. Ex. Doc. 8, pp. 47–49, 54–55. Wendell H. Stephenson, *The Political Career of General James H. Lane*, Kansas State Historical Society *Publications* (Topeka: Kansas State Printing Plant, 1930) 3:86–87.

[12] Cass to Walker, 1 Sep 57, S. Ex. Doc. 8, p. 75, *SW Rpt*, 1857, p. 6. On opposition in the cabinet to meeting Walker's demands see Allan Nevins, *The Emergence of Lincoln*, 2 vols. (New York: Charles Scribner's Sons, 1950) 1:171. Nevins indicates the decision went against Walker, but the deployments of troops speak for themselves.

In the event, only Johnston's and Sumner's commands arrived in time, and they were so late that some units had to move directly to the polling places to which they were assigned without reporting to their posts. Meanwhile, Walker struggled with what he considered a serious insufficiency of troops during the late summer. The dragoons at Lawrence had to be diverted temporarily to meet a reported Indian threat to Fort Riley, left vulnerable in their absence. Although they returned when the threat turned out to be a false alarm, Walker reluctantly had to withdraw them again late in August because of the decision to send them to Utah. No sooner had he withdrawn the troops than he found that the "insurgent government of Lawrence, under the erroneous opinion that the regular troops had all been ordered to Utah," had enacted a compulsory tax law. On 26 September Walker had Harney dispatch Maj. Thomas W. Sherman's artillery battery to the town to put an end to this new "rebellion." They remained in Lawrence during and after the election, 5-6 October.[13]

With the arrival of the units of the 6th Infantry and 1st Cavalry, on the election days Harney sent detachments to other suspected trouble spots throughout the northeastern part of the territory to guard the polls, each contingent, in accord with Walker's instructions, acting as a *posse comitatus* in support of U.S. marshals or territorial sheriffs at the polling places. Harney could report to the War Department on 11 October that the general election had passed off very quietly, "no disturbance or tumult having occurred at any of the polls which have been heard from to mar the peace of the territory." In several precincts where the troops were not present, however, notably Oxford and McGhee, there were the old types of fraud and nonresident voting. Walker threw out the results in these precincts, thus ensuring freestate control of the territorial legislature.[14]

Despite an admitted improvement in the prospects for "permanent pacification" of Kansas, Walker was unwilling to relinquish any of the force he had been promised. The uproar surrounding the Oxford-McGhee frauds and the assembling of the pro-slavery constitutional convention at Lecompton led Walker to believe that he might badly need a military force to keep the freestaters in line despite their electoral victory. In response to a query from Harney, Walker told the troop commander that the entire force should be maintained in Kansas during the fall and winter, that it could only be dispensed with should "no untoward circumstance" arise during the period. And indeed the force stationed in Kansas reached its highest point in the months that followed. By the end of the year 1857 it consisted of 2,516 men as contrasted with only slightly over 1,000 at the time of Geary's troubles the previous year.[15] It was a temporary phenomenon, for most of this force at Forts Riley and Leavenworth was destined to move on to Utah early in the new year. Indeed it is difficult to discern, in the troop movements to Kansas late in 1857, which units were really sent to meet Walker's requests, and which were simply using Leavenworth as a way station on the route to Utah.

In any case, Walker felt some satisfaction in what he had accomplished when in November

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[13] Walker to Cass, 3 and 18 Aug 57, S. Ex. Doc. 8, pp. 61-66. Walker to Harney, 26 Sep 57, Harney to Walker, 27 Sep 57, SO (Special Order) 77; Hq Troops Serving in Kansas, 26 Sep 57. *SW Rpt*, 1857, pp. 121-22.

[14] Harney to Secy War, 11 Oct 57, *SW Rpt*, 1857, p. 129. Documents on the orders to the troops are also in this report, pp. 101-06, 120-28. On Walker's actions on the election frauds, see Walker to Cass, 20 Oct 57, S. Ex. Doc. 8, pp. 99-101.

[15] S. Ex. Doc. 22, 35th Cong., 1st sess., *Report of the Secretary of War Showing Number of Troops Stationed in Kansas each Qtr since 1 Jan 1856*. Harney to Walker, 9 Oct 57; Walker to Harney, 10 Oct 57, *SW Rpt*, 1857, pp. 129-30.

he departed the territory for a month's leave in the East. He left the governorship in the hands of the territorial secretary, Frederick P. Stanton. Walker was never to return. Although the Buchanan administration had supported him with troops, it was pro-Southern in outlook and did not like his action in the Oxford–McGhee case that had ensured freestate control of the legislature. And it would not support him in his position on the Lecompton Constitution. The convention elected in June by pro-slavery voters met as Lecompton on 7 September and adjourned during the territorial elections. But it resumed deliberations on 19 October and drew up a constitution under which it proposed Kansas should ask admission as a state. In his negotiations with the freestaters, Walker had promised that any constitution drawn up by the convention would be submitted to the vote of the people and thought he had Buchanan's support for this position. The drafters of the Lecompton Constitution proposed a vote on the slavery question only. Their constitution would protect slave property already in the territory in any case; the people were to be permitted to vote only on whether any more slaves would be allowed to enter. When the Buchanan administration chose to support what the freestaters called the "Lecompton swindle," Walker felt his position was untenable, and he resigned the governorship on 15 December with a long blast at Buchanan's policy.

Acting Governor Stanton completely shared Walker's views. Rather than attempt to control by military force the freestaters at the time of the scheduled vote on the slavery clause of the Lecompton Constitution, Stanton called the territorial legislature, now under freestate control, into special session on 7 December for the sole purpose of providing for another election to vote the entire Lecompton Constitution up or down. For this defiance of the administration's will, Stanton was dismissed and James W. Denver, who had gone west to be Indian commissioner, was appointed territorial secretary and acting governor of Kansas. The election under the terms of the Lecompton Constitution was held on 21 December 1857. With the freestaters refusing to participate, the vote was 6,143 to 569 for the constitution with slavery. On 5 January 1858, the freestaters held their own election in which the pro-slavery people did not participate and rejected the entire constitution, 10,266 votes to 162. The issue now had to be settled in the halls of Congress where, despite the support of the Buchanan administration, the Lecompton Constitution was never to be accepted. Kansas was not admitted to the Union until 1861, and then under a freestate constitution.[16]

In none of these events did the military forces in Kansas play any vital role. On 19 October, during the Lecompton convention, Walker did withdraw Sherman's battery from Lawrence and bring it to Lecompton at the behest of the local sheriff who claimed that an assembled mob threatened the convention's deliberations. On the initiative of the War Department, too, troops were stationed at selected places during the 21 December election. Harney furnished a few troops in early January, on Denver's requisitions, to support the U.S. marshal in controlling mob action in Lecompton, and to protect the territorial land office from bands of lawless men. Troops again were stationed at the polls in certain precincts during the January elections for state officers under the Lecompton Constitution.[17] But in reality the guarding

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[16] On this course of events, see Roy F. Nichols, *The Disruption of American Democracy* (New York: Macmillan Co., 1948), pp. 122–75. For Stanton's justification of his action in calling the special session of the legislature, see KSHS *Collections*, 5:414–19. "It was to me certain," he wrote Cass, "that the mass of the people were determined not to submit to the constitution, nor to participate in the election, but probably to prevent its taking place. A large military force would have been necessary everywhere to enforce order."

[17] Walker to Cass, 20 Oct 57, S. Ex. Doc. 8, p. 100–101. Materials in KSHS *Collections*, 5:457–58, 468–73.



THE BATTLE OF HICKORY POINT *(detail from a print by Wm. Breyman).*

of the polls during the election of October 1857 was the last act in the major drama of troop intervention in Kansas.

Afterward, the Buchanan administration no longer attached the same importance to Kansas, and the redeployment of troops from Kansas to Utah and other posts was rapid. Harney was once again designated to the Utah command, and when the dispute with the Mormons was settled before he could assume it, he was dispatched to the West Coast to command the Department of Oregon. By 30 June 1858 there were less than 600 soldiers left in Kansas. None were cavalry or dragoons, the types best suited to operations against scattered armed bands; and most were artillery, the type least suited for these purposes. A year later the number had dwindled further and all the troops present at Forts Riley and Leavenworth were artillerymen.[18]

Southeast Kansas—The Residue of the Pacification Mission

The general result of the efforts of Geary and Walker, coupled with the freestate political victory, was the pacification of most of the settled area of Kansas, however much the

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[18] *SW Rpt*, 1858, pp. 774–75 and *SW Rpt*, 1859, pp. 602–03. There were, however, some cavalry units at Riley at certain times between these dates.

political struggle continued to rage in the halls of Congress over the Lecompton Constitution. There was one exception to this general pacification—Fort Scott and its environs in Southeast Kansas. Fort Scott sat on the Missouri border and was one of the strongholds of the pro-slavery elements. It was perhaps for this reason that the town and the surrounding countryside became the center of activities of a band of Radical freestaters led by James Montgomery that plundered the homes and farms of pro-slavery settlers and even those of Conservative freestaters who sought only to live in peace. To combat Montgomery's activities during the period 1857–1861, the Army was frequently called on for aid under the secretary of war's earlier instruction.

The first call for assistance came in mid-December 1857 from the sheriff of Bourbon County and the deputy U.S. marshal there. Acting Governor Stanton asked General Harney to "immediately station at Fort Scott a sufficient number of men, not less than 100, under the command of a discreet officer" to act as a *posse comitatus* to assist these officers "in the execution of legal process."[19] Harney promptly sent a squadron of the 1st Cavalry under command of Capt. Samuel D. Sturgis with instructions to aid the civil authority in preserving the public peace and executing the laws. Sturgis stayed in Fort Scott for two weeks but apparently made little effort to stop Montgomery's depredations in the countryside. He had hardly departed when new Acting Governor James W. Denver, learning that Montgomery's men were on the rampage again, asked for the dispatch of a new force. This time Col. John Monroe, commanding at Fort Leavenworth, sent two companies of the 1st Cavalry under Capt. George T. Anderson, a Georgian of decided pro-slavery sympathies, and a future Confederate general. Anderson was instructed to report to the U.S. district judge and U.S. marshal at Fort Scott and be governed by their instructions.[20]

Anderson proved more aggressive than Sturgis, but hardly so "discreet." All during March and April Anderson's companies sought an elusive banditti who were farmers in the daytime and plunderers after sundown. Some of his command were even accused of joining border ruffians in depredations against freestaters, adding to the disorders in the region. On 21 April 1858 troops finally found a body of armed men and pursued them into a defensive position in the hills above Painted Creek. In an ensuing engagement the cavalrymen, armed only with pistols and sabers, were bested by Montgomery's men and forced to withdraw. The Army lost one soldier and four horses. This soldier seems to have been the only one killed in action during the entire Kansas episode. Montgomery lost only one wounded, and with the cavalrymen pinned down, his whole band escaped arrest.[21]

In the aftermath of this affair, Montgomery's supporters vowed to hang Anderson from the highest tree in Bourbon County and to put to death any of his soldiers wherever found. Before learning of the battle at Painted Creek, Denver had already decided to have Monroe replace Anderson's unit with some less partisan troops, but on hearing of the engagement decided to reinforce it and replace Anderson in command. Monroe sent Capt. Thomas J. Wood of Hickory Point fame to Fort Scott with a company of dragoons and two artillery detachments. To guard against the alleged misconduct of Anderson's contingent, Wood was

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[19] Stanton to Harney, 16 Dec 57, KSHS *Collections*, 5:456–57.

[20] Harney to Stanton, 17 Dec 57; Denver to Monroe, 15 Feb 58, Monroe to Denver, 18 Feb 58; SO 34, Hq, Troops serving in Kansas, 17 Feb 58. KSHS *Collections*, 5:458, 478–79, 521. Leavenworth, Kansas *Weekly Herald*, 9 January 1958. George M. Welch, "Border Warfare in Southeast Kansas, 1856–1859," A.M. thesis (University of Kansas, 1938), p. 60.

[21] Welch, "Border Warfare," pp. 62–64, 71–73.



HARPERS FERRY, *c. 1859.*

instructed that "Great care must be taken that the men of your command never exceed the instructions of the civil authorities."[22]

Wood's contingent, in any event, made little progress in halting Montgomery's depredations. And on 13 May Harney notified Denver that his mounted companies at Fort Scott would have to return to Leavenworth preparatory to depature for Utah. Only an artillery company would be left in the troubled area.[23] This reduction in troop strength came just as the situation in southeast Kansas mounted to a boiling point. Montgomery's raids had forced many pro-slavery settlers and indeed some conservative freestate men to abandon their homes

[22] Asst AG, Hq, Troops serving in Kansas, to Wood, 27 Apr 58; Monroe to Denver, 27, 28 Apr 58. KSHS *Collections*, 5:522–24; Lawrence, Kansas *Herald of Freedom*, 26 June 58.

[23] Harney to Denver, 13 May 58, SO 63, Hq Troops serving in Kansas, 12 May 58, SO, 184, 23 May 58; Maj W. T. Sherman to Denver, 22, 24 May 58. KSHS *Collections*, 5:524–26.

and flee to Missouri. In retaliation, on 19 May 1858 a group of pro-slavery men under Capt. Charles Hamilton raided the freestate village of Trading Post in Linn County, rounded up 11 freestate men, and brutally killed 5 of them, wounding 4 others—the so-called Marais des Cynges massacre. The victims, Governor Denver later found, were guilty of nothing more than sympathy with Montgomery to the extent that "they took no steps to protect their neighbors, who differed with them in political opinions, from their depredations." Montgomery pursued Hamilton into Missouri but was unable to find him. On his return from this foray, he arrested a civil officer, confiscated letters written by the U.S. marshal to Denver along with writs for the arrest of himself and members of his band, and then had the effrontery to write a letter to Denver proposing peace in Bourbon and Linn counties on his own terms. He followed these exploits early in June with an attempt to burn the town of Fort Scott by placing dry hay against a house and setting fire to it. His men then withdrew and fired several volleys into the town to prevent the people from extinguishing the fire.[24]

When Denver got the first news of the troubles at Trading Post, he sent his military and civilian aides, Lt. A. P. Jones and Benjamin Newsom, to the scene of the troubles "to ascertain the facts," while he hastened to Leavenworth to consult with the military commander. There he was chagrined to learn that only 4 or 5 infantry companies and 1 artillery battery remained available for his use in Kansas, that the order for the 2d Cavalry to move up from Texas had been revoked. To Cass he complained bitterly: "With a mounted force, I would have no doubt of being able to arrest the disturbances at once . . . infantry is useless as a posse in a country such as this." He requested that the government arrange to furnish him a cavalry force at once saying that "the excutive here ought not to be left powerless . . . and unable to enforce the laws when violated."[25]

Denver's pleas brought no such result as Walker's had a year earlier. The best he could get was two companies of the 2d infantry that had just arrived at Leavenworth to go to Fort Scott to join the one artillery battery already there. Their commander, Capt. Nathaniel Lyon, as strong a freestate partisan as Anderson was a pro-slavery one, reported to the governor on 11 June that he doubted if such a small body of troops could have much effect in the existing state of popular excitement.[26] Great good, he thought, might come from "an energetic administration of the law by the civil authorities" and he suggested that the governor visit the area to encourage such a solution.[27]

Denver was in fact already in the region when Lyon wrote his report, with the very object in mind that Lyon urged on him, for it was quite obvious to the governor that he did not have the troop strength to force a military solution. He appreciated very quickly from Jones and Newsom's report and his own observations that Montgomery was able to thrive because most of the inhabitants either feared or sympathized with him. At a mass meeting of Bourbon County citizens at Fort Scott on 15 June Denver negotiated what was in effect a treaty with the freestate leaders, including Montgomery, wherein the latter agreed to keep the peace and enforce the laws. In return they received Denver's promise that the troops would be removed as soon as he was satisfied that the local government was functioning and peace

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[24] Denver to Cass, 23 Jun 58; Jones and Newsom to Denver, 3 Jun 58. *Ibid.*, 5:526–28, 531–35.
[25] Denver to Cass, 7 Jun 58, ibid., 5:528–30.
[26] Both were to become generals on their respective sides in the Civil War.
[27] Lyon to Denver, 11 Jun 58, KSHS *Collections*, 5:536.

was restored to the community. In effect, Denver agreed to no further efforts to arrest Montgomery and his band in return for a commitment on their part to stop their depredations.[28]

Denver, who on 12 May 1858 had officially assumed the position of governor, did not want the troops removed from the area until he was reasonably assured of peace. When on 25 June Army Headquarters ordered to other posts the four companies of the 4th Infantry in Kansas as well as the artillery battery deployed at Fort Scott, he protested bitterly asking that the matter be referred to the secretary of war and the president for decision. "If the governor has been deprived of all control over the movements of the troops here," he told Maj. Thomas W. Sherman, now commanding at Fort Leavenworth, "he ought to know it, and if not, there should be no orders issued conflicting with his purposes."[29] Sherman seemingly ignored this request and on 7 July, acting on his own belief that troops were no longer needed at Fort Scott, ordered them back to Leavenworth preparatory to carrying out the movements ordered by the Department of the West. Denver had meanwhile gone to Washington, where he got assurances of support from the War Department that countermanded the Department of the West order. Sherman had to hastily send the troops back. Denver, incensed at Sherman's action, asked Secretary of State Cass to have him replaced as commander at Leavenworth. The War Department had already ordered Sherman to Fort Ridgeley, Minnesota, however, so that he was removed from the scene without any fanfare.[30]

Acting at least in part on assurances from Captain Lyon that all was well in Southeast Kansas, on 9 August Denver did agree to remove the troops. He took the precaution of retaining until October a small volunteer force known as the Linn County Volunteers under Capt. A. J. Weaver, formed in June to assist in policing the area. But Denver was satisfied that southeast Kansas was under control when he resigned his office on 1 September, assuring Cass in his final report that "peace now reigns where but lately all was confusion."[31]

Acting Governor Hugh S. Walsh and Denver's successor, Thomas Medary, soon learned that the peace was an illusion. In November Montgomery became active again, at least on the pretext that the new county officials were not properly honoring the amnesty granted his men for past offenses that he considered part of the June agreement. And "old John Brown" returned to Kansas and began a series of depredations in conjunction with Montgomery. When the sheriff of Bourbon County arrested one Benjamin Rice, a member of Montgomery's band, for a murder committed earlier and placed him in jail in Fort Scott, Montgomery raided the town on 16 December 1858, freed Rice, killed John Little who had formerly been U.S. marshal in the area, and robbed a store. Brown followed on 20 December with a raid into Vernon County, Missouri, where he also killed a man and freed fifteen slaves. Fear once again gripped the whole area. The district judge wrote Governor Medary "We are emphatically at the mercy of these cuthroats day and night."[32]

The territorial government was again forced to ask for troops as a *posse comitatus*. Ascer-

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[28] Denver to Cass, 23 Jun 58, Terr Council Min, 15 Jun 58, ibid., 5:494–95, 531–35.

[29] Denver to Sherman, 29 Jun 58; Sherman to Denver, 28 Jun 58; SO 45, Hq, Dept West, 23 Jun 58. KSHS *Collections*, 5:537–38.

[30] Sherman to Actg Gov Hugh S. Walsh, 15 Jul 58, Walsh to Sherman, 22 Jul 58; Denver to Officer Cmdg U.S. Troops in Kansas, 9 Aug 58; Denver to Cass, 24 Aug 58, Floyd to Cass, 15 Sep 58, ibid., 5:502–03, 506, 541–44.

[31] Denver to Cass, 1 Sep 58; Lyon to Denver, 3 Aug 58; Denver to Cass, 24 Aug 58; Denver to CO, U.S. Troops in Kansas, 9 Aug 58; Denver to Weaver, 26 Jun 58, Denver to Cass, 18 Sep 58, ibid., 5:497–98, 505–06, 540–42, 543–45.

[32] J. Williams to Medary, 30 Dec 58, ibid., 5:567. On the disorders generally see pp. 551–67.



JOHN BROWN

taining that there were no mounted troops at Leavenworth, Medary requested the four cavalry companies he knew had returned from Utah to Riley. Major John Sedgwick, commanding at that post, granted two, commanded by Capt. William S. Walker, a nephew of the ex-governor. The horses of the other two, he said, were simply not in condition to do service in the field. To supplement these troops, Medary authorized a company of volunteers in Linn County, and one in Bourbon and secured arms for them from the federal arsenal in Saint Louis. And he dispatched his military aide, Lieutenant Jones, to carry messages to the president informing him of the troubles.[33]

On 8 January 1859 Medary issued sweeping instructions to Captain Walker. Acting as a *posse comitatus* in the company of the U.S. marshal or any deputy, his troops were to arrest any man or body of men whom the civil authorities were unable to handle, any who had been engaged in the late outrages in the area, or any assembled for the purpose of resisting federal or territorial officials or of violating the laws. Walker was authorized to attack these parties if they offered resistance, to burn and demolish their strongholds, and to bring in any prisoners to Fort Leavenworth for safekeeping.[34]

Walker had been en route only two days when word came down from the War Department to the post commanders at Leavenworth and Riley that they were not to comply with requests from Governor Medary "for troops to suppress disorders in Kansas." If any troops had been sent out they should be recalled. This revocation of the longstanding authority of the governor of Kansas to requisition troops for a *posse comitatus* indicated the growing unwillingness of the government in Washington to use military force to support civil authority in the territory. The decision was evidently made without any knowledge of the Fort Scott or Vernon County raids, for when Lieutenant Jones arrived in Washington and presented Medary's case to the president, the governor's authority was restored. In the interim it halted Walker's movement temporarily, and led Medary to believe that he must rely on civilian *posses* supported by his volunteer companies.

In any case, Captain Walker had no occasion to carry out his sweeping instructions. Whether because of the threat of the military forces being mobilized against him or because he sensed that even the radical freestaters were turning against "jayhawking" activities,

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[33] Medary to CO, Fort Riley, 28 Dec 58; Medary to Buchanan, 28 and 29 Dec 58, Sedgewick to Medary, 31 Dec 58, S. A. Medary to Gov Medary, 22 Dec 58; Medary to Capt Weaver and Capt Hamilton, 8 Jan 59. ibid., 5:563, 565–66, 570, 580, 582–83.

[34] Medary to Walker, 8 Jan 59, ibid., 5:583–84.

Montgomery surrendered on 18 January, and he brought in six of the "worst" of his men on 2 February.[35] Medary expected these men to be tried by a special court established to try those accused of crimes in the "infected district." Then on 11 February 1859 the freestate legislature passed a general amnesty law for those involved in crimes arising out of "political differences of opinion" in the counties of southeast Kansas, and Montgomery was never made to pay for his crimes.[36]

Meanwhile, John Brown was left to fend for himself. With even the freestate forces arrayed against him, he fled Kansas, moving up the old Lane trail, evading those who sought to capture him for the price on his head. Medary secured a military *posse* to aid in his pursuit, but it was in vain. Brown escaped out of the territory and went on to Iowa, where he established a sort of military training camp for his followers for a yet unknown objective, and then moved on to Canada.[37]

In any case, Medary wrote Cass on 23 February 1859 that "peace is restored in Kansas, and I hope forever," and asked permission to visit his family in Ohio.[38] It was a hope often expressed by governors of Kansas in the past, and as in the past, it was doomed to disappointment. Disturbances in 1860 once again led to the familiar request for troops from the governor to the military commander. This time General Harney, now commanding the Department of the West at Saint Louis, came personally with a large force and quieted the situation although he made no arrests. He left two companies behind, one of them commanded by Nathaniel Lyon. Early in 1861 Kansas was admitted to the Union as a free state, and very soon thereafter the activities of the desperado bands merged into the Civil War, with Union and pro-Southern forces contesting control. The long period of Army involvement in the domestic disturbances in the troubled territory was over.

This last chapter in the story of troop use in Kansas, in any case, was not of the same genre as the activities in 1856–1857 when they dramatized a great national issue and division, and the administrations in Washington gave a high priority to the effort to pacify Kansas. After Walker's resignation, the Buchanan administration shifted its priorities greatly, seeking to provide first for the Utah expedition and for other frontier posts involved in the continuing struggle with the Indians. Although troops remained at the disposal of governors of Kansas, it was always a bare minimum and there were seldom any mounted troops who had the necessary mobility to cope with the "jayhawkers." Neither the means nor the will to pacify a small section of Kansas by using federal military force remained. The results were a measure of the effort, for in contrast to the operations of 1856–1857, which must be adjudged a success, those of the years 1858–1860 were clearly a failure in controlling the disorders in southeast Kansas.

The employment of Army units in this last act in the Kansas drama conformed much more closely to the *posse comitatus* pattern than had the broader policy of policing the territory carried out by Shannon, Geary, and Walker. The governor continued to be the channel

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[35] "Jayhawkers" was a name, of uncertain origin, applied to roving bands of marauders along the Kansas-Missouri border during the troubled 1850s and the Civil War.

[36] Telg, Asst AG, War Dept, to CO, Fort Riley, 7 Jan 59; Medary to Walker, 10 Jan 59, Jones to Buchanan, 9 Jan 59, Medary to Cass, 21 Jan 59, Medary to Buchanan, 31 Jan and 2 Feb 59, *Resolution of Council and House of Representatives, Kansas Territory, 11 Feb 1859*, all with related papers in KSHS *Collections*, 5:582–603.

[37] Medary to Sumner, CO, Fort Leavenworth, 31 Jan 59, ibid., 5:601.

[38] Medary to Cass, 23 Feb 59, ibid., 5:616.



ATTACK BY U.S. MARINES ON JOHN BROWN'S BAND AT HARPERS FERRY.

through which marshals and local territorial officials channeled their requests for military aid, but the units furnished were normally placed at the disposition of these requesting officials as military *posses* to make specific arrests or serve specific writs. Only once was a genuine sweep to clean up Southeast Kansas authorized, that of Captain Walker early in 1859, and Walker's mission was aborted by mixed signals from the War Department. The targets of military action in Southeast Kansas were almost invariably bands of freestaters who carried out their attacks against pro-slavery sympathizers, or those they deemed to be such. And these bands had a modicum of support, not only in the area itself, but in the territorial legislature where the freestaters exercised control after the fall elections of 1857, when Walker's military intervention had done much to assure their victory. With inadequate resources for the task, a narrow concept of the mission, and lack of support from the major portion of the Kansas population, the Army was unable to control the disorders in southeast Kansas on the eve of the Civil War.

The Sequel—John Brown's Raid

John Brown left Kansas with a few followers early in 1858, and sometime during the next year he conceived of the plan to raid Harpers Ferry, seize the federal arsenal and armory

there, and begin the process of freeing the slaves in the South. Early in July 1859, posing as Isaac Smith, a New York farmer, he rented a small farm in Maryland, just across the Potomac from Harpers Ferry. At the farm he gathered a cache of arms (pistols, rifles, and pikes) and he and his followers familiarized themselves with Harpers Ferry and its surrounding countryside.

At the arsenal in the town, rifles and other arms were stored, while the armory engaged in the manufacture of arms for the government. The Baltimore and Ohio Railroad (B&O) ran through Harpers Ferry, a way station on the line between Baltimore and the cities of the Middle West. The buildings making up the armory included a strong brick structure near the railway bridge across the Potomac used as an engine house with a watchman's room adjoining it. The actual manufacturing plant, known as Hall's Rifle Works, was about a half-mile from town.

Shortly before midnight on 16 October 1859, Brown led a group of eighteen armed men into Harpers Ferry, quietly seizing the arsenal and the armory buildings, including Hall's Rifle Works. They easily overcame the lone watchman who guarded the federal installation. Brown then sent a party into the countryside to seize hostages. They returned at dawn with Col. Lewis W. Washington, a grand nephew of the first president, another plantation owner, J. H. Allstadt, a number of Washington's slaves, all the arms they could find, and four of Washington's horses hitched to a wagon. Brown placed Washington and Allstadt in the engine house under guard. He then dispatched another party to the rented farm in Maryland, using Washington's wagon and team, to bring the arms stored there to a schoolhouse about a mile from the Potomac. In the process, the party seized another hostage, a Maryland planter named Byrne, whom they also sent over to join the hostages in the engine house. Meanwhile, the raiders seized other hostages in the town itself, along with some slaves, confining them in the engine house and the adjoining watchman's room. But slaves did not flock to Brown's standard as he expected, and those he liberated and armed with pikes showed no inclination to use them.[39]

In the midst of Brown's operations, at about 0130 a mail train came through Harpers Ferry on its way from Wheeling to Baltimore; Brown's guards stopped the train on the bridge and detained it for several hours. In the general confusion a free colored man, a porter on the B & O, Stephen Hayward, was killed by one of Brown's men and another railroad man was hurt. The raiders finally let the train pass, and from the next station the conductor telegraphed to Baltimore the alarming news that negroes "led by about two fifty (250) white men" had seized the arsenal at Harpers Ferry, fired on the train, and given notice that no further trains would be allowed to pass. The news was such as to immediately raise the specter of a new Nat Turner's Rebellion led by abolitionists. The president of the B & O, John W. Garett, immediately wired Secretary of War Floyd, relaying the information he had received about the raid and asking, "Can you authorize the Government officers and military from Washington to go on our train at three twenty this afternoon to the scene or send us full authority for volunteers from Baltimore to act? We will take them on the afternoon express if necessary. Please advise us immediately what the government will do. Our operations on road being

[39] The facts about the raid are succinctly set forth in S. Comm. Rpt. 278, 36th Cong., 1st sess., *Report of Select Committee . . . appointed to inquire into the late invasion and seizure of property at Harper's Ferry . . .*, ser. 1040, pp. 2–6. They are also recounted in greater detail in biographies of Brown and other secondary works too numerous to list.

meantime suspended."[40]

Floyd immediately wired orders to Fort Monroe, the nearest station where any regular troops were located, to send a contingent to the scene of the raid. By noon on the seventeenth three companies of coast artillery under Capt. Edward O. C. Ord were on their way to Baltimore where they would catch a train for Harpers Ferry. Floyd also authorized the use of Baltimore volunteers and decided to get Col. Robert E. Lee, then on leave at his Arlington estate near Washington, to take charge of the operation. The aide sent with the message summoning Lee to the War Department encountered 1st Lt. James Ewell Brown Stuart (known as Jeb) of the 1st Cavalry at the door of the secretary's office. Stuart, also on leave, had come to negotiate for the use of his patent on a new type of device to fasten a cavalryman's sabre to his belt, but sensing some greater adventure, volunteered to take the message to Lee. Once he know of its contents, he persuaded the colonel to allow him to go along as his aide on the mission.

Meanwhile, Floyd conferred with President Buchanan, who signed a hastily drawn proclamation, and urged prompt action. Since it would take a long time for Ord's companies to get to the scene of the raid, Floyd contacted the secretary of the Navy who agreed that marines available at the Navy Yard could be used. At 1530 a contingent of eighty-six marines, under the command of Lt. Israel Greene, with two three-inch howitzers, boarded the train headed from Washington to Relay House near Baltimore where they would change trains for Harpers Ferry. Greene's instructions were that on arrival at his destination, the marine contingent would come under the command of Colonel Lee.[41]

Floyd gave Lee his orders and the president's proclamation early in the afternoon of 17 October. Both the secretary and the colonel thought at the time that a large-scale slave insurrection or abolitionist invasion of Virginia was under way. Lee, without even taking time to change from civilian clothes, rushed to the Washington railroad station with Stuart in tow, but missed the train carrying the marines. They caught the Baltimore Express at 1730, two and a half hours behind the marines, but hoping to catch up with them at Relay House. Again they were too late, but President Garrett of the B & O promised them a special locomotive as soon as possible. Lee then telegraphed the stationmaster at Sandy Hook, Maryland, the last B & O stop before Harpers Ferry, to hold the marines as well as the Baltimore volunteers until he arrived. At eleven o'clock, almost precisely twenty-four hours after John Brown's raiders crossed the Potomac, Lee arrived at Sandy Hook to take command of the operations against them.[42]

The commander soon learned that the situation was not nearly as desperate, nor the raiders nearly as numerous, as the information reaching Washington had indicated. Once the inhabitants of Harpers Ferry awoke in the morning to find their town occupied by "abolitionists," the alarm quickly spread through the countryside. The townsmen organized their own citizen militia, and by 1100 hastily organized companies from Charlestown and Martinsburg had arrived. After nightfall more militia arrived from as far away as Winchester, Virginia, and Frederick, Maryland. They more closely resembled a disorderly and vengeful mob than

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[40] Text of these telegrams is in Wilson, *Federal Aid*, apps. 57 and 57a, pp. 296–97.

[41] The above account of events in Washington is based primarily on a manuscript prepared by Bernard Nalty, "'At All Times Ready . . .'; The Marines at Harper's Ferry," Marine Corps Historical Reference Series No. 10, Historical Branch, G-3 Div., Hq, U.S. Marine Corps, May 1959, pp. 1–4. See also Douglas Southall Freeman, *R. E. Lee, A Biography*, 4 vols. (New York: Charles Scribner's Sons, 1934–35), 1:394–95.

[42] Nalty, "Marines at Harpers Ferry," pp. 4–5; Freeman, *Lee*, 1:395.



ROBERT E. LEE



JAMES EWELL BROWN (JEB) STUART

an organized military force, but they were able to drive Brown's men from the arsenal and Hall's Rifle Works, killing or capturing all the raiders on the Virginia side of the river except for Brown and six others who took refuge in the engine house. They were able to free the hostages in the watchman's room, but some thirteen remained with Brown's men in the engine house. At the same time bullets fired by the raiders killed three men, including the mayor of Harpers Ferry, and wounded others. During the day and into the night desultory firing continued on both sides. Within the engine house one of Brown's six men was killed and another, his son Oliver, mortally wounded. The defense of the building therefore rested on only Brown and four men, but the militia made no effort to storm it.[43]

Once apprised of the actual situation, Lee wired back instructions that the troops from Fort Monroe should be held in Baltimore. He also held the Baltimore volunteer companies temporarily on the Maryland side, but immediately sent the marines across the river to take position on the armory grounds to make sure the insurgents did not escape. "But for the fear of sacrificing the lives of some of the gentlemen held by them as prisoners in a midnight assault," Lee reported later, "I should have ordered the attack at once."[44]

During the small hours of the morning of 18 October, Lee laid his plans for an assault at daybreak that would offer the best hope of saving the hostages' lives. He wrote a note to the unknown leader of the raiders (rumor had it that it was John Brown but no one was certain), citing their hopeless position and demanding surrender. If compelled to take them by force, Lee said, he could not answer for their safety. Stuart was to take the note and approach

[43] S. Rpt 278, pp. 5–6 and appendix containing Lee's Report to AG, 19 Oct 59, pp. 40–45. Hereinafter cited as Lee Rpt.

[44] Lee Rpt, p. 41.

the engine house bearing a flag of truce. The young lieutenant was not to accept any conditions whatsoever offered by the insurgents but should tell them they must "immediately deliver up their arms and release their prisoners." If the lives of the hostages were to be preserved, Lee calculated that the assault must take place immediately in the event that the men in the engine house refused to surrender. In that case Stuart was to step back and give a signal that would launch the assault. The assaulting force would quickly batter down the door and attack with bayonets; there was to be no shooting lest the hostages be hit.

Lee offered the "honor" of making the assault first to the Maryland, then to the Virginia, militia commanders. Neither would accept, the Maryland commander reminding Lee that professional soldiers were paid for this sort of work. Lieutenant Greene, representing the professionals, accepted the role for the marines with alacrity. Twelve men were selected to form the storming party with twelve others in reserve. A detail of three additonal men was to accompany the assault group bearing sledgehammers to batter down the door of the engine house.

By daybreak on 18 October the forces were in position. The militia surrounded the building some distance away; Greene's men were stationed closer in but out of the line of fire from the building. The parties agreed that Stuart should wave his hat as a signal for the assault to commence. Onlookers in the streets, buildings, and hills nearby probably numbered more than 2,000 when Stuart advanced with his flag of truce at 0700. On Stuart's approach, Brown cracked the door and the cavalryman, who had been in Kansas, quickly recognized him. Brown tried to bargain and the parley went on for some time, but finally Stuart stepped back and waved his hat. The marines advanced to the assault, but the three-man detail with the sledgehammers could not break down the door. Greene saw a ladder lying nearby and ordered his men to use it for a battering ram. On the second blow with the ladder, the marines made a hole in the door and Greene leaped through it, sword in hand. The rest followed, and two of them were struck by bullets, one fatally wounded. But they soon put an end to the struggle and freed the thirteen hostages unharmed. Greene slashed vigorously at Brown with his sword but succeeded only in wounding the fearless old veteran of the Kansas troubles. Of the other five men in the house, Oliver Brown was already mortally wounded; the marines killed two others, and the last two surrendered.[45]

Of Brown's whole party of nineteen, twelve were killed and only one, John E. Cook, who had been on the Maryland side, escaped. Of the six prisoners, including Brown, only two could be listed as "unhurt" in Lee's report. The whole affair was over so quickly (five minutes after Stuart waved his hat) that Lee decided it was not necessary to issue the president's proclamation,[46] and in a message to the War Department in mid-morning he characterized Brown's men as "rioters" and not as "insurrectionists." In mopping-up operations he dispatched two of the Maryland militia companies across the river to look for Cook and to seize the arms and ammunition at the schoolhouse near the river. Later he sent Stuart with a party of marines to search the farm Brown had rented as Isaac Smith. Both parties found rifles, pistols, ammunition, medical supplies, and pikes, but Cook escaped them, only to

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[45] Lee Rpt Nalty, "Marines at Harpers Ferry," pp. 8–12. Freeman, *Lee*, 1:396–400.

[46] The text of the draft has not been preserved. Freeman speculates (*Lee* 1:396n) that it "probably established temporary martial law," and seems unaware of the statutory requirement for a proclamation in affairs of this sort where federal troops were used. It seems more likely that it was a standard "cease and desist" proclamation drafted to meet the legal requirement.

be caught later and hanged with the rest of the surviving raiders. At the instructions of the War Department, Lee delivered the prisoners to the state authorities at the jail in Charlestown. He was ready to dismiss the militia and return the marines to Washington when a wild rumor hit Harpers Ferry that the village of Pleasant Valley, Maryland, some five miles away, was under some sort of attack. The colonel, though he thought the story improbable, personally went to the village with Stuart, Greene, and a party of twenty-five marines, only to find it was a "false alarm." Once this alarm was over and his report written, Lee, Stuart, and the marines returned to Washington, taking the same early morning train to Baltimore that Brown had halted two days earlier.[47]

Lee was to return briefly on 30 November to Harpers Ferry, this time with four companies of troops from Fort Monroe, and to remain for several days. With Brown in the Charlestown jail awaiting execution, rumors flew through the country that rescue parties were being formed in the North to save him and again seize the Harpers Ferry arsenal and armory. Governor Stanley A. Wise of Virginia wrote President Buchanan of his alarm at the number of threats he had received and asked that some adequate military force be posted at Harpers Ferry until after Brown was executed. After some hesitation, Buchanan was persuaded to comply. Presumably the pretext was to provide a guard for the federal works such as had been badly needed when John Brown struck. In the event, Brown's execution in Charlestown on 2 December 1859 passed quietly. After his body was carried throught Harpers Ferry en route to Philadelphia and a certain immortality, the troops returned to Fort Monroe and Lee went back to Arlington.[48]

While Lee, from his professional point of view, looked on the raid as having never constituted any real threat to his home state, the Senate investigating committee showed more alarm: "Brown brought with him for this expedition," they reported, "arms sufficient to have placed an effective weapon in the hands of not less than 1,500 men; besides which, had he succeeded in obtaining the aid he looked to from the slaves, he had entirely under his control all the arms of the United States deposited in the arsenal at Harpers Ferry."[49] And Southerners did interpret it as a threat. John Brown's raid went far to create those fears of abolitionist activity that led to secession and civil war, a true sequel to the disorders in Kansas where the first blood in the battle between North and South had been shed.

The raid holds a less important place in the history of federal military intervention in domestic disorders than it does in the general history of the United States. This intervention was, as in the case of Nat Turner's Rebellion, an emergency measure undertaken without the usual formalities. And like Turner's Rebellion and most of the other riots of the antebellum period, it was the militia acting under state and local control that brought the raiders to bay, even though in this case it did require a well-disciplined federal force to finish them off. The affair at Harpers Ferry has the distinction of being one of the few cases in which federal troops actually inflicted and suffered casualties during a domestic disturbance. In retrospect, the tactics of John Brown bear a close resemblance to those of terrorists of the second half of the twentieth century. Viewed in this light, Lee's method of dealing with the situation deserves some notice.

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[47] Lee Rpt, Freeman, *Lee*, 1:400–401.

[48] Freeman, *Lee*, 1:102–03.

[49] S. Rpt 278, p. 7. The committee could recommend no legislative remedy to prevent or deal with any similar incident.

CHAPTER 10

The Utah Expedition

We are firmly impressed with the belief that the presence of the army here, and the large additional force that had been ordered to this Territory, were the chief inducements that caused the Mormons to abandon the idea of resisting the authority of the United States. A less decisive policy would probably have resulted in a long, bloody, and expensive war.

——Lazarus W. Powell and Ben McCulloch to Secretary of War Floyd, 3 July 1858.

Not long after his inauguration in May 1857, while the government was still struggling with the difficulties in Kansas, President James Buchanan decided to send a military expedition to Utah to deal with what he deemed to be Mormon defiance of federal authority. Buchanan's decision had a considerable background. Members of the Church of Jesus Christ of Latter-day Saints (called Mormons after the name of their sacred book) settled in the valley of the Great Salt Lake in 1847, after literally having been driven from their earlier settlements in Missouri and Illinois by mob action and official hostility. When they first arrived, the area was still Mexican territory, but it became part of the United States in the settlement following the end of the Mexican War. The Saints then organized a provisional state of Deseret and in 1849 applied for admission to the Union. Congress demurred, and on 9 September 1850, as part of the compromise of that year, created Utah Territory under federal jurisdiction.

The Mormons were a tightly knit religious group whose social organization, hardened by the persecutions, was a theocracy. This social organization and their religious doctrines made it difficult for them to live in communities governed by others, and their purpose in moving to Utah was to set up a community to be governed by themselves without outside interference. Polygamy was not at first an article of faith with the Saints, but by the time they moved to Utah it had become one. And it was the practice of polygamy, more than any other difference, that set the Mormons apart in the eyes of other religious sects. The Mormons' religious organization was an elaborate hierarchy of priests or elders with the First President—"Prophet, Seer and Revelator"—and his Council at its head. After the troubles in Illinois in which their first leader, Joseph Smith, was slain, Brigham Young succeeded to the position of president. A man of strong will, he ruled the Saints with an iron hand. The Mormons adapted their religious organization to the political organization of the provisional state of Deseret, although preserving the forms of democratic government. Prominent Mormons doubled in positions in the religious and political organization, with Brigham Young heading both.

The creation of Utah Territory raised fears among the Mormons that the federal government, repeating the performance of state governments in the East, would disrupt the fabric of Mormon society. President Fillmore at least partially allayed these fears by appointing

Brigham Young as territorial governor and superintendent of Indian affairs, with three other churchmen in important offices. But he named outsiders (or gentiles as the Mormons designated all those not members of their faith) to two of three judgeships and to the office of territorial secretary.

Friction between the Mormons and the non-Mormon federal officials who came and went in the next seven years gave rise to the situation where the president decided he needed to take strong action to assert federal authority in Utah. True, many of these officials were political hacks of little ability and low moral character who made little effort to understand the sensitivities of the Mormons. Yet they did represent federal authority in Utah, which the Mormons showed little inclination to accept unless it conformed to the will of their religious organization. Under the aegis of the territorial government and legislature the Saints kept most cases out of the hands of the federal courts and in those of the probate courts they dominated. Even in federal courts, the Mormon hierarchy frequently dictated both the testimony of Mormon witnesses and the verdicts of Mormon juries. Because federal marshals were usually gentiles, the territorial legislature created a post of territorial marshal and gave it jurisdiction over all matters pertaining to the domestic affairs of Utah. The Mormons had their own Indian policy and non-Mormon Indian agents were viewed with suspicion. Mormon settlers held tenuous title to their land, no land office having been opened in the territory, and they feared eviction if federal land surveyors carried out their duties. If the Mormon leaders did not encourage intimidation and violence against both gentiles and apostates, they seldom took any action to punish the perpetrators of such acts and frustrated the efforts of gentile federal judges to do so. In short, the Mormons made it practically impossible for federal officials to operate in Utah who were unsympathetic to Mormon control of the territory. It was almost inevitable that the federal government would react to this situation, particularly since Utah stood squarely astride the main emigrant routes to the Pacific coast.

In the summer of 1851, Territorial Secretary Broughton Harris and federal Judge Perry Brocchus fled the territory in fear of their lives after having aroused Mormon opposition by their actions. They were followed by the Indian agent, Jacob Holeman, and subagent Henry R. Day who charged that the Mormons were influencing the Indian tribes against the United States. While these "runaways," perhaps because their own moral characters were suspect, failed to influence President Fillmore to stop supporting Brigham Young, their propaganda against the Mormons had an enormous influence on public opinion in the East. Replacements for a time enjoyed more harmony with the Mormons, but the conflict was ere long renewed. Although Harris' successor as secretary, Banjamin G. Ferris, enjoyed good relations with the Mormons while in the territory, he returned east to write a lurid anti-Mormon book. Similarly, Judge John F. Kenney, though outwardly sympathetic to the Saints, complained secretly to the attorney general of Mormon intimidations, declaring the sect "inimical to the Government of the United States and all its officers who are not of their peculiar faith."[1] Lieutenant Colonel Edward J. Steptoe of the Army Engineers, sent to Utah with a party of 300 soldiers and civilians to explore a road to California, clashed with the Mormon authorities. When David H. Barr, appointed surveyor general of the territory, began

[1] As quoted in Norman F. Furniss, *The Mormon Conflict, 1850–1859* (New York: Yale University Press, 1960), p. 54.

in 1855 to conduct his surveys, he met with every obstacle the Mormons could put in front of him, and was finally also forced to flee the territory in fear of his life.

The most serious conflict came with judges who attempted to assert their authority and subvert Mormon domination of the judicial processes in Utah. The profligate Judge W. W. Drummond, who brought a Washington prostitute along with him as a consort, violently attacked the jurisdiction of their probate courts. On resigning his office in March 1857, he returned East and wrote extensively in the press of the iniquities of Mormon rule. He also wrote President Buchanan suggesting that he send a non-Mormon governor to Utah with sufficient military force to support him.

Meanwhile, another member of the federal judiciary, George P. Stiles, himself an apostate Mormon, launched a judicial attack from another angle, issuing an order that the United States marshal should be the executive officer of the district court for territorial as well as federal cases. Prominent Mormon lawyers entered Stiles' court and threatened him with physical harm. When he appealed to Brigham Young for protection, he got none. Indeed on the night of 29 December 1856, a mob broke into Stiles' office and seized his books and records as well as those of a visiting gentile merchant and lawyer. At least some of these materials were burned in Stiles' backyard. The judge promptly left for Washington, where he offered these occurrences as evidence of rebellion in Utah against the United States.

When Buchanan became president, all important gentile officers of the territory with the exception of Indian agent Garland Hurt were back in the East voicing their grievances against the Mormons. And Hurt was to follow soon after, fleeing Utah in September 1857 to the safety of the military expedition that Buchanan had meantime sent out. Newspapers in the East clamored for action to bring the Mormons into line.[2]

Mounting the Expedition

The processes by which President Buchanan arrived at the decision to send troops to Utah are obscure, and even the timing of the decision is uncertain, although it was clearly made some time in May 1857. There was little fanfare, and the president did not precede the dispatch of military force with any "cease and desist" proclamation such as the laws of 1795 and 1807 would appear to have required. Nor did he send any preliminary investigating commission such as Washington had used in the Whiskey Rebellion, not a totally dissimilar case. Instead the expedition was sent out to accompany a new non-Mormon governor and other non-Mormon officials, with instructions to establish a new Army Department of Utah. Young was not even informed by any separate communication that he was being relieved; apparently the new governor was simply to inform him on arrival in Utah.[3]

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[2] The literature of the Mormons and the troubles in Utah is voluminous, most of it with either a strong pro- or anti-Mormon bias. The above summary is based mainly on Furniss, *The Mormon Conflict*, p. 3–61. Furniss' book is a modern scholarly study, certainly the best to appear on the entire controversy. It is, however, quite sympathetic to the Mormons and not a little anti-Army in tone. M. Hamlin Cannon, "The Mormon War: A Study in Territorial Rebellion," A.M. thesis (George Washington University, 1938), views the Mormons less sympathetically, although he casts most of the blame for their actions on Brigham Young. H. Ex. Doc. 71, 35th Cong, 1st sess., *Msg from president transmitting reports . . . relative to the military expedition ordered to the Territory of Utah*, 26 Feb 58, ser. 956, contains most of the complaints registered by the federal officials in Utah that led to the dispatch of the expedition.

[3] Philip S. Klein in *President James Buchanan: A Biography* (University Park, Pa.: Penn. State Press, 1962) states that a letter informing Young of his relief "never arrived because the Pierce Administration had annulled



BRIGHAM YOUNG

Administration planning for the expedition was hasty and muddled, apparently based on the supposition that the Mormons would offer no resistance. In contrast to the actions in Kansas when Jefferson Davis had allowed the commanding general of the Army, Winfield Scott, no role at all, Secretary of War John B. Floyd did work through Scott's headquarters. But he did not heed Scott's advice. On 26 May 1857 the commanding general submitted a memorandum advising against sending the expedition in 1857. He thought a force of 4,000 professionals necessary to overcome what he visualized as fanatical and unified resistance on the part of the Mormons, though he was willing to gamble on a smaller contingent of around 2,500 men: one regiment of infantry, one regiment of cavalry, and artillery support. But he did not believe that even a force of this size could be assembled at Fort Leavenworth, Kansas, in time to make the 1,150-mile march to Utah before the snows of winter set in. "If the occupation be attempted with an inadequate force," he said, it might be cut off and destroyed, and the government "after suffering deep mortification, would be obliged to employ double the force that would, originally, have been necessary."[4]

Apparently it was Secretary Floyd who overruled Scott, for President Buchanan later stated that he was not aware at the time of Scott's opposition.[5] In any case, two days after he wrote the memorandum, on 28 May 1857, the commanding general issued orders for assembling the expedition that he did not believe could succeed. The orders provided for the movements of the 5th Infantry from Florida, to be replaced in its Indian-fighting role by volunteers; and of eight companies of the 10th Infantry and two of the 2d Dragoons from Minnesota to be replaced at Forts Snelling and Ridgeley by four companies of the 2d Infantry. These units would join at Leavenworth with six companies of the 2d Dragoons and Capt. John W. Phelps' battery of the 4th Artillery to form the core of the expedition. The two other companies of the 10th Infantry would come on to Leavenworth as soon as relieved by companies of the 2d Infantry. The two companies of dragoons at Fort Kearney would join en route. All available recruits were to be assigned to these organizations, the necessary sup-

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the Utah mail contract." The statement appears to be based on a footnote in H. H. Bancroft, *History of Utah, 1540–1886* (San Francisco: The History Co., 1889), p. 531n. Bancroft simply states that "it is probable that no official intimation had reached Salt Lake City" by October 1857 because of the interruption of the mails, but produces no evidence that such a letter was ever sent.

[4] M. Hamlin Cannon, "Winfield Scott and the Utah Expedition," *Military Affairs*, no. 2 (Fall, 1941) 4:208–11.

[5] James Buchanan, *The Buchanan Administration on the Eve of the Rebellion* (New York: Appleton, 1866), pp. 238–39.

ply trains would be assembled, and mounts provided for the dragoons. Once filled up, the force would contain about 2,500 men.[6]

As commander of the expedition Scott selected Brig. Gen. William S. Harney, who, at the behest of Governor Walker, had just assumed command in Kansas. Scott apparently knew nothing of Buchanan's promise to Walker that Harney would command in Kansas; Secretary Floyd, who must have known of it, evidently ignored the commitment. He also ignored the fact that Philip St. George Cooke's 2d Dragoons were the heart of the forces keeping order in Kansas where Walker had been promised sufficient troops to achieve his purposes. This tangle of cross-purposes arose out of the division of control between the secretary of war's office in Washington, which under Jefferson Davis had attempted to assert its position as the command headquarters of the Army, and the self-designated Headquarters Army in New York, where the commanding general, Winfield Scott, held office. The running feud between Scott and Davis that characterized the latter's tenure as secretary of war was only partially settled by Secretary Floyd, and coordination between the two headquarters still was haphazard.[7]

In any case, the directive that went out to Harney on 29 June 1857 came from Scott's headquarters over the signature of his aide-de-camp, Col. George W. Lay, and not from the secretary of war's office, although it stated that the instructions had been prepared "in concert with the War Department and sanctioned by its authority wherever required." The directive charged that "the community and, in part, the civil government of Utah Territory" were "in a state of substantial rebellion," but the instructions hardly read like those given a commander going forth to put down a rebellion. They were in fact closely patterned on those Harney was already acting on in Kansas, except that they did not go nearly so far in entrusting to the governor authority over the troops.

> If the governor of the territory, finding the ordinary course of judicial proceedings, and the power vested in the United States marshals and other proper officers, inadequate for the preservation of the public peace and due execution of the laws, should make requisition upon you for a military force to aid him as a *posse comitatus* in the performance of that official duty, you are hereby directed to employ for that purpose the whole or such part of your command as may be required; or should the governor, the judges, or marshals of the Territory find it necessary directly to summon a part of your troops to aid either in the performance of his duties, you will take care that the summons be promptly obeyed; and in no case will you, your officers or men, attack any body of citizens whatever, except on requisition or summons, or in sheer self defense.
>
> In executing this delicate function of the military power of the United States, the civil responsibility will be upon the governor, the judges, and marshals of the Territory. While you are not to be, and cannot be, subjected to the orders, strictly speaking, of the governor, you will be responsible for a zealous, harmonious, and thorough cooperation with him, on frequent and full consultation, and will conform your action to his request and views in all cases where your military judgment and prudence do not forbid, nor compel you to modify, in execution, the movements he may suggest. . . .[8]

A day later Scott issued a general order for the task force to "march to, and establish a post at, or near, Salt Lake City, Territory of Utah." It was to constitute a separate Army of Utah in the field from the time of its departure from Leavenworth. Harney was confirmed

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[6] GO 8, Army Hq, New York City, 28 May 57. Circular Instructions from Gen Winfield Scott, 28 May 57, H. Ex. Doc. 71, pp. 4–5.

[7] See above, Chapter 10, on the troop dispositions. On the rift in the War Department, see Weigley, *History of the United States Army* (New York: Macmillan Co., 1967), pp. 192–95.

[8] Lay to Harney, 29 Jun 57, *SW Rpt*, 1857, pp. 21–23.

as commander and directed to put the troops in motion at the earliest practicable date. Forts Kearney and Laramie, the way stations en route, were placed under his command. "On the 1st of January next after the territory of Utah shall have been entered by the troops," the order read, "it will constitute a new and separate military department, to be styled the Department of Utah, and be commanded by General Harney or the senior present."[9]

In this fashion the establishment of a new military department in Utah, not the suppression of any Mormon rebellion, became the ostensible purpose of the expedition. In keeping with this design, and acting on a suggestion from the War Department that he send a "discreet staff officer to Salt Lake City," on 28 July Harney dispatched Quartermaster Capt. Stewart Van Vliet to Utah to make necessary arrangements with the Mormons for the purchase of food, fuel, and forage for the post to be established. Van Vliet carried a letter from Harney to Brigham Young that contained no hint of a punitive expedition and did not even mention that Young was to be relieved as governor. Harney simply informed Young as "President of the Society of Mormons," of the decision to form the territory of Utah into a military department, and solicited his aid to Van Vliet in purchasing supplies.[10]

Meanwhile, the first elements of the expedition—eight companies of the 10th Infantry, 650 strong, commanded by Col. Edmond B. Alexander—departed Leavenworth on 18 July; Phelps' battery, 70 strong, followed on the 19th; and the 5th Infantry commanded by Col. Carlos Waite with about 525 effectives and accompanied by an artillery company from the 3d Artillery commanded by Capt. Jesse L. Reno marched on 22 July. It was a force "much diminished by sickness and desertion," and only about half the strength of 2,500 that Scott had thought should be under way by mid-July. Captain Phelps remarked in his diary "We are none of us prepared for such a move." The most serious flaw was that the force lacked any mounted element, most necessary to provide protection for the supply trains on the march. Governor Walker had dispatched the 2d Dragoons to Lawrence, making them unavailable for the expedition, at least for the time. Hastily a plan was conceived to have four companies of the 1st Cavalry and three companies of the 6th Infantry then engaged under Colonel Sumner along the Platte River against the Cheyennes replace the dragoons and simply join the expedition en route. The plan proved infeasible, and the expedition had no cavalry contingent during the long march to Utah, a lack that was to have disastrous consequences. The expedition also soon lost its commander. Walker protested vehemently to Buchanan, and the president assured him Harney would remain in Kansas.[11]

Not until 29 August, when the lead elements in the expedition were nearing Fort Laramie in Wyoming Territory, did the Army authorities get around to appointing a successor to General Harney—Col. Albert Sydney Johnston, commander of the 2d Cavalry in Texas, then on leave in Washington. Johnston was instructed to apply to Harney for "all the orders and instructions he has received as commander of that expedition, which you will consider

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[9] GO 12, Army Hq, 30 Jun 57. Telg, Scott to Harney, 14 Jul 57, H. Ex. Doc 71, p. 10.

[10] Asst AG, Fort Leavenworth, to Van Vliet, 28 Jul 57, *SW Rpt*, 1857, p. 27–28. Harney to Young, 28 Jul 57, Leroy Hafen and Ann M. Hafen, eds., *The Utah Expedition, 1857–1858* (Glendale, Calif., Arthur H. Clark Co., 1958), pp. 39–40. Telg, AG to Harney, 21 Jul 57, H. Ex. Doc. 71, p. 11.

[11] See above, Chapter 9. Telg, Harney to AG, 21 Jul 58. Hafen and Hafen, *Utah Expedition*, p. 34. Phelps diary in ibid., pp. 94–95. Otis G. Hammond, ed., *The Utah Expedition, 1857–1858, Letters of Capt. Jesse A. Grove, 10th Inf. USA* (Concord, N.H.: New Hampshire Historical Society, 1928), p. 31. Harney to Asst AG, 8 Aug 57, H. Ex. Doc. 71, pp. 17–18. Sumner to Asst AG, Army Hq, 20 Sept 57, *SW Rpt*, 1857, pp. 98–99.

addressed to yourself and by which you will be governed accordingly."[12] Johnston, after settling his personal affairs, arrived at Leavenworth during the second week of September. There he found the contingent of the 2d Dragoons finally about ready to depart, and the new governor and a set of civilian officials whom the troops were supposed to escort to Utah.[13]

After several others had refused the appointment as governor of Utah, Buchanan finally found his man in Alfred Cummings, a Georgian whose chief claim to fame was to be his stint as governor of the territory. Cummings was not selected until June and did not receive his commission from Secretary of State Lewis Cass until 13 July. Selections of other non-Mormons for federal positions in the territory were also delayed but finally three new judges—Delana R. Eckels (the chief judge), Charles E. Sinclair, and John Cradlebaugh—were appointed, along with a new superintendent of Indian affairs, Jacob Forney; a federal marshal, Peter K. Dotson; a territorial secretary, John Hartnett; and others of minor importance. Most of these men had gathered at Leavenworth by mid-September. The only important absentees were Judge Sinclair and Judge Cradlebaugh.[14]

Secretary of State Cass' instruction to the new governor made no mention of any rebellion in Utah, but emphasized the necessity to uphold the supremacy of federal law. Although the president, Cass stated, did not expect opposition from the Mormons to the assertion of federal authority, Cummings was authorized, if it did develop, to employ first a civilian *posse* to enforce obedience, and if that failed, to call on the Army for a military *posse comitatus*. There was no mention in the governor's instructions of any concurrent power of the federal judges and marshals also to request troops. In this lay the root of future misunderstanding, a reflection of the lack of coordination that characterized planning for the expedition.[15]

When Johnston arrived at Fort Leavenworth to assume his command, the lead elements, under their own separate regimental or battery commanders but with no commander for the whole, were well beyond Fort Laramie and approaching Utah Territory. The last two companies of the 10th Infantry, who had finally come down from Minnesota in August, were on the march to Fort Kearney under the command of Lt. Col. Charles Smith. A contingent of the 2d Dragoons from Fort Kearney under Lt. Benjamin F. Smith was also on the road to Utah but well in the rear of the others. Johnston dispatched six companies of the 2d Dragoons under Colonel Cooke on 27 September and raced forward himself with forty dragoons in an effort to catch up with the lead elements. He offered to Governor Cummings the choice of going along with him or with Cooke and the main body of the dragoons. Cummings chose to go with Cooke, the rest of the civil officers accompanying him. Johnston started out with great optimism, expecting, he said, to gain the head of the column in thirty-five days and to enter the valley of the Great Salt Lake by 20 October.[16]

Johnston's optimism was, as he soon learned, unjustified. The whole expedition was off to an inauspicious start, well calculated to produce the consequences Scott had warned against if an inadequate force was dispatched. Whereas Scott had emphasized the importance of keep-

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[12] Asst AG, Army Hq, to Johnston, 28 Aug 57, *SW Rpt*, 1857, pp. 23–24, GO 12, WD Hq, 29 Aug 57.

[13] Charles P. Roland, *Albert Sydney Johnston: Soldier of Three Republics* (Austin, University of Texas Press, 1964), pp. 188–89.

[14] Furniss, *Mormon Conflict*, pp. 96–97.

[15] Cass to Cummings, 30 Jul 57, in "Utah Affairs," Territorial Papers, Utah Territory, vol. 1, NARA. See Furniss, *Mormon Conflict*, p. 97–98.

[16] Johnston to Asst AG, Army Hq, 16 Sep 57, H. Ex. Doc. 71, p. 21–22. Roland, *Johnston*, pp. 188–99. Johnston to Cummings, w/memo, 16 Sept 57, Hafen and Hafen, *Utah Expedition*, p. 143.

ing the troops well massed on the march, they were widely dispersed over the long route to Utah, without adequate cavalry protection for the supply trains. Until Johnston joined the lead elements in late October, the expedition lacked a commander in the field. The general assumption of the administration that the Mormons would not resist had produced little preparation to meet resistance if it occurred. Orders and instructions were ambiguous, on the one hand assuming a rebellion and on the other insisting that the troops were simply to escort the civil authorities, establish a military post, and furnish *posse comitatus* to the governor, marshals, and judges as necessary to enforce the laws of the Union. The troop units themselves were ill-prepared for the journey, having only recently been filled with recruits, and many of their officers were not even present. One who was, artillery Captain Phelps, perceived yet another anomaly. Saying that his ranks were filled mainly with ignorant foreigners, and that the Mormons were also mostly recent immigrants, Phelps opined that "we exhibit to the sun the ridiculous spectacle of an army of foreigners led by American officers going to attack a set of foreigners on American soil."[17]

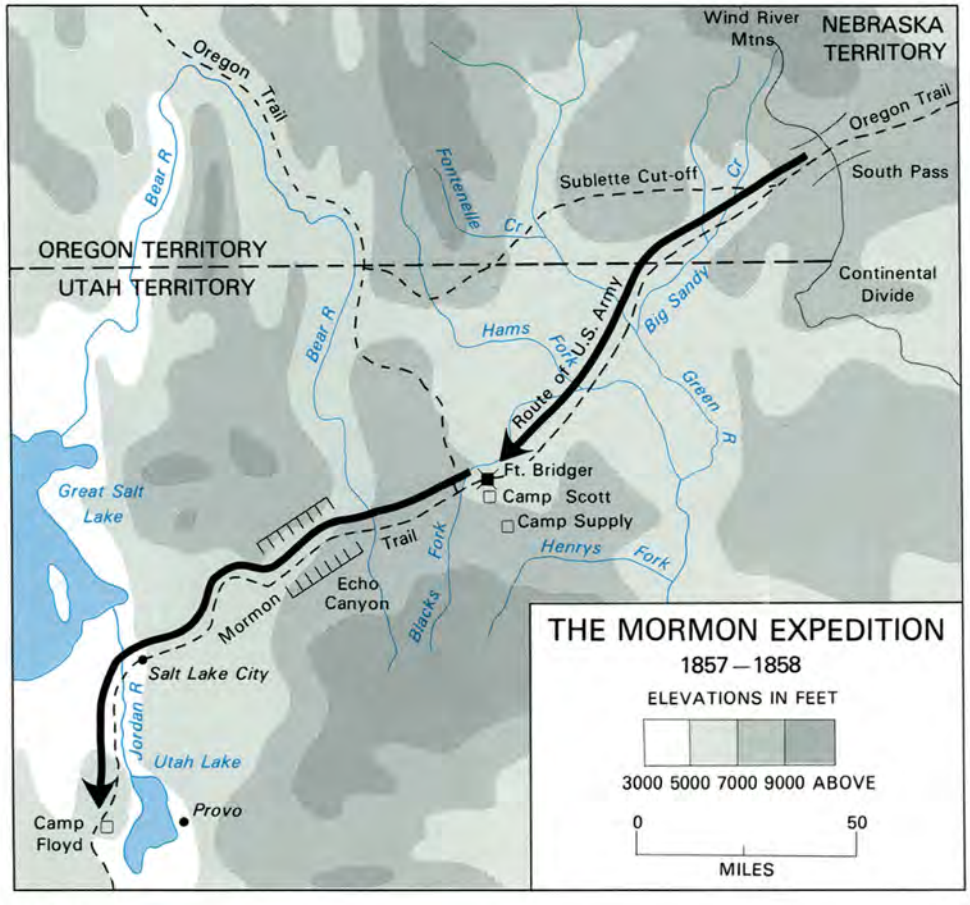


STEWART VAN VLIET *(in a Civil War photograph).*

The Winter Debacle

After receiving his orders from General Harney on 28 July Captain Van Vliet, accompanied by one other officer, thirty soldiers, and a mule-drawn wagon train, pushed on ahead of the main column, arriving at Ham's Fork on Green River, 143 miles from Salt Lake City, early in September. Along the route every party he met coming from Utah warned that the Mormons would not allow soldiers to enter the valley of the Great Salt Lake. So at Ham's Fork he left his military escort behind and struck out for Salt Lake City in the company of two Mormons returning from an abandoned station. He arrived on 9 September and was received with great courtesy by Brigham Young and other members of the Mormon hierarchy during a six-day visit. But Young told him in no uncertain terms that the army could count on no supplies from the Mormons in Utah. "He and the people of Utah had determined to resist all persecution at the commencement, and that the *troops now on the march for Utah should not enter the Great Salt Valley.*" The military expedition, Young said, was simply

[17] Phelps diary, 24 Aug 57, in Hafen and Hafen, *Utah Expedition*, p. 115.



MAP 3

a continuation of the persecutions of Missouri and Illinois, designed to destroy the Mormon community solely on account of its religious beliefs. Van Vliet countered that although the Mormons might prevent the small force now approaching from "getting through the narrow defiles and rugged passes of the mountains this year," next year the United States would surely send troops sufficient to overcome all opposition. The Mormon response was that they would destroy their crops and houses, and with a three-year reserve of supplies they had cached, retire to the mountains to "bid defiance to all the powers of government."[18]

Van Vliet met with Colonel Alexander and the main column of the Army of Utah on the road from Fort Laramie on 21 September and informed him of Young's attitude. He gave the same message to Johnston on the road between Kearney and Laramie on 29 September,

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[18] Rpt, Van Vliet to Asst AG, Army of Utah, dated Ham's Fork, 16 Sep 57. Italics are Van Vliet's original. See also Van Vliet's reports to Quartermaster General T. S. Jessup and Secretary Floyd in Washington 6 and 20 Nov 57. All in *SW Rpt*, 1857, pp. 24–27, 35–38. Documents in Hafen and Hafen, *Utah Expedition*, pp. 41–47 include Mormon accounts of Van Vliet's visit.

before hurrying on to report to the War Department in Washington. Both commanders then were on notice that the Mormons would resist at some point."[19]

Meanwhile, Young was acting to carry out his threats. On 15 September, asserting his authority as governor of Utah Territory and superintendent of Indian affairs, he proclaimed martial law in the territory, mobilizing its militia, forbidding ingress or egress of any persons without a permit, and forbidding "all armed forces of every description from coming into the territory under any pretense whatsoever."[20] Young entrusted command of military operations to Lt. Gen. Daniel Wells, commander of the Mormon militia organization. Young instructed Wells to fortify the passes leading into the valley of the Great Salt Lake and to conduct harassing operations against the advancing army. He was to avoid general engagements and indeed the shedding of blood if at all possible, but to impede and harass the army by burning grass along the line of march, stampeding stock, and destroying wagon trains. There is reason to believe that Young's strategy from the start, for all the bombast, was to delay the army's advance until some measures of conciliation could be worked out that would secure Mormon rights. At least it is worth noting that, while Young was proclaiming these heroic measures and making sure through the agency of Van Vliet that the advancing army would understand the Mormon determination to resist, he had also dispatched an emissary East to talk to an old friend of the Mormons, Col. Thomas J. Kane, who had influence in the Buchanan administration.[21]

In accordance with Young's instructions, Mormon infantry manned positions on the approaches to their valley, particularly in Echo Canyon, a narrow gorge through which any army must pass in a direct approach to Salt Lake City. And Mormon cavalry, in small maneuverable units, proceeded to carry out the tactics of harassment once the expedition had entered Utah Territory.

The main army column did enter Utah in late September. The eight companies of the 10th Infantry took up a position at Ham's Fork on 28 September, and Phelps' battery joined them the next day. The 5th Infantry advanced to a point about twenty-five miles back on Green River on 30 September. In making these movements Colonel Alexander, commanding the 10th Infantry, was aware of some threat to his supply trains and sought to establish a defensible position, but he had not to this point asserted his right as senior officer to command the entire advance force. Then, two days after his arrival on Ham's Fork, Alexander received a message from Brigham Young addressed to "The Officer now commanding the forces invading Utah Territory," relayed by Wells. Young enclosed his proclamation of 15 September and, claiming that he had never been relieved either as governor or superintendent of Indian affairs, asserted his right to issue it. Noting that the troops had not obeyed his proclamation and had entered Utah, Young now directed that they "retire forthwith from the territory" by the same route they had entered. If this was impracticable immediately because of approaching winter, he conceded, they could remain until spring on condition they turn over their arms to the territorial quartermaster.[22]

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[19] Johnston to Asst AG, Army Hq, 29 Sept 57; Alexander to Asst AG, Army Hq, 9 Oct 57. *SW Rpt*, 1857, pp. 24, 29–31.

[20] Proclamation by Gov Brigham Young, 15 Sep 57, *SW Rpt*, 1857, pp. 32–33.

[21] On the Mormon preparations and particularly on Young's strategy, see Furniss, *Mormon Conflict*, pp. 119–47. S. W. Richards, to T. L. Kane, Esq., 16 Sep 57, Hafen and Hafen, *Utah Expedition*, pp. 255–56.

[22] Young to Officer now commanding . . . , 29 Sep 57; Alexander to Asst AG, Army Hq, 9 Oct 57. *SW Rpt*, 1857, pp. 29–33.

On 2 October Alexander, apparently quite nonplussed, acknowledged receipt of the letter with its "absurd" claims, and promised to pass it on to the "general commanding" as soon as he arrived. "In the meantime," the colonel said, "I have only to say that these troops are here on orders of the President of the United States, and their future movements and operations will depend entirely on orders issued by competent military authority."[23] Alexander was now thoroughly alarmed at his situation, and uncertain what to do with the early winter of the mountain country approaching. On the day he received Young's missive he plaintively implored his still unknown commander to hasten forward, and he asked Colonel Waite to move his 5th Infantry up to the immediate vicinity to unite the two regiments.[24]

Evidently while Waite was moving up (the 5th encamped on Black's Fork on 5 October), a Mormon detachment under Maj. Lot Smith struck with lightning speed, profiting from the lack of cavalry with the expedition. On the night of 4 October the Mormons burned two unprotected wagon trains in Waite's rear along Green River and the next morning destroyed another on the Big Sandy. The total destruction amounted to seventy-two wagons containing 300,000 pounds of food, mainly flour and bacon.[25]

The losses jarred the lethargic Alexander into action. On 5 October he somewhat apologetically assumed command of the entire advance force. He had learned of Johnston's appointment to replace Harney, and that the former was still at Leavenworth on 10 September. He reasoned that Johnston could not possibly reach Ham's Fork before 20 October. Since the force had already dallied for over a week of good weather at Ham's Fork, Alexander knew some kind of decision on the future of the expedition had to be made before Johnston arrived. He called a council of his subcommanders, out of which came a decision not to go into winter quarters either along Ham's Fork or farther east in the Wind River Mountains, but to attempt to follow the valley of the Bear River into the Mormon settlements. It was a route 100 miles longer than the direct approach via Echo Canyon, but Alexander sought to avoid the narrow mountain passes which could "be defended by a handful against thousands." He assumed that the two companies of the 10th Infantry under Colonel Smith and those of the 2d Dragoons under Lieutenant Smith were advancing toward a point on this route and could easily form a junction there with the main force.

So Alexander dispatched Capt. Randolph B. Marcy with a detachment to clean up the debris of the burned wagon trains, and after Marcy's return took up the march northward on 11 October. Mormon detachments hovered on his flanks, pursuing harassing tactics and keeping a close watch on his movements. Fortunately, Mormon Maj. Joseph Taylor with one detachment fell into the hands of the troops and from orders from Wells that he carried, the army learned of Mormon plans and their *modus operandi.* All the while Alexander carried on a running exchange with Brigham Young, who continued to breathe fire and brimstone, demanding that the troops retire from the territory, while Alexander continually stressed the need to obey federal authority. In any case, Alexander had made only eleven miles on his march when on 19 October a snowstorm started. About the same time he learned that he had been misinformed about Colonel Smith's position and intentions. So on the nine-

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[23] Alexander to Young, 2 Oct 57, *SW Rpt*, 1857, p. 34.

[24] Maynadier to "Colonel," 2 Oct 57, *SW Rpt*, 1857, Hafen and Hafen, *Utah Expedition*, pp. 70–71. Alexander to Asst AG, Army Hq, 9 Oct 57, *SW Rpt*, 1857, pp. 29–31.

[25] See listing in H. Ex. Doc. 71, p. 63.

teenth after another council of war, he started a return march back to the same position he had held eight days earlier.[26]

Meanwhile, Colonel Johnston arrived at Fort Laramie on 4 October, moving on well ahead of Colonel Cooke and the 2d Dragoons. En route he encountered two companies of the 6th Infantry, which had been ordered back from Laramie to Leavenworth, and asserted the authority he had been given to turn them around promptly. Having thus provided a garrison for Laramie, he learned that the supply of corn for Cooke's dragoons would be precarious, and while urging Cooke to push on through South Pass to join the main force he left it to the dragoon commander's judgment where he should stop for the winter should the march prove impracticable.[27]

By 13 October, Johnston had reached the Sweetwater where he learned from a messenger sent by Colonel Alexander to seek Colonel Smith about the Mormon depredations and Alexander's decision to approach Salt Lake City by the Bear River Valley. The decision quite astonished Johnston, but he saw no means of getting a message through to Alexander because of the roving Mormon bands between them. But the news quite dispelled Johnston's earlier optimism that he could enter Utah before winter. He now sought to bring all the scattered detachments of troops together, protect the supply trains, and find a suitable spot for the entire force to spend the winter. He moved with his escort to Pacific Springs and there brought together Colonel Smith's forces, his own escort, and the detachment of the 2d Dragoons under Lieutenant Smith. To augment this force he recruited volunteers among the discharged teamsters, enlisting them for a six- or nine-month period. While he was concentrating this force, Johnston received another plaintive note from Alexander, this one addressed to "any officer of the United States Army en route to Utah, or Governor Cummings." In this note Alexander sought information about "the trains or bodies of troops cumming this way," and asked that they "make a rapid march to join us." This message revealed to Johnston Alexander's total ignorance about the size, whereabouts, and intentions of the rest of the forces moving toward Utah. Since the message had been brought by a reliable bearer who would return, Johnston sent back word to Alexander to retire in slow marches back to the mouth of Fontenelle Creek where he would join with the forces he had assembled at Pacific Springs. He wished, he said, to "concentrate the command with the view of wintering in an eligible spot."[28]

In his report to Army Headquarters, Johnston was more caustic about Alexander.

> His intended movement, if met with opposition would have so retarded his march as to have made it impracticable and would have so probably entangled him in the midst of the deep snow of the valley of the Bear River, which I understand never fails to fall there and usually early in the season, as to place him beyond the means of extrication.

He now made it quite clear to Scott that it would be impossible to advance against the Mormons until spring, and convinced by the events of the past month that a war must be waged

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[26] Alexander to Officers of the US Army Commanding Forces En Route to Utah, 8 Oct 57; Alexander to Asst AG, Army Hq, 9 Oct 57; Alexander to Asst AG, Army of Utah, 17 Nov 57. All in H. Ex. Doc. 71, pp. 30–32, 38–40, 80–81. Most of the exchanges with Brigham Young are in H. Ex. Doc. 71 and in Hafen and Hafen, *Utah Expedition*. The events are well described in Furniss, *Mormon Conflict*, pp. 108–14.

[27] Johnston to Asst AG, Army Hq, 5 Oct 57; Johnston to Cooke, 5 Oct 57, H. Ex. Doc. 71, pp. 28–29, 42.

[28] Johnston to Asst AG, Army Hq, 13 Oct 57, *SW Rpt*, 1857, pp. 34–35. Alexander to Any Officer . . . , 14 Oct 57, Hafen and Hafen, *Utah Expedition*, p. 82. Johnston to Alexander, 16 Oct 57; Johnston to Asst AG, Army Hq, 18 Oct 57. H. Ex. Doc. 71, pp. 35–38, 40.

against them, he suggested a movement of troops from Oregon or California to crush them from two sides when spring came.[29]

By 26 October, Johnston had gathered all the rear elements and supply trains of the army near South Pass, and on 4 November he formed a junction with Alexander's command at Ham's Fork. His "Army of Utah" was now all together except for Colonel Cooke's dragoons, still struggling along the road from Laramie, after having been delayed there awaiting wagons with corn. On 4 November Johnston assumed active command. Meanwhile, having achieved their objective of preventing the army from entering Salt Lake City before winter, the Mormons withdrew to their settlements, burning outposts at Fort Bridger and Fort Supply. Johnston had already determined to winter at Bridger, a fort that bore the name of the mountain man who had established it and who claimed that the Mormons had driven him from it. Anticipating that he might have to drive the Mormons from the fort, Johnston spent two days in organizing his columns and on 6 November he started out for Bridger, thirty-five miles away. No sooner were the troops under way than a severe blizzard struck, followed by intense cold and intermittent snow for two weeks. The thermometer ranged between ten and sixteen degrees below zero. It took fifteen days to complete the march and the toll on horses, mules, and oxen was disastrous. There was no place to halt for shelter. "The country between here and South Pass," wrote Johnston "with the exception of the narrow valleys of watercourses, is a great desert, affording no shelter by its conformation or by woods or even bushes from the furious blasts of these high regions . . . there was no alternative but to press forward perseveringly, though slowly making our route by the frozen horses, mules and oxen."[30]

Cooke's dragoons, escorting the civil officials, came in a few days later, having suffered even more severely from the storm. They lost 134 of 278 horses and the rest were in bedraggled condition. As Cook put it "the steps of an advancing army" were marked by "the horrors of a disastrous retreat."[31]

At all events, the Army of Utah was now concentrated under its commander in winter quarters at what the Mormons had left standing of Fort Bridger. This consisted of a "high, well built, strong stone wall, enclosing a square of one hundred feet." The departing Mormons had destroyed all the other houses, crops, and grain stores in the vicinity. The troops stored their supplies in the stone enclosure and erected a tent city that was denominated Camp Scott. The herds of mules, battery horses, and cattle were sent to graze along Henry's Fork not far off and Cooke's command camped nearby to protect them. A quick inventory of supplies indicated that there would be enough rations to carry the command through the winter, although the flour ration had to be cut, much of the food was unpalatable, and there was a shortage of salt. The main problem, however, was the supply of animals.[32]

Johnston immediately sent an emergency request back to Laramie for a mule train loaded with salt, along with a request that other supplies from Laramie be pushed forward as early in the spring as the weather would permit. In a desperate effort to replenish his supply of horses and mules, he sent Capt. R. B. Marcy on a difficult and dangerous trek to New Mex-

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[29] Johnston to Asst AG, Army Hq, 18 Oct 57, H. Ex. Doc. 71, pp. 35–38.

[30] Johnston to Asst AG, Army Hq, 30 Nov 57, H. Ex. Doc. 71, pp. 77–79.

[31] Cooke's report to Johnston, 21 Nov 57, contains a journal of the entire march from Leavenworth. H. Ex. Doc. 71, pp. 92–100.

[32] Ibid., pp. 77–79. Reports of QM Capt H. F. Clarke and QM Capt J. H. Dickerson, 29 Nov 57, ibid., pp. 104–07.



FORT BRIDGER

ico to bring back animals in the spring. He called for more volunteers from among the discharged wagoners and "other American citizens unemployed" and in the end recruited three companies of men he thought would make excellent light troops. "In the spring," he wrote, "the army, with the volunteer force included, about two thousand strong, will resume their march as soon as the supply of horses and mules arrive, and the grass on the mountains shall be found sufficient to sustain them."[33]

The events of the autumn heightened the hostility toward the Mormons already felt by the officers and men of the Army of Utah. Johnston wrote,

> They have with premeditation placed themselves in rebellion against the Union and entertain the insane design of establishing a form of government thoroughly despotic and utterly repugnant to our institutions—occupying as they do an attitude of rebellion and open defiance connected with numerous overt acts of treason. . . . The time for any further argument is past, and in my opinion, the people of the United States must now act or submit to an usurpation of their territory and the ingrafting upon our institutions, a social organization and political principle totally incompatible with their own.[34]

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[33] Johnston to BG John Garland, CO, Dept New Mexico, 25 Nov 57; Johnston to Col Hoffman, CO, 6th Inf, 13 Nov 57; Cir., Army Hq of Utah, Camp Scott, 19 Nov 57; Asst AG Army Utah to CO, 6th Inf, Ft. Laramie, 30 Nov 57; Johnston to Asst AG, Army Hq, 13 Dec 57. H. Ex. Doc. 71, pp. 80–82, 87, 107–110.

[34] Johnston to Asst AG, Army Hq, 5 Nov 57, H. Ex. Doc. 71, pp. 46–47.

Johnston's loyal officers and men echoed these sentiments, and during the long winter looked forward with anticipation to the day when they could come to grips with a crafty enemy. Long before arriving at Camp Scott, Johnston had issued orders that wherever Mormons were met in arms they should be treated as enemies. He also forbade wagon trains to pass by the camp either in or out of the Mormon settlements, cutting off both commercial intercourse and postal deliveries, and established a tight system of security around Camp Scott.[35]

Meanwhile the civil officials encamped nearby in a tent city known as Eckelsville after the chief judge. Almost immediately after arriving at Camp Scott, Cummings issued a proclamation to the people of Utah announcing his appointment as governor and his intention to make preliminary arrangements for the organization of a territorial government while at the camp. Citing his duty to enforce all applicable federal laws, he characterized the Mormon depredations against the army as "treasonable acts of violence committed by lawless individuals" against whom proceedings would be brought in Judge Eckels' court. He ended by ordering, as commander-in-chief of the militia of the territory, "all armed bodies of individuals, by whomsoever organized, to disband and return to their respective homes." The penalty for disobedience, he said, would be "the punishment due to traitors."[36] Cummings sent the proclamation in a letter to Brigham Young, addressing him as "Ex-governor of Utah" and announcing his appointment to that post (evidently the first official notification).[37]

Cummings asked for acknowledgment of the receipt of the letter by returning messenger, but there is no evidence he ever got it. Young's next communication was to the military commander, to whom he offered 800 pounds of salt, having, he said, been informed of the troops' dire need. In signing himself as "Governor of Utah," Young indirectly replied to Cummings. Johnston promptly refused the offer from "enemies of the government" in no uncertain terms.[38]

Meanwhile, Cummings wrote to Secretary of State Cass that he was satisfied in his judgment that "the territory is now in a state of rebellion" and requested orders and instructions from the president that would "distinctly define my military rights and duties."[39] He received no clarification. His military rights continued to be those of employing his military escort as a *posse* to enforce federal law, a purpose for which, in the event, he was never to use it. In Eckelsville, however, Judge Eckels labored vigorously to give the governor some grounds on which to use the military *posse*. Employing a grand jury composed of teamsters and other hangers-on of the military camp, he got indictments for treason not only against the Mormon officers who had been captured but also against Brigham Young and most of the other important Mormon leaders.[40]

Despite the seeming agreement between military and civil officials on the iniquities of the Mormons, a certain coolness began to develop between Johnston and Cummings during the long winter at Camp Scott. Perhaps it began when Cummings chose to accompany Cooke and not Johnston on the march. Or perhaps it began when Cummings learned, after

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[35] Ibid. Orders on wagon trains are in H. Ex. Doc. 71, 69–91. Capt. Jesse A. Gove's letters to his wife reflect the great animosity of the officers and rank and file toward the Mormons. Hammond, *Utah Expedition*, passim.

[36] H. Ex. Doc. 71, pp. 75–76.

[37] Cummings to Young, 21 Nov 57, ibid., p. 76

[38] Young to Johnston or Alexander, 26 Nov 57, H. Ex. Doc. 71, pp. 110–11.

[39] Cummings to Cass, 28 Nov 57, Hafen and Hafen, *Utah Expedition*, pp. 298–300.

[40] Furniss, *Mormon Conflict*, pp. 166–67. H. Ex. Doc. 71, pp. 55–56, 68.

arrival at Camp Scott, that Alexander's correspondence with Brigham Young had been sent to Army Headquarters but only belatedly shown to him, the responsible civil officer with the expedition.[41] At all events, with both men in the same camp, no close contacts or consultations came about; communications were usually in writing. And when spring and the time for action came, Cummings had lost most of his zeal to punish the Mormons while Johnston remained as adamant as ever.

Resolution Without Bloodshed

In his first annual message to Congress on 8 December, President Buchanan seemed grimly determined to meet the Mormon challenge. "This is the first rebellion which has existed in our Territories," he declared, "and humanity itself requires that we should put it down in a manner that it shall be the last." Spurred on by the setbacks to the military expedition, he asked Congress to authorize four new regiments for the army and to appropriate the necessary funds to defray the expenses of the expedition.[42] While Congress debated these matters, the War Department took measures to strengthen the Army of Utah, to give it the overwhelming preponderance of force needed to subdue the Mormons.

Orders issued from the army's headquarters early in January 1858 calling for dispatch to Utah "as soon as possible" of the 1st Cavalry, the 6th and 7th Infantry, two light companies of the 2d Artillery, the two companies of the 2d Dragoons that had not accompanied their regiment in 1857, and a small detachment of engineers from West Point. It meant not only stripping Leavenworth and Riley of troops that might be used to control disorders in Kansas, but also eight companies of the 7th Infantry had to be brought from Texas and Arkansas, necessitating the temporary abandonment of posts at Forts Washita, Smith, Arbuckle, and Belknap. All these units were to be brought up to full strength with recruits, and additional recruits were to march with the relief columns to fill the units already in Utah. The supply plan provided three months' subsistence for the troops en route, and an entire year's supply for the whole army once it was collected in Utah. An additional eight months' reserve supply would be deposited at Fort Laramie. The whole reinforcement amounted to 3,018 officers and men in units plus 850 recruits. It would bring the total strength in Utah to 5,606, and would require at least 100 wagon trains of 26 wagons each to bring in the supplies. Russell, Majors, and Waddell, the supply contractors, had to hire more than 4,000 men to handle this load. And all this was without the additional reinforcement the Army of Utah would receive in response to Johnston's request to the Department of New Mexico for four companies of mounted riflemen to accompany Captain Marcy when he returned in the spring with the horses and mules. For a brief period late in January 1858, General Scott himself considered going to the Pacific Coast to lead a "diversion" against the Mormons from the west. This plan was abandoned rather quickly, but it illustrated the extent to which the commanding general contemplated committing U.S. Army forces to the struggle against the Mormons.[43]

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[41] See Cummings to Cass, 13 Dec 57, Hafen and Hafen, *Utah Expedition*, pp. 301–02.

[42] Richardson, *Messages and Papers*, 7:2985–87.

[43] GO 1, Army Hq, 8 Jan 58 and GO 4, 16 Jan 58. Cir. No. 1, Army Hq, 11 Jan 58; Johnston to Asst AG, Dept N. Mex., 10 Jan 58; Army Hq to CO Dept N. Mex., 23 Jan 58; Army Hq to Johnston, 23 Jan and 4 Feb 58. *SW Rpt*, 1858, pp. 31–33, 41–42.

In October 1857 the War Department had restored the command over Fort Kearney and Fort Laramie to the Department of the West, removing them from the direct control of Colonel Johnston. Johnston not only protested vigorously, but also continued to give direct orders to the commander at Laramie for forwarding supplies to Camp Scott. As part of the general plan for reinforcements in March 1858, Scott rearranged command over this line of communications and provided for its protection. He created a District of the Platte with headquarters at Laramie to control as much of the line of communications as passed through Nebraska Territory. The commander of the District of the Platte was to be responsible for the safety of trains and cattle until they reached South Pass, where they would be taken in charge by an escort from the Department of Utah. This district commander was to be governed by instructions from General Headquarters or if junior to him (as he was almost certain to be) from the commander of the Department of Utah. Ten companies of the 4th Artillery and the two companies of the 2d Dragoons designated for the Utah Expedition were to make preparations for occupying the line of the Sweetwater and Platte to be in position to protect the trains moving to Utah.[44]

As the capstone for the whole scheme, on 15 April 1858 Army Headquarters appointed Maj. Gen. Persifor F. Smith to command the Department of Utah, with Brig. Gen. William S. Harney and Brig. Gen. Albert Sydney Johnston (who had been given the brevet rank in January) to command brigades under him. Smith and Harney were to supervise the movement of troops to Utah which was to commence at the earliest practicable date. Smith was now given power to make any changes in the assignment and disposition of forces in the District of the Platte that he might wish.[45]

Harney succeeded to the command when Smith died on 21 May 1858. By that time the march of the reinforcements was well under way. In mid-March, the first contingent to depart Leavenworth was a special train carrying most of the supplies that Johnston had ordered from Laramie, since it had developed that the requisite quantities could not be furnished solely from stocks at that post. This train was escorted by two companies of the 6th Infantry commanded by Lt. Col. William Hoffman, formerly commandant at Fort Laramie, who had come back to Leavenworth to serve on a court-martial. Hoffman's escort to Laramie was to be increased over the rest of the route by the two companies of the 6th Infantry then at the fort. The rest of the 6th Regiment under Lt. Col. George Andrews departed Leavenworth on 7 May. The second column of reinforcements left on 21 May, the third on 28 May, and the fourth and last on 31 May. Harney expected the leading supply trains accompanying the main columns to arrive at Camp Scott by the last of July, "and by the 10th of August, one entire division, about 250 wagons carrrying about 450,000 rations . . . with their escort, numbering about 900 men." He expected to be at Camp Scott in advance of the first troops. He added that, "Whatever military operations may be necessary can then be commenced with vigor and tolerable efficiency."[46]

While this great reinforcement was in the making, Johnston, in practical isolation at Camp

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[44] GO 6, Army Hq, 27 Mar 58. GO 13, Army Hq, 23 Oct 57. Johnston to Army Hq, 5 Feb 58, *SW Rpt*, 1858, pp. 48–49.

[45] GO 8, Army Hq, 15 Apr 58.

[46] Harney to Asst AG, Army Hq, 27 May 58; Johnston to Army Hq, 5 and 13 Feb 58; Hoffman to Army Hq, 25 Feb 58; Army Hq to Asst AG WD, 1 Mar 58; Asst AG, Dept Utah, St. Louis, to Andrews, 27 Apr 58. *SW Rpt*, 1858, pp. 48–49, 39–40, 104–06.

Scott (communications even to Laramie took upwards of a month) proceeded with preparations to resume the march on Salt Lake City with the forces that would be at his disposal by early June 1858. His major preoccupation was with assuring supplies of rations, clothing, and animals. He counted on the arrival of the column under Hoffman bringing supplies from Leavenworth and Laramie and the return of Captain Marcy from New Mexico with horses and mules. Johnston intended to move ahead as soon as the supplies with their escorts arrived and not to wait for the massive reinforcement, about which, in any case, he did not know the details. When queried by Scott whether he had sufficient numbers to force the passes to Salt Lake City before reinforcements arrived, he replied confidently that he had.[47] He was convinced of the necessity of the action. He wrote Scott on 20 January,

> They should be made to submit to the constitutional and legal demands of the government unconditionally. An adjustment of existing difficulties on any other basis would be nugatory. The threat to oppose the march of the troops in the spring will not have the slightest influence in delaying it and if they desire to join issue, I believe it is for the interest of the government that they should have the opportunity.[48]

As this preparation for action proceeded, Buchanan, under attack in Congress because of the expense of the expedition and its early bungling, moved toward the conciliation that Johnston opposed. Thomas J. Kane, the friend of the Mormons in Philadelphia whom Young had contacted, approached the president in December 1857, proposing to go on a mission to arrange a peace between the government and the Mormons. He contended that the Mormons misunderstood the purpose of the government, equating it with the earlier persecutions in the East. Buchanan refused to send Kane as an official emissary, but did agree that he should go on a private mission at his own expense with the president's unofficial blessing.[49]

Kane traveled to the Mormon settlements via the back door, going by steamer to California and then overland to Salt Lake City. He reached the territory in early March and conducted talks with the Mormon leaders, no record of which survives. On the evening of 12 March he arrived at Camp Scott in a state of exhaustion, and the next day called in turn on General Johnston and Governor Cummings. Kane carried with him an offer from Brigham Young of 20,000 pounds of flour and 200 head of cattle to relieve the "destitute condition" of the troops. The 200 head of cattle formed a herd owned by one Gerrish, a Salt Lake City merchant whom Johnston had detained in camp for a time and prevented from returning to his base. Young alleged he was a prisoner. The offer roused Johnston's ire, and by no means laid the basis for conciliation that Kane hoped it would. "Whatever might be the need of the Army under my command for food," he said, "we would neither ask, nor receive from President Young and his confederates any supplies while they continue to be enemies of the government." Gerrish had already gone east, having been free at any time to go any place he wanted except "to Salt Lake City or some position occupied by an armed body of Mormons opposed to the Government."[50]

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[47] Scott to Johnston, transmitted thru War Dept AG, 2 Apr 58; Johnston to Army Hq, 21 May 58. *SW Rpt*, 1858, pp. 66–68, 100–101. Apparently it took a month and a half for this query to reach Johnston.

[48] Johnston to Army Hq, 20 Jan 58, *SW Rpt*, 1858, pp. 44–45.

[49] Buchanan to Kane, 31 Dec. 57, two notes, *SW Rpt*, 1858, pp. 162–63.

[50] Johnston to Kane, 15 Mar 58, *SW Rpt*, 1858, p. 88. On the Kane mission generally see Furniss, *Mormon Conflict*, pp. 176–82.

Kane was thus rebuffed, and the unofficial presidential emissary came to occupy a very precarious position in Camp Scott. Johnston held him at arm's length while the soldiery regarded him as a Mormon spy. He had great difficulty in keeping the troops from shooting the Mormons who had escorted him to camp and who stayed nearby to serve as his messengers to Brigham Young. And he himself on one occasion was shot at and barely missed by one of the soldiers who either mistook him for a Mormon intruder or else deliberately sought to frighten him. Nevertheless, his mission was at least partially successful. He prevailed with Cummings as he could not with Johnston, and was able to persuade the governor to go with him to Salt Lake City without a military escort, there to see for himself what the attitude of the Mormons actually was. On 26 March he went into Salt Lake City and made the necessary arrangements with Brigham Young.[51]

While Kane was attempting to promote a peaceful settlement, the Mormons under the direction of Young and his cohorts started the move southward that they had threatened should the army appear in sufficiently overpowering strength. Their strategy was to evacuate all the settlements north of Provo, with only a few guards left behind in each town. In this way they would avoid contact between the settlers and the army, while from Provo the hierarchy could judge what the army had actually come to Utah to do. Because the decision was not to be irreversible, orders to burn the homes that they had left behind were held in abeyance. As Cummings rode into Salt Lake City, most of the inhabitants of the city and northward were already on the road. Indeed Young, Wells, and other Mormon leaders had to return from Provo to meet with them.[52]

The governor arrived in Salt Lake City on 12 April and received the same sort of cordial welcome Captain Van Vliet had. But the message this time was not one of unequivocal opposition. Cummings conferred with Young and others for three days, after which he sent a message to Johnston declaring,

> I have been everywhere recognized as the governor of Utah, and so far from having encountered insults and indignities, I am gratified in being able to state to you that, in passing through the settlements, I have been universally greeted with such respectful intentions as are due to the representative of the executive authority of the United States in the territory.

Facilities had been given him to perform his duties as governor and he "apprehended" that the records of the territorial courts were intact, though he had not examined them. He then went on to relay to Johnston Mormon charges that the fugitive Indian agent, Dr. Garland Hurt, then in Camp Scott, had incited the Indians against the Mormons. He asked Johnston to investigate, with a strong hint that the army itself was involved in inciting Indians to attack Mormon settlements.[53]

Cummings was exaggerating the extent of the Mormon submission, for the exodus southward continued, their men remained stationed in the passes leading to the valley, and the main Mormon leaders still voiced sentiments that no peace was possible as long as the army remained close to their settlements. In a sense, Cummings was simply making peace by

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[51] Furniss, *Mormon Conflict*, pp. 181–82. Roland, Johnston, pp. 206–08. Hammond, *Utah Expedition*, pp. 135–41. Kane wrote in his diary, 28 March 1858: "I have returned from a trip in which I was *successful* in making arrangements for *introducing governor C, into the Valley*. . . . , Hafen and Hafen, *Utah Expedition*, p. 280.

[52] Furniss, *Mormon Conflict*, pp. 182–84.

[53] Cummings to Johnston, 15 Apr 58, *SW Rpt*, 1858, pp. 72–73.

declaring it.[54] The skeptical Johnston received the message coldly, expressing gratification that Cummings had been recognized as governor of Utah but caustically commenting that "The Mormon force now occupying the canons and other positions on or near the route to Salt Lake City, it is to be presumed, will now . . . be disbanded and I beg leave to request that I may be informed when that will take place." The charges against Dr. Hurt he took as a direct affront, and after a quick investigation he told Cummings that they had no basis.[55] The troop commander continued to make his preparation to enter the valley of the Great Salt Lake with whatever force proved necessary.

Cummings, meanwhile, proceeded with his efforts to make peace. After an inspection of the records of the territorial government and courts, he decided that they were all intact. On hearing that there were persons in the territory desirous of leaving who were unable to do so, he had a notice read in the tabernacle in his presence inviting any who desired to place themselves under his protection. In response, he registered some 56 men, 33 women, and 71 children "as desirous of my protection and assistance in proceeding to the States." Most represented themselves as disappointed in the economic opportunities in Utah, not at the political regime of the Mormons. Cummings spoke in the Mormon Tabernacle urging obedience to federal law, only to stir up a hornet's nest of obvious resentment of this gentile governor, expressed in outpourings about earlier persecutions. He traveled south trying to persuade evacuees to return to their homes, but to little avail. Attempting to allay Mormon fears of treason trials conducted by federal judges with juries drawn from teamsters and camp followers, the governor assured a skeptical people that they would have the right to trials by juries of their peers.

Generally there emerged an accord between Cummings and Young whereby the former was to be allowed to exercise the powers of governor as long as he took no action to the detriment of the Mormon hierarchy. By 12 May Cummings was sufficiently encouraged that he wrote to Cass declaring that the emigrant route to California through Utah could now once again be declared open.[56] On the real crux of the matter, however, the entrance of the Army of Utah and the federal officials into the valley of the Great Salt Lake, the Mormon leaders remained much more equivocal. Cummings was himself convinced that for the army to come into the valley might do more harm than good. He wrote Cass,

> A military force could overwhelm most of these poor people, involving men, women, and children in a common fate. But there are among the Mormons many brave men, accustomed to arms and to horses, who would fight desperately as guerrillas, and if these settlements are destroyed, will subject the country to an expensive and protracted war, without any compensatory results. . . . I shall restrain all operations of the military for the present, which will enable me to receive from the President additional instructions, if he deems it necessary to give them.[57]

Cummings overstated his powers, for he had none to restrain Johnston from entering the valley in keeping with his orders from the War Department to establish a post there. He would have to rely on persuasion, and on 16 May he returned to Camp Scott to try to convince Johnston that the military presence was not immediately required in Salt Lake City. In the camp

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[54] On the premature nature of Cummings' declaration, see Furniss, *Mormon Conflict*, pp. 186–88.

[55] Johnston to Cummings, 21 Apr 58, w/Incls, *SW Rpt*, 1858, pp. 77–84.

[56] Cummings to Cass, 12 May 58, Hafen and Hafen, *Utah Expedition*, p. 314.

[57] Cummings to Cass, 2 May 58, H. Ex. Doc. 138, 35th Cong., 1st sess, *Msg, from the President . . . The Probable Termination of Mormon Troubles in Utah Territory*, ser. 959.

he found a hostile atmosphere. Johnston's sentiments were unchanged—"To compromise with these people on any other terms than an unconditinal surrender would in my opinion be unsafe, unwise, and impolitic.[58] The troops cried out for vengeance for the winter sufferings they thought the Mormons had forced upon them and looked askance at Cummings' espousal of a peaceful settlement with concessions to people they thought should be punished for their transgressions.[59]

On 21 May Cummings played his trump card, informing Johnston that "after careful investigation" he found "no organized armed force of its inhabitants in any part of this Territory with the exception of a small party subject to my orders in or near Echo Canyon." He asked that Johnston remove the restrictions on commercial and postal intercourse with the Mormons he had imposed in November 1857. Johnston dutifully complied but indicated his skepticism in communicating the order to Colonel Hoffman bringing the reinforcements along the trail from Laramie, "but not on this account to relax the vigilance which should be exercised in any enemy's country to secure your trains and herds."[60]

Although determined to advance into the valley of the Great Salt Lake as soon as his army was ready, Johnston still showed some restraint in supporting the more extreme measures proposed by some of the civilian officials in his camp. The U.S. marshal, Peter K. Dotson, on 25 May asked Cummings to place such a *posse* under his control as to enable him to serve writs on Brigham Young and sixty-six others indicted in Eckels' court for treason. Such a *posse* would obviously require Johnston's entire military force and be in reality a commitment to subdue the Mormons by force. On inquiry from Cummings, Johnston said he would "not at this time be able to comply with such requirements."[61]

President Buchanan, meanwhile, had taken the whole affair out of the hands of Cummings and Johnston. Evidently persuaded that he had made a mistake in not sending an investigating commission to Utah in the first instance, in April 1858 he decided to rectify his error. He chose for commissioners Lazarus W. Powell, formerly governor of Kentucky and senator-elect from the state, and Ben McCulloch, a hero of the Texas revolution and the war with Mexico, then a U.S. marshal in Texas. In advance of the appointment of the commission, Buchanan finally issued a proclamation on 6 April 1958 reviewing the course of Mormon resistance to federal authority and declaring that it constituted "rebellion against the Government." He threatened punishment as traitors for those who persisted in their resistance, but offered a "free and full pardon" for all who would submit themselves to the federal authority. The military forces, he said, would not be withdrawn "until the inhabitants of that Territory shall manifest a proper sense of duty which they owe to this Government." Powell and McCulloch were to carry with them this promise of pardon for past sins as an inducement to persuade the Mormons to accept the federal officials. If accepted, it would of course void the indictments obtained by Judge Eckels at Green River and remove any question of future treason trials. The secretary of war's instructions to the commissioners were that they were to make no treaty with the Mormons but to try to "bring these misguided people to their senses . . . and spare the effusion of human blood." Once the officials sent out by

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[58] Qutoted in Roland, *Johnston*, p. 210.

[59] Furniss, *Mormon Conflict*, p. 190. Hammond, *Utah Expedition*, pp. 226-28.

[60] Cummings to Johnston, and Johnston to Cummings, 21 May 58, Asst AG, Dept of Utah, to Col Hoffman, 22 May 58. *SW Rpt*, 1858, pp. 102-03.

[61] Cummings to Johnston and Johnston to Cummings, 25 and 28 May 58, *SW Rpt*, 1858, pp. 103-04.

the president were installed and due obedience yielded to the laws and their officials acts, there would be no further need for the U.S. Army troops in the territory except for the normal functions of keeping the Indians in check and protecting the emigrants.[62]

Hastening along the route in order to arrive before Johnston put the troops in motion, Powell and McCulloch reached Camp Scott on 29 May. After conferring with general and governor, they sided with Johnston, saying that the "leaders of the Mormon people have not given the governor correct information as to the condition of affairs in the valley," that the Mormons were still in arms guarding the approaches to Salt Lake City. They thought the presence of the U.S. Army the best guarantee that the Mormons might submit and favored no relaxation of pressure—"We deem it a matter of first importance that the army advance into the valley of Salt Lake before the Mormons can burn the grass or harvest or burn the growing crops."[63]

Powell and McCulloch did, however, want to confer with the Mormon leaders before the army marched. They arrived at Salt Lake City on 7 June where they were joined shortly afterward by Cummings, crestfallen that the game had been taken out of his hands. Before they left Camp Scott, they understood that Johnston would not move until he heard from them. Cummings thought he had an even stronger understanding on this point.[64]

In any case, in the course of conferences on 11 and 12 June, for which Young and other Mormon leaders again returned from Provo to Salt Lake City, the commissioners obtained essentially the pledges they required, although hedged about by Mormon protest and rhetoric. The Mormons accepted the presidential pardon, all the while protesting they had done nothing to require it except for the raids on the army supply trains. They finally gave in on the key issue. "Upon the President's views and intentions being made known . . . it was agreed that the officers, civil and military of the United States should peaceably and without resistance enter the Territory of Utah, and discharge, unmolested, *all their official duties.*" The army would establish in the territory the military posts necessary to prevent Indian depredations, protect emigrants, and "to act as *posse comitatus* to enforce the execution of civil process should it be necessary." If the inhabitants submitted to the execution of federal laws and peaceably received the federal officers, there would be no need for such *posses.* If they refused or otherwise resisted the execution of the federal laws, "the President would employ if necessary the entire military power of the nation to enforce unconditional submission and obedience to the Constitution and laws of the United States."[65]

On 12 June, immediately following the conference, the commissioners notified Secretary Floyd that they had settled "the unfortunate difficulties existing between the government of the United States and the people of Utah."[66] On the basis of information Cummings had sent to Cass, President Buchanan had already decided the troubles were over. On 10 June he went before Congress to cancel his request for appropriations necessary for calling

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[62] Secy War Floyd to Powell and McCulloch, 12 Apr 58, *SW Rpt,* 1858, pp. 160–62. Buchanan's proclamation is in Richardson, *Messages and Papers,* 7:3024–26.

[63] Powell and McCulloch to Secy War, 1 Jun 58, *SW Rpt,* 1858, pp. 165–67.

[64] On Johnston's actual anticipation on 4 June see his letter to Army Hq to that date, *SW Rpt,* 1858, pp. 107–08.

[65] Powell and McCulloch to Secy War, 24 Aug 58, *SW Rpt,* 1858, pp. 175–77. This was the formal record of the conference of 12 June as drawn up on 3 July 1858 and certified by Young as "correct as far as I can recollect at present." See also Powell and McCulloch to Secy War, 12 Jun and 26 Jun 58, ibid., pp. 167–72.

[66] Powell and McCulloch to Secy War, 12 Jun 58, *SW Rpt,* p. 167.

into service for Utah two regiments of volunteers that Congress had authorized on 7 April. The four additional regular regiments were quietly forgotten.[67]

In communicating to Johnston their success in persuading the Mormons to accept federal authority, the commissioners cautioned that the people were very fearful of the army, that Johnston should be careful to select a camp site away from the population centers, and that he should issue a statement reassuring them the army intended them no harm.[68] Meanwhile, both Marcy and Hoffman had arrived with their reinforcements, supplies, and animals. Hoffman with the lead element of his command came into Camp Scott on 8 June with the rear elements following a few days later. Marcy with his escort of 3d Infantry mounted riflemen came in on 11 June, the animals purchased in New Mexico "all in fine condition." Since the grass in the area was being rapidly exhaused by the herds of animals, Johnston moved out of Camp Scott on 13 June 1858, advancing toward Salt Lake City. On the next day he reached Bear River and camped there. At Bear River he received the commissioners' communication. In keeping with the commissioners' suggestion he then issued a proclamation to the people of Utah, assuring them that they had nothing to fear from the army and that it would protect their persons and property as long as they obeyed federal laws. At the same time Johnston congratulated McCulloch and Powell on the accomplishment of their mission and indicated he would resume his march on 17 June and arrive in the valley five days later.[69]

News that the troops were on the march reached Cummings in a protest from Brigham Young. The governor had told Young that Johnston had pledged not to move until he got the word from the commissioners, and he complained bitterly to the general that he would be suspected of duplicity unless there was some clarification. He also registered a complaint against Johnston with the secretary of state. On the other hand, the commissioners, although probably annoyed, simply held their peace awaiting developments. When Cummings received Johnston's proclamation on 17 June, he promised to circulate it, but again protested Johnston's premature movement with some pique, insisting that above all he should select an encampment away from the population centers before proceeding.[70]

En route on 19 June Johnston coldly informed Cummings that he had not meant his statement as a pledge.

> The instruction of the President to the commissioners were positive that the army should occupy the territory of Utah, and my orders do not allow the discretion of making delay, unless reasons should be offered for so doing which should appear to me to be sufficiently cogent. It was not foreseen by me that the supplies would arrive as soon as they did, and that the grass in every direction within convenient reach should be so quickly consumed. The last circumstance alone made it necessary to move; I did not deem a formal notice necessary.

He did assure Cummings that the army would select a suitable site outside any city or town and that the "greatest care will be taken that no one is improperly treated or injury to their property sustained."[71]

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[67] H. Ex. Doc. 138, 35th Cong., 1st sess.

[68] Powell and McCulloch to Johnston, 12 Jun 58, *SW Rpt*, 1858, pp. 167–68.

[69] Johnston to Army Hq, 11 Jun 58; Col Loring to AG, 12 Jun 58; Marcy to Asst AG, Army of Utah, 12 Jun 58; Johnston's Proc to People of Utah, 14 Jun 58; Johnston to Powell and McCulloch, 14 Jun 58. *SW Rpt*, 1858, pp. 108–09, 112, 120–21, 187–201.

[70] Cummings to Johnston, 15 and 17 Jun 58, *SW Rpt*, 1858, pp. 114–16. Cummings to Cass, 18 Jun 58, Hafen and Hafen, *Utah Expedition*, pp. 325–26.

[71] Johnston to Cummings, 19 Jun 58, *SW Rpt*, 1858, pp. 116–17.



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The exchange affected in no way the course of events as far as the settlement with the Mormons was concerned, for the latter had now shifted too far toward conciliation to resume a posture of defiance. What it did reveal was the widening split between the civil governor and the military commander, men who were supposed to work together to resolve the situation in Utah as Governor Geary and General Smith had worked together in Kansas. Although Cummings now wished to forgive and forget past problems and to let the Mormons govern themselves under a light federal aegis, Johnston still wanted to assert the federal authority more strongly and punish Mormon leaders for past sins. He was, however, very careful to stick closely to the letter of his instructions. One of his officers, Captain Gove of the 10th Infantry, was more outspoken in his criticism. "The Mormons have accepted this pardon," he wrote his wife, "but it is no more in earnest than the wind; they are as impudent and villainous as ever. . . . No trust is to be put in them . . . so you see we have got to give them a sound whipping, hang about 100 of them, and then the rest will submit. . . . They have only accepted to gain time. The President has damned himself and the country."[72]

The Army of Utah marched through Salt Lake City on 26 June and then set up a camp outside town across the little Jordan River that night. The city was practically deserted. The troops were under orders that no one was to leave ranks during the march, and quartermaster and commissary officers saw to it that their herds did not trample on private property. Once the troops were out of town across the river, Johnston posted guards on the bridges to see that none returned to the city.[73]

After some consideration, Johnston selected Cedar Valley, about thirty-six miles from Salt Lake City and about equidistant from Provo, the second largest Mormon settlement, as the site for his permanent camp. The site offered the advantage of good grazing land; it had few inhabitants; and it was well situated to permit deployment of troops to other parts of the territory as needed. For nearly two weeks Johnston held his troops in their camp on the Jordan so as to permit the Mormon refugees to return to their homes without meeting the army en route. But when the grass in this location was finally exhausted by the animals the army had to move. Meanwhile, the Mormon leaders had finally given the word for their followers to return home. On the roads to Cedar Valley, many army units encountered Mormon families and in some cases became entangled with them. There were no clashes as each

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[72] Hammond, *Utah Expedition*, pp. 174–75. See Furniss, *Mormon Conflict*, pp. 198–99.
[73] Johnston to Army Hq, 18 Jun 58, *SW Rpt*, 1858, pp. 121–22.

group scrupulously avoided offending the other. By 8 July the Army of Utah was established in the north end of Cedar Valley, which Johnston took over as a military reserve and designated Camp Floyd. What Johnston's biographer has called a "queer triumphal march" was to be followed by "one of history's most unusual occupations."[74]

Provo—The Last Incident

"We are firmly impressed with the belief," Powell and McCulloch wrote Secretary Floyd, "that the presence of the army here, and the large additional force that had been ordered to this Territory, were the chief inducements that caused the Mormons to abandon the idea of resisting the authority of the United States. A less decisive policy would probably have resulted in a long, bloody and expensive war."[75] Whether their reasoning was correct or not, the War Department followed it and maintained a sizable force in Utah until the outbreak of the Civil War. This occupying army proved to be more a reminder of federal authority than an active instrument of law enforcement against the Mormons. Only for a brief period in the spring of 1859 were U.S. Army forces used in the *posse comitatus* role, and then on the request of U.S. judges and marshals, not Governor Cummings.

The entire army of 5,000 men scheduled in January 1858 was never brought together in Utah. With the resolution of the crisis, the Department of Utah was assigned a force consisting of the 2d Dragoons, Phelps' battery of the 4th Artillery, a company of the 3d Artillery, and three regiments of infantry—the 5th, 7th, and 10th—a total of about 3,000 men. Two companies of dragoons and ten companies of the 4th Artillery remained in place in the District of the Platte for a time, subject to the orders of the commander in Utah. The 6th Infantry moved on to Oregon, the 1st Cavalry returned to its patrol duties on the plains, Captain Marcy's escort of mounted riflemen to New Mexico, and the engineer detachment to West Point. Johnston returned the volunteer companies formed in the winter to Leavenworth for discharge. He was confirmed as commander in Utah and Harney, after completing his work of forwarding recruits, animals, and supplies to the Utah force, returned to Saint Louis to command the Department of the West.[76]

As the army settled down in Cedar Valley and the Mormons returned to their homes, it soon became apparent that the capitulation of the Saints was more nominal than real. True, the gentile appointees assumed their positions in the territorial government, but the sway of Brigham Young and the Mormon hierarchy over their people was as strong as ever. The shadow government of the Mormon church governed Utah rather more effectively than the gentile officials. Governor Cummings, although by no means a creature of the Mormons, determined that he must cooperate with them to maintain peace in Utah. The federal judges, supported by General Johnston, thought that federal supremacy should be more strongly asserted and a more diligent effort made to convict Mormons of crimes that they believed had been committed. Despite his anti-Mormon sentiments, Johnston was careful never to exceed the instructions he had been given, and he strove to be scrupulously fair in his deal-

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[74] Roland, *Johnston*, pp. 214–15. Johnston to Army Hq, 8 Jul 58, *SW Rpt*, 1858, pp. 122–23.

[75] Ltr of 3 Jul 58, *SW Rpt*, 1858, p. 174.

[76] GO 17, Army Hq, 29 Jun 58. Johnston to Army Hq, 22 Jul 58; Harney to Army Hq, 15 Jul and 5 Aug 58, *SW Rpt*, 1858, pp. 124–34. Johnston was offered a choice between the 6th and 7th Infantry and he chose to retain the 7th.

ings with the Saints. For instance he would allow no soldiers to be discharged in the territory unless they had employment in Utah or means of transport to California. He would permit no raids by the soldiers on Mormon property or Mormon persons without just cause.[77]

So it was that the fall and winter of 1858–1859 passed without overt clashes between soldiers and Mormons, however much mutual resentment remained. The town of Fairfield, near Camp Floyd, renamed Frogtown, attracted the usual numbers of confidence men, prostitutes, and other low elements of society that inevitably congregate in towns near army camps. Frogtown had its share of crimes, disorders, and fights, but they were not necessarily related to any conflict between Mormons and soldiers, and they involved no call on the army to support civil authority. Nor did any such call come from the governor. The real test came in March 1859, when the federal judges set out to contest Mormon authority.

During the winter, the two absent justices, John Cradlebaugh and Charles Sinclair, arrived in Utah, while Chief Judge Eckels took leave in the East. The judicial struggle with the Mormons began early in 1859 when Judge Sinclair sought to bring those who had disrupted Stiles' court to justice and again tried to limit the jurisdiction of the probate courts. But it was one-eyed Judge Cradlebaugh who created the real crisis by undertaking to prosecute prominent Mormons for alleged murders and other crimes committed and bringing the army in to support him. On 6 March 1859, about to open court in Provo using a seminary as a courthouse, Cradlebaugh formally asked Johnston for a military guard for prisoners to be tried before the court. He said there was no prison within the district in which to incarcerate these offenders, who included six or eight persons already in military custody at Camp Floyd, and prospectively "a large organized band of thieves, who are charged with stealing government animals and who will probably be arrested early in the coming week."[78] What Cradlebaugh left unsaid was that he also intended to bring into custody many prominent Mormons allegedly involved in crimes, most notably the perpetrators of the Potter-Parish murders, involving the killing of several Mormon apostates. Beyond this he looked forward to finding those involved in the Mountain Meadows massacre of September 1857, when about 120 members of an emigrant party from Arkansas had been slaughtered, supposedly by Indians. Whether Johnston knew of Cradlebaugh's intentions is uncertain. Certainly he sympathized wholeheartedly with the judge's purpose and considered it well within the purview of his instructions to furnish troops to aid in the judicial process.

Johnston dispatched a company of the 10th Infantry to Provo, but with his usual caution gave instructions to its commander, Capt. Henry Heth, that his activities should be limited to securing whatever prisoners were turned over and delivering them to the marshal or district judge on request—"in no case will your command assist in the arrest of anyone. . . . If any requisition for assistance be made it must be directed to the commanding general, and not obeyed until ordered by him."[79] Anxious to avoid contact with the civilian populace, Heth intended to set up camp outside the city limits, but found that these limits extended for several miles on each side of Provo. So finally he accepted the offer of a deputy marshal and established his camp on public ground next to the seminary where Judge Cradlebaugh was holding court.

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[77] Roland, *Johnston*, pp. 222–23.
[78] Cradlebaugh to Asst AG, Dept Utah, 6 Mar 59, *SW Rpt*, 1859, p. 140. Furniss, *Mormon Conflict*, pp. 212–14.
[79] Heth to Asst AG, Dept Utah, 10 Mar 59, *SW Rpt*, 1859, p. 141.

The presence of the troops in close proximity to the townspeople raised an immediate furor. The mayor and council of Provo protested vigorously to the judge this "direct interference with the municipal regulations of American citizens." The judge replied that the troops were only guarding the prisoners and that "good American citizens have no cause to fear American troops."[80] The proof that Cradlebaugh did not consider the mayor one of these good citizens came on 18 March when he had him arrested. He also issued warrants for several other prominent Mormons, who fled the town and escaped service. With these moves by Cradlebaugh, Mormons from the countryside flocked into Provo and the furor mounted. Heth, alarmed that an attempt might be made to rescue the prisoners he held, sent a dispatch post haste to Camp Floyd, apprising Johnston of the situation. The following day, 19 March, Johnston ordered Bvt. Maj. Gen. R. Paul with eight companies of the 7th Infantry, Phelps' battery, and a squadron of the 2d Dragoons to take up a position at Battle Creek where he would be able to support Heth on call. "You will be careful," Johnston informed Paul, "not to permit your command to interfere with the rights of citizens, and, on no pretense whatsoever will you make the attack on any body of citizens except in sheer self-defense."[81] Paul did not camp on Battle Creek, where he found insufficient grass for his animals, but moved closer to Provo in a place he designated Camp Timpanagos.

The Mormons knew nothing of the cautious instructions given either Heth or Paul, and many believed that Paul's movement signaled the opening of hostilities against them. Rumors flew that while the 7th Infantry moved on Provo, the 5th would advance into Salt Lake City. Surreptitiously, the Mormons began once again to alert their militia for a possible fight; bands of men, some fleeing Judge Cradlebaugh's warrants and others fearful of them, took to the mountains and canyons. The danger of an armed clash again loomed ahead.[82]

On 14 March, Governor Cummings, whom Johnston had not taken the trouble to inform about his troop dispositions, arrived in Provo in response to an appeal from the Mormon leaders. He found Captain Heth unresponsive to his inquiries; the captain insisted he should report only to his military superiors. On 20 March Cummings addressed a very sharp letter to Johnston requesting that he "promptly order the officer in command of the detachment now encamped at the court house to a position as will relieve the inhabitants from the influence of a military encampment in this vicinity." Cummings contended that there was no necessity for troops in Provo.[83]

Johnston bluntly refused the governor's request. He had quite properly, he said, and in full accordance with his instructions, responded to a request from a coordinate branch of the government. After carefully explaining why Heth had camped next to the temporary courthouse, he asserted, "There was nothing in the manner of making this movement that should have been construed as an intimidation. . . ." And finally he denied that the governor had any right to question his disposition,

> To prevent any misunderstandings hereafter, I desire to say to your excellency that I am under no obligation whatever to conform to your suggestions with regard to the military disposition of the troops

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[80] Mayor B. A. Bullick to Cradlebaugh, 11 Mar 59; Cradlebaugh to Hon Mayor and City Council of Provo, 12 Mar 59, *SW Rpt*, 1859, pp. 142–43.

[81] Asst AG, Dept Utah to Bvt Maj G. R. Paul, 19 Mar 59; Heth to Asst AG, 18 Mar 59; Johnston to Cradlebaugh, 19 Mar 59, *SW Rpt*, 1859, pp. 143–44, 147–49.

[82] Furniss, *Mormon Conflict*, pp. 216–17.

[83] Cummings to Johnston, 20 Mar 59, *SW Rpt*, 1859, pp. 149–50.

of this department, except only when it may be expedient to employ them in their civil capacity as a posse, in which case, should the emergency arise, your requisition for any portion of the troops under my command will be complied with, and they will be instructed to perform the duty pointed out.[84]

The governor and the military commander were now completely at odds. And if, in Johnston's view, Cummings was subverting enforcement of federal law in Utah, the general was ignoring that part of his instructions that called for careful and continuous consultation with the governor. In reporting the matter to his superiors, Johnston admitted that the "discrepancy of views between the executive of the Territory and the commander of the department cannot fail to entail all the evil consequences of want of harmony and unity of purpose." But he contended that the dispute had arisen simply because the governor had wrongfully assumed that he had military powers.[85] In a letter a week later, he carried his defense a step further, arguing that the judges must be supported,

the horrible crimes which have been perpetrated in this territory, crimes of a magnitude and of an apparently studied refinement in atrocity, hardly to be conceived of, and which have gone unwhipped of justice—These if the judges are sustained they will endeavor to bring to light.[86]

Cummings sent his own version of the incident to Lewis Cass, with a request for additional authority over the troops. And he issued a proclamation saying the presence of the troops tended to terrify citizens, subvert justice, and intimidate witnesses, and ending with a formal protest against the use of troops without his approval.[87]

Meanwhile Johnston continued to support Judge Cradlebaugh in his efforts to serve warrants on prominent Mormons. On 24 March, Marshal Dotson, after having tried unsuccessfully to serve these writs on "twelve or fourteen citizens of Springville and this place (Provo City)" asked Johnston for a military *posse* of at least 200 men to execute the process of the court. Judge Cradlebaugh united with Dotson in making the requisition. "I have reason to believe," Dotson stated, "that this whole community is engaged in aiding these offenders to elude the process of the court and vigilance of the officers of the law."[88]

Johnston directed Paul to furnish a *posse* of 150 infantry and 50 dragoons to act under the marshal's direction:

The general wishes you to direct the officer in command in all matters relative to the civil duties required of him, to be governed by the marshal or other United States officer under whose direction he acts, and if, in the arrest of any person or in the execution of any duty, resistance is offered, he will require of the civil officer how the resistance is to be overcome whether by the bayonet or firing, & c, and give distinct notice to his men how it is to be done, and that it is to be done by order of the United States marshal or other proper persons.[89]

The role of the troops was thus extended from simply guarding prisoners to assisting the marshal in making arrests and overcoming any resistance he might encounter. Essentially this was the same role troops had been playing in Kansas for some years.

While Marshall Dotson and his military *posse* secured the area around Springville, unsuccessfully attempting to serve their warrants, the situation became even more tense. On the

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[84] Johnston to Cummings, 22 Mar 59, *SW Rpt*, pp. 151–52.
[85] Johnston to Asst AG, Army Hq, 24 Mar 59, *SW Rpt*, 1859, pp. 139–40.
[86] Johnston to Asst AG, Army Hq, 31 Mar 59, quoted in Roland, *Johnston*, p. 229.
[87] Furniss, *Mormon Conflict*, p. 218; Roland, *Johnston*, p. 225.
[88] Dotson to Johnston, 24 Mar 59, *SW Rpt*, p. 155.
[89] Asst AG, Dept Utah, to Paul, 24 Mar 59, *SW Rpt*, 1859, p. 156.

night of 26 March in Provo, some townsmen threw stones at one of Heth's sentinels and "came near injuring him." Heth sent a curt note to the mayor and council of Provo. "Should this be repeated, I will regret the consequences that may ensue." In reporting the matter to Johnston he was more explicit. "Should a sentinel of my command in the quiet discharge of his duty be attacked by a volley of stones thrown at him, as was the case last night, I have directed that the sentinel shall fire upon the mob."[90]

The tension was further heightened by an incident in Rush Valley. A sergeant of the 10th Infantry struck a young Mormon on the head, seriously injuring him, during a fracas over the removal of a Mormon herd from the military reserve in the valley. In the Mormon version it was an unprovoked attack; in the army version, supported by the sworn testimony of all military witnesses, it was an act of self-defense when the Mormon attacked the sergeant with a pitchfork.[91]

The tension eased somewhat when on 2 April Judge Cradlebaugh adjourned his court, evidently disgusted with the recalcitrance of Mormon witnesses and juries and the inability of the marshal to arrest those he deemed to be the greatest culprits. Paul and Heth joined forces to escort the five remaining prisoners, held in connection with the Potter-Parrish murders, back to Camp Floyd. The troops departed Provo amidst the jeers and catcalls of the inhabitants and arrived at their camp amidst the cheers of their compatriots.[92]

Neither Cradlebaugh nor Johnston was ready to give up the effort entirely. As the men against whom warrants were issued disappeared into the mountains and canyons around Salt Lake City, Johnston on 6 April authorized another small military *posse* of thirty men to assist a deputy marshal in the San Pete Valley. A little later he sent a much larger force under Lt. Col. Daniel Ruggles into the valley, but it was not constituted as a *posse*. When a deputy marshal asked Ruggles on 18 May to furnish a *posse* of forty men to arrest Bishop Erasmus Snow, and Ruggles referred the matter to Johnston, the latter showed he was not ready to furnish *posses* indiscriminately. He told Ruggles he did not "consider it expedient to fill this requisition" and directed that any future requisition should be made by Marshal Dotson or under the sanction of a federal judge directly to him, setting forth the circumstances of the case. Johnston may have been influenced by the opinion of Ruggles, voiced privately, that pursuit of the bishop into the mountains would provoke a clash with the Mormons for which forty men would not suffice.[93]

The Mormons lurking in the mountains and canyons thought the Army of Utah was about to try to take over control of the territory; Johnston and his officers on the other hand thought of themselves as simply trying to enforce the laws and bring criminals to justice. Governor Cummings, who was caught in between, did have to take cognizance of the numbers of armed bands of Mormons in the mountains and canyons around Salt Lake City, and on 9 May he issued a proclamation ordering that these bands disperse on penalty of being arrested for disturbing the peace. He entrusted enforcement to John Kay, the territorial marshal elected by

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[90] Heth to Mayor and Council, 27 Mar 59; Heth to Asst AG, Dept Utah, 27 Mar 59, *SW Rpt*, 1859, p. 159.

[91] The Army version is in Lt L. H. Marshall, 10th Inf, to Johnston, 25 Mar 59, and Johnston to Cummings, 26 Mar 59, *SW Rpt*, 1859, pp. 158–59. On the controversy generally, see Furniss, *Mormon Conflict*, pp. 223–24 and Roland, *Johnston*, pp. 227–28.

[92] Roland, *Johnston*, p. 227. Furniss, *Mormon Conflict*, p. 219.

[93] Johnston to Capt H. R. Seldon, 5th Inf, 6 Apr 59; Asst AG Dept Utah to Ruggles, 20 May 59; Ruggles to Asst AG, Dept Utah, Private, 18 May 59. *SW Rpt*, 1859, pp. 161–62, 178–79.

the Mormon legislature, and not to Johnston's troops. It was not surprising that Kay, after a cursory search, reported he had found no such armed bands. Colonel Ruggles, commanding the troops in the area, wrote Johnston that the truth was somewhat different.

> There is abundant evidence that Bishop Snow, Bradler, Edwards and other reputed criminals, as well as many other armed Mormons were in the mountains at or near the coal mine canyons, most of the time of my continuance in the San Pete Valley, making occasional visits, mostly nocturnal, to their respective homes. They were there at the time when the governor's proclamation . . . for the dispersion of all armed assemblages was received. . . . The report of John Kay, marshal of Utah territory, dated 16 May in which he declared his inability to find any armed parties of Mormon citizens, reached me when there were still many armed Mormons in the San Pete mountains and canyons, if any reliance is to be placed in the statements of men.[94]

While this fruitless search for Mormon fugitives went on in the area around Provo and Salt Lake City, Judge Cradlebaugh moved south with the intent of investigating the Mountain Meadows massacre, in which he rightly suspected that Mormons and not Indians were the principals involved.[95] Cradlebaugh did not ask for or receive from Johnston a military *posse* to assist him in this work. Johnston did find it convenient, nonetheless, to send a detachment of dragoons under Capt. Reuben P. Campbell to the same general area at the same time to protect travelers on the road to California, to provide an escort for paymaster Maj. Henry Prince returning from California with payroll funds, and "to make inquiry respecting murders which were said to have been perpetrated by the Indians last fall," the last obviously a reference to the Mountain Meadows affair. Campbell was to take measures to punish the Indians he found responsible. It seems most likely that Johnston had tongue to cheek in issuing these orders, for he must have been aware by this time of Cradlebaugh's suspicions.[96] And Cradlebaugh did travel to Mountain Meadows in the company of the troops. His deputy marshal, William H. Rogers, later stated that the judge had told him he had authority from Johnston "to retain a portion of the troops under Captain Campbell, if he deemed it necessary, either to protect the court or to enforce its writs."[97]

When Captain Campbell arrived at the scene of the massacre on 6 May, he found the shocking physical evidence—half-buried corpses and "human skulls, bones, and hair scattered about, and scraps of clothing of men, women and children." His medical officer took care of giving proper burial to the remains.[98] Jacob Forney, superintendent of Indian affairs, was in the area at the same time, trying to collect the small children whom the Mormons

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[94] Ruggles to Johnston, 2 Jun 59; Cummings to Johnston w/Incl proclamation, 9 May 59, *SW Rpt*, pp. 174–75, 185–88.

[95] The most authoritative work on the subject of the massacre is Juanita Brooks, *The Mountain Meadows Massacre*, 2d ed. (Norman: University of Oklahoma Press, 1962). Brooks, a Mormon herself, concludes that the massacre was committed by Mormons and Indians but that it was a Mormon, John D. Lee, who lured the immigrants from their defenses and persuaded them to lay down their arms on promises of safe conduct to Cedar City. In the actual killings, the Mormons present disposed of the men and the Indians of the women and children. Brooks also contends that although Brigham Young and other high Mormon officials did not sanction the massacre, they did learn of it shortly after its occurrence, and participated in a cover-up. Brooks attributes the Mormon participation in the massacre to war hysteria created by the approach of the army and Young's stirring up the people to oppose it.

[96] Asst AG, Dept Utah to Campbell, 17 Apr 59; Johnston to Asst AG, Army Hq, 27 Apr 59. *SW Rpt*, 1859, pp. 165–66, 205–06.

[97] Brooks, *Mountain Meadows Massacre*, p. 271.

[98] Campbell to Asst AG, Dept Utah, 6 Jul 59; Asst Surg Charles Brewer to Campbell, 6 May 59. *SW Rpt*, 1859, pp. 206–08.

had spared, thinking them too young to remember. Forney gave to Cradlebaugh the names of Mormons suspected of participating in the affair, on evidence he got from the oldest of the children and other sources. Cradlebaugh collected additional information from informants in Cedar City. On the basis of this evidence he issued some thirty-nine warrants against participants in Mountain Meadows and ten for other crimes.[99] The Mormon suspects in the south, like those in the north, vanished when the deputy marshal came to serve his warrants. And Campbell's troops were not asked at any time to assist in their service. But the judge did count on the troops to guard prisoners, protect witnesses, and give security to the court. This military protection seems to have been withdrawn in mid-May for reasons that are not clear, and Cradlebaugh, feeling that he could not proceed without it, abruptly ended his investigation.[100]

The reasons for Campbell's failure to continue to support Cradlebaugh are of only academic interest, for military activities of this sort would have ended shortly therafter anyway. In Washington, Cummings' views prevailed over those of Johnston and the judges, and on 6 May Secretary Floyd sent the commander in Utah new instructions.

> Peace being now restored to the Territory, the judicial administration of the laws will require no help from the army under your command. If the service of United States troops should be needed under any circumstances, it could only be to assist the executive authority in executing the sentence of law or of the judicial decrees of the court; and that necessity could only arise when the services of a civilian posse are found to be insufficient. You will, therefore, only order the troops under your command to assist as a *posse comitatus* in the execution of the laws, upon the written application of the governor of the territory and not otherwise.[101]

To all intents and purposes this order ended the law enforcement mission of the Army in Utah, for Governor Cummings was never to ask for a military *posse* to help enforce civil law. Johnston, who received the order on 8 June, hastened to inform Judge Cradlebaugh that he could no longer hold the prisoners accused of murder at Camp Floyd. There could be no further question of military *posses* to apprehend Mormon fugitives or detachments to guard prisoners or witnesses. After a month's delay because Marshal Dotson had no place to confine the prisoners, the Mormon legislature having appropriated no money for the purpose, the marshal did finally take them off the army's hands in July 1859. It was to no purpose, for they were never to be tried. Judge Cradlebaugh gave up his efforts and retired to the southern part of the territory in an area that was to become part of Nevada. Johnston and the Army of Utah devoted their efforts to protecting emigrants, dealing with depredations of the Indians, and exploration. Johnston himself remained aloof in Camp Floyd, never fraternizing with the Mormons nor visiting Governor Cummings. In August, 1859, when the governor asked him for troops to punish the Indians for killing emigrants, Johnston sent the troops but pointedly rebuked the governor saying he would have sent them in response to the same sort of information received from anyone.

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[99] Figures from Furniss, *Mormon Conflict*, p. 219. Forney to Johnston, 1 May 59, *SW Rpt*, 1859, pp. 172–73. On Cradlebaugh's activities in Cedar City, see Rogers' statement cited.

[100] Deputy Rogers in his statement says that Johnston called the troops back to Camp Floyd to meet the threat of the Mormons gathering in the mountains, and that he and Cradlebaugh accompanied them back to Camp Floyd. Brooks, *Mountain Meadows Massacre*, p. 277. There seems to have been in fact no such order. In his report on 6 July 1859, Captain Campbell simply indicates that he returned to Camp Floyd, not noting the date, "the commanding general having concluded that the objects of the expedition were accomplished." *SW Rpt*, 1859, p. 208.

[101] Secy War Floyd to Johnston, 6 May 59, *SW Rpt*, 1859, p. 157.

In view of the very specific orders of the Secretary of War, of recent date, limiting my authority to comply with your requisitions . . . to cases which, in a single contingency may occur, I feel it my duty to refuse a compliance with your requisitions for troops in any other case whatever than those specified.

Should an extraordinary exigency occur, such as is contemplated by the law approved 3d of March 1807, for the use of military force, the mode is there pointed out by which the aid of such force can be obtained, which of course is well known to you.[102]

In reality the law of 1807 had not been followed very closely in Utah. The president issued no preliminary proclamation before sending troops to Utah, and the proclamation he finally put out in April 1858 was hardly of the prescribed nature. In retrospect, it seems a fair conclusion that Buchanan, although he never made it explicit, employed the troops in Utah on the basis of his constitutional mandate to see that the laws were faithfully executed rather than under the law of 1807. This was the power that Fillmore had claimed at the opening of the decade of the fifties.[103]

The concept of the employment of troops in Utah, as it had been in Kansas, was that of the *posse comitatus*, under the control of the governor or other civil officials. The difference between the two was that in Kansas the War Department authorized the use of troops only on requisition of the governor, whereas in Utah, until June 1859, judges and marshals were also empowered to requisition them. And in contrast to Kansas, where governors and troop commanders worked together very closely, in Utah Governor Cummings and General Johnston were at odds almost from the start. Johnston certainly cannot be absolved of much of the blame for this state of affairs. Although he followed his instructions to the letter in every other respect, he virtually ignored clauses that made him responsible for a "zealous, harmonious, and thorough cooperation" with the governor.[104] It is extremely difficult to assess the rights and wrongs of this disagreement. Cummings' policy almost certainly prevented the armed clash the officers of the army seemed all too anxious to provoke. On the other hand, it resulted in letting the Mormons run Utah much as they had before the army came and in a failure to punish anyone for some very heinous crimes, most notably the Mountain Meadows massacre.

It is worthy of some note that neither in Kansas nor in Utah was the Cushing Doctrine ever invoked in its literal sense, and marshals and judges clearly did not assume that they had the right to call on organized bodies of troops to serve as a *posse comitatus* without authority from the War Department. Officers in command in both territories were careful to allow no use of troops that they did not think authorized by instructions emanating from Washington.

For the officers and men of the Utah expedition, it was a most frustrating experience. Yet the conduct of the Army in Utah showed that whatever the sentiments of its men it would conform strictly to the directives of civil authority. However disappointed he may have been after he received the new order in June 1859, Johnston enforced it rigorously even to the

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[102] Johnston to Cummings, 5 Aug 59, *SW Rpt*, 1859, p. 212. Johnston to Cradlebaugh, 3 Jun 59, w/related papers in ibid., pp. 190, 196–201, 205. Roland, *Johnston*, p. 230–34.

[103] See above, Chapter 7. The procedure to be followed under the law of 1807, covering the use of the Regular Army, was of course that of the law of 1795 governing use of the militia. Buchanan clearly could have used the part of this law authorizing use of troops to "enforce the laws of the union" but he did not specifically invoke it.

[104] See above, p. 9.

point of not reacting when the sergeant who was on trial for hitting the Mormon in Rush Valley was shot down in Salt Lake City by an assailant who was in turn protected by the crowd.[105]

For all their success in frustrating the army after it settled in Utah, the Mormon leaders, for all their bombast, did shrink from a direct conflict with federal military force and ostensibly gave in to the demands of the government that were backed by this force. This perhaps justifies the conclusion of the modern historian of the conflict that the military expedition at least accomplished something.

> Buchanan's Administration . . . had in the face of a defiant sect peacefully placed a Gentile in the governor's office and posted a sizeable military garrison within the territory. These accomplishments made an attack upon a United States district court less likely in 1860 than it had been in Stiles' day.[106]

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[105] See Johnston to Asst AG, Army Hq, 15 Aug 59, w/related materials in *SW Rpt*, 1859, pp. 215–17. Furniss, *Mormon Conflict*, pp. 225–26.

[106] Furniss, *Mormon Conflict*, p. 227.

CHAPTER 11

The Civil War: Beginnings of Draft Resistance

If . . . they refuse to disperse, to lay down their arms, or surrender the persons whose arrest is ordered, their camps will be assaulted with the utmost vigor, and the insurgents captured or killed at all hazards, so that an efficient lesson may once for all be given to all rebels at home.

——Brig. Gen. Jacob D. Cox to Brig. Gen. John S. Mason, 16 June 1863.

The Civil War was the greatest domestic disorder in American history. The military conflict does not, nonetheless, fall within the purview of this volume. In theory the Lincoln administration did treat the secession of the Southern states as an insurrection to be handled under the laws of 1795 and 1807 dealing with combinations too powerful to be overcome by the ordinary course of judicial proceedings. And it secured a permanent revision of those laws vastly strengthening the executive's hand. Yet in practice it accorded the South the status of a belligerent, and the rules of international war, not those governing internal disorders, applied to the armed conflict.[1] Within this framework, the principal focus of attention in this work must be on the role of federal military force in controlling internal disorders within the areas controlled by the Union—largely a matter of enforcing the first real draft law in the United States.

Establishing the Framework

Immediately following the firing on Fort Sumter and the seizure of other federal properties in the South, Lincoln issued a proclamation closely following the formula laid down by the law of 1795, calling on the states for 75,000 militia to deal with certain "combinations too powerful to be suppressed by the ordinary course of judicial proceedings." He commanded the "persons composing such combinations . . . to disperse and retire peaceably to their respective abodes within twenty days from this date," and he called Congress into special session in July.[2] Before Congress convened he issued further proclamations establishing a blockade of Southern ports, calling for a limited number of volunteers to serve for three years, increasing the size of the Regular Army and Navy, and suspending the writ of *habeas corpus* in certain areas.

When Congress did convene, it ratified the president's actions and passed additional laws

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[1] On the subject of the dual legal nature of the war, see James G. Randall, *Constitutional Problems under Lincoln*, rev. ed. (Urbana: University of Illinois Press, 1964), pp. 49–73.

[2] Richardson, *Messages and Papers*, 7:3214–15.

that would enable him to mount a full-scale war effort to force the seceded states back into the Union. An act of 13 July 1861 modified the law of 1795, providing that when the president had invoked the act and the insurgents should fail to disperse in obedience to his proclamation, he could declare the states or parts thereof in which the combinations existed "in a state of insurrection against the United States" and impose a blockade on them.[3]

Other laws on 22 and 26 July authorized the president to call into service 500,000 volunteers and to enlarge the Regular Army. As a final measure, and one that has frequently escaped attention, on 29 July 1861 Congress again revised the basic laws of 1795 and 1807 dealing with the use of military force in civil disorders. It left intact the section dealing with action on state requests, but vastly strengthened the president's authority to use both militia and regulars to suppress insurrections and execute the laws of the Union. The pertinent section read:

> That whenever, by reason of unlawful obstructions, combinations or assemblages of persons, or rebellion against the authority of the government of the United States, it shall become impracticable, in the judgment of the President . . . to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any state or territory . . . it shall be lawful for the President . . . to call forth the militia of any or all of the states of the Union, and to employ such part of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws . . . or to suppress such rebellion in whatever state or territory thereof the laws . . . may be forcibly opposed or the execution thereof forcibly obstructed.[4]

This was obviously a law designed to enable Lincoln to deal with the "rebellion" then existing in the Southern states. It added "rebellion" specifically to the obstructions and combinations that could be acted against under the law of 1795, entrusted the decision to use military force to the "judgment of the President" whenever he deemed it "impracticable" to enforce the law by ordinary means (the 1795 law had merely made it lawful for him to do so), and omitted any reference specifically to the powers of the federal marshals under the act as a means of enforcement short of the use of military force. Of incidental notice was the fact that it incorporated the provisions of the Act of 1807 authorizing the use of regular forces as well as militia and extended the president's authority to territories as well as states. The requirement for a proclamation was continued, but the president could, without congressional approval, maintain in federal service any militia he called for sixty days after the convening of the next session of Congress, rather than the thirty days stipulated in the law of 1795.[5]

This 1861 statute, however much it provided a legal justification for coercing the Southern states, was not the real basis for Lincoln's conduct of the war. On 16 August 1861 the president formally proclaimed the inhabitants of the seceded states to be "in a state of insurrection against the United States." And until 20 August 1866 when President Andrew Johnson declared all insurrection at an end, the Civil War was "conducted between the contending parties with all the rights of war recognized by the law of nations."[6] In carrying out their various war measures both Lincoln and Congress tacitly recognized that they were dealing with a war, not an insurrection. Rather than a basis for conduct of the war, the law of 29 July 1861 was to become a permanent part of the statutory basis for federal troop

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[3] 12 *Statutes at Large* 255, 268. Richardson, *Messages and Papers*, 7:3215–18.

[4] 12 *Statutes at Large* 281. For other laws see 12 *Statutes at Large* 274, 279.

[5] For the pertinent sections of the law of 1795 see above Chapters 1 and 3.

[6] See Wilson, *Federal Aid*, pp. 103–04.

intervention in lesser disturbances and it has remained the basic statute authorizing the president to employ troops to enforce federal law that was to be used in such instances as Little Rock, Arkansas, and Oxford, Mississippi, in the twentieth century. In this manner, the Civil War led to a great enhancement of the president's power to use military force in domestic disorders.[7]



JOHN S. MASON

The law was not used to sanction the use of military force to suppress internal disorders during the Civil War in the states loyal to the Union. Under the president's war powers, at least partially sanctioned by legislative action, the Army was given a role in law enforcement during the conflict that was quite different from any that it had exercised before. Military commanders sometimes supplanted civil authority and exercised both police and judicial functions on their own. In an effort to deal with dissent and disloyalty, Lincoln suspended the writ of *habeas corpus* in certain specified areas in 1861 and on 24 September 1862 issued a proclamation suspending it for the duration of the "insurrection" for all rebels, insurgents, and persons, wherever found, who discouraged enlistment, resisted the draft, or were guilty of disloyalty. He thus resorted to arbitrary arrests on executive authority and in some cases trial by military commission. Secretary of State William H. Seward was at first entrusted with administration of this arbitrary arrest program, but in February 1862 Lincoln transferred responsibility to the War Department, where it was carried out normally under departmental commanders. Although Congress only partially ratified this arrangement in the Habeas Corpus Act of March 1863, its restrictions were largely ineffectual, and Lincoln's policy remained in effect to the end of the war.

Although the arbitrary arrest policy was leniently applied, it did mean that military commanders were involved, throughout the war, in the unfamiliar business of law enforcement. The extent of their involvement varied from almost none in areas remote from the war to the administration of martial law in areas of active military operations or where dissent was particularly rampant. Where martial law was in effect, trial of offenders was by military commission, not by the civil courts. This volume is not concerned with the administration of justice by military commanders during the Civil War any more than it is with the military conflict. But this abnormal situation forms part of the context within which military actions to control civil disorders during the war took place, and it explains why those actions involved none of the normal procedures for calling on federal troops followed in

[7] It survives, with some greater economy of language, as Sec. 332, Title 10, *U.S. Code.*

peacetime. In the event, practically all these instances involved disorders growing out of the administration of the draft laws.[8]

Enforcing the Militia Act of 1862

In response to Lincoln's call and the congressional authorization of July 1861, the states furnished some 700,000 volunteers by April 1862. But the rush to the colors was not to continue indefinitely. The initial enthusiasm began to flag in 1862, and on 17 July of that year Congress enacted a new militia law empowering the president to call militia into federal service for up to nine months, to set manpower quotas on the several states, and in the case of any state that failed to fulfill its quota to issue "all necessary rules and regulations" to provide for enrollment "and otherwise putting this act into execution."[9] The new law never mentioned drafts; the manner of raising men was left somewhat vaguely up to the governors. By the same token the vagueness of the "all necessary rules and regulations" clause allowed a vigorous president to move the country perceptively closer to national conscription.

On the strength of the new law, Lincoln on 4 August 1862 set a quota of 300,000 nine-month men to augment the 300,000 three-year volunteers called for on 2 July, and five days later Secretary of War Edwin M. Stanton issued regulations to the state governors providing for the enrollment and drafting from the state militia to fill the quotas left unfilled by volunteers. He also established in each state a provost marshal, a civilian official to be appointed by the War Department on the nomination of the state governor, to enforce "with such assistants as may be necessary," the attendance of the draftees.[10] The burden of enforcement thus rested primarily on the state governors.

Although the War Department set 15 August as the date when a draft should be initiated in each state to fill any quotas unfilled by volunteers, there was considerable delay and the draft was still under way in some states in November. Not the least of the causes for postponement was violent resistance or the threat of violent resistance to the draft. While overt resistance was geographically confined, its focus was quite diffuse. In urban areas the resistance tended to follow class divisions where working men, themselves quickly enrolled, grew to hate and fear a draft in which men of wealth and position easily bought substitutes or otherwise obtained exemptions. Frequently, labor unrest and racial antagonism went hand in hand with antidraft sentiment. Laborers, especially recent immigrants, began to fear competition from freedmen. Frequently a prominent feature of later draft riots, attacks on Negroes appeared as a minor element in draft resistance even in the Midwest in 1862. Industrial discontent, also a major force in the later draft riots, figured in some of the 1862 outbreaks. In rural areas the day-to-day obligations of the new immigrant farmers made them particularly resentful of being drafted to fight for the Union, a political concept few understood or appreciated. Finally, in widely scattered areas of the Midwest especially, antiwar sentiment was manipulated by the Copperheads, to use the popular name given the

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[8] On the extent of the arbitrary arrest program and military administration of civil justice during the war, see Randall, *Constitutional Problems*, pp. 118–69.

[9] 12 *Statutes at Large* 597–600.

[10] War Dept GO 99, 9 Aug 62.

antiwar Democrats outspokenly critical of the Lincoln administration, into a potent source of resistance.[11]

Indiana, which would be a storm center throughout the war, recorded some of the first instances of violence against the draft. In several localities the rolls and draft boxes were destroyed and the enrolling officers threatened. According to some reports, resisters could muster as many as 1,000 men in the west-central part of the state.[12] While resistance usually stopped just short of open insurrection, the entire state remained in turmoil throughout the fall of 1862. Southern sympathizers and Copperhead groups met and drilled openly, and Union supporters went in fear of their lives and property. So pervasive was resistance that it was properly attributed to secret societies engaged in subversion and some 200 draft resisters were in fact indicted for conspiracy in Indiana in 1862.[13]



EDWIN M. STANTON

It was in Maryland, not Indiana, that resistance to the process of enrollment prompted the first application of federal force. In several counties the rolls were destroyed and marshals and their helpers were put to flight. Threatened with violence, enrolling officers refused to work. On 20 August, Governor A. W. Bradford informed the departmental commander in the area, Maj. Gen. John E. Wool, that the enrollment then under way and the militia draft scheduled for the near future could not be accomplished without the support of military force. Wool delayed a response, and Bradford turned to Secretary Stanton asking that a small force of federal troops be placed at the disposal of the Maryland provost marshal. Wool meanwhile explained to Stanton that he could not spare the troops in his command for draft duties. In any case, he took a dim view of the use of federal soldiers to quell draft resistance: "If the State cannot enforce its own laws without U.S. soldiers, we may as well give up at once."[14] Moreover, to accede to Bradford's request, Wool pointed out to the Army's general

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[11] Frank L. Klement, *Copperheads in the Middle West* (Chicago: University of Chicago Press, 1960), pp. 25–26; see also Eugene C. Murdock, *Patriotism Limited, 1862–1865: The Civil War Draft and the Bounty System* (Kent, Ohio: Kent University Press), p. 6.

[12] W. H. H. Terrell, *Indiana in the War of Rebellion* (Indianapolis: Douglas and Conner, 1869), p. 282.

[13] Klement, *Copperheads*, pp. 134–64. James G. Randall and David Donald, *The Civil War and Reconstruction* (Lexington, Mass.: D. C. Heath & Co., 1969), p. 299. Fred A. Shannon, *The Organization and Administration of the Union Army, 1861–1865*, 2 vols. (Cleveland: Arthur H. Clark Co., 1928), 2:195–97.

[14] Wool to Stanton, 3 Sep 62, *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, 3d ser., 128 vols. (Washington: Government Printing Office, 1878–1903), 3d ser., 2:509. Bradford to Stanton, 2 Sep 62, ibid., pp. 506–07. Hereafter cited as *OR* with series in roman numerals *viz. OR* III, 2:506–07.

in chief, Henry W. Halleck, would be improper because "exercise of the power would be an offense solely recognizable by the civil authorities, and not by the military tribunals." If troops were needed, let one of the volunteer units then being raised be assigned to the governor. Further, Wool was unwilling to take responsibility for arrests made by the state provost marshal or his deputies, something that would become a legal necessity if his troops were deployed.[15]

At the time of Governor Bradford's request for support, Wool's Middle Department, lately redesignated as VIII Army Corps,[16] was suffering a severe shortage of manpower. Wool had two regiments of infantry and a company of cavalry to guard the whole eastern shore. For the rest he had some ten regiments of infantry volunteers, and a scattering of artillery and cavalry units. Although Halleck could dismiss Wool's line of reasoning concerning the draft in Maryland, he and Stanton respected the department commander's assessment of his manpower situation and turned elsewhere for troops to aid the loyal Maryland governor. In Stanton's name Halleck ordered one regiment from the brigade of Maryland volunteers and three troops of cavalry (Purnell Legion) withdrawn from Maj. Gen. George Brinton McClellan's Army of the Potomac and assigned to Governor Bradford to support the Maryland draft. The order arrived at a crucial moment in the weeks following the battle of Antietam. McClellan pointed out that the Maryland brigade was defending an important line along the Potomac with a force too small for the job, but all that his army could spare. He could not justify detailing the requested companies. But Halleck was adamant: "The order directing an infantry regiment under General Kenly to report to Governor Bradford must be obeyed." On 1 November the regiment left the Army's lines and entrained for Baltimore.[17] The records do not reveal whether any of these troops were ever engaged in action against draft resisters. The heralded presence of some 850 hardened veterans from the Army of the Potomac in Baltimore, however, was probably sufficient insurance against further interruption of enrollment in the state.

Stanton may have had second thoughts about pulling troops out of the Union lines to counter draft resisters, for when Governor Andrew G. Curtin appealed for federal aid in Pennsylvania in late October, the secretary's response was more measured. As recently as 1 May 1862 the state witnessed a force of state militia quelling rioters in the Pottsville area.[18] Burdened with a history of labor unrest, Pennsylvania had many workers in scattered parts of the state who focused their resentment on the draft. The first in a long series of disturbances connected with conscription flared up in the mining regions of east-central Pennsylvania. On 22 October Curtin reported to Stanton that over 1,000 armed men had assembled in Schuylkill County to block the trains filled with draftees on their way to camp. He asked the secretary for "ample authority" to use the volunteer units then being raised in the state, as well as the regulars and the Anderson Cavalry troop at Carlisle Barracks, to put down the uprising.[19]

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[15] Msg, Wool to Halleck, 13 Sep 62, *OR* I, pt. 2, 19:286.

[16] The Middle Department included Pennsylvania, New Jersey, Delaware, the eastern shore of Maryland and Virginia, and several other Maryland counties.

[17] Msg, Halleck to Brig Gen Kenly, 8 Oct 62, *OR* I, pt. 2, 19:406; Halleck to Wool, 15 Sep 62, ibid., p. 304; McClellan to Halleck, 31 Oct 62, ibid., pp. 515–16; Halleck to McClellan, 1 Nov 62, ibid., p. 523; and McClellan to Halleck, 1 Nov 62, p. 524.

[18] New York *Tribune*, 7, 8, and 9 May 1862.

[19] Msg, Curtin to Stanton, 22 Oct 62, *OR* I, pt. 2, 19:468.



WALTER D. MCINDOE

Stanton immediately authorized use of all regular and volunteer troops present in the state to enforce the draft. He also authorized the governor to call on General Wool for aid. But in the next two days Curtin was back again with more details of his problem and further requests. He considered "the organization to resist the draft" in three counties "very formidable" with 5,000 men under arms. All work in the district had been interrupted, he reported, and draftees were being prevented from leaving the area. Curtin and others considered this "the first appearance of a conspiracy," and in addition to the units already requested he wanted an additional force of 1,000 regulars or an equal number of Pennsylvania volunteers from the Army of the Potomac which, with the troops already authorized would, he thought, crush the resistance once and for all. He suggested that Stanton appoint Brig. Gen. Andrew Porter, a federal officer then in Pennsylvania, to command the troops. Again Stanton was receptive: the Anderson cavalry would stay in the state (thus ending rumors that the unit was being sent to the battlefield); while a regiment could not be taken from McClellan's forces, "one or two" other regiments of federal troops who had served throughout the war would be sent to Pennsylvania; Porter would command the troops and, if Curtin wished, be named Pennsylvania provost marshal for the occasion.[20]

Meanwhile, Stanton ordered Wool to confer with the governor in Harrisburg and report whether there were enough troops in the department "to enforce the laws." Even before leaving Baltimore, Wool informed the War Department that if more troops were needed they must be found elsewhere, for his department had none to spare for subduing draft riots. However, after meeting with Curtin, Wool ordered a section of artillery to report to the governor without delay and put a regiment of Pennsylvania volunteers on standby subject to the governor's immediate call—as he reported it, the best he could do.[21]

Apparently the troops on hand in Pennsylvania, along with the regular artillery from Wool's headquarters and the volunteer force organized by Curtin, proved equal to the occasion. Within a week the governor reported that the need for the use of force against the draft resisters had ended. According to this estimate, the decisive and prompt application of force in the three counties and the timely visit of Bishop James F. Wood, a clergyman with much influence among local Irish-Americans, had been vital in restoring order. Curtin neverthe-

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[20] Msg, Curtin to Stanton, 23 Oct 62, *OR* I, pt. 2, 19:473; Stanton to Curtin, 23 Oct 62, ibid., Curtin to Stanton, 24 Oct 62, ibid., p. 479; Stanton to Curtin, 24 Oct 62, ibid.

[21] Msg. Halleck to Wool, 23 Oct 62, *OR* 1, pt. 2, 19:474; Wool to Halleck, 23 Oct 62 and 24 Oct 62, ibid., pp. 474 and 480.

less planned to retain the federal artillery sent by Wool and to keep his own volunteer state force in place for several days as a precautionary measure.[22]

The major draft riots of 1862 occurred in Wisconsin and, unlike the other incidents of that year, were played out with little attention from the central government. Ironically, Gov. Edward Salomon had worked hard to avoid the troubles that arose in Maryland and Pennsylvania. He postponed the draft until after the fall harvest to allow time to encourage volunteers. He granted a further delay to Milwaukee County because of irregularities in the enrollment in that important population center. He failed, however, to get a special session of his legislature to organize the state militia thoroughly and to enroll the state's eligible citizens, and he made a serious tactical blunder in ignoring the enrollment and examining officers nominated by the local communities, appointing instead county sheriffs, politicians with ties to the "better element," in their place.[23]

In all, six Wisconsin counties experienced draft resistance serious enough to require the presence of federal troops. The most important outbreaks occurred in Washington and Ozaukee counties just north of Milwaukee. Both counties had been assigned extremely high draft quotas by the state provost marshal, higher even than Milwaukee. Violence flared up in the town of West Bend (Washington County) on 11 November when a crowd assembled to stone the houses of prominent citizens and abolitionists. Fearing that the trouble might escalate into a serious riot, the governor, without reference to Washington or the local federal commander, ordered to West Bend four companies (about 300 men) of the 30th Wisconsin Volunteer Infantry, a federal unit in training at Camp Washburne, Milwaukee, and another company of that regiment to Green Bay (Brown County) where, patrolling the streets, they easily overawed the crowds.[24]

Meanwhile, a serious riot had broken out in Port Washington (Ozaukee County) on draft day, 10 November. As the drawing was about to begin, a crowd seized draft commissioner William A. Pars, beat him severely, and threw him down the courthouse steps. Pars escaped under a hail of stones to the cellar of the post office while the mob, now swollen to over 1,000, destroyed the draft rolls and turned on the town. Fortified by wares taken from local publicans and bedecked with "No Draft" signs extracted by force from local printers, the main element of the mob ran down the town's streets threatening and assaulting innocent bystanders. Others used the occasion to settle old scores. The homes of a number of prominent citizens, including the draft commissioner, were destroyed, and several local Masons were singled out for special

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[22] Msg, Curtin to Stanton, 27 Oct 62, *OR* 1, pt. 2, 19:500. See also Shannon, *Organization of the Union Army*, 2:199.

[23] Jack F. Leach, *Conscription in the United States, Historical Background* (Rutland, Vt.: E. E. Tuttle Pub. Co., 1952), pp. 148–50. Leo Peter Johnson, "Port Washington Draft Riot of 1862," *Mid-America* 1 (January 1930), pp. 212–22, and *History of Washington and Ozaukee Counties* (Chicago: Western Historical Company, 1881), p. 365.

[24] Klement, *Copperheads*, p. 26. In his *Constitutional Problems Under Lincoln*, James G. Randall refers repeatedly to the use of state militia and militia officers in the disagreeable duty of suppressing draft resistance in Wisconsin (p. 260). In fact, the two major military units employed by Governor Salomon in 1862 were federal units. In accordance with War Department regulations (see War Dept GO 75, 8 Jul 62) the 30th Wisconsin Volunteers was mustered into federal service on 21 October 1862, and the 28th Wisconsin Volunteer Infantry on 13 September 1862. The 28th would leave Wisconsin on 20 December to join the Union Army in Kentucky; the 30th, curiously, remained in the state until March 1864 serving, usually in company-size units, in draft enforcement and duty against the Indians. See Edwin Quinn, *Military History of Wisconsin* (Chicago: Clarke & Co., 1866), p. 789 and *Annual Report of the Adjutant General of the State of Wisconsin for the Year Ending September 30, 1863* (Madison: Wm. Park, 1863), pp. 4–8 and 104–09.

abuse. One group seized the local ceremonial cannon, and loading its one shot, set it up on the town wharf defying "Uncle Sam and any force he might send" to arrest them.[25]

Informed by his draft commissioner who had escaped the town under cover of darkness, Governor Salomon immediately ordered Col. James M. Lewis of the 28th Wisconsin, a federal unit then camped in Milwaukee, to send eight companies (some 600 men) under the command of Provost Marshal Walter D. McIndoe by steamer to Port Washington to "quell the riot." Landing part of his force below the town on the night of 11 November, McIndoe sailed with the rest to the town wharf and quickly surrounded the riot area, preventing the crowd's escape. He read a proclamation from the governor to the citizens of Ozaukee County in which Salomon justified the draft as a right of the federal government, and warned that all those interfering would be arrested and punished according to Lincoln's proclamation of 24 September.[26]

Although the arrival of the federal troops marked the end of the riot, Salomon's problems were just beginning. Provost Marshal McIndoe immediately set up headquarters at the Port Washington courthouse and opened a court to examine prisoners. In all, 130 men were arrested, examined, and sent off to prison at Camp Randall in Madison. Salomon was clearly embarrassed by the spectacle of 130 Wisconsin citizens in his custody guarded by federal troops. Furthermore, with companies of soldiers already patrolling the streets of Milwaukee, Sheboygan, and several other communities, he would desperately need those federal troops should another riot occur. After repeated remonstrances to the War Department, itself in a quandary on the prisoner question and facing court tests of Lincoln's proclamation, Salomon received Stanton's permission to parole those prisoners he thought eligible and to turn the rest over to the commander of the Department of the Northwest, Maj. Gen. John Pope. The remaining prisoners were paroled by Pope in early December. Meanwhile, the victims of riot damage appealed to the Wisconsin legislature, which allowed their claims and charged the federal government.[27]

Hoping to avoid similar problems in Milwaukee, Salomon postponed the draft there until 19 November when, with seven companies of the 30th Wisconsin Volunteers and detachments from the 28th Standing Guard, the draft proceeded peacefully; his worries were further alleviated when on 29 November he won a pledge from the acting commander of the Department of the Northwest, Brig. Gen. W. L. Elliot, that henceforth upon the governor's request, the federal commander would order his units to protect state authorities in enforcing the draft.[28]

Although volunteers responding to the 1862 militia calls would continue to trickle in during the spring of 1863, the major enrollment and drafting of state militia—of which the draft in Milwaukee on 19 November was one of the last—marked the final attempt to man

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[25] The best accounts of the riot are found in Johnson, "Port Washington Draft Riot of 1862" and the *History of Washington and Ozaukee Counties*, pp. 365–66.

[26] "Proclamation to People of Ozaukee County," 11 Nov 62 reprinted in Reuben Thwaites, *Civil War Messages and Proclamations of Wisconsin War Governors* (Madison: Wisconsin Historical Commission, 1921), pp. 147–49.

[27] Msg, Salomon to Stanton, 24 Nov 62, *OR* III, 2:867; Brig Gen C. P. Buckingham to Salomon, 24 Nov 62, ibid., pp. 867–68; Salomon to Stanton, 12 Nov 62, ibid., p. 765; Telg, Salomon to Pope, 23 Nov 62, Telg rcd, Dept of the Northwest, item 3451, RG 393. See also Shannon, *Organization of the Union Army*, 2: 201–03 and Johnson, "Port Washington Draft Riot of 1862."

[28] Msg, Elliot to Salomon, 29 Nov 62, Rcds of the Dept of the Northwest, item 354, RG 393.

the Union Army with calls for militia. Lest the difficulties with the draft be blown out of proportion, it is well to remember that only twelve states had to resort to it and that it netted only 87,000 nine-month men, less than a third of the 300,000 quota set by the Militia Act of 1862. And during the first two years of the war a total of more than one million men, 10 percent of the white male population of the North, voluntarily joined the Army.[29] Yet if the volunteer system was able to put a million men in uniform in less than two years, it nevertheless suffered enough serious defects to make it obsolete in the conduct of a modern war. As one War Department official put it, the need for a "reliable, regular, and abundant supply of men" had become increasingly apparent. Lacking the discipline provided by a central authority, the effort to enroll and conscript militia had proven cumbersome, erratic, and subject to frequent delay. It was not the answer. Out of an emerging consensus on these points would come on 3 March 1863 the first national conscription law.[30]

The Draft Law of 1863

The 1863 conscription law was fundamentally different from all that had gone before. Without reference to the militia, it declared all able-bodied men between 20 and 45 liable to military service for three years. Conscription would be directed and controlled by a provost marshal general who, responsible directly to the secretary of war, would operate out of a separate War Department bureau. The law divided the states into 178 districts, each to be controlled by a three-man enrollment board appointed by the War Department and chaired by a district provost marshal, usually an Army officer, responsible to the provost marshal general in Washington. The district boards were to enroll, draft, exempt, and muster men in their areas under quotas set by the War Department. Drafting was to be used to fill the quotas not filled by volunteers. Drafted men would be permitted to hire substitutes. The boards were charged with apprehending deserters, among whom the law counted those who failed either to report for duty or to provide substitutes. The act also empowered provost marshals summarily to arrest anyone engaged in impeding or avoiding conscription.[31]

The governors of the states had been responsible primarily for enforcing the militia draft of 1862. Although under the new law they continued to have some responsibility, they shared it with a provost marshal organization working directly under the War Department. To head this agency, James B. Fry was named provost marshal general, with the rank of a colonel of cavalry as stipulated in the law. On 5 June 1863 the War Department prescribed the method by which the district provost marshals working under him might obtain troop aid.

> On the application of Provost Marshal for military aid in the performance of the duties imposed on him by law, the Commanding Officer of a Military Department will furnish such force as he may deem necessary. If he cannot supply the force asked for, or he does not deem it necessary, he will immediately so inform the Provost Marshal, in order that the latter may properly advise the Provost Marshal General.[32]

The War Department also formed a Veteran Reserve Corps (initially called the Invalid Corps) to work directly with the provost marshals, protecting draft officials and suppressing

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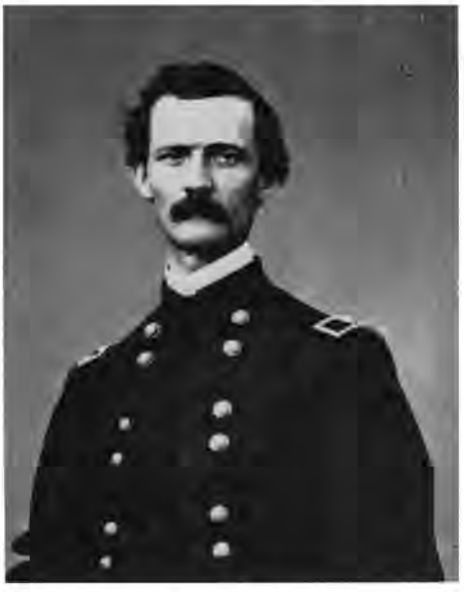
[29] See Stanton to Vice President Hamlin, 5 Apr 1864, *OR* III, 4:216–17.

[30] See *Final Report Made to the Secretary of War by the Provost Marshal General, 1866*, p. 12.

[31] 12 *Statutes at Large* 731–37.

[32] War Dept Cir, 5 Jun 63.

draft resistance. The corps was composed of experienced soldiers, whose wounds or general health incapacitated them for regular duty in the field. This special force was to reach a strength of 18,255 officers and men by November 1863 and more than 30,000 before the end of the war. But it took shape too slowly to play more than a minor role in the riots of the summer of 1863.[33]



JAMES B. FRY

Enforcement of the new law, more than any other single issue or event, brought the war home to every community. For the first time agents of the War Department appeared to enroll, examine, and draft men in every community, enforcing their decisions with the help of soldiers when needed and arrests when they considered them appropriate. Almost immediately there arose a widespread and often violent resistance to the draft process. Difficulties began as soon as the new federal enrollers attempted to draw up their lists. Across the North came reports of enrollers beaten, robbed, and even murdered as they made their house-to-house listings. With other types of federal protection insufficient or nonexistent in most areas, the enrollers usually found it impossible to work without soldiers to protect them.

The first large-scale resistance to the new draft occurred in Ohio in June 1863. Governor Andrew Tod had reduced the state's draft quota by offering liberal cash bounties, thereby inducing 80 percent of the state militia to enlist as three-year volunteers. But no matter how much reduced, conscription was particularly repugnant to a large group of citizens in east-central Ohio where, in addition to the usual complaints against the draft, the arguments of Clement T. Vallandingham, the charismatic, anti-war Democrat, had won many converts.[34] Tod became concerned about the possibility of violence, and asked Secretary Stanton on 12 June to increase the size of the Governor's Guards, a federal unit performing miscellaneous duties in the state, from a battalion to a regiment. The unit was, at the time, supervising the exchange of prisoners of war at Camp Chase, near Columbus, and was the closest federal force to the seat of the draft resistance. On the same day, Tod told Brig. Gen. Jacob D. Cox, the commander of the District of Ohio, that sending a force of at least 200 federal troops to the area was advisable, "if not indispensably necessary" to secure order and quiet during the enrollment and draft.[35]

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[33] *Final Report of the Provost Marshal General*, pp. 91-93.

[34] For a highly colored account of Vallandingham's influence on the draft resisters, see Jacob D. Cox, *Military Reminiscences of the Civil War* (New York: Charles Scribner's Sons, 1900),1:458-72. For a recent interpretation, see Klement, *Copperheads*, especially pp. 80-81.

[35] Msgs, Tod to Stanton and Cox, 12 Jun 63, *OR* III, 3: 349. *Annual Report of the Adjutant General to the Governor of Ohio, 1862* (Columbus: Richard Nevins, 1863), p. 2.



OLIVER P. MORTON

The governor's warnings were followed by a report from the assistant provost marshal general for Ohio[36] to Fry concerning violence against the enrollment in several districts. He had dispatched a small force of 150 men to Mansfield, the geographical center of the troubled area, he said, but not before a band of 70 armed insurgents had rescued some of their comrades from the provost marshals. So many enrolling officers were under attack in the area that the process would have to be completed under armed guard and would be delayed.[37] On 16 June the state provost marshal general reported to Brig. Gen. John S. Mason, the commander of federal forces at Columbus, Ohio, that an estimated 700 to 900 insurgents were in the process of banding together in a quasi-military organization in Holmes County. He wanted at least 300 soldiers with five days' rations sent to him in Columbus. This force would accompany a U.S. marshal as a *posse comitatus* to arrest certain parties who had obstructed the enrollment act in Holmes. For this, he told Mason, "you will have to give the officer proper orders."[38] The District Commander, General Cox, Mason's superior, would have nothing to do with the *posse* arrangement. From his headquarters in Cincinnati he ordered Mason to assemble a battalion-size force of infantry and a section of artillery which Cox would augment by sending the 8th Independent Company of Ohio Sharpshooters from Camp Dennison.[39] This force was to proceed to Holmes County under command of "the most experienced and efficient field officer available" to quell the insurrection in which armed men were "resisting the laws." Cox would have this officer read to the insurgents a proclamation prepared by the governor calling on them to disperse. If the insurgents surrendered those men the provost marshall thought fit to arrest, no further military steps needed to be taken; if the whole body of resisters could be captured without bloodshed, this should be done; if the insurgents refused, they should be attacked "with utmost vigor," captured, or "killed at all hazards," to provide a sufficient lesson to "all the rebels at home."[40]

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[36] Although the conscription law provided for district provost marshals throughout the country serving under a provost marshal general in Washington, the administrative burden caused Fry soon after his appointment to appoint an assistant provost marshal general in each state. These men, who grew in power and importance during the war, served as a bridge between Fry and the state authorities and reduced the problem of dealing with 178 separate districts.

[37] Msg, Col Edward A. Parrott to Fry, 12 Jun 63, *OR* III, 3:349–50.

[38] Msg, Parrott to Capt John Green, Asst AG, 16 Jun 63, *OR* I, pt. 1, 23:396.

[39] The sharpshooters, not completely organized until 22 August 1863, were mustered into federal service at Camp Dennison on 9 March 1863. See *Annual Report of the Adjutant and Inspector General to the Governor of the State of Ohio, 1863* (Columbus: Richard Nevins, 1864), pp. 10 and 60, and The Adjutant General, *Carded Lists of Military Organizations*, "The Ainsworth File," NARA.

[40] Msg, Cox to Mason, 16 Jun 63, *OR* I, pt. 1, 23:397.



AMBROSE E. BURNSIDE

Pursuant to these orders a force of some 410 federal troops, including 50 sharpshooters, 100 men from the Governor's Guards, a section (probably two guns) of the 22d Ohio Volunteer Light Artillery, and 230 exchanged prisoners of war awaiting reassignment at Camp Chase, arrived at the community of Napoleon on the afternoon of 17 June. Believing the insurgents were camping two miles south of town, their commander, Col. William Wallace, decided to send an advance group of 50 men from the Governor's Guards to pinpoint their location. He instructed his men to hold fire if they sighted the resisters until he could send in the governor's proclamation under a flag of truce. Moving less than a mile and a half down the road, the advance party came under fire from concealed positions behind stone and log barriers along the road. The guards returned the fire and charged the insurgents' positions. At that the "bush whackers"—some twenty-two in number—fled, but not before two were captured. Deploying his unit as skirmishers, the guards commander reported the affair to Wallace who then moved up his main force, arriving at 1700.

With no resisters in sight, Wallace deployed part of his force as skirmishers and drew the rest up in line of battle, continuing to advance along the road. Suddenly shots range out from hidden positions in a high field on the right. Wallace's men immediately returned fire and charged "with a yell." The sight of the soldiers advancing toward them caused the resisters to scatter, leaving three wounded and several others to be captured. Wallace later reported hearing that at least one had been killed and carried off, although local leaders claimed the man was only wounded. Wallace dispatched patrolling parties who took a few more prisoners as the disorganized insurgents fled in all directions. The soldiers camped that night in the insurgents' gathering place.[41] The number of insurgents identified totaled about eighty in all, a pale ghost of the force reputed assembled just days before.

Meanwhile, calmer heads prevailed. With the acquiescence of the resisters, several local community leaders, including a colonel of the local militia, met with Wallace on 18 June and agreed that those for whom the provost marshal held warrants would surrender and, together with thirteen of the most violent insurgents, would turn themselves in to federal authorities at Cleveland the next day. Wallace in turn agreed to withdraw his force, which

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[41] Report of Col William Wallace, 15th Ohio Infantry, CO, U.S. Forces in Ohio, 20 Jun 63, *OR* I, pt. 1, 23: 395–96; and Ltr, L. P. Leadbetter to Gov Tod, 22 Jun 63, *OR* III, 3:403. See also Cox, *Military Reminiscences*, 1:470–71.

he did on 20 June except for some 75 to 100 of his men who remained in Napoleon until 25 June and appear to have behaved very badly.[42]

The rhythm of armed resistance, federal intervention, and successful enrollment set in Ohio was generally repeated in neighboring Indiana, but with greater intensity. Widespread antipathy to the draft was exacerbated in Indiana by the running feud between the Republican governor, Oliver P. Morton, and his Democratic-controlled legislature. This antipathy turned into armed resistance in early June. Attacks on draft officials became commonplace, and reports of armed bands of mounted men circulated among state and federal officials.[43] On 10 June two enrolling officers making their house-to-house rounds in Rush County were ambushed by a dozen men who killed one U.S. marshal and seriously wounded another. At the request of the state provost marshal general, Capt. Conrad Baker, the local district commander, Brig. Gen. O. B. Willcox, dispatched two companies of infantry and one of cavalry from Indianapolis to the scene of the crime. Subsequently, the district provost marshal arrested the men responsible for the attack, and, after discussion with local leaders, enrollment proceeded peacefully under the eye of the federal force.[44]

The Rush County incident was atypical because it resulted in the one confirmed death during the Indiana disturbances of 1863. But for several reasons Rush County typified federal intervention in the state. The incident was correctly assessed and reported by the state provost marshal, Captain Baker, who worked closely with the local federal commander, General Willcox. Both showed a consistent willingness to negotiate and work with local Democratic leaders to restore order. When they found federal troops needed, they called on the departmental commander for a force whose size was appropriate to the incident and whose management was carefully kept out of the hands of district marshals.

Unfortunately, Baker and Willcox were not always in control. In another series of incidents, the violence or threat of violence was vastly exaggerated by the district provost marshal and the governor, and the federal forces deployed by the department commander proved extravagant for the occasion. Although they were subject to continual harassment, such as the destruction of their draft rolls and threats of violence, district provost marshals nonetheless tended to exaggerate the seriousness of their situations. Their reports reveal men ready to believe the wildest charges of intrigue, of conspiracies involving hundreds and even thousands of their fellow citizens, of threats to the very existence of state government. The provost marshal of the Terre Haute District, for instance, reported that the dissidents numbered 3,000 strong, and raised the specter of men under arms destroying railroads and killing workers in his district.[45]

The department commander in the area, Maj. Gen. Ambrose E. Burnside, proved particularly receptive to these alarms, especially when they were reinforced by dire warnings from Governor Morton. Fresh from his defeat at Fredericksburg, Burnside was willing to employ the full military might of the Union to set things right in the Midwest. Discounting charges that the "exercise of military authority" was unnecessary in Indiana, Burnside warned Secretary Stanton that civilians could not maintain the peace in the state. He wanted the authority to declare martial law throughout the state whenever he thought it necessary.

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[42] Ltr, Leadbetter to Tod, 22 Jun 63 with endorsements, *OR* III, 3:403–04.
[43] Klement, *Copperheads*, pp. 79–80.
[44] Ltr, Baker to Fry, 11 Jun 63, *OR* III, 3:338–40.
[45] Msg, R. W. Thompson to Baker, 18 Jun 63, *OR* III, 3:393–94.

"Depend on it," he concluded, "I can restore the whole department to perfect quiet if my policy is adopted."[46]

Stanton could ignore the man, but, unfortunately, his military subordinates could not. General Willcox warned that prudence was needed in Sullivan County to restore order, partially undone by the "indiscretion of our own troops." Willcox wanted to work with prominent Democratic leaders to finish the enrollment without provoking extreme armed resistance. He agreed with the state provost marshal and others that all peaceable measures should be tried first. But Burnside would have none of it. Declaring that compromising with traitors in arms was unwise, and that peace efforts could "be kept up too long," he wanted to impose martial law on the county. In fact he planned to do so "unless special reasons to the contrary exist."[47]

Willcox pleaded for a few days' grace to see if the enrollment could be completed without resorting to federal force. In this he was successful.[48] Fortunately for the needs of the Union Army, the calmer approach taken by Willcox and Baker prevailed in most of the incidents that took place in six of Indiana's counties, and that state successfully produced its quota of men for the service.

Thus resistance to the new draft law in the Midwest in June 1863 occasioned little more military intervention than had enforcement of the militia draft earlier. The storm was yet to come, and it broke in New York in July 1863, not long after the bloody battle at Gettysburg.

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[46] Msg, Burnside to Stanton, 16 Jun 63, *OR* III, 3:371.
[47] Msgs, Willcox to Burnside and Burnside to Willcox, 20 Jun 63, *OR* III, 3:391–92.
[48] Msg, Willcox to Burnside, 20 Jun 63, *OR* III, 3:392.

CHAPTER 12

The Civil War: Draft Riots

Provost Marshal will be sustained by the military force of the country in enforcing the draft in accordance with the laws of the United States, and will proceed to execute the orders heretofore given for draft as rapidly as shall be practicable, by aid of the military force ordered to cooperate with and protect them.

———Office of the Provost Marshal General, Circular No. 48, 17 July 1863

New York's Bloodiest Week

The significance of the June disturbances in the Midwest pales in comparison to the four days of murder, arson, looting, and destruction—New York's so-called bloodiest week—that began on 13 July 1863. Although the New York riots were larger and deadlier than those that went before, they arose from the same basic conditions.[1] Conscription was the immediate cause, although in New York, with its large laboring class and the complexities of its urban economy, the disturbance quickly assumed the dimensions of a class struggle. The poor saw the draft as a heavy burden that the rich could escape by hiring substitutes. The riots had an economic basis also. Pressed by the inflationary war economy, the city's laborers, mostly Irish immigrants, were demanding higher wages from the owners of the docks and factories only to find their jobs threatened by the installation of new machinery and the hiring of blacks and new immigrants. Unopposed to emancipation in principle, New York's white workers were constantly exposed to charges by Democratic politicians that the freedmen would soon be streaming up from the South to join Negroes in a city whose black population was already the second largest in the North. Thus a war to preserve the Union had evolved in their eyes into a war to free the slaves; the victory for which they were being drafted to fight would see black men taking white men's jobs.[2] The connection between the draft and their economic well-being was constantly being brought home to the workers by the Democratic press and local Democratic politicians. Governor Horatio Seymour himself pub-

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[1] The complex causes of the New York riots are outlined in Adrian Cook's *The Armies of the Streets: The New York City Draft Riots of 1863* (Lexington: University of Kentucky Press, 1974), Chs. 1–2; James F. Richardson, *The New York Police: Colonial Times to 1901* (New York: Oxford University Press, 1970), pp. 130–36; Basil Leo Lee's "Discontent in New York City" (Ph.D. dissertation, Catholic University of America, 1943), pp. 95–103; Hunter Dupree and Leslie H. Fishel. Jr., eds., "An Eyewitness Account of the New York Draft Riots, July 1863," *Mississippi Valley Historical Review* 47 (December 1960), pp. 472–75; James A. Frost, "The Home Front in New York During the Civil War," *New York History* 42 (July 1961), pp. 273–92; and Robert S. Raybeck, "New York State in the Civil War," *New York History* 42 (March 1961), pp. 273–97.

[2] Williston H. Lofton, "Northern Labor and the Negro," *Journal of Negro History* 34 (July 1949), pp. 251–73; and Albon P. Man, Jr., "Labor Competition and the New York Draft Riots," *Journal of Negro History* 36 (October 1951), pp. 375–405.

licly questioned the constitutionality of the draft law, and his comment that a mob as well as a government could act in the name of public necessity may not have been lost on New York's citizens.

Conditions were ripe for trouble. The draft was begun on Saturday morning, 11 July, in the Ninth District office at Forty-sixth Street and Third Avenue. Seventy percent of the names to be drafted were peacefully called before the local provost marshal stopped for the day, thus allowing plenty of time during the hours of a sweltering New York weekend for the malcontents to brood over their situation. When the officials resumed the draft selection on Monday, little was available with which to oppose potential troublemakers. The area was practically denuded of troops with most New York volunteer units in federal service and off to the Gettysburg campaign. The few state soldiers in the city were on furlough while their units were being reorganized for further war service. The assistant provost marshal for New York, Col. Robert Nugent, had seventy soldiers from the Invalid Corps under his command at the Park Barracks downtown. The metropolitan police, oblivious to signs of impending disaster, were not even on special alert for the draft. Only thirteen policemen were to be on hand to guard the Ninth District office when the draft was scheduled to resume on Monday morning.[3]

By early Monday morning, 13 July, it was obvious to any local observer that serious trouble was pending, as a crowd began to collect around the Ninth District office. Led by a group of volunteer firemen angered by recent rulings that removed their draft exemptions, the men and boys were vowing to "mess up" the district officials. As they moved through the streets they rapidly recruited allies from among the local workers eager to join in the fun. Alarmed by the growing commotion in the streets and reports of unusual absenteeism, the local district police captain dispatched forty-eight men to the draft office. These seemed hardly sufficient to deter a mob, but they evidently reassured the local provost marshal who resumed the drawing on schedule. Moments later the mob attacked, and driving the police and marshals before it, seized what records it could and set fire to the building. The sight of the flames seemed to fuel the passions of the mob, and its members began looting and destroying nearby businesses and pulling down telegraph lines. Among their first victims, Police Superintendent John A. Kennedy, arriving on the scene to investigate, was beaten senseless.

Warned of the danger, Nugent split his Invalid Corps force into thirds, sending two groups to the Ninth and neighboring Eighth District offices, retaining the rest in reserve. In the first engagement of the day these soldiers met the mob on Forty-third Street, but after firing a volley over their attackers' heads, they were quickly overwhelmed. Then they broke and ran. In the fracas they lost several killed and wounded. Police arrived on the scene in small detachments and suffered a similar fate at the hands of the mob, which, flushed with victory, began to fan out across the city gathering recruits and spreading destruction as it went.[4]

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[3] Cook, *Armies of the Streets*, pp. 54–58. The following account of the riots is based on Cook's recent, comprehensive, and scholarly study along with three contemporary histories: Major T. P. McElrath, *"The Draft Riots in New York," Annals of the War Written by Leading Participants North and South* (Philadelphia: Times Publishing Co., 1879), pp. 286–304; Joel T. Headley, *Pen and Pencil Sketches of the Great Riots* (New York: E. G. Treat, 1882); and *The Volcano Under the City by a Volunteer Special* (New York: Fords, Howard, and Hulbert, 1887). The latter two works are especially important for the primary documents they include in their appendixes.

[4] For a colorful description of the fighting in the early hours of the riots, see *The Bloody Week, Riot, Murder and Arson, Containing a Full Account of this Wholesale Outrage on Life and Property, Accurately prepared from*



HORATIO SEYMOUR

Responding to Mayor George Opdyke's call for help, the commander of the 1st Division, New York State National Guard, Maj. Gen. Charles W. Sandford, immediately ordered his few available men to report to the Guard armory for duty.[5] General John E. Wool, now commanding the Department of the East, also responded to the mayor's call, as he put it, because of the "imminent danger" to federal installations in New York as well as to the lives and property of citizens. Later on the same day, Wool received the War Department's blessing for his initiative. It was expected, Halleck wired him, that Wool should protect the provost marshal in the execution of his duties, and he authorized the use of all available force "to see that the laws are executed."[6] This instruction from Halleck was one of the few messages reaching New York from the War Department on the first day of the riots. Storms in Maryland had downed many telegraph lines, which probably explains Stanton's uncharacteristic silence.

Wool's first response to the mayor's call was to order eighty men from Fort Hamilton in the harbor to report to Nugent for riot duty. At Wool's request, Rear Adm. Hiram Paulding, the local naval commander, dispatched two companies (ninety men each) of marines and three howitzers with marine guards to report to Nugent at City Hall. He also ordered the guns of the USS *Savannah* loaded with grape and along with several of his smaller gunboats to stand by for action in lower Manhattan. Meanwhile, the gun crews at the New York Navy Yard were put on alert.[7] Wool also asked the commander of Invalid Corps units at Newark, New Jersey, the superintendent of the Military Academy at West Point, and the governors of several neighboring states to send troops to augment his meager forces.[8]

Wool's call for men from Fort Hamilton alerted Brig. Gen. Harvey Brown to the situation. Brown, designated by War Department special orders as federal commander of the harbor and city of New York, was a West Point graduate and honored veteran of the Seminole and Mexican wars. From the first, Brown displayed an accurate understanding of the problems confronting authorities and a studious disregard for blundering superiors. He

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Official Sources, by Eye Witnesses (New York: Coutant and Baker, 1863).

[5] On 23 April 1862 the state of New York enacted a measure redesignating its state militia units as National Guard units.

[6] Incl to Msg, Wool to Stanton, 20 Jul 63; Halleck to Wool, 13 Jul 63. *OR* I, pt. 2, 2:878, 883–84.

[7] Msgs, Paulding to Lt Cmdr R.W. Meade, Cdr, Marine Detch., 13 Jul 63, Ltrs sent, Cmdt N.Y. Navy Yard, entry 332, RG 45, NARA.

[8] Msgs, Wool to governors of Mass. and Conn., 14 Jul 63, *OR* I, pt. 2, 27:885; Wool to Stanton, 20 Jul 63, ibid., pp. 878–79.

immediately altered Wool's instructions, ordering the troops at Fort Wood, another harbor installation, to the city and putting all forces in his command on alert, including a section of artillery. Only then did he report to Wool.

The problem of command and control of the troops in New York would hamper operations throughout the riots; during the first twenty-four hours it was an acute problem. Wool, the departmental commander, was a 75-year-old veteran of the War of 1812, infirm and clearly incapable of command. He was, unfortunately, a stickler for military protocol, and Sandford's superior militia rank automatically gave him precedence over federal officers in Wool's eyes. When Wool ordered his troops out "for the protection of the city," he placed them under Nugent, the assistant provost marshal, subject to the militia general's orders.[9] Later, when Brown appeared, that capable officer was made federal commander, again under Sandford. Sandford, a prominent corporation lawyer and part-time soldier who never donned a uniform during the crisis, maintained his leisurely work habits and abbreviated business hours even at the height of the riots. His passion was the safety of his weapon depositories, especially the state arsenal at Seventh Avenue and Thirty-fifth Street. Throughout the crisis he immobilized hundreds of militia troops and those federal soldiers he was able to get from the complacent Wool to stand guard while the city burned down around them.

These purely defensive tactics were anathema to the aggressive Brown. Establishing his headquarters at the central police station, he proceeded to direct operations in concert with Police Commissioner Thomas Acton. These men understood the proper technique for opposing highly mobile mobs with a small force in a large city. They appreciated the advantage of a central headquarters where special telegraphic communication networks linked police stations in all parts of the city with headquarters (but not with each other). This system gave them ready access to the latest intelligence on the progress of the riots and a central location from which to dispatch police and soldiers to the proper locations to cope with them. From the first the police and federal soldiers coordinated their operations and often served in mixed units. To do this Brown was forced to disregard Sandford and his order for the concentration of all federal forces at the arsenals.[10]

The inevitable clash found Wool siding with Sandford. Brown resigned in anger, by one account snorting, "For all I care the rebels can burn this goddamn city. Let Sandford run the show. I'm through."[11] But fortunately for the later course of the crisis, he was urged to reconsider by Mayor Opdyke and others. Brown agreed to treat Sandford as his superior and was restored to command early on 14 July, but in practice he continued to ignore his titular commander and to direct operations independently from police headquarters.

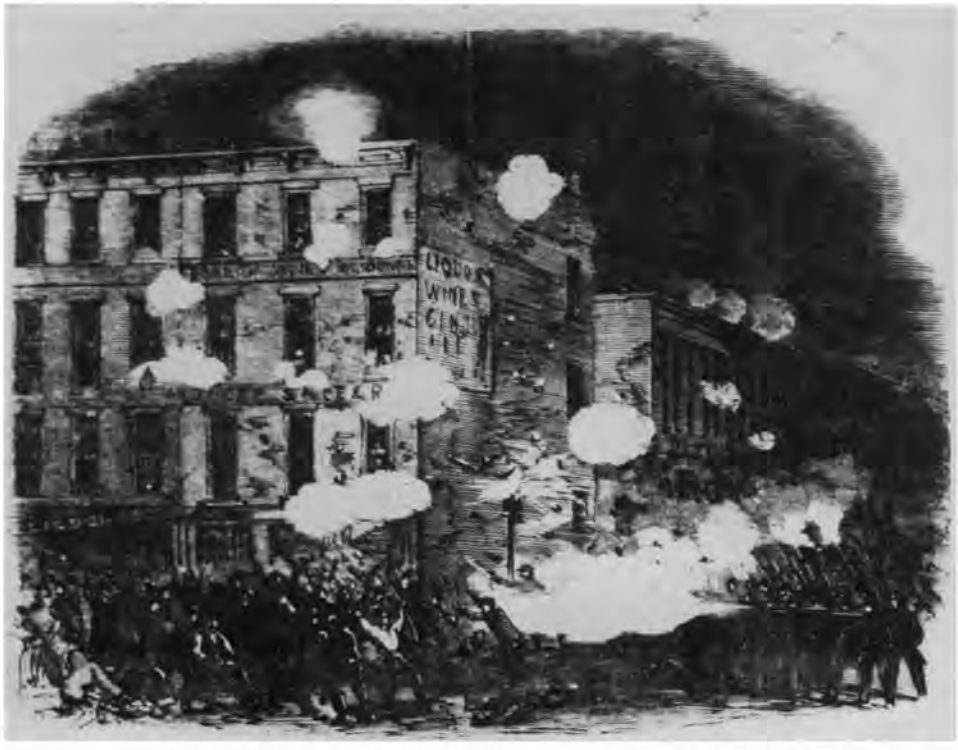
By evening of the thirteenth the forces available in the city numbered about 2,000 men, including 800 police stationed at the Mulberry Street headquarters, about 500 New York militia under Sandford at the Seventh Avenue arsenal and other state weapons depositories, and nearly 700 federals. The federals included headquarters and Companies F and H of the 12th Infantry, a Regular Army unit, detachments from Companies A, B, and C of the 11th New York Volunteer Heavy Artillery, a 200-man marine brigade under Lt. Cmdr. Richard Meade; a small cavalry unit under Col. Thaddeus P. Mott; a company of Invalid Corps sol-

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[9] Department of the East Order, 13 Jul 63, *OR* I, pt. 2, 27:880.

[10] The clash between Brown and Sandford is detailed in most surveys. For accounts particularly critical of Wool and Sandford, see Richardson's *The New York Police*, pp. 136–40 and Headley, *Pen and Pencil Sketches*, pp. 177–78.

[11] Quoted in Irving Werstein, *July, 1863* (New York: Julian Messner, Inc., 1957).



NEW YORK DRAFT RIOTS. *Illustration from* Harper's Weekly *(1 August 1863) depicting fight between rioters and federal troops.*

diers from Newark; and in a somewhat separate category, some 150 men of the 11th New York Volunteer Infantry, the Fire Zouaves. During the last hours of the day this force was augmented by a number of civilian volunteers, veterans offering their assistance in answer to Wool and Sandford's call.[12]

While city and federal officials frantically searched for defenders, the crowds and violence continued to grow. In far-flung sections of the city mobs would spring up and do battle with outnumbered police, only to melt away and re-form elsewhere. Helpless before the growing onslaught, the police saw businesses and homes of people who had incurred the mob's wrath burned, armories attacked, and vehicles overturned. What had begun as a violent but limited demonstration against the federal draft had quickly degenerated into widespread anarchy as thousands of the city's slum dwellers, drunk with liquor and the contagious desire to destroy, joined in an all-out assault on civil authority. By mid-afternoon on 13 July their rampage assumed a racial tinge as the city's black community became a major

[12] Abstract from return of the Department of the East shows that on 30 June 1863 New York City and Harbor contained 996 federal soldiers (see *OR* I, pt. 3, 27:818). The harbor contingent was augmented early on 14 July by a detachment of soldiers from West Point. The Zouaves were among those two-year volunteers discharged from federal service in May. They served during the riots under state officials, but in Brown's command. See Cook, *Armies of the Streets*, p. 107.

target of the mob's animus. Searched out in their homes, blacks were brutally assaulted and murdered and their property stolen. The lucky ones commandeered boats or hid in carts and somehow escaped the city. Others found a flimsy refuge in the not very safe police stations. In a particularly vicious act, a band set fire to the Colored Orphan Asylum and, holding the firemen at bay, let the building burn down. Blacks continued to be victimized throughout the riots, their suffering serving as a unifying theme for the apparent aimlessness of the mob.

By Monday evening it was obvious to officials that only the application of overwhelming military force would end the disturbance. All Brown and Acton could do was buy time and perhaps reduce the destruction by sending flying squads of police and troops to reported trouble spots. For example, General Brown ordered Capt. Henry R. Putnam to march Company F, 12th U.S. Infantry, an 82-man unit, to Forty-sixth Street where a mob was burning buildings. The soldiers arrived on the scene shortly after a force of 60 policemen. The combined force, with the police operating under their own captain, charged the mob, which fought desperately for some minutes before melting away. The mob lost a number of killed and wounded during the general melee; one soldier was injured enough to require hospitalization.[13] The unit returned to police headquarters, a five-mile march through alien streets.

A severe storm imposed a hiatus on the rioting on Monday night and the soldiers and police patrolled quiet streets. However, on Tuesday morning, 14 July, the crowds began re-forming. Brown sent Capt. Thomas Wood and a 150-man unit of regulars from Fort Hamilton to confront a crowd estimated at 2,000 at Pitt and Delancy streets. Seeing the soldiers, the mob attacked, filling the street. Wood formed his unit into a line across the street at port arms. When a warning shot over the crowd's heads earned for the soldiers a scattering of return fire, Wood ordered a point blank volley. With twelve of its members fallen dead or wounded, the crowd quickly disappeared. Later Wood had to order a bayonet charge to clear the way for his unit to return to headquarters as crowds of resisters continued to reform in the streets and impede its progress.[14]

A few hours later Capt. Walter S. Franklin, commanding the 115 men of Company H, 12th Infantry, faced an armed mob farther north at Twenty-second Street and First Avenue. Although Franklin was accompanied by about 150 policemen, these officers did not join in the fight but concerned themselves with the recovery of some 300 carbines reported loose in the area. Franklin ordered his men to fire by sections, allowing each section to drop behind to reload as soon as it had fired. Despite this continuous fire, the mob grew, hurling missiles and shooting at the soldiers from the rooftops. Firing and moving block by block, the besieged troops finally returned to headquarters.[15] Franklin's operation typified many of the inconclusive skirmishes between soldiers and the mobs throughout the second day.

Tuesday forenoon saw the almost total silence on the part of the authorities broken. Governor Seymour, coming from his vacation spot on the New Jersey shore, arrived in the city and, after conferring with Wool and Opdyke, issued a proclamation calling on the rioters

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[13] Official Rpt of Capt H. R. Putnam, 21 Jul 63, quoted in Headley's *Pen and Pencil Sketches*, pp. 307–13; Cook, *Armies of the Streets*, p. 120. Captain Putnam estimated civilian losses "would not fall short of forty," but this figure seems somewhat inflated since there was no general shooting reported in the after action report. Equipped with rifled muskets, the soldiers probably charged the mob with bayonets, and casualties most likely were caused by bayonets and police clubs.

[14] Rpt of Lt Thomas Wood, quoted in Headley's *Pen and Pencil Sketches*, pp. 322–23. See also p. 199.

[15] Headley, *Pen and Pencil Sketches*, pp. 315–17.

to retire, threatening to use "all power necessary" to restore peace. The mayor issued his own proclamation forbidding the sale of guns and ammunition.[16]

At eleven o'clock Colonel Fry, the provost marshal general, ordered Nugent to suspend the draft. He would in the next few hours emphasize the secrecy of the suspension, but his order did little more than recognize that the city was in chaos and the draft offices in ruins. What records had been recovered were now stored in the harbor forts for safety.[17] On a more practical level, Fry asked Secretary Stanton to send four infantry regiments and an artillery battery to New York.[18]

By 1400 Secretary Stanton began to act on the scanty information available to him.[19] Vowing that the government would stand the test even if "there should be a riot and mob in every ward of every city," Stanton promised the mayor that five regiments were on the way. Halleck sent orders to Maj. Gen. Darius N. Couch commanding an assembly of federalized militia and volunteer units in the Gettysburg area to return to New York two of that state's regiments, and he ordered from Baltimore the 7th Regiment, New York National Guard, in federal service in that city. And with some reluctance, on 15 July he told Maj. Gen. George G. Meade to detach the regular 8th Infantry, or another unit "if more convenient" along with one regular artillery battery from the Army of the Potomac to go to the troubled city.[20]

It would take at least twenty-four hours for the first reinforcements to arrive from Pennsylvania, and these hours proved the most critical for Brown and Acton. Again and again their exhausted men were forced out into the streets to face mobs reportedly larger and better armed than the day before. In fact Brown's strength was somewhat diminished because Admiral Paulding, under orders from Secretary of the Navy Gideon Welles to protect the Navy Yard above all else, drew off some of his men. By the same token, Provost Marshal Nugent lost his marine guard, and the gunboat *Adela* was withdrawn from the Battery to protect the property of the U.S. Prize Commission.[21] Desperate for men, Brown decided to resist Sandford's attempts to siphon off troops to reinforce his precious arsenals. Henceforth, Brown decreed, Sandford's calls for men would be interpreted to exclude federal troops. Later, on 14 July, Brown tried to recover those federal soldiers already attached to Sandford. He ordered Nugent and all soldiers at the arsenals to report to police headquarters.[22] From that point on, the federal soldiers and the police concentrated on dealing with the rioters; Sandford and the militia were left to guard the arsenals.

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[16] Both proclamations are reprinted in full in *The Bloody Week*, pp. 12 and 14–15.

[17] Msg, Fry to Nugent, 14 and 15 Jul 63, *OR* I, pt. 2, 27:895.

[18] Msg, Fry to Stanton, 14 Jul 63, *OR* I, pt. 2, 27:893–94.

[19] Although Wool and Nugent had wired Washington, apparently Stanton was getting most of his meager information from Edward S. Sandford, of the U.S. Military Telegraph in New York. That official's reports, with Stanton's terse pleas for more information, are found in *OR* I, pt. 2, 27:886–93. See also Gideon Welles, *Diary of Gideon Welles*, 3 vols. (Boston: Houghton Mifflin, 1911),1:369.

[20] Msgs, Halleck to Couch and to Schenck, 14 Jul 63, Halleck to Seymour, 14 Jul 63 and Stanton to Opdyke, 14 Jul 63, and Halleck to Meade, 15 Jul 63, all in *OR* I, pt. 2, 27:915–19; the quote is from Msg, Stanton to Sandford, ibid., p. 889.

[21] Msg, Paulding to Wool, 14 Jul 63, and to Cmdr of USS *Adela*, 14 Jul 63, both in Ltrs sent by Cmdt New York Navy Yard, entry 332, RG 45; Telg, Secy Welles to Rear Adm Paulding, 14 Jul 63, Ltrs rcd by New York Navy Yard, entry 328, RG 45.

[22] Cook, *Armies of the Streets*, pp. 102–03 and 128. See also James G. Wilson, *The Memorial History of the City of New York* (New York: N.Y. History Co., 1893), pp. 503–04.



FIGHT AT THE *TRIBUNE* OFFICE. *Illustration from* Harper's Weekly *(1 August 1863).*

The arsenals were not the only buildings requiring guards. Federal gun emplacements were set up around city hall and Horace Greeley's *Tribune* office. Patrols were established around several gun factories and armories. The resourceful assistant treasurer, John J. Cisco, also eventually got both federal and militia forces to guard the U.S. Sub-Treasury, acting with a zeal and singleness of purpose that seemed to exclude all consideration for the needs of the rest of the city. Cisco bombarded Wool and Paulding as well as Secretary of the Treasury Salmon Chase with demands for aid. Referring to an old agreement whereby the secretaries of both War and Treasury had promised that troops should guard the Sub-Treasury in case of disturbance, on 13 July he called on Wool for a battery of artillery and Paulding for a unit of marines.[23] Meanwhile, he told his superior in Washington, he would defend the building with his employees, some of whom he placed on the roof with carboys of sulphuric acid from the assay department to pour on the heads of the mob.

Rejecting a suggestion from Chase that he use revenue cutters, Cisco finally got a 25-man unit of the 10th New York National Guard from General Sandford and had Admiral Paulding dock the *Tulip* at the foot of Wall Street with its guns bearing on the approaches to the build-

[23] Telg, Secy War to Lt Gen Winfield Scott, 9 Nov 57; Ltrs Relating to Military Discipline and Control, 1849–1869, W139–141–1857, Rcds of Army Hq, RG 108; and Ltr, Secy Treas Cobb to Cisco, 9 Nov 57, Rcds of Office of Secy Treas, Gen Rcds Dept of Treas, RG 56.

ing. Overcoming Paulding's fear that equipment might be lost to the crowds, Cisco had his workers drag two 24-pound howitzers and a load of cutlasses up from the ships and into his building. His men, he warned Secretary Chase, were growing weary of all this dangerous soldiering in addition to their regular full-day's work that they were still putting in at the assay department.[24]

Wednesday, 15 July, followed the pattern set the previous days, with the soldiers and police continuing their flying assaults to break massed concentrations of rioters or save, temporarily at least, some strategic building. In an effort to defuse the situation, Wednesday afternoon Mayor Opdyke issued another proclamation, this time declaring the riot ended and explaining that only isolated fragments of the mobs out for plunder remained in the streets. He called for volunteers to relieve the soldiers and police in patrolling districts of the city. For anyone clever enough to see through his pretensions, he warned that five battle-hardened regiments were on their way and that recent victories in the field would make an unlimited number of units available if needed. After lengthy pleading, Opdyke and Seymour got Nugent to break Fry's secrecy order and announce that the draft had been officially suspended.[25] Finally, ending a day of statements, Seymour issued a proclamation that neatly contradicted that of the optimistic mayor. He proclaimed the city of New York in a state of insurrection and warned that the means provided by the laws to restore law and order would be applied in full. All caught resisting or aiding resisters would be punished.[26]

Proclamations notwithstanding, the rioting continued unabated through Wednesday afternoon. Mixed units of police and troops continued their operations. Captain Putnam, for example, marched his unit, dragging a field piece, up Third Avenue, crossing Twenty-sixth Street with riflemen on his flanks under orders to fire on the crowd at will.[27] Such methods easily cleared the streets, but the mobs re-formed as soon as the soldiers passed.

The end of violence was near. At 1700 the 65th Regiment, New York National Guard, a 400-man unit with a battery of four howitzers from the 8th Regiment, New York National Guard, detached from General Couch's command in Pennsylvania, landed in the city.[28] Assigned by Wool to Brown, the latter immediately detailed the unit to the Central Market with two companies detached to guard Cisco's sub-treasury. The next morning, 16 July, the 7th Regiment, New York National Guard, landed at the foot of Canal Street and marched up Broadway to report to Wool and Seymour. It too was handed over to Brown who assigned the unit to the police precincts between Seventh and Sixty-fifth streets, with orders to suppress all mobs and riots "sternly," using "all means" in doing so. The regiment's commander reported that he was obliged to use "harsh measures," including returning fire on citizens shooting from houses and other places of concealment. By midnight, however, he could report to Brown that all was quiet in his district.[29]

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[24] Telg, Cisco to Chase, 14 Jul and Chase to Cisco, 14 Jul and Chase to Cisco, 14 Jul 63, both in Telg "Xa" file, Correspondence of the Secy Treas, Gen Rcds of Dept Treas, RG 56; Msgs, Cisco to Chase, 13 Jul 63 and 23 Jul 63, Ltrs recd N.Y. Asst Treas Office of Secy Treas, Gen Rcds of Dept of Treas, RG 56.

[25] Cook, *Armies of the Streets*, pp. 147–48 and Msg, Nugent to Fry, 16 Jul 63, *OR* I, pt. 2, 27:901.

[26] The governor's proclamation is printed in full in *The Bloody Week*, p. 21. See also Wilson, *Memorial History*, p. 505.

[27] Official Rpt of Capt Putnam, 21 Jul 63, reprinted in Headley, *Pen and Pencil Sketches*, pp. 307–13.

[28] The 65th and 8th New York National Guard regiments, along with the 7th New York National Guard regiment mentioned earlier, were all organized militia units called briefly into federal service to help repel the Confederate invasion of Pennsylvania.

[29] SO, Dept of the East, 16 Jul 63, reprinted in *Annual Report of the Adjutant General of the State of New York,*



ATTACK ON BLACK HOMES, SULLIVAN STREET, NEW YORK. *Illustration from* Harper's Weekly *(1 August 1863).*

The display of troops marching up the city's streets had the desired effect. Mayor Opdyke could report on 16 July to Secretary Stanton with considerable assurance that the riot was over "for the present."[30]

Some confusion had developed over just how many soldiers were to be ordered to New York. On the evening of 15 July General Couch had reported to Halleck that eleven regiments of New York troops were scheduled to leave Frederick, Maryland, for home. Halleck, fearful of weakening the Army and determined that New York militia should defend the city, countermanded that order, saying that only the 65th and 7th Regiments had been asked for. Couch explained that the decision to send all the New York regiments was based on the fact that their time in federal service was almost up, and when on 16 July Governor Seymour pressed his demand that all New York troops come home, Stanton complied.[31] By Friday morning, at Stanton's direction, six New York State volunteer regiments, the 26th Michigan Volunteer Infantry, a unit serving with the New York militia units in the Department

1863 (Albany: Comstock and Cassidy, 1864), 1:356; and Rpt of Colonel Marshall Lefferts of Service of the Seventh Regiment, New York State National Guard, ibid. pp. 355–57.

[30] Msg, Opdyke to Stanton, 16 Jul 63, *OR* I, pt. 2, 27:926.

[31] Msgs, Couch to Halleck and Halleck to Couch, 15 Jul 63, *OR* I, pt. 2, 27:920–21.

of Virginia, and six New York National Guard regiments had arrived in the city. General Meade had asked that the 8th Infantry be returned to the Army of the Potomac as soon as possible, but that Regular Army regiment also joined the massing troops in New York, destined to stay for a month's duty.[32]

The arrival of reinforcements and the end of the riot coincided with a shake-up in the federal command in New York. After two days to consider the effect of Wool's age and general debilities, Stanton on 15 July appointed Maj. Gen. John A. Dix to succeed to the command of the Department of the East. Inexplicably, Stanton also ordered the highly effective Harvey Brown replaced by Brig. Gen. Edward R. S. Canby. Canby, a highly respected officer, took command of the federal forces in the city on 17 July; Dix of the department on 18 July.[33]

With regiments continuing to stream into the city, by 18 July General Canby was able to release some of those on duty. Responding to the urgent pleas of Admiral Paulding, the commandant of West Point, and Colonel Fry, Canby ordered the marines, the Invalid Corps units, the West Point detachment, and troops from the harbor forts to return to their stations. Meanwhile, he ordered units of the 8th Infantry and the 5th Artillery, the latter a federal unit based in the New York harbor as part of the government defense force of the city, to remain on standby "for use on a minute's notice," and continued to position the arriving units throughout the city.[34] Finally, Canby could inform Washington on the evening of 18 July: "city quiet and all reports favorable."[35]

Statistical information on New York's bloodiest week has been subject to considerable inflation. The widely exaggerated figures of many contemporary reports have had to be scaled down over the years. The latest, most exhaustive study by Adrian Cook places the total number of deaths at 119, including 8 or possibly 9 soldiers and 2 policemen, and 195 severely wounded, including 35 soldiers and 32 policemen. The size of the mobs has also been widely estimated, but Cook concludes that never more than 300 hard-core rioters assembled at one time. This figure does not include the great numbers of spectators and hangers-on who formed a part of the general mob scene. It still seems that contemporary military and police reports may have been right when they claimed that soldiers and police were outnumbered in every battle.[36] Cook counts nearly two hundred arrests made by the civil authorities. An indeterminate number of people were also detained by the troops. Served with a writ requiring that he give up one of the rioters to the civil authorities, Canby promptly rejected it, explaining that the miscreant had been arrested "by military force engaged in overcoming an armed resistance to the laws of the United States and the State of New York."[37]

Even though rioting did effectively end on 18 July, Canby and Dix were not ready to

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[32] Msg, Meade to Gen Lorenzo Thomas, 16 Jul 63, *OR* I, pt. 2, 27:927.

[33] War Dept SO 313, 15 Jul 63, *OR* I, pt. 3, 27:708; and War Dept GO 217, 15 Jul 63. Brown's effective command during the riots was never recognized by the War Department although he was later promoted to major general.

[34] Msg, Bowman (Cmdt of West Point) to Canby, Meade to Canby, Paulding to Canby, all 18 Jul 63 and all in Ltrs recd, Dept of East, entry 1247, RG 393. Ltrs, Maj Lawrence Kep to Cmdr 8th U.S. Inf and Bty of 5th U.S. Arty, 18 Jul 63, Ltrs sent, Dept East, entry 1242, RG 393. Spec Orders, Dept of East, no. 2 and no. 3, 18 and 19 Jul 63, vol. 78/206, entry 1248, RG 393.

[35] Msg, Canby to Halleck, 18 Jul 63, Ltrs sent Dept of East, entry 1242, 393.

[36] The appendixes to Cook's *Armies of the Streets* provide a comprehensive listing by name, age, and occupation of the rioters, killed and wounded..

[37] "Reply to Writ," 20 Jul 63, Ltrs sent, Dept of East, entry 1242, RG 393. The prisoner was later discharged by his Army captors who decided that he had not taken part in the riots.

authorize Fry to recommence the draft at any early date, insisting that it was "prudent" to wait until federal and state authorities could "perfect arrangements for the preservation of order."[38] And the flow of troops into the city continued unabated. The 2d Division of the New York National Guard, nine full-strength infantry regiments in federal service, arrived in the city and were assigned to duty stations in Brooklyn. The 14th New York Volunteer Cavalry and the 152d New York Volunteer Infantry were also assigned to duty in Manhattan. Although Canby lost several New York National Guard units that were returned to the control of Governor Seymour, he still had about 6,000 federal troops available in the city and its environs when he advised Fry, on 21 July, to wait a while before resuming the draft.[39]



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Halleck was reluctant to send any more troops to New York, warning that any further deployment would be at the expense of the Army of the Potomac. Should Meade be defeated by such diversions, he said, "there will be howls throughout the country against the Administration at Washington." But both Dix and Canby were adamant that more troops were needed. Canby feared a mob attack on the harbor forts and he was not willing to rely on the New York militia to defend them, since state authorities had never declared themselves forcibly in support of the resumption of the draft. He asked for a minimum reinforcement of four extra regiments, 2,000 to 2,400 men.[40]

Halleck and Stanton bowed to their local commanders' demands, and new troops began arriving on 1 August. Canby found himself busy positioning units of the 1st and 37th Regiments of Massachusetts Infantry Volunteers, the 5th Wisconsin Volunteer Infantry, the 20th Indiana Volunteers, the 83d New York Volunteer Infantry, and the artillery of the 13th Regiment of New York Volunteers. These were in addition to the 26th Michigan Volunteers and the 8th U.S. Infantry, along with the rest of the usual harbor complement. Even discounting the continuing loss of New York militia units whose time in federal service had expired, Canby had approximately 5,000 men on duty in the city and harbor alone on 12 August. After consultation with Mayor Opdyke, the police, and Canby, Provost Marshal Nugent asked permission to resume the draft, but warned that Canby's troop strength should be doubled.[41]

Stanton did order the draft resumed on 19 August, and Fry promised Dix that "a larger

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[38] Msg, Canby to Fry, 21 Jul 63; Fry to Canby, 19 Jul 63, *OR* I, pt. 2, 27:930, 940.

[39] Report of AG of N.Y., 1863, pp. 358–62. SOs 4 and 5, Dept of East, 1863, entry 1248, Rcds of Dept of East, RG 393.

[40] Msgs, Halleck to Canby, 27 Jul 63 and Canby to Halleck, 28 Jul 63, *OR* III 3:575 and 585–86.

[41] Department of East SOs no. 2, 25 Jul 63, no. 11, 27 Jul 63, and no. 8, 2 Aug 63, vol. 78/206, entry 1248, RG 393. Msg, Nugent to Fry, 12 Aug 63, *OR* III, 3:671–72.

force than you have represented as necessary will be at your disposal."[42] Dix wanted an extra 5,000 troops in the city, but his concerns transcended the question of manpower. He was convinced, he told Stanton on 12 August, that Seymour would actively oppose the draft and "the military power of the State" would be used to protect citizens from the draft. Should this happen, Dix would declare martial law and suspend civil authority. In this connection, he told Stanton, he was convinced after studying the appropriate laws and court decisions that the president had the power, in the case of insurrection or obstruction of the laws, to issue orders directly to state militia officers by-passing the governor.[43]

Dix's concern was understandable. Seymour had made his opposition to the draft, and specifically to the New York quotas under the draft, clear to President Lincoln and the press.[44] Lincoln had tried to explain that he would welcome a court test and would refine the New York quota figures, but the war effort demanded that the draft take place without further delay. Evidently Lincoln shared Dix's suspicions and decided that the time for sweet reason had passed. On 14 August Fry arrived in New York with a packet of documents for General Dix. The first was a draft presidential proclamation declaring that since it was in the president's judgment necessary to use military force in New York to suppress "existing unlawful combinations against enforcement of the laws of the United States," he was commanding all persons obstructing the law to cease and desist. The second was a draft order from the president upon General Sandford to report with his men to General Dix, the federal departmental commander. The third was a draft letter to Governor Seymour calling forth the New York militia to suppress the unlawful combinations against the authority of the United States which rendered the enforcement of federal law by ordinary course of judicial proceedings impracticable in New York City. The call on the governor was really a courtesy, Secretary Stanton explained to Dix, for he accepted the latter's contention that the president could call directly on militia officers. Yet President Lincoln thought that with such a request Seymour would either have to help or "shoulder the responsibility of refusing." The decision to use all or any of these draft documents was left to Dix's judgment.[45]

Dix never used the proclamation or the letters. Fry had also brought a list of units Stanton was forwarding to New York for Dix's support along with Stanton's promise that "any further aid or direction you may require will on notice be given you if in the power of the government."[46] By 19 August General Canby had in the city 12 regiments of Regular Army infantry, 23 regiments of volunteers (state units in federal service), 8 regiments of volunteer artillery, and five other regiments en route—nearly 28,000 men in all. With this impressive force standing by, Nugent and his men peaceably completed the draft, something over a month after it had been first commenced, without any call for additional state militia.

The massive force might not have been necessary had not the federal authorities badly mismanaged the affair in the first instance. Given the experience in the Midwest and the vocal

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[42] Msg, Fry to Dix, 12 Aug 63, *OR* III, 3:672.

[43] Msg, Dix to Stanton, 12 Aug 63, *OR* III, 3:672–73.

[44] Ltr, Seymour to the Pres., 7 Aug 63, reprinted in *OR* III, 3:612–19.

[45] A copy of the drafts, along with extracts from Stanton's accompanying letter to Dix and other materials, is printed in *Complete Works of Abraham Lincoln*, ed. John G. Nicolay and John Hay (New York: F. D. Tandy Co., 1905), 9:388–91. Lincoln's letter to Seymour of 7 August is reproduced on p. 369.

[46] Ltr, Stanton to Dix, 14 Aug 63, quoted in ibid., p. 391.

and persistent vows heard in many quarters to disrupt the draft in the city, Fry should have appreciated the danger. It was folly to hold the draft in so large and hostile a city without some form of military protection. A prudent War Department might well have postponed it until the state's regiments were back from Pennsylvania. Once the trouble began, the police and the Invalid Corps should have been used immediately against the crowd at the Ninth District office. After missing this chance to strangle the riot at birth, federal and city authorities could do little but employ the containment tactics devised by Brown and Acton, awaiting the arrival of a larger military force. Even this approach was seriously compromised by a bungled command and control system. Wool's mistake in insisting that an incompetent militia general control all federal forces was only partially mitigated by Brown's independent action. Throughout the troubles a large portion of the available force was rendered ineffective by Sandford's insistence that it guard the arsenals. Even the cooperation between police and soldiers and the advantages accruing from the police telegraphic intelligence could not overcome the confusion over orders and tactics that occurred on the first, critical day.

Spread of the New York Riots

The New York conflagration acted as a stimulus for a rash of riots that broke out simultaneously in many parts of the country. Those most closely connected to the New York incident all took place in the urban areas of the Northeast, and all were triggered by incidents connected with the draft. But if the draft was their proximate cause, the same economic complaints that figured in the New York riots were also present. Within hours of the outbreak in Manhattan, serious riots broke out in Boston, Troy, New York, and Portsmouth, New Hampshire, with lesser confrontations or rumors of clashes appearing in Buffalo, Elmira, Newark, Philadelphia, and Jersey City.

A riot broke out in Boston on 14 July. Late in the afternoon a woman assaulted two assistant provost marshals who were trying to serve notice on a newly drafted man.[47] When the federal officials tried to arrest the woman, her neighbors protested, a crowd quickly gathered, and the marshals were severely beaten. Police eventually arrested the culprits, although the crowds continued to grow. But here Boston had the advantage over New York, for more troops were nearby, both state and federal. Mayor Frederic W. Lincoln promptly called out three companies of state infantry and a company of cavalry. As a further precaution he asked the local federal authorities for their support and quickly received two companies of the 11th U.S. Infantry from nearby Fort Independence and two companies of artillery from the depot at Readville on the outskirts of the city. Also at the mayor's request, state officials put the state militia on full alert.

Despite the presence of the troops, a crowd attacked the armory on Cooper Street at 2000. Inside at the time were a battery of the 1st Massachusetts Heavy Artillery, a federal unit from Fort Warren in the harbor, and a detachment of the 11th Infantry. The mob began to throw stones; the troops fired a round of blanks and then charged. The crowd melted away, but when the soldiers returned to the armory it re-formed and proceeded to batter down one of

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[47] The most complete secondary accounts of the Boston riot are found in Roger Lane, *Policing the City: Boston 1822–85* (Cambridge: Harvard University Press, 1967), pp. 118ff; and Shannon, *Organization of the Union Army*, 2:216–18.



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the doors. The artillery unit had placed several brass fieldpieces inside to cover the door, and when the crowd broke through, fired a round of canister shot into the milling people. Four or five rioters were killed and about twelve others wounded, some seriously. Although the crowd again dispersed, small groups continued to mill around the dock area. Armed guards, part militia and part regulars, were posted around Dock Square, and cannon were placed to command the approaches. Some confrontations took place, with police firing into the crowd, but no large-scale disturbances. About midnight a persistent remnant tried to burn the Cooper Street armory down, but were driven off by police reinforced with detachments from the heavy artillery posted in the building.[48]

Nearly 2,000 federal and state troops—artillery, cavalry, and infantry—patrolled the city during the night. A company of the 33d U.S. Artillery from Fort Independence stood duty at Faneuil Hall while a battalion from the 11th Infantry guarded the Watertown arsenal. Threats made against the black residents of the city proved empty, and although crowds continued to wander the streets, they were peaceful and eventually dispersed.

Early on the fifteenth, Mayor Lincoln issued a proclamation warning all persons to desist from further violence and declaring that peace would be preserved "at all hazard."[49] The proclamation was generally obeyed although regulars and militia remained on guard throughout the city for several days. As the New York *Tribune* later put it, the imposing display of military might and the obvious intent of officials to use it had put an end to the disturbance. There were no more riots in Boston.

Riots also broke out in Troy, New York, on 14 July. Crowds began to gather as draft officials were carrying on their duties in the city. Assistant Provost Marshal Charles Hughes called out his local guard—twelve men of the Veteran Reserve Corps under the command of a Regular Army captain. In the absence of the mayor, the county sheriff summoned six companies of militia but only two (about 100 men) appeared at the rendezvous demonstrating the strong local sympathy for the rioters. There was no violence that day but the next morning, 15 July, the tensions increased as 300 to 400 laborers from the local foundries began marching through the streets demanding an end to the draft. They stoned and gutted the office of the Troy *Times* and moved to destroy a black church only to be diverted from the deed

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[48] Msg, E. S. Standford to Stanton, 15 Jul 63, *OR* I, pt. 2, 27:890. The casualty figures are from the New York *Tribune*, 17 Jul 63.

[49] Quoted in the New York *Tribune*, 17 Jul 63.

by a priest. Then they broke open the city jail and released some 80 prisoners, thought to be fellow rioters.[50]

By the evening of the fifteenth, with the nearby city of Albany also in turmoil, Acting Assistant Provost Marshal General Frederick Townsend, a Regular Army infantry major, ordered the draft suspended in Troy and its commencement delayed in Albany. The basic fear of the local draft officials, as Townsend reported at length to Fry, was that the unreliable local militia with its considerable military equipment might join in with the rioters. Townsend had some thirty men of the Veteran Reserve Corps to guard the draft records in Albany and a smaller group to protect the arsenal and provost marshal's office in Troy. He had been offered assistance by a number of local citizens, but, he told Fry, he was reluctant to arm citizens before a serious riot broke out, and he wondered if he should ever take the chance of arming locals who might be in sympathy with the crowds.

Fry quickly endorsed Townsend's decision to suspend the draft and ordered him to abandon it whenever opposition appeared until sufficient military force was available. For this he wanted Townsend to appeal to General Canby in New York. Canby, of course, could spare nothing, and Townsend's subsequent request for 1,000 regulars and part of an artillery battery went unfilled.[51]

With the announcement of the draft's suspension, however, reinforcements proved unnecessary. On the evening of 15 July the mayor of Troy, who had just returned to town, ordered in a detachment of militia with a six-pound howitzer. This unit dispersed a mob that had collected again, but not before several houses were sacked and a great deal of property damage had occurred. In general, the destruction was directed against draft officials and blacks. No further disturbances occurred. And by the time drafting was resumed on 1 September General Dix had sent at Townsend's request enough federal troops to Troy to protect the local officials.[52]

Many districts in upstate New York demanded federal protection during New York's bloody week. In Utica, Rochester, and Buffalo it was not thought safe to draft until troops could be on hand. The area around Buffalo was particularly tense and local provost marshals noted strong indications of pending mob violence. On 14 July in conjunction with the New York City suspension Fry ordered the draft suspended in Buffalo and Brooklyn until military force could be secured. To the provost marshal in Elmira, Fry urged circumspection until such time as troops could be obtained from General Dix.[53]

As in the earlier alarms in the Midwest, there were strong hints in New York State that the threat of riots and resistance to the draft were more real in the minds of the drafting officials than in the streets of their districts. On 27 July, for example, the assistant provost marshal in Elmira told Fry that reports of trouble in Buffalo had magnified the danger, and the U.S. deputy marshal at Syracuse ridiculed the reports of danger in his area. Painting the local draft officer as a timid man who listened to every rumor, he promised that the draft would take

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[50] Msg, Actg Provost Marshal General Townsend to Fry, 16 Jul 63, *OR* III, 3:515–17; New York *Tribune*, 17 Jul 63.

[51] Msg, Fry to Townsend, 16 Jul 63, *OR* III, 3:518 and Msgs, Townsend to Canby, 17 Jul 63, with indorsements, ibid., pp. 527–28.

[52] Msg, Townsend to Fry, 29 Aug 63, with Incl msg, Dix to Townsend, *OR* III, 3:739.

[53] Msg, Fry to Actg PM (Provost Marshal) for Western New York, 14 Jul 63 and 20 Jul 63, *OR* III, 3:489 and 548; Msg, Dept of East (Dix) to TAG, 21 Jul 63, TAG Register of Ltrs recd, RG 94.



RESUMPTION OF THE DRAFT. *Scene in the Provost Marshal's Sixth District Office as illustrated in* Harper's Weekly *(5 September 1863).*

place when ordered.[54] In fact, by late July most of the draft resistance in the state had disappeared. Fry's plan to complete the draft in New York City and then with a show of federal force cross the state, drafting as he went, proved unnecessary. Drafting went on with little delay. On 22 July Fry sent three companies of the Veteran Reserve Corps to support the draft in Elmira, and on 10 August General Dix sent a small unit of regulars to Oswego and later to Oneida. Threats of an outbreak at Schenectady caused Dix to send off a detachment of 200 regulars, but no violence occurred. Despite this general lack of resistance, Dix still sided with the more cautious provost marshals. He remained fearful of disturbances and reported that in his opinion artillery as well as infantry would be needed in some areas to enforce the draft.[55]

Incidents accompanying the New York riots also occurred in several cities in New Jersey, Connecticut, and Rhode Island with serious, if short-lived riots in Jersey City and Portsmouth, New Hampshire. No federal troops were involved, with the exception of Jersey City where the provost marshal secured from General Dix's Department of the East two companies of infantry to guard parts of the city and a gunboat with howitzers and a large

[54] Ltrs, Diven to Fry and Lowell to Fry, 27 Jul 63, *OR* III, 2:578.
[55] Msg, Dix to Fry, 10 Aug 63, *OR* III, 3:665.

force of marines to be stationed at the shipyards. In Portsmouth a detachment of marines from the Navy Yard along with a company of regulars from nearby Fort Constitution stood guard during a disturbance, which was broken up by police and Veteran Reserve Corps guards attached to the local provost marshal. Dix routinely turned down requests for troops in these areas, but Fry did order the draft suspended for a time in New Jersey.[56]

By contrast, the War Department did find units to spare for Philadelphia. Although the local provost marshal believed the danger of riot minimal, Fry insisted on sending five companies of Veteran Reserve Corps troops to the city and told his subordinate in Harrisburg to be ready to call on the local federal military commanders if necessary. Secretary of the Navy Welles ordered the Navy Yard to send all available force to the aid of the draft officials if needed. And on 16 July Stanton ordered two regiments of infantry and two batteries of artillery to the Quaker City. With such an impressive force on hand, Philadelphia remained quiet.[57]

Meeting Other Threats in 1863

On 17 July 1863, in the midst of the widespread rioting, Provost Marshal General Fry issued a general circular to his subordinates, vowing that while temporarily interrupted "in one or two cities" the draft would be continued. "In accordance with the laws of the United States" the provost marshals would be sustained by federal troops and they should get on with the draft as fast as possible. Later in the year he would downplay the disturbances outside New York City, characterizing the riots in Boston and Troy as "feeble responses,"[58] but his belittling of the amount of draft resistance was hardly justified. Granted the draft was completed peaceably in many regions, and that troubles were frequently exaggerated by district provost marshals, it is still true that opposition to the 1863 draft was widespread and violent and brought about an unprecedented amount of use of federal troops in local communities. Stanton received demands for federal assistance from some 200 draft districts in July and August alone.

One perennial trouble spot lay in the mining region of east-central Pennsylvania. Here many enrollers were badly beaten, and several were murdered. Much mine property was destroyed. Early in August General Couch, now the commander of the Department of the Susquehanna, sent two regiments of infantry and an artillery battery to protect draft officials in the Scranton area. Couch believed this force sufficient for the enrollment, but suggested to Fry that additional troops be sent when the men were actually drafted.[59]

True to Couch's warning, trouble flared again in November when drafting began. The provost marshals were able to employ a force of fifty federal cavalry soldiers to protect officials as they made their rounds, and the presence of the military ended resistance until the drafted men left the region. But once the military departed, the Copperheads of the region began terrorizing Union men, especially the mine owners. Again Couch sent regulars to

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[56] Msgs, Fry to Canby, 19 Jul 63, *OR* I, pt. 2, 27:930; Dix to Halleck, 20 Jul 63, ibid., p. 939 and Fry to Dix, 22 Jul 63, *OR* III, 3:555–56.

[57] See materials in *OR* III, 3:491–518.

[58] PM Circ 48, 17 Jul 63; Rpt, Fry to Stanton, 17 Nov 63. *OR* III, 3:524, 1046–53.

[59] Msg, Couch to Fry, 5 Aug 63, *OR* III, 3:529 and Msg, PM Whipple to Bonford, Actg Asst PM Gen for Pa., 9 Aug 63, ibid., pp. 674–75.

restore order,[60] but he was clearly worried about the arrests made by his men in these incidents, for they involved state offenses, not resistance to the draft per se. He was therefore doubtful that men arrested could be tried by military commissions. Federal troops, he thought, "must be very cautious about substituting military law for civil," and he confessed confusion over the appropriate form of military justice for these cases. He hoped for enlightenment during a forthcoming meeting of commanders at Gettysburg, but no record can be found that he ever obtained the precise direction he desired.[61]

Resistance to the draft was renewed in the Midwest during the summer and autumn of 1863. With all other states filling their quotas with volunteers, only Wisconsin and Michigan held drafts that year, but authorities in Iowa and Minnesota also required the presence of federal forces. General John Pope, the department commander in the area, was reluctant to use troops and was openly skeptical of the Cassandra-like provost marshals in his department. On 20 June he assured an apprehensive Fry that enrollment in Milwaukee had been accomplished "strictly according to law" with the aid of city police alone. He had, he said, refused requests by local draft officials for troops, and he told Fry that the provost marshals in his command were lacking in discretion and common sense and prone to panic. He wanted to use troops only as a last resort, and he reminded Fry that the War Department had judiciously left decisions on the matter to the department commanders. He believed it to be in the government's interest that laws be enforced "by the means usual in time past." He thought it neither "wise nor politic to encourage the people to resort, on every trifling pretext of difficulty, to military force in the execution of civil law."[62]

But Pope's civil libertarian instincts had their limits, and he was anxious to have troops available for the draft in Wisconsin, where there had been so much trouble in 1862. Since he considered public pre-positioning of military units in itself provocative, he devised a plan to bring seasoned troops home from the field, ostensibly to rest and recruit new men, but actually to be present to handle any violent resistance to the draft. Halleck insisted that he should instead use some of the troops in his department deployed against the Indians, since he regarded the number excessive. Pope was forced to agree. He rounded up four companies of the 30th Wisconsin Infantry, then on duty in the western part of the state, along with two infantry regiments from Saint Paul, Minnesota, and an artillery unit of eighty men. This force he held in reserve and he asked Governor Salomon to have his militia ready also for duty on five-day notice. In the event, he found he did not need any military force. Perhaps this time he had placed too much faith in the predictions of his provost marshals, for the draft in Wisconsin was successfully completed without benefit of soldiers.[63]

In the case of Detroit, the War Department proved more amenable to Pope's scheme. The city had suffered a race riot earlier in the spring when a Negro convicted of rape and guarded by militia troops was set upon by a mob. The soldiers fired at the attackers, killing one man. Before the ensuing violence was put down by a unit of federal troops stationed at

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[60] Msg, C. Tower, PM Tenth Dist of Pa. to Fry, 7 Nov 63, *OR* III, 3:1004–06. See also Shannon, *Organization of the Union Army*, 2:224–25.

[61] Msg, Couch to Maj Gen Franz Siegel, Cdr Lehigh Dist, 14 Nov 63, *OR* I, 29:455.

[62] Msg, Pope to Fry, 20 Jun 63, *OR* III, 3:395–96.

[63] Msg, Halleck to Pope, 17 Jun 63, *OR* I, pt. 2, 28:384. Pope to Salomon, 18 and 27 Jul 63, w/related papers in *OR* III, 3:533–35, 544–45, 579–80. See also Robert Huhn Jones, *The Civil War in the Northwest* (Norman: University of Oklahoma Press, 1960), pp. 104–05.

Fort Wayne and five companies of the 27th Michigan Infantry brought in at the sheriff's request from nearby Ypsilanti, one Negro was killed, scores wounded, and 200 burned out of their homes.[64] Many whites, including the overwhelmed Detroit police department, tried to protect the blacks, and the convict was eventually exonerated of the crime, but the city's 1,400 Negroes, mostly escaped slaves, continued to bear the brunt of white anger and frustration over the war. Local officials feared that with feelings still running high, the draft would likely set off more violence, and, the district provost marshal warned, reports about 1,500 disaffected in the city, ready for trouble, were most likely true. Governor Austin Blair asked Stanton for troops, and by 21 July six companies of the Michigan Sharpshooters had been brought back from Kentucky for duty at Fort Wayne, while two companies of sharpshooter recruits had been positioned at the Dearborn Arsenal with orders, as reported in the press, to fill up their ranks by recruiting. A section of artillery, mounted and manned by members of the Veteran Reserve Corps, and fifty federal cavalry recruits were also on hand in case of trouble. With this force in place the summer passed peacefully in Michigan.[65]

Trouble also threatened in Minnesota and Iowa. On 26 July Pope ordered the commander at Saint Paul to pre-position a sufficient force at Fort Snelling to be used "vigorously," if requested by the governor, to quell any riot. The commander was to act as far as possible "in accordance with the civil law in such cases," and he was advised by Pope to be guided by the advice and wishes of the governor, except in cases where federal officials required immediate protection.[66]

Pope faced a different situation in Iowa. Several officials had asked for the intervention of federal troops in local political meetings on the grounds that in the past these meetings had degenerated into dangerous brawls. The local commander, Brig. Gen. Benjamin S. Roberts, told Pope that he had referred such requests to the governor, since the militia was the logical force to use in such affairs. Pope, drawing a careful distinction between the use of federal troops in "local political brawls" and in executing the draft commended Roberts for his action.

> U.S. laws specify clearly the circumstances under which U.S. troops are to be employed in putting down insurrections in the State, and the exact method to be pursued to secure their services. When U.S. laws are resisted and U.S. officers endangered in the execution of their duty the manner of employing troops is specifically set forth. The cases arising out of the conscription law are provided for in the law itself. It is desirable . . . to avoid complications with the civil authorities and the people, and for this purpose to decline using . . . military force . . . except in accordance with the laws and in the manner prescribed thereby.

Should a draft became necessary in the Dubuque area and resistance develop, Pope promised that on sufficient notice he would pre-position a force there to make such resistance impos-

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[64] David Katzman, *Before the Ghetto: Black Detroit in the Nineteenth Century* (Urbana: University of Illinois Press, 1973), pp. 45–47 and 178; Robert Shogan and Tom Craig, *Detroit Race Riot, A Study in Violence* (Philadelphia: Childon Books, 1964), p. 17. The 27th Michigan Infantry was a federal unit mustered into service on 10 April 1863.

[65] Msg, 1st Dist PM Newberry to Actg Asst PM for Detroit Hill, 14 Jul 63, *OR* III, 3:488; Hill for Fry, 21 Jul 63, ibid., pp. 551–52; 27 Jul 63, ibid., pp. 577–78; and 8 Aug 63, ibid., p. 639. The 1st Regiment of Michigan Sharpshooters, Companies A through F, were mustered into federal service on 7 July 1863 and remained in Detroit until 16 August 1863, see Frederick Henry Dyer, *A Compendium of the War of the Rebellion* (Des Moines: Dyer Co., 1908), p. 1280

[66] Msg, Pope to Col S. Miller, CO, St. Paul, 26 Jul 63, *OR* III, 3:574.

sible. "Although I desire you," he told Roberts,

> at points where resistance to the draft is apprehended to make proper disposition of your forces to protect the U.S. officers and secure the execution of the laws, I wish you to do so quietly and unostentatiously, simply that they may be on hand to assure quiet, which probably will not be disturbed unless rash and ill-advised counsel prevail.[67]

Governor Samuel J. Kirkwood was not so circumspect. A forceful Republican politician, he had used the state militia on several occasions to suppress violence associated with conscription and had broadcast his willingness and intention to use his forces again. Although Iowans volunteered in sufficient numbers to avoid a draft in 1863, resistance to enrollment, usually blamed on the machinations of the Knights of the Golden Circle, reached the militant stage in Keokuk County in early August. On 6 August Kirkwood sent the militia to confront what he described as a large organized mob of armed men in Keokuk. He wanted to root out resistance with a prompt military act, and although he believed his state forces up to the task, he wanted a federal backup available. He asked Stanton's permission to detain six companies of the nearby 7th Iowa Cavalry for a few days. Without reference to the department commander, Stanton ordered the volunteer unit to remain in the state to keep the peace.[68]

The last large riots of 1863 occurred in Illinois. During July and August armed resistance to the enrollment and draft erupted in widely separated parts of the state. The equivalent of three companies of federal troops (some 240 cavalry and 40 infantry) were placed on duty in three southern counties to assist enrollers. Lieutenant Colonel James Oakes, the assistant provost marshal general of the state, also had two companies of cavalry stationed at Quincy to protect draft officials in the western sections of the state. Oakes passed on to Fry reports from his assistants that outlined a picture of roaming mobs, in open sympathy with the Confederacy, destroying property and disrupting the draft process with violent and sometimes murderous outbursts. Oakes claimed that three or four companies of troops were needed in each district, with an entire regiment in reserve for the state at large. He wanted to delay the draft in Illinois until the state had the means of enforcing it.[69] His views were seconded by Governor Richard Yates, who reported that the people were ripe for revolution and asked for five regiments to keep the peace.[70]

While at least some of this excitement must be dismissed as the excessive reaction of local provost marshals and politicians, the violence in some areas, Quincy and Danville for example, approached New York's intensity when size and population are considered. Trouble began in Danville, in the extreme eastern part of the state, on 24 August when a mob of about 400 armed men besieged the office of the local provost marshal, a Captain Fithian. The siege rapidly became violent, with several murders and serious woundings. The resourceful Fithian telegraphed his counterpart at LaFayette, Indiana, for help. Without reference to higher authority, the LaFayette provost marshal took 100 picked men of the 104th Indiana Infan-

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[67] Msg, Pope to Roberts, 7 Aug 63, *OR* III, 3:637–38.

[68] Msg, Kirkwood to Stanton, 6 Aug 63, *OR* III, 3:632–33; Stanton to Kirkwood, 8 Aug 63; ibid., p. 639. See also Robert Rutland, "Copperheads in Iowa," *Iowa Journal of History* 52 (1954), pp. 1–30 and H. H. Wubben, "The Maintenance of Internal Security in Iowa, 1861–1865," *Civil War History* 10 (1964), pp. 401–15. The 7th Iowa Cavalry was organized in April-July 1863 and mustered into federal service at that time. It was used in Missouri, Kansas, and the Northwest, chiefly in service against the Indians.

[69] Msg, Oakes to Fry, 16 Jul 63, *OR* III, 3:500–12

[70] Msg, Yates to Stanton, 17 Aug 63, *OR* III, 3:685. See also John B. McMaster, *A History of the People of the United States During Lincoln's Administration* (New York and London: D. Appleton, 1927), p. 415.

try by special train across the state line to Danville; here he turned them over to Fithian. With these men and the help of state militia brought in during the next day from Springfield, Fithian was able to restore order, but not before five men were killed and a number seriously wounded.[71] When it became apparent that a draft in the state would not be necessary in 1863, most of the violence subsided, but enough threats to the peace continued to keep several federal troop units on duty throughout the fall.

1864—An End to Resistance

By the spring of 1864 a general consensus had developed on the necessity for the draft, no doubt partly engendered by an amendment to the draft law on 24 February 1864 that removed some of its more glaring inequities. When Lincoln issued a call for 200,000 three-year men in March, the drafting proceeded without appreciable violence throughout the North, despite persistent rumors and predicitions to the contrary in several states. Local authorities called on Stanton for troops to enforce the law, but General Ulysses S. Grant, the field commander, desperately needed reinforcement and could not spare troops from the front to protect provost marshals.

Despite the general improvement, there were sporadic disorders related to conscription during the summer of 1864. In Pennsylvania a disturbance known as the Fishing Creek Rebellion brought some extra federal troops into the state. On 10 August 1864, the assistant provost marshal general of Pennsylvania reported to Fry that bands of armed and organized deserters and draft delinquents were operating in Columbia and Cambria counties in the western part of the state. More than 500 men in each county were involved, he claimed, and they were being urged on by political opponents of the administration. The provost marshal had small detachments of federal troops in the region, but he needed a larger force—at least a full regiment of the Veteran Reserve Corps—to travel from county to county overawing all resistance and arresting all deserters and delinquents.

Fry, determined to have every deserter arrested before the new draft scheduled for September commenced, responded by sending the 16th Regiment of the Veteran Reserve Corps to Pennsylvania, along with some scattering detachments of regular Union soldiers. In the event, reports of organized resisters proved unfounded, but the troops did scour the area and seize a total of seventy individuals reputed to be the leading exponents of draft resistance in the area.[72]

Officials in several states anticipated violence after Lincoln issued another proclamation on 18 July announcing a new draft for September. Governor John Brough of Ohio, for instance, told Stanton on 9 August that he would need 10,000 to 15,000 men to enforce

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[71] Msg, Actg Asst PM Gen, Indiana, to Fry, 26 Aug 63, *OR* III, 3:722–23. See also Shannon, *Organization of the Union Army*, 2:233–35. The 104th Indiana Infantry was mustered into federal service in March 1863 as part of the force organized to oppose General Morgan in Kentucky.

[72] Msg, Actg Asst PM Dodge to Fry, 10 Aug 63, and Fry to Dodge, 16 Aug 64. *OR* III, 4:607, 620–21. John A. Marshall, *The American Bastille* (Philadelphia: Thomas W. Hartley, 1869), pp. 304–16. Shannon, *Organization of the Union Army*, 2:240. Forty-four were eventually incarcerated at Fort Mifflin near Philadelphia. Of this number one died in prison, thirty-six were released without trial after a few weeks, and seven were convicted by a military commission. Six of the convicted men served time in prison, though none more than nine months. One man paid a fine, one was pardoned by Lincoln, and five were pardoned by President Andrew Johnson.

conscription. The local military department commander, Maj. Gen. Samuel P. Heintzelman, agreed, telling Halleck that organized groups were planning to seize the federal and state arsenals and release rebel prisoners. He wanted the prisoners sent east, and 5,000 troops sent into Ohio, 10,000 each into Illinois and Indiana, to enforce the draft.[73]

Heintzelman's request came as the War Department was already considering warnings from Pope that armed resistance to the September draft was likely in Wisconsin, where there were no longer any federal troops, and appeals from officials in New York, Pennsylvania, and Kentucky, who expected severe resistance in some districts. Halleck told Grant that troops might have to be withdrawn from the field to handle draft riots. In reply Grant warned that to withdraw troops would make it difficult to prosecute the war at a particularly critical juncture, and suggested that Heintzelman get the governors in his department to form militia organizations for the purpose. Lincoln, on whom the ultimate decision rested, sent an emissary to consult Grant, and in the end supported him, promising in effect that no troops would be taken from the Army of the Potomac for draft-related duties.[74]

Stanton found his own solution. He proposed that Governor Brough call out the Ohio militia if military force was needed. The men were to be armed, transported, subsisted, and paid by the United States in the same manner as federal troops, although they were not to be mustered into the federal service and would themselves still be subject to the draft.[75] As it happened, no large-scale resistance appeared in Ohio. Apparently the reports of organized insurgents had once again been exaggerated.

The results in Ohio imbued Stanton with a healthy skepticism about predictions of draft riots that showed when he had to deal with similar demands for troops in New York. Surely, based on the events of the previous year, it was the most serious trouble spot. General Dix, the departmental commander, General Sandford, the New York militia commander, and Brig. Gen. John J. Peck, Canby's successor as commander in the city, all agreed there would be a crying need for troops when the September draft took place. Dix particularly was convinced that neither state nor city authorities would help enforce the draft, since many were in cahoots with the Copperheads and other Southern sympathizers. His initial demand for 2,000 troops had escalated to 10,000 by 29 August.[76]

Stanton was unimpressed. He believed the rumors were widely exaggerated and politically conceived. He told Peck there would be no difficulty "if military officers do their duty," and warned that "if those in command have not the nerve, the Government will try to find some who have." To General Dix, Stanton added that in view of Peck's evident alarm, the department commander should remain in the city and in command.[77] Stanton was right; there was no repetition in New York in 1864 of the troubles of 1863.

Yet Stanton remained concerned about Indiana and Illinois. He instructed Maj. Gen. Joseph Hooker, Heintzelman's successor, diligently to investigate the rumors in his area and

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[73] Msg, Brough to Stanton, 9 Aug 64; Heintzelman to Halleck, 9 Aug 64, *OR* III, 4:599, 1286–87.

[74] Msgs, Halleck to Grant, 11 Aug 64, 11 and 12 Aug 64; Grant to Halleck, 15 Aug 64, *OR* I, pt. 2, 42:111–12, 193–94, *OR* III, 4:613. Cypher, Lincoln to Grant, 17 Aug 64, Roy P. Basler, ed., *The Collected Works of Abraham Lincoln*, vol. 8 (New Brunswick, Rutgers University Press, 1953). Carl Sandburg, *Abraham Lincoln: The War Years*, 3 vols. (New York: Harcourt, Brace & Co., 1939), 3:217–18.

[75] War Dept Order, 15 Aug 674, *OR* III, 4:620.

[76] Msgs, Dix to Stanton, 22 Jul 64, 18 Aug and 29 Aug 64; Fry to Halleck, 8 Jul 64; Peck to Stanton, 2 Sep 64, *OR* III, 4:483–84, 625–26, 646, 686.

[77] Msgs, Stanton to Peck and Dix, 2 Sep 64, *OR* III, 4:686–87.



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to adopt precautionary measures to meet any emergency. But given the "vast importance" of reinforcing Grant, he promised no outside assistance.[78] In fact, the danger in the Midwest also turned out to be vastly exaggerated, and with rare exceptions federal troops were not employed when disturbances did occur. Despite dire warnings, with the usual appeals from provost marshals to local federal commanders and to Fry for thousands of soldiers, Illinois, Wisconsin, Minnesota, and Indiana managed to endure their problems without help from Washington.[79] In the case of Indiana, Stanton decided to appoint, a new, aggressive district commander, Bvt. Maj. Gen. A. P. Hovey, who assumed broad and generally undefined powers to preserve the peace, enforce the draft, oppose resisters, and exercise command over the state militia whenever called into federal service. In outlining Hovey's responsibilities, the War Department pointed to the unfortunate performance of his immediate predecessors who, it claimed, continually called for extra troops to defend their draft officers while inventing excuses for not raising new troops. The department warned Hovey: Produce new troops quickly and expect no help from Washington to face resisters. Although Colonel Fry relented and dispatched a Veteran Reserve Corps regiment to Indiana, the unit was never employed, and the state militia easily quelled the only serious outbreak occurring that fall. General Hooker, on the scene at Stanton's request, accurately predicted that no further resistance to the draft would appear in Indiana.[80]

The Draft Riots: An Assessment

The disturbances in Indiana's Crawford and Orange counties in the fall of 1864 proved to be the final episodes in the history of draft resistance in the Civil War. For more than two years the North had watched soldiers patrol its communities, breaking up combinations of citizens bent on defying a vital wartime law. In many areas, as in the spectacular upheaval in New York, the presence of troops was essential to the orderly procedure of the draft. Al-

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[78] Msg, Stanton to Hooker, 28 Sep 64, *OR* I, 2:515–16.

[79] Minnesota provided a minor exception to this generalization when in November 1864 local draft officials mounted a small unit of federal soldiers to stand guard at draft headquarters in Saint Paul. See Msg, Actg Asst PM Gen, Minnesota, for Fry, 26 Nov 64, *OR* III, 4:944–45.

[80] Msgs, Townsend, Asst AG, to Hovey, 14 Sep 64, *OR* III, 4:716–17; Schuyler Colfax to Fry, 3 Oct 64, ibid., p. 753; Townsend to Hooker, 4 Oct 64, ibid., p. 754; Hooker to Townsend, 8 Oct 64, *OR* I, pt. 2, 39:159.

though state militia and metropolitan police were employed in many instances, the War Department and departmental commanders found it necessary to use federal forces in some thirteen states. In the later incidents the first called were more often soldiers of the Veteran Reserve Corps, men more suited to routine guard duty than to quelling riots. Volunteer units mustered into federal service were the most common source of additional federal force, and probably for propinquity as much as anything else, departmental commanders would most often use them in their home states. But not always, for at times federal officials ignored state lines. A veteran Wisconsin unit, for example, faced the mobs in New York, and an Indiana unit helped to quell rioters in Illinois. First line regulars were also employed, usually because they were stationed nearby and readily available as in Boston and New York. On several occasions troops were pulled out of the lines of the Army of the Potomac to serve on riot duty.

The New York riots of 1863 completely eclipsed the rest both in intensity and in terms of federal military commitment. Indeed the New York draft riots may well have been the most serious and destructive outbreaks ever to occur in an American city. They had marked influence on the War Department's approach to the use of troops. Both Stanton and Fry were obviously frightened by the passions unleashed against the government in New York and for a time became more amenable, in fact sometimes overeager, to commit federal troops to ensure the execution of the draft.

In one sense the New York riots were an aberration, an example of mob fury and urban anarchy. Yet as Shannon has correctly observed, they were only "major eruptions of the seething subterraneous movement" which extended over all the country. In fact, with due regard for differences in population, a few of the riots in Massachusetts, Illinois, and Indiana rivaled those in New York. But these were exceptions. Generally the sporadic uprisings outside New York resulted in few deaths, in most cases only minor property damage, and the federal commitment rarely exceeded one or two regiments in size and one or two days in duration. Nevertheless, these disturbances caused harried governors, provost marshals, and departmental commanders to juggle their meager resources and dun the War Department for support. This in turn served to disrupt the war effort, all for a system of manpower procurement that netted the Union less than 170,000 men.

The decision to commit federal troops depended to a great degree on the reports and requests of local provost marshals. These men proved often to be excitable, prone to exaggerate trouble. It should also be remembered that they operated outside the control of the local federal commander. The department commander might provide or refuse military assistance to these draft officials, but he had no power over the timing or execution of the enrollments and drafts. The failings of the local provost marshals appeared to complement those of their superior in Washington. Fry was often stiff-necked where patience and long-suffering might well have been effective. Although a formidable administrator and the heart of the conscription program, Fry seemed willing to accept the wildest rumors of conspiracies and predictions of violence from his men in the field. Stanton came to appreciate the amount of exaggeration in their reports later in the war as the contrast between his excited dispatch of excessive numbers of troops to the relatively calm Philadelphia in 1863 and his cool rejection of appeals for help from New York in 1864 attest. Stanton demonstrated a clearer understanding of the disturbances than his cabinet colleagues, Welles and Chase, who saw them as Confederate conspiracies. He also became quite adept at separating fact from rumor,

learning when to send out a substantial force, when to calm a nervous governor with promises of future assistance, and when to put a little starch in a department commander's resolve.

From the legal and constitutional viewpoint, the most significant feature of the use of federal troops to suppress draft resistance during the Civil War lay in the procedures used. By suspending the writ of *habeas corpus* and resorting to military arrests and trials, Lincoln seemingly also set aside the requirements of law that had previously governed both presidential and War Department action in using troops to handle domestic disorders. In none of the cases involved did he himself act on a request from state authorities or issue a "cease and desist" proclamation. Implicitly, if not explicitly, he decentralized authority to order the use of troops to the War Department and its subordinate agencies. At least it was effectively exercised by them. Secretary Stanton maintained some control over the whole process, but departmental commanders exercised a great deal of authority on their own, expressly granted by the War Department circular issued immediately following the passage of the draft law in 1863. And even district provost marshals could use troops that might be available to them, such as local units of the Veteran Reserve Corps, without any appeal to higher authority. In one case, in Wisconsin in 1862, a state governor used state troops that had been mustered into federal service without reference to the War Department or the departmental commander. In any case, the use of military force, instead of civil authority, in the enforcement of the draft and indeed of other laws during the Civil War became almost commonplace, and only sensitive departmental commanders, such as General John Pope, ever even reflected on the change from the old order.

In one sense, Lincoln was carrying to the ultimate the power originally claimed by Millard Fillmore to use the land and naval forces of the United States "to see that the laws are faithfully executed" without any restriction except that inherent in the appropriative powers of the Congress, and to delegate that power as he saw fit. This essential loosening of controls over the use of troops in domestic disorders, inaugurated as a wartime measure, was to carry over into the Reconstruction period.

CHAPTER 13

Reconstruction: First Phase—1865–1868

It was no riot; it was an absolute massacre by the police, which was not excelled in murderous cruelty by that of Fort Pillow. It was a murder which the mayor and police of this city perpetrated without the shadow of a necessity.

——Maj. Gen. Philip H. Sheridan to General Ulysses S. Grant, 2 August 1866.

Even more so than the Civil War, the era of Reconstruction in the South was one during which the Army played an abnormal role in civil government. Never before or after, within the continental boundaries of the United States, did it exercise police and judicial functions, oversee local governments, or deal with domestic violence on the scale it did in the eleven ex-Confederate states from 1865 to 1877.

Three distinct periods may be distinguished. The first lasted from the surrender at Appomattox on 9 April 1865 until the passage by Congress of the First Reconstruction Act on 2 March 1867. During this period President Andrew Johnson attempted to set the rules for a fairly lenient Reconstruction process only to meet with concerted opposition from the Radicals in Congress. The second period was one of outright military rule in the South under the auspices of a Radical Republican Congress. It lasted in each state until that state had been readmitted to the Union by Congresss under the terms of the Reconstruction Acts. Tennessee, for instance, was actually readmitted in 1866, but Mississippi, Texas, and Virginia not until 1870. During this period the unreconstructed states were under the military rule of the commanders of the Army's military districts, until such time as they ratified the Fourteenth Amendment and drafted new constitutions creating "loyal republican governments." The third period lasted, in each state, from the time power was returned to the civil authorities to the final removal of the Army from its occupational role in the South in 1877. At least theoretically, once a state was restored to the Union, civil rule prevailed, and the military commanders had no right to interfere except under conditions that had prevailed before secession in 1861. Nevertheless, the Army continued to exercise a civil role during this third period, interceding frequently, in keeping with the policy of a Republican admininstration, either to preserve order or to maintain Republican state governments.

Throughout the period, as James E. Sefton has noted, "the Army was by far the most important instrument of federal authority in the South . . . and it was the only enforcer of national reconstruction policy, regardless of whether that policy was under executive leadership or congressional."[1] It was this role as the "enforcer of national reconstruction policy"

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[1] James E. Sefton, *The United States Army and Reconstruction, 1865–1877* (Baton Rouge: Louisiana State

that shaped the Army's rules of engagement, so to speak, in handling civil disorders. And they were likely to vary with the locality, depending on what the national Reconstruction policy was at the moment, whether Congress or the president was directing it, and the inclinations of individual commanders. Suffice it to say here that, even after the readmission of the ex-Confederate states, the old pre-Civil War rules did not apply. Only with the passage of the Posse Comitatus Act in 1878 did the situation once again become one in which the troops could be used in civil disorders only at the express direction of the president after all the legally prescribed formalities had been observed.

As in the case of the Civil War, it is not within the purview of this volume to deal with the Army's role as civil administrator during the occupation of the South. The instruments of military control during the war—martial law, arbitrary arrests, and trial by military commission—continued to be features of the first two periods of the Reconstruction Era, and to them could be added at times using provost courts to try minor civil offenses, overruling civil court decisions, and removing civil officials. After the passage of the Reconstruction Acts, military commanders acted as civil governors of their "provinces" for a time. This volume will concern itself, however, only with the use of federal troops in specific instances of violence, whether confined to single cities like the Norfolk, Memphis, and New Orleans riots of 1866, or spread over wide areas like the activities of the Ku Klux Klan and other secret organizations later on.

Before the Civil War, in both North and South, militia under state control, not federal troops, were almost always used to control local disorders where miltary intervention was necessary.[2] But during Reconstruction in the South, even after the ex-Confederate states were "reconstructed," there was no reliable militia available to either state or federal authorities. A Radical Congress in 1867 disbanded all the old white militia in the South, viewing it as a reestablishment of the Confederate Army. Reconstruction governments under Republican control created black militia units, but neither these governments nor the federal commanders every really used them to confront ex-Confederates.[3] Federal military force was the sole expedient to be relied upon either to protect the freedmen in their rights or to deal with disturbances when the civil authorities were either unable or unwilling to do so.

The Army's numbers in the South during Reconstruction were never adequate to the tasks assigned. The total fell from 202,000 in June 1865 to 88,000 in January 1866 and to less than 18,000 by October 1866, as the volunteer regiments were demobilized and only the regulars remained. They stabilized in the 18,000–20,000 range for a year, but fell again in 1868 to 11,000 and continued to fall until in 1876 only 6,000 soldiers remained on occupation duty. Until 1870, because black volunteer regiments were not demobilized as rapidly as white, a large proportion of these troops occupying the South were black. They were also, during the height of military rule, scattered at a multiplicity of posts throughout the Southern states. Most of the troops remaining after the end of direct military rule in 1870 were white, and they were consolidated at fewer posts. Both before and after 1870, Texas, because of its wide

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University Press, 1967), p. ix. Sefton's comprehensive analysis of the role of the Army in each of the periods set forth above is the main basis for statements on the general role of the Army in the Reconstruction Era, as opposed to its specific role in subduing outbreaks of violence, in this chapter and the two that follow.

[2] See above, Chapter 5.

[3] On the black militia, see Otis A. Singletary, *Negro Militia and Reconstruction* (Austin: University of Texas Press, 1957).

area and the prevalance of desperadoes, had more troops and more posts than any other state. But in Texas as well as elsewhere, both before and after 1870, only companies and platoons were usually available in any given place to deal with violent outbreaks.[4]

The Army fitted its mission of occupying the South within the framework of its traditional territorial administrative system that divided the country into divisions, each with a number of departments under it. A War Department General Order of 27 June 1865 placed Virginia, North Carolina, and South Carolina in the Division of the Atlantic with headquarters at Philadelphia; Florida, Louisiana, Mississippi, and Texas in the Division of the Gulf with headquarters at New Orleans; Alabama, Georgia, and Tennessee, in the Division of Tennessee with headquarters at Nashville; and Arkansas in the Division of the Mississippi with headquarters at Saint Louis. Each of the eleven ex-Confederate states was constituted as a department within its respective division.[5] Below the departmental level generals divided their commands into two or more districts, and the districts were frequently further divided into subdistricts. In 1865, both the divisions and departments were headed by major generals, the relative position depending on seniority. During the next twelve years, the War Department was to recast the organization over a dozen times, but the basic hierarchy and responsibility of the commanders remained the same except during the period of direct military rule, when the South was divided into five "military districts" outside the normal structure.[6]

Background of the 1866 Disturbances

The potential for violent outbreaks was ever present in the post-Civil War South. Masses of blacks, precipitately freed from the bonds of slavery, wandered through the countryside or flocked to the cities, usually without the legitimate means of obtaining sustenance. The Freedmen's Bureau, a War Department agency created to assist the ex-slaves in adjustment, did something to alleviate distress and introduce order, but it was hardly enough. At the same time, thousands of ex-soldiers returned to civil life, many of them inured to violence and resentful of the shape that Southern society was taking under federal control. The war had devastated the rural economy and left black and white alike in a desperate struggle for existence. To Southern whites, the former rulers of the land, the braggadacio of some newly emancipated blacks, the presence of black Union soldiers, the drilling of black militia and the efforts of the Freedmen's Bureau and Union League to educate and protect the blacks and turn them into a solid phalanx of Republican voters, all seemed to carry the threat of black seizure of political power and the redistribution of property from former slaveholders to former slaves. But in the last analysis, the greatest threat of violence came from whites anxious to maintain their supremacy rather than from freedmen trying to overthrow it. And the Army obviously had some obligation to protect freedmen. How far this obligation went depended very largely on the struggle over control of the Reconstruction process between President Andrew Johnson and Congress.[7]

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[4] See figures compiled by Sefton in *Army and Reconstruction*, app. B, pp. 260–61.

[5] War Dept GO 118, 27 Jun 65.

[6] The various changes are detailed in Sefton, *Army and Reconstruction*, app. A, pp. 255–59. See also pp. 16–18.

[7] For detailed accounts of Reconstruction see: John Hope Franklin, *Reconstruction After the Civil War* (Chicago: The University of Chicago Press, 1961); Randall and Donald, *The Civil War and Reconstruction*; Singletary, *Negro Militia;* Kenneth M. Stampp, *The Era of Reconstruction*, 1865–1877 (New York: Vintage Books, 1965); Harold

Johnson had his own way until Congress convened in December 1865. His policy was lenient, promising that the states that had seceded could quickly return to their places in the Union. A Tennessean of yeoman ancestry, Johnson was far more sympathetic to the poorer white classes in the South than to the mass of emancipated blacks. Borrowing from Lincoln's plan of conciliation, Johnson appointed provisional governors in the Southern states and instructed them to convene constitutional conventions elected by those citizens willing to take a loyalty oath. High Confederate officials and owners of property worth more than $20,000 were excluded from participation. As a prerequisite to readmission each state was expected to ratify the Thirteenth Amendment abolishing slavery, nullify its secession ordinance, and repudiate the Confederate debt.

Johnson envisaged a transitional system of parallel governments, military and civil, at state and local levels, with the military first ruling under a modified version of martial law and gradually relinquishing control as the new civil governments took shape. Once civil government was operating, the president wanted military commanders to interfere as little as possible with governors, county executives, and mayors as these civilian officials "reconstructed" their respective jurisdictions, preserved order, and protected the citizens. With relation to civil outbreaks, he evidently envisaged that upon request of a civil official, usually the provisional governor or a mayor, the local military commander would furnish a military shield behind which the civil police and deputy sheriffs could function. The Army was not to interfere with these functions except when an "unsettled state of society" required it to act as a last resort to preserve the peace.

In effect, the Johnson program promised white Southerners eventual self-government and ample time to digest the new political, social, and economic realities. But it promised little to the freedmen, neither the right to vote, nor any redistribution of property, nor even any guarantee of equality before the law. Indeed several of the reconstituted state legislatures passed Black Codes that established different legal standards for the two races. And perhaps most critical of all for the Radical Republicans in Congress, the Johnson program contained a practically built-in guarantee that the Democrats would regain political control of the Southern states and combine with their Northern brethern to dominate Congress.[8]

When Congress convened in December 1865, it immediately showed its displeasure with Johnson's course by refusing to seat any of the senators and representatives the provisional governments in the South had sent to Washington. It then formed its own Joint Committee of Fifteen on Reconstruction to work out a program. Two measures soon emerged that between them promised to set Reconstruction on a new course—a Freedmen's Bureau Act and a Civil Rights Act. The first was passed by Congress on 6 February 1866 but was vetoed by Johnson. The veto was sustained by the Senate and it was not until July 1866 that a new but similiar Freedmen's Bureau Act was passed over the president's second veto. Meanwhile, the Civil Rights Act was passed over Johnson's veto in early April, a signal triumph for the Radicals.

The Civil Rights Act prohibited racial discrimination by either state or local law or

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M. Hyman, *A More Perfect Union* (Boston: Houghton Mifflin Co.,1975); Michael L. Benedict, *A Compromise of Principle: Congressional Republicans and Reconstruction*, 1863-1869 (New York: Norton, 1974).

[8] Randall and Donald, *Civil War and Reconstruction*, pp. 561-62, 579-80. Sefton, *Army and Reconstruction*, pp. 10-11, 16, 25-26, 89. See Richardson, *Messages and Papers*, vol. 8 for an outline of Johnson's policies in his own words, particularly the first annual message, pp. 3551-69.



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custom, thus overthrowing the Black Codes. The act placed enforcement in the hands of the federal courts and marshals, not the state authorities. United States marshals, deputy marshals, and persons appointed by them were empowered to "summon and call to their aid the bystanders or *posse comitatus* of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged." In a final section it also made it lawful for the president to employ the same military force to enforce the act, a power that Johnson did not seem likely to use.[9]

The Freedmen's Bureau Act passed in July extended the life of the agency and empowered its head to "extend military protection and jurisdiction" over all cases in the South where civil rights and immunities belonging to whites were denied to Negroes or in which Negroes were subjected to punishment different from whites for the same offense. Bureau officials, not civil courts, were to decide all such cases, under whatever rules and regulations the War Department might provide.[10] Before it adjourned, Congress enshrined the principle of these acts in the Fourteenth Amendment, making blacks citizens with full rights to equality under the law. It then passed the amendment on to the states for ratification with a clear understanding that provisional governments in the South must ratify it if they expected to be readmitted to the Union.

The Fourteenth Amendment aside, the Civil Rights and Freedmen's Bureau Acts clearly imposed direct obligations on the Army in the South to protect freedmen against any discrimination on the part of the Johnson provisional governments. Meanwhile, Johnson proceeded on his own course. After vetoing the Civil Rights Act, on 2 April 1866, he issued a proclamation declaring the rebellion suppressed and peace restored in all parts of the United States except Texas. On 20 August he included Texas within the purview of the proclamation, thus officially ending the War of the Rebellion as far as the federal executive was concerned. His moves were widely interpreted in the South as ending the occupation, martial law, and the suspension of the *habeas corpus* privilege. While Johnson may have had this in mind eventually, he did not intend it directly, for only three days after the issuance of the first proclamation, the War Department "with the President's approval" instructed commanders that martial law was not removed. "It is not expedient, however," the instruction

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[9] 14 *Statutes at Large*, 27–30.
[10] 14 *Statutes at Large*, 173–77.

read, "to resort to military tribunals in any case where justice can be attained through the medium of civil authority."[11]

In any case, as Congress and the president each pursued a separate policy, the Army in the South had no clear guide about the course it should follow. It seems quite clear that the president's opposition to the Civil Rights Act encouraged the spirit of resistance in the South. Only Tennessee ratified the Fourteenth Amendment, and this only after members of its legislature had to be forcibly detained to secure a quorum. But Tennessee was readmitted on 24 July 1866, thus ostensibly removing military rule from that state. The other ten ex-Confederate states, following Johnson's lead, refused to ratify and showed increasing restiveness under the terms of the Civil Rights Act and the new charter of the Freedmen's Bureau. This was the root of incidents that took place in Norfolk, Memphis, and New Orleans in the spring and summer of 1866 that did much to turn public opinion in the North against the president.[12] And the Army commanders in the areas affected, not quite certain of their authority, reacted hesitantly in these crises.

Norfolk—April 1866

The riot at Norfolk, Virginia, in April 1866 was the first major civil disturbance in the postwar South. On 9 April a crowd of blacks rallied to celebrate the passage over the president's veto of the Civil Rights Act. They planned a larger rally and parade on the sixteenth, combining blacks from both Portsmouth and Norfolk on grounds near the latter city. On 12 April, Capt. Philip W. Stanhope, a battalion commander of the 12th infantry commanding the posts of Norfolk and Portsmouth, learned that certain whites in Norfolk, chiefly ex-Confederates and members of a "large floating population of disorderly and abandoned characters," were planning to disrupt the celebration. Anticipating serious trouble, Stanhope placed his men under arms on the fifteenth and prepared them to deploy at once should the mayor of Norfolk exercise his privilege under the Johnson policy to request military assistance.[13]

On 16 April, as nearly 800 Negroes marched toward Portsmouth, a white man fired a shot into their midst. The crowd charged and killed the man. Captain Stanhope sent an escort of infantry to protect the ralliers and escort them safely home. Later, learning that whites in Norfolk were preparing a reprisal against the black community, Stanhope consulted with the mayor. The mayor lamented that his meager and unsympathetic all-white police force could not be relied on to protect the blacks and pleaded with the officer to use troops for that purpose. Presumably acting under President Johnson's policy that military commanders in the Southern states, on request, aid their civilian counterparts, Stanhope agreed to help.

At approximately 2130 about one hundred men, armed and dressed in Confederate gray, assembled at the United Service Engine Fire House and proceeded to march. On spotting

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[11] Quoted in Sefton, *Army and Reconstruction*, p. 78. For a discussion see pp. 74–79 Johnson's proclamations are in Richardson, *Messages and Papers*, 8:3627–630; 3622–636.

[12] There were lesser disturbances in other Southern cities during this period arising from much of the same causes, but there was apparently no substantial military intervention in them.

[13] This account of the Norfolk riot is based primarily on: Testimony of Maj Philip W. Stanhope, 12th Inf, 3 May 66, File 154V1866; Rpt of the Norfolk Riot, RG 94; Records of the Office of the Adjutant General, NARA.

Captain Stanhope and his orderly, who had been inspecting the area, the men in gray wheeled around from column to line and fired a volley of fifty shots toward the startled pair. After galloping back to headquarters, Stanhope ordered a lieutenant to take a company in search of his assailants or any other rioters and break them up. The soldiers were to hold their fire initially but, if fired upon, they were to respond both with bullets and fixed bayonets. When the company returned without having located the captain's attackers, Stanhope concluded that he must be dealing with an organized body of well-armed men who could appear on signal, march in cadence, fire volleys, and disappear at will.

In a report to his superior headquarters, the Department of Virginia, Stanhope recommended that both Norfolk and Portsmouth be placed under martial law because "The city authorities are powerless to quell disturbances of any magnitude and are extremely hostile to the black population." Captain Stanhope apparently did not realize that under the conditions of the occupation, a modified form of martial law already existed. While awaiting a reply, the captain requested and received support from a company of marines sent by the commander of the Norfolk Navy Yard and arranged with the local ferryboat company to operate late in order to transport possible reinforcements from Fortresss Monroe. Throughout the night of the sixteenth, Stanhope's men and marines patrolled the streets of Norfolk but encountered no resistance stronger than occasional brickbats and sporadic sniper fire.

On 17 April Captain Stanhope heard that white rioters were organizing for an assault later that day to "crush" his command and "exterminate" the Negro community. Anticipating the worst, Stanhope telegraphed Fortresss Monroe for reinforcements. Having been alerted by Stanhope the previous day, the post commander, Maj. Gen. Nelson A. Miles, quickly sent 200 soldiers to Norfolk. The men arrived at dusk. Stanhope thereupon ordered the mayor to announce publicly that any attempt at rioting that evening would be crushed. Stanhope later confided that if reinforcements had not arrived in time, "a very desperate riot would have taken place."

All rioting had ceased by the evening of the seventeenth. The next day the commander of the Department of Virginia, Maj. Gen. Alfred Terry, commended Stanhope's handling of the crisis. One month later, an officer's board of inquiry was to do likewise. Both General Terry and the board agreed that Stanhope had acted properly within the existing framework of military rule. In Terry's message to Stanhope on the eighteenth, the general reflected both Johnsonian concern for civilian control in the South and a commander's obligation under military rule to preserve order and save lives.

> Although martial law prevails in the Department, you are not responsible for the behavior of any citizen. The good order of the city primarily's in the hands of civil authorities . . . Military must not interfere unless civil authorities are clearly unable to preserve order. Protect colored people by suppressing any disturbances that endanger them. Arrest those who fired at you and lodge proper complaint with civil authorities.[14]

Although the passage of the Civil Rights Act sparked the rioting in Norfolk, the act was not invoked in justification for federal intervention to end it. Since the city officials asked for troop aid, instead of the federal officials empowered by the act to call for troops, it seems unlikely that the act could have been used.

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[14] Asst AG, Dept of Va to Stanhope, 18 Apr 66; Rpt of Board of Officers, 3 May 66—both in Rpt of the Norfolk Riot, RG 94.

Memphis—May 1866



GEORGE STONEMAN

The riot that broke out in Memphis, Tennessee, on 1 May 1866 greatly surpassed in violence that at Norfolk. During the war Memphis had served as a collection depot for all black soldiers drafted from the West, and the continued presence of black troops in the city and environs aroused resentment among white citizens, who accused them of boisterous and menacing conduct, making the streets unsafe for white women. Whites also resented the activities of the Freedmen's Bureau and disliked what was taught in the schools for black children run by teachers from the North. There was particularly strong enmity between the black soldiers and the predominantly Irish police force of Memphis. Black soldiers had arrested pro-Confederate lawbreakers in Memphis during the war, hardly gently. Now they accused the Memphis police force of extreme brutality in making arrrests in the black quarter. The 3d Heavy Artillery, U.S. Colored Troops, had been stationed in Memphis since its activation in 1863; by April 1866 it was the only remaining black unit in the area, its station Fort Pickering in South Memphis, the sole active Army post in the metropolitan area. Families of many of these soldiers had settled in cabins nearby. Also nearby Fort Pickering was a saloon and dance hall called O'Grady's where the black soldiers customarily congregated. Their conduct at O'Grady's was disorderly, and drunken soldiers frequently discharged their pistols into the air.[15]

On 30 April 1866 the men of this last colored unit in Memphis, the 3d Heavy Artillery, were mustered out of the service. During the night and the following day, 1 May, they carried on an exuberant celebration. By midafternoon a crowd of about a hundred blacks had congregated on South Street, many of them drunk and disorderly. The police came and arrested two of these celebrants, and as they took their prisoners away the black crowd pursued them, hurling epithets and throwing stones. Some of the ex-soldiers who had managed to retain their pistols fired them into the air. The police, thinking they were being fired upon, turned and fired into the crowd of blacks. Some of the dischargees returned the fire, and then pursued the police out of the neighborhood, freeing their prisoners. Sometime later, the police returned with reinforcements and a general exchange of fire ensued. At dusk the black dischargees retreated to the safety of Fort Pickering or to their families' homes in the black quarter of South Memphis. During this afternoon of riot, one policeman and one fire-

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[15] On the background of the Memphis riot, see Jack L. D. Holmes, "The Underlying Causes of the Memphis Riot of 1866," *Tennessee Historical Quarterly* 17 (September 1958):195–221.

man were killed and perhaps two others hurt. The blacks took casualties also, both killed and wounded, but it is impossible to state the number with any degree of certainty.[16]

About 2200 that night a combined force of police and a sheriff's *posse*, consisting entirely of whites, returned to the scene of the afternoon disturbances, purportedly to make arrests of those who had resisted the police earlier. Not meeting any opposition from the discharged soldiers, most of whom were in Fort Pickering, they commenced what may best be described as a pogrom against blacks generally. In the words of the minority member of the subsequent congressional investigating committee, a Kentuckian not without sympathy for the South, the party

> commenced an indiscriminate slaughter of the innocent, unoffending, and helpless negroes wherever found, and without regard to age, sex, or condition; visiting the humble houses of the colored people under the pretext of searching for arms; breaking open their houses when admission was not speedily granted by the inmates; shooting, beating, and killing them in the most cruel manner without cause or provocation, and in many cases robbing them of the little pittance of money and property they had accumulated by their labor and frugality; in other cases setting fire to their houses and attempting to force the inmates to remain there until the were consumed by flames, or, if they attempted to escape, shooting them down as wild beasts. But, to crown this most disgraceful tragedy, it is proven that some of the colored females were violated by some of these fiends in human shape.[17]

This kind of activity on the part of white mobs, many of whom were city police or firemen, continued sporadically for three days. During these days of riot, 47 blacks and 2 whites were killed; 70 or 80 persons, nearly all blacks, hurt; 91 houses or cabins, 4 churches, and 12 schoolhouses burned; and 5 black women raped.[18]

The federal military in Memphis reacted quite hesitantly, but in the end did intervene effectively to stop the carnage. The headquarters of Maj. Gen. George Stoneman, commander of the Department of Tennessee, were in Memphis, but the only troops posted there after the discharge of the 3d Heavy Artillery were four understrength companies of the 16th Infantry at Fort Pickering under the command of Capt. Arthur W. Allyn. They numbered about 183 officers and men, of whom only about 120 were available for duty. At the very outset of the riot, on the afternoon of 1 May, P. M. Winters, the sheriff of Shelby County, in which Memphis was located, came to General Stoneman and asked that he use his troops in quelling it. Stoneman, mindful that local officials and citizens had for some time been urging him to withdraw all troops from Memphis, and had assured him that they could handle any situation that arose, refused. Stoneman told the sheriff "that the question should first be tested whether they were capable of taking care of themselves, before the United States troops should be called."[19] In retrospect, Stoneman's refusal was not wise. The sheriff then went out and recruited the *posse* of white citizens that was to cause so much trouble.

During the afternoon of 1 May, others claiming to represent the mayor came to Stoneman asking that he use troops. The military commander replied that he must have "in black

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[16] This account is based on testimony before and the report of the House Select Comittee on the Memphis Riots, H. Rpt. 101, 39th Cong., 1st sess., Memphis Riots and Massacre, ser. 1274, particularly pp. 3–8, 37–41. See also Transcript of Proceedings of a Military Commission Appointed to Investigate Memphis Riots, File 412T 1866, RG 94, NARA. The testimony taken by the Military Commission was included in the House Report.

[17] Ibid., p. 39. The minority member of the three-man committee, Rep. G. S. Shanklin, Democrat of Kentucky, dissented markedly from the views of the two Republicans on the committee in assigning blame. It is of some significance, therefore, that he could describe the scene in this manner.

[18] Ibid., p. 36.

[19] Testimony of Maj Gen Stoneman, 23 May 67, ibid., p. 50.

and white'' a request from the mayor. This he received later in the afternoon; answering the formal request, Stoneman promised that he would direct Captain Allyn to hold his force in readiness to cooperate with the civil authorities of Memphis to suppress any further lawlessness. Then he gave Captain Allyn instructions to furnish as much force as was available on the request of the mayor of the city or the sheriff of Shelby County to assist in quelling disturbances, using great discretion and employing firearms only in cases of extreme necessity. He followed with orders to keep all arms at Fort Pickering under close guard and to issue none to ''improper persons.'' All muskets should be taken from the hands of the black dischargees in the fort (nothing was said of pistols) and none should be allowed to keep their weapons after discharge. Allyn was instructed, the next day, to keep the blacks, as far as possible, inside the fort and the whites away from them. These latter orders, aimed at protecting the black ex-soldiers, had the effect also of preventing their offering armed opposition to white mobs.[20]

No request came from Memphis Mayor John Park to Captain Allyn during the rioting on the night of 1 May. Indeed some witnesses later claimed that the mayor was ''so much intoxicated'' during the whole period of the riots, ''that he was wholly incapacitated for business or duty of any kind.''[21] In any case, the captain did, apparently on his own initiative, dispatch two patrols into the streets of South Memphis during the night, and they seem to have been responsible for ending the rioting sometime around midnight. At about 1000 the following morning, the rioting erupted again, and a messenger brought word to Allyn that both the mayor and the sheriff wanted to see him. He found the mayor after some delay, but ''powerless to act,'' as he put it. So he hastened to see the sheriff, who requested his entire available force. Allyn was able to muster only forty-five men since the rest of his troops were on guard duty. These he marched to the designated point of rendezvous with the sheriff at the Beale Street market. Here he had to wait forty-five minutes for the sheriff, who finally pointed out to Allyn the spots where rioting was taking place. The captain then ordered his men into ''two skirmish lines at angles right to each other, which, wheeling one to the right and the other to the left, covered the whole ground.'' His instructions were not to fire unless fired upon and to arrest all persons bearing arms, turning them over to the civil authorities. There were no exchanges of fire between soldiers and rioters. The troops did arrest a number of persons, including some policemen ''breaking open negro cabins and robbing them.'' These men were promptly released by the civil authorities. Having brought the rioting to an end, at lease temporarily, Allyn then ordered the white mobs that had gathered to disperse, withdrew his troops to Fort Pickering, and hurried off to report to General Stoneman as ordered. Stoneman, according to Allyn, simply reiterated the orders he had previously given. After he returned to his troops, the captain was engaged throughout the afternoon and night in dispatching patrols to trouble spots, mostly to prevent or to put out fires, which the firemen of Memphis made no effort to extinguish. The troops remained on duty until

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[20] Stoneman Testimony, 23 May 1866, before Congressional Committee. Rpt, Capt A. W. Allyn to Asst AG, 21 May 66. Ibid., pp. 50, 358–60. The written orders from Stoneman, reproduced on pp. 360–61, do not contain any reference to responding to an order of the sheriff, but Allyn testified that these were his instructions. The order to keep the blacks and whites separate was dated the following day, 2 May. In his report and testimony before the committee (pp. 245–48), Allyn indicates that he received all these orders from Stoneman sometime during the night of 1 May.

[21] This is the language used by Rep. Shanklin in his minority report. Ibid., p. 40.



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0300. That they were not very successful in checking incendiaries is attested by the large number of dwellings, schoolhouses, and churches put to the torch.[22]

General Stoneman, meanwhile, received several requests from civil officials and citizens groups to authorize and arm *posses* to work with the military in controlling the disturbances. Obviously concerned that these *posses* would operate in the same manner as that formed by the sheriff, Stoneman refused them all. As sporadic rioting continued into Thursday, 3 May, he decided to take matters into his own hands. In a brief note to the mayor, sheriff, and aldermen, he proclaimed what was in effect martial law.

> Circumstances compel the undersigned to interfere with civil affairs in the city of Memphis. It is forbidden for any person, without the authority of these headquarters, to assemble together any posse, armed or unarmed, white or colored. This does not include the police force of the city, and will not as long as they can be relied on as preservers of the peace.[23]

Around the clock, for the next forty-eight hours Captain Allyn's patrols diligently broke up all gatherings. By 5 May, when reinforcements ordered from Nashville by Stoneman arrived, the rioting had come to an end. Some days later when Captain Allyn was asked by the congressional investigating committee "What would have been the condition of things if there had been no troops here at all during these disturbances," Allyn replied that very probably "ten thousand troops would have been needed here a few days afterward."[24] Yet it seems apropos to add that had his small force been ordered to interfere earlier, the attacks on the blacks might have been prevented.

With the city quiet, on 5 May General Stoneman set up a military commission to investigate the riot and addressed a sharp letter to the mayor demanding to know what had been done to apprehend the "perpetrators of the outrages which had disgraced the city," what steps would be taken to remunerate those who lost property in the riots, whether the city authorities were able and competent to prevent the carrying and use of arms in the city, and whether they were ready to protect and respect the rights of the black population. He concluded by warning that if the people of Memphis could not "govern themselves as a law-abiding and Christian community, they will be governed."[25] The mayor's replies were not reassuring insofar as the punishment of rioters or the restitution of property was concerned.

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[22] See Allyn's report and testimony, ibid., pp. 245–48, 358–60.
[23] Ibid., p. 52. Quoted in Wilson, *Federal Aid*, p. 111.
[24] H. Rpt 101, p. 248.
[25] Ibid., pp. 4–5.

But Stoneman did accept, reluctantly one may assume, the mayor's assurances that the city government could now preserve the peace, and he quietly removed military control of the city without public announcement.

The investigation by military commission was followed by one carried out by a select committee of the House of Representatives composed of two Republicans and one Democrat. The majority report, after characterizing the riot as a massacre and ascribing the blame to the city's people as well as its government, declared that since no punishment could be meted out by the civil authorities, it was "the duty of the government to arrest, try, and punish the offenders by military authority; and also by the same authority levy a tax upon the citizens of Memphis sufficient to cover the losses for all property destroyed."[26]



JAMES SPEED

Commanding General of the Army Ulysses S. Grant accepted the investigating committee's verdict; President Johnson did not. However, convinced that Army commanders in the South needed some specific authorization for military intervention to protect the freedmen, without waiting for a request from civil officials, on 6 July 1866 Grant issued General Order No. 44.

> Department, District, and Post Commanders in the states lately in rebellion are hereby directed to arrest all persons . . . charged with . . . crimes and offenses against officers, agents, citizens and inhabitants of the United States, irrespective of color, in cases where the civil authorities had failed, neglected, or are unable to arrest and bring such parties to trial, and to detain them in a military confinement until such time as a proper judicial tribunal may be ready and willing to try them. A strict and prompt enforcement of the order is required.[27]

Grant made no allusion to protection of the blacks' civil rights as the basis for his instructions, but a little later he did issue another general order quoting in full without comment the text of the Civil Rights Act with its provisions for military enforcement.[28]

Grant followed his General Order No. 44 with a report to Secretary Stanton denouncing the gross dereliction of duty by Memphis officials in leaving the protection of the blacks entirely to a handful of federal troops. Following the formula of the House committee, he recommended that the soldiers arrest all leaders of the riot and that the federal government

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[26] Ibid., p. 34. The minority member thought the trouble lay in that most of the respectable people of the city, e.g., ex-Confederates, had been disfranchised with the result that the city's government had fallen into the hands of inept officials who employed riffraff as police and firemen.

[27] WD GO 44, 6 Jul 66.

[28] WD GO 50, 21 Jul 66.

take legal action against the Memphis authorities for all damages sustained by Allyn's troops and federal property during the riot.[29]

Grant's recommendations were clearly in keeping with General Order No. 44, but Attorney General of the United States James Speed advised Johnson not to follow them. Speed argued that however outrageous the conduct of whites in Memphis, their commissions and omissions constituted no offense against the laws and dignity of the United States. Under the federal system, he explained, the states, not the Army, bore the responsibility for protecting the citizens from personal attacks, and those citizens should prosecute their assailants through the state courts. Speed commented that the military had "performed their duty in aiding to suppress the mob violence. Having done that, they have and can have nothing to do with the redress of private grievances. . . . The courts, state and national are open in Tennessee, and there is not war."[30] Speed's opinion evidently persuaded Grant that he did not have authority to take any action under his recent general order and as a result the perpetrators of the attack on blacks in Memphis escaped unscathed. Nevertheless, the Memphis riot, like that to follow in New Orleans, played its part in turning public and congressional opinion against President Johnson's lenient Reconstruction policies.[31]

New Orleans—July 1866

The last major racial disturbance of 1866 occurred in New Orleans on 30 July. If not a larger riot than that at Memphis, its violence, for a brief period, surpassed anything that had previously transpired in the postwar South. And the rage of some whites demonstrated toward the freedmen in the New Orleans riot provided final confirmation for Northerners, earlier disturbed by Black Codes and the Memphis affair, of the bankruptcy of Johnson's policies.

The roots of the affair in New Orleans went back to 1864 when, under Lincoln's policy, Unionist elements in Louisiana convened a convention and drew up a constitution for the state. Before adjourning, the convention had passed a somewhat ambiguous provision for a reconvocation at the call of its presiding officer or of the state legislature. In 1866, Louisiana was being governed under this constitution, which permitted only white suffrage. The passage by Congress of the Fourteenth Amendment in June 1866 raised the hopes of both blacks and the Radical white minority (exasperated because ex-Confederates occupied so many public offices) that by revising the Louisiana constitution in keeping with that amendment they could gain political control of the state. Therefore they started a movement to reconvene the convention of 1864, despite the fact that some of its members were dead by 1866 and that there were no representatives in the convention from the Louisiana parishes, which in 1864 had still been under Southern control. When the presiding officer of the 1864 convention, now a federal judge, refused to issue a call, and the legislature turned down a proposal for a new convention, these Radicals called their own meeting of many of the delegates to the original convention and elected a new president *pro tem*, Judge R. K. Howell of the state supreme court. Howell issued a proclamation calling back into session the convention

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[29] Grant to Stanton, 7 Jul 66, File 412T1866, Military Commission on Memphis Riots, RG 94, NARA.

[30] Speed to President, 13 Jul 66, ibid.

[31] See Sefton, *Army and Reconstruction*, pp. 81–82 and Jack D. L. Holmes, "The Effects of the Memphis Race Riot of 1866," West Tennessee Historical Society *Papers* 12 (1958):58–79.

on 30 July at the Mechanics Institute in New Orleans to "revise and amend the Constitution and to consider the adoption of the XIV Amendment."[32]



ABSALOM BAIRD

The governor of the state, J. Madison Wells, a Unionist who had been forced to flee Louisiana during the war, supported the meeting of the convention. He called for an election in September to fill vacancies from unrepresented parishes in that body. Practically all other state officials, including the lieutenant governor, Albert Voorhees, and the attorney general, Andrew J. Herron, were unalterably opposed. And the most bitter opponent of all was John T. Monroe, mayor of New Orleans, a man who at first had been denied the right to take office by the military commander on grounds that he had never taken the oath of allegiance. Monroe packed his police force with ex-Confederate soldiers and disreputable whites. He and his allies in the state government saw the convention as a prelude to the attempted forcible overthrow of the provisional state and local governments. On 23 July an ex-Confederate state judge instructed a New Orleans grand jury that the convention had been called in a manner contrary to the rules for amending the existing constitution, and charged that it was illegal and subversive, with its members punishable by law. The grand jury willingly indicted members of the convention.[33]

Armed with these indictments, Mayor Monroe prepared to break up the convention on 30 July and arrest its members. As a precaution, on 25 July he wrote Bvt. Maj. Gen. Absalom Baird, commanding the Department of Louisiana, with headquarters in New Orleans, to ascertain that the Army would not interfere with the arrests. In reply to Monroe, Baird defended the right of the convention to sit. In so doing the military commander appealed not to the Civil Rights Act or the Fourteenth Amendment but to the right of free speech and assembly under the First Amendment.

> . . . if these persons assemble . . . I presume, in virtue of the universally conceded right of all loyal citizens of the U. S. to meet peaceably and discuss freely questions concerning their civil government—a right which is not restricted by the fact that the movement proposed might terminate in a change of existing institutions. If the assemblage in question has the legal right to remodel the state government, it should be protected in so doing; if it has not then its labors must be looked on as a piece of harmless pleasantry to which no one should object.[34]

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[32] On this series of events see Joe Gray Taylor, *Louisiana Reconstructed, 1868-1877* (Baton Rouge: Louisiana State University Press, 1974), pp. 42-52, 103-06.

[33] H. Rpt 16, 39th Cong., 2d sess., *Report of Committee on the New Orleans Riots*, ser. 1304, pp. 6-7.

[34] Baird to Monroe, 26 Jul 66; Monroe to Baird, 25 Jul 66. H. Ex. Doc. 68, 39th Cong., 2d sess., New Orleans Riots, ser. 1292, pp. 77-78.

If the First Amendment made it a criminal act to attack or arrest members of a peaceful assembly, Grant's General Order No. 44 of 6 July had specifically permitted commanders to arrest the offenders. Major General Philip H. Sheridan, his superior as commander of the Division of the Gulf, Baird said, had imposed on his departmental commanders, presumably in carrying out General Order No. 44, a "high obligation for military interference to protect those who, having violated no ordinance of the State, are engaged in peaceful avocation."[35]

Although Baird refused Monroe permission to break up the convention, he promised military aid, on request, if the conventioneers became too rowdy or violent for New Orleans' policemen to handle. Conversely, "if a riotous attack upon the assembly be anticipated, which the police may be unable to quell or prevent, in that case the whole military power will be furnished, if required, to assist in keeping the peace."[36]

The atmosphere in New Orleans was further charged, and the fears of the Conservatives heightened, by a Radical "Friends of Freedom" rally on the evening of 27 July. Ex-governor Michael Hahn, the principal speaker, came out for universal suffrage. Another speaker at the same rally, A. P. Dostie, a dentist who had been forced to go North during the war because of Unionist sentiments, led a torchlight parade, reportedly five thousand strong, down Canal Street and addressed them in what was alleged to be an extremist speech from the steps of City Hall.[37]

Doubly alarmed by this demonstration, the next day Mayor Monroe made a personal visit to General Baird's quarters in New Orleans in the company of Lieutenant Governor Voorhees. Monroe again asked Baird to abstain from interference with either the city police or the sheriff when either attempted to arrest members of the convention. Baird reiterated his previous stand, making it clear that unless he got instructions from the president to act otherwise he would prevent the arrests.[38]

Having reached an impasse with Baird, Voorhees and Attorney General Herron took their case directly to President Johnson. In a telegram later in the day, they denounced the Radical assembly as an unlawful body aimed at overthrowing the provisional government approved by the president and pointedly asked whether General Baird intended to interfere with court processes. Johnson immediately wired back to the state officials that the Army was expected to "sustain and not obstruct or interfere with the proceedings of the courts."[39] No copy of the telegram was sent to General Baird, who meanwhile had wired Stanton asking guidance.

> A convention has been called with the sanction of Governor Wells. . . . The lieutenant governor and city authorities think it unlawful and propose to break it up by arresting the delegates. . . . I have warned . . . the parties that I could not countenance or permit such action without instructions to that effect by the President. Please instruct me at once by telegraph.[40]

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[35] Ibid., p. 78.

[36] Ibid., p. 78.

[37] Emily H. Reed, *Life of A. P. Dostie* (New York: W. P. Tomlinson, 1868), pp. 292–98. Testimony of Gen Baird, H. Ex. Doc. 68, p. 86. Donald E. Reynolds, "The New Orleans Riot of 1866, Reconsidered," *Louisiana History* 5 (Winter 1964):22–25, argues convincingly that Dostie's speech did not call for violence on the part of the blacks "except in self-defense."

[38] Baird's testimony, ibid., pp. 86–87.

[39] Voorhees and Herron to Johnson, and reply, 28 Jul 66, H. Ex. Doc. 68, p. 4.

[40] Baird to Stanton, 28 Jul 66, ibid., p. 87.

Stanton never replied and did not show the telegram to President Johnson. His own testimony before the congressional investigating committee was that he simply did not think it urgent, but according to his biographers he withheld the message from the president because he knew it would only move Johnson to order Baird to cease interference with the New Orleans authorities. In this version, Stanton approved the course Baird was pursuing, and by not answering him he hoped to compell him to furnish military protection to the convention without crossing President Johnson.[41]

Whatever may have been Stanton's motives, Baird found himself without any official instructions from the War Department. Voorhees and Herron had the telegram from Johnson published in the newspapers, but Baird read it as "ambiguous as to the wishes of government in relation to the convention." On 29 July he readied two infantry regiments for action. He ordered both the 41st (black) and the 1st (white), respectively, three miles north and south of New Orleans to stand by for an order on the thirtieth to rush downtown toward the Mechanics Institute. He also had a steamer stand by to transport the 1st Infantry from Jackson Barracks to the foot of Canal Street and readied a tugboat to act as a dispatch runner.[42]

Again Baird met with Voorhees at about 1100 on the thirtieth, and he reiterated his previous stand saying that he did not propose to give military protection to the convention but intended simply to preserve order and prevent any violence on either side. Voorhees agreed that perhaps Baird should post a small detachment at the Mechanics Institute. The commander's general plan, however, was to have the four companies, once consolidated at Jackson Barracks, enter New Orleans about one hour before the convention began, and to assemble at the levee on Canal Street, several blocks away from the meeting place. There they would be ready to move to handle any disturbance on order.

For some inexplicable reason, although newspapers had announced that the convention would begin at noon, Baird mistakenly believed it would start at 1800. Thus his troop movements were six hours behind time. It seems likely that had he positioned his troops in time, all that followed might have been avoided.[43] As it was, Baird returned to his headquarters at 1200 and learned that the convention had just begun. A note from the lieutenant governor warned that large numbers of freedmen and whites were already gathering at the Mechanics Institute and that "the appearance of soldiers, with policemen, at this moment would be very beneficial." Alarmed at the advent of trouble six hours earlier than expected, Baird ordered the four companies en route to the levee to proceed directly toward the convention hall. The general then sent a staff officer to reconnoiter the situation.[44]

At the Mechanics Institute, located at Dryades Street between Canal and Common streets, the convention met at noon but adjourned for lack of a quorum until 1330. At approximately 1300 about 130 blacks began marching south on Burgundy Street toward the convention center—their purpose to rally outside the Mechanics Institute and, if necessary, protect the convention from attack. A dozen or more marchers carried small arms, and others carried canes and clubs; but the procession appeared peaceful, carrying the American flag, and sing-

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[41] Benjamin F. Thomas and Harold M. Hyman, *Stanton* (New York: Alfred A. Knopf, 1962), p. 496. Stanton's statement is in H. Rpt 16, p. 27.

[42] See Baird's statement before congressional Committee, H. Ex. Doc. 68, pp. 86-89.

[43] See Baird's statement, H. Ex. Doc. 68, p. 89. Sefton, *Army and Reconstruction*, p. 87. Wilson, *Federal Aid*, p. 137.

[44] Voorhees to Baird, 30 Jul 66. Baird to Stanton, 30 Jul 66. H. Ex. Doc. 68, pp. 6, 90. Baird's statement, pp. 90-91.



PHILIP H. SHERIDAN

ing songs. Near the intersection of Canal and Dryades, loosely organized bodies of ex-Confederates gathered, many of whom could be identified by distinctive badges, scarves, or emblems. Many of Monroe's policemen, out of uniform other than for badges, also watched as the procession reached the intersection. After marchers and spectators exchanged insults, fights ensued and the paraders fled to the institute where they barricaded themselves, with the frightened delegates, inside.

Uniformed police appeared and encircled the Mechanics Institute while nonuniformed police and ex-Confederate soldiers formed an outer ring. Despite the appearance of a white flag in one of the windows of the hall, uniformed police rushed into the building and fired point blank into throngs of marchers and delegates. When policemen started to run out of ammunition, they withdrew from the building, reloaded, and entered a second time for more shooting. Delegates and marchers frantically sought hiding places or jumped out of windows to the pavement twenty feet below. On the ground, whites clubbed, kicked, knifed, and shot many of the unsuccessful fugitives. For the next hour whites hunted down the few delegates who had escaped with minor injuries and attacked uninvolved blacks in other neighborhoods.[45]

The Negroes had been hunted down and the shooting had ceased by the time the troops from Jackson Barracks reached the Canal Street wharf at 1440. Immediately upon disembarking, Baird's four companies marched west up Canal Street toward the institute, clearing out lingering crowds along the way. The Army's surgeons later reported that 38 people, mostly blacks, had been killed and 147 wounded. It was admittedly a conservative estimate, for many of the wounded were hidden away by friends, and probably some bodies were not found. The ratio of killed was 37 on the side of the Conventioneers and one on the other.[46]

Having learned of the outrages committed and the leadership provided by the police, General Baird proclaimed martial law that evening. He appointed Bvt. Maj. Gen. August V. Kautz as military governor of New Orleans and directed him to supervise the city authorities and the police until a military investigation could determine which officials were guilty of participation in the planning or conduct of the affair. When the sheriff came to Baird with a warrant for the arrest of certain members of the convention, Baird forbade the sheriff to make any such arrests.[47]

[45] Details recapitulated in a telegram from Maj Gen Philip H. Sheridan to Andrew Johnson, 6 Aug 66, ibid., pp. 14–16. See also the text of H. Rpt 16, pp. 6–10.

[46] H. Rept 16, pp. 12–15 lists all the known dead and wounded based on the surgeon's count but suggests there were others. The one of the mayor's men killed is listed as a "disloyal white."

[47] Baird to Asst AG, USA, 31 Jul, and to Stanton, 2 Aug 66. H. Ex. Doc. 68, pp. 8, 10, 92.

In a telegram to President Johnson on the thirty-first, Louisiana's Attorney General Herron protested Baird's action. Baird's apparent disregard of the president's telegrams to Voorhees and Herron on the twenty-eighth and thirtieth instructing that troops would not interfere with court processes—orders that Baird had never received—angered the president. Johnson bluntly notified Baird through the War Department: "You will not impose any obstacle in the way of civil authorities."[48]

On 1 August Johnson directed the War Department to ask Voorhees and Herron if Baird had consulted them before imposing martial law and whether such law was warranted. Voorhees and Herron jointly replied on the second that "Civil authorities were not, to our knowledge, conferred with by General Baird as to the propriety of declaring martial law. Civil authorities could easily enforce the law. . . . Martial law was wholly unnecessary. Order fully restored before the arrival of troops."[49]

While the War Department queried Louisiana officials, a grand jury in New Orleans exonerated the city government of all responsibility for the riot. Instead it blamed members of the convention for undue provocation. In light of the president's displeasure with martial law and the verdict of the grand jury, General Baird dutifully released the rioters arrested by his troops for crimes allegedly committed on 30 July. While the troops marched back to their barracks, New Orleans policemen briskly executed warrants calling for the arrest of members of the convention.[50]

General Sheridan, commander of the Division of the Gulf, returned to New Orleans from a trip to Texas on 1 August. Once he had learned what had happened, Sheridan, taking advantage of close personal ties with his former wartime commander, immediately telegraphed to General Grant a candid and strongly worded report, "The Mayor of the city, during my absence suppressed the convention and a party of 200 Negroes with firearms, clubs, and knives in a manner so unnecessary and atrocious as to compel me to say that it was murder. . . . Everything is now quiet, but I deem it best to maintain military supremacy in the city for a few days until the affair is fully investigated."[51]

On receipt of further information on 2 August, Sheridan added, "It was no riot; it was an absolute massacre by the police which was not excelled in murderous cruelty by that of Ft. Pillow."[52] Moved by Sheridan's two dispatches, Grant instructed him on 3 August to "continue to enforce martial law . . . to preserve peace; and do not allow any civil authorities to act if you deem such actions dangerous to the public safety. Lose no time in investigating the causes that led to the riot."[53]

President Johnson also wanted information concerning the causes of the riot. Convinced by Voorhees and Herron that the Negroes marching on 30 July had constituted a mob that, by its aims and conduct, had provoked the riot, Johnson on 4 August asked Sheridan some leading questions: "Did the mob assemble and was it armed for the purpose of sustaining the convention in its usurpation and revolutionary proceedings? Have any arms been taken

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[48] Herron to Johnson, 31 Jul 66; Asst AG to Baird, 1 Aug 66. H. Ex. Doc. 68, pp. 9-10.

[49] Asst AG, USA, to Voorhees and Herron, 1 Aug, and reply, 2 Aug 66—both in H. Ex. Doc. 68, pp. 10-11

[50] Wilson, *Federal Aid*, p. 142

[51] Sheridan to Grant, 1 Aug 66, H. Ex. Doc. 68, p. 9

[52] Sheridan to Grant, 2 Aug 66, ibid., p. 11. The "Fort Pillow Massacre" occurred on 12 April 1864 when Confederate General Nathan B. Forrest's troops allegedly shot down Union soldiers, most of them black, after they had surrendered.

[53] Grant to Sheridan, 3 Aug 66, ibid., p. 12.

from persons . . . who were supposed or known to be connected with the mob? . . . Was not the assembling of this convention and the gathering of the mob for its defense and protection the main cause of the riotous and unlawful proceedings? Have steps been taken by the civil authorities to arrest and try any and all those who were engaged in this riot, and those who have committed offenses in violation of the law? Can ample justice be meted by the civil authorities to all offenders against the law?"[54]

Sheridan reported back to the president on 6 August that, yes, one of the preconvention boosters, Dr. A. P. Dostie, had used intemperate language and that about 10 percent of the procession to the Mechanics Institute did bear pistols, canes, or clubs, but only, he said, to defend themselves against the overwhelmingly hostile spectators lining the streets to the convention. Sheridan also conceded that some of the marchers may have traded shots and blows with the spectators. He maintained, however, that they did nothing to justify the subsequent attack and massacre by the police. Instead of separating the two factions, the police, from the outset, took the side of those opposing the convention. Despite the waving of a white flag by the conventioneers, the police forced their way into the hall and brutally slew or wounded any delegates or marchers they encountered, unresisting and unarmed included. In view of the great hostility prevalent in the state against blacks and Northern whites, Sheridan concluded that civil authorities could not be relied upon to mete out justice to guilty parties on both sides. And he issued a warning, "If this matter is permitted to pass over without a thorough and determined prosecution of those engaged in it we may look out for frequent scenes of the same kind, not only here, but in other places."[55]

Sheridan's blunt appraisal at least moved Johnson to confirm, through his secretary of war, Grant's order continuing martial law in New Orleans.[56] But it was already too late to do much about "a thorough and determined prosecution." Persons arrested had been released without trial. The grand jury had already exonerated civilian authorities and placed full responsibility for the rioting on the members of the convention. The mayor, the state attorney general, and the lieutenant governor, for the time being, had escaped censure or removal for their egregious failure to enforce justice impartially. And in fact Sheridan's fears of repercussions were realized—violence against blacks and white Radicals became endemic in Louisiana over the next decade.[57]

The New Orleans riot did not result, as Conservative Louisianians charged and President Johnson evidently believed, from a Radical conspiracy to overthrow the provisional government of the state. Nor does it seem true, as Sheridan and the Northern Radicals believed, that it was a premeditated massacre planned and orchestrated by city and state officials. A modern scholar has concluded that it was an explosion of blind rage on the part of the whites of New Orleans based on a "fundamental inability to accept the emancipation of slaves and its revolutionary implications."[58] Yet a massacre it surely was, and on the national stage it played an important part in the final victory of the Radical Republicans over

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[54] Johnson to Sheridan, 4 Aug 66, ibid., p. 12.

[55] Sheridan to Johnson, 6 Aug 66, ibid., pp. 14-16.

[56] Stanton to Sheridan, 7 Aug 66, ibid,, p. 14.

[57] Taylor, *Louisiana Reconstructed*, suggests that these killings were endemic even before the riot, "There had been many more Negroes killed before July 30 than were murdered on that date, but the previous killings had been scattered over time and space.," p. 112. See also p. 106.

[58] Reynolds, "New Orleans Riot Reconsidered," p. 27.

President Johnson. In the congressional elections of 1866 candidates supporting the president found his handling of the New Orleans affair a hard cross to bear. The Radicals won a sweeping victory in the election. Meanwhile a committee of the lame duck Congress conducted its investigation of the New Orleans riot and issued its report in February 1867, concluding that "the time has fully arrived when Congress should intervene . . . to secure to the people of Louisiana a republican form of government."[59] And the Radical Congress was soon to do just that, providing its own version of such a "republican form of government" not only for Louisiana but for the rest of the ex-Confederate states except Tennessee, which had ratified the Fourteenth Amendment and elected a Republican governor, and so was considered "reconstructed."

Military Rule During Congressional Reconstruction

On 2 March 1867, a Radical Congress enacted, over the president's veto, a measure entitled "An Act to Provide for the More Efficient Government of the Rebel States," popularly known as the First Reconstruction Act. It followed on 23 March with a Second Reconstruction Act dealing with some of the details. The new legislation declared that, with the exception of Tennessee, the governments approved by Johnson were thenceforth considered provisional and under Army rule until "loyal, republican governments" could be established. Congress divided the Southern states among five military districts, each under a general officer with sweeping powers to maintain law and order and to supervise the process by which the "loyal, republican governments" should take form. Another law, a rider to the Army Appropriations Act of 1867, disbanded the white militias in all of the ex-Confederate states except Tennessee.[60]

As prescribed in the law, the Reconstruction process involved first the selection of a constitutional convention by the qualified voters. All males twenty-one years of age or more, whether white or black, were to be eligible to vote except for those disfranchised for participation in the rebellion or commission of a felony. Once the convention had drawn up a state constitution it would submit it to the same electorate for approval. Once the new constitution was approved by the voters, and the Fourteenth Amendment ratified, military rule would end and the state would resume its place in the Union.

The military commanders were to supervise the enrollment, determine the qualifications of voters, monitor elections, and convene constitutional conventions. They were also authorized to replace inept or disloyal public officials, to act as policemen in protecting the persons and property of citizens against violence, and to transfer cases from civil courts to military tribunals at their discretion. In short, the military commanders became the supervisors of both the political process and the administration of justice in the South.[61]

To the command of the military districts, President Johnson appointed the following major generals: the 1st (Virginia), John M. Schofield; the 2d (North and South Carolina), Daniel

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[59] H. Rpt 16, p. 34.

[60] 14 *Statutes at Large* 428-29, 485; 15 *Statutes at Large*, 2-4.

[61] For detailed documentation of the Army's exercise of political and police powers during congressional Reconstruction see: U.S. Congress, Senate, *Correspondence Relative to Reconstruction*, S. Ex. Doc. 14, 40th Cong., 1st sess., 1867, ser. 1308, pp, 35-36, 60-61, 220, 239, 249-50, and 275-79; H. Ex. Doc. 342, 40th Cong., 2d sess., ser. 1346, *General Orders—Reconstruction*, pp. 7-8, 35-36, 80, 99-100, 136-37, 148, 151-52, and 160-62.

E. Sickles; the 3d (Georgia, Alabama, and Florida), John Pope; the 4th (Arkansas and Mississippi), Edward O. C. Ord; and the 5th (Louisiana and Texas), Philip H. Sheridan.[62] In an opinion rendered on 12 June 1867, Johnson's attorney general, Henry Stanberry, cautioned these commanders to exercise their powers with restraint, especially taking care not to replace civil authorities except when absolutely necessary to prevent crime and preserve peace and order. To counter this opinion, Congress on 19 July passed a Third Reconstruction Act spelling out specifically the military commander's power to remove officials and to determine who could and could not vote.[63]

The military commanders then no longer had to wait for a request from civil authorities in order to use troops to suppress disturbances or even in normal law enforcement. They could now do so on their own initiative. And they could remove any civil officials whom they found uncooperative. In his new office as commander of the 5th Military District, General Sheridan lost no time using the new powers retroactively to remove from office the "disloyal" officials whom he blamed for the New Orlean riot: Mayor Monroe, State Attorney General Herron, and a New Orleans judge. Later he removed as impediments to enforcement of the Third Reconstruction Act, through incompetence or disloyalty, Governor Wells and several New Orleans officials: the city treasurer, the chief of police, the city surveyor, city attorney, and twenty-two members of the Board of Aldermen. Sheridan's energetic application of the Reconstruction Act affronted President Johnson who on 17 August 1867 removed Sheridan as commander of the 5th Military District, exercising one of the few prerogatives remaining to him as president.[64]

Congress was as parsimonious in granting resources to the military commanders as it was generous in granting them powers. The generals had only about 20,000 men to police ten states with a total population of over eight million. It is not surprising then that their ability to enforce the law and to protect the freedmen was limited. Elections under the new rules supervised by the military resulted in the ascendancy of the Radicals—blacks, carpetbaggers, and scalawags included—in state and local government throughout the South. This further alienated the majority of Southern whites, and swelled the ranks of troublemakers eager to put blacks back "in their place" and teach Northern intruders a lesson. The numerical imbalance between those intent on breaking laws they did not believe in and federal troops available to enforce them encouraged scores of racial incidents.

Nevertheless, the military presence and power exercised a major restraining influence, and there was only one riot of any consequence in any of the states while they were under military rule—this occurring at Mobile, Alabama, in May 1867. The commander of the post at Mobile, Col. Oliver L. Shepherd, 15th Infantry, had tried to forestall a clash between numerous Confederate and Negro veterans by recommending that the Negroes avoid riding on street cars. On 14 May a Radical congressman from Pennsylvania spoke to a rally of blacks urging them to disregard Shepherd's advice as an infringement on their rights under the Fourteenth Amendment. Across the street from the rally, the chief of police got into an argument with another man who "accidentally" discharged his pistol toward the ralliers. Soon other shots rang out and a group of whites attacked the crowd killing two men and

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[62] See Sefton, *Army and Reconstruction*, pp. 114–15.

[63] 15 *Statutes at Large* 14–16. For Stanberry's opinion see *Correspondence Relative to Reconstruction*, S. Ex. Doc. 14, 40th Cong., 1st sess., ser. 1867, pp. 275–87

[64] Sefton, *Army and Reconstruction*, pp. 156–57.

wounding several others. After observing the attack Colonel Shepherd summoned infantry from his camp twelve miles away. Once in the city, Shepherd's men deployed to various points and forced citizens to return to their homes. Three squads of eight men and one officer each stayed on hand until the provocative congressman left for Pennsylvania the next day. In a report to General Pope on 20 May, the commander of the Department of Alabama, Maj. Gen. Wager Swayne, blamed the riot on "an element which is active in the spirit of rebellion and presumes upon the sympathy of the police," and he directed Colonel Shepherd to place guards at critical points where mobs were likely to gather, to suspend the police force, and to punish summarily all disturbers of the peace.[65]

Reacting to the Mobile incident, Secretary of War Stanton ordered all district commanders to anticipate future outbreaks by pre-positioning troops within the city limits of some of the more volatile urban centers. There they could check riots at the outset rather than waste valuable time waiting in distant camps for the authorities to call for help. After receiving Stanton's order, General Pope, the commander of the district embracing Alabama, approved Swayne's action and told him to go further and depose both the mayor and the chief of police of Mobile.[66]

In a general order to Swayne and other subordinates in the 3d Military District, Pope established a model procedure for preventing or suppressing riots. First local commanders were to ensure that the mayor or sheriff require advance notice from parties planning a rally. If the rally was to be in town, the police chief was to assemble a sufficient number of policemen to prevent violence; outside town, the sheriff was to assemble a *posse* for the same purpose. Local commanders were to provide whatever force was deemed necessary. In addition, the commanders were to assign a "judicious and capable" officer to each rally who could summon troops when the civil authorities proved inadequate or unwilling to handle trouble. Pope reminded all subordinate commanders that Congress had empowered them to relieve from office any public official who failed to comply with his duty to preserve peace and order.[67]

Measures such as this appear to have discouraged any active city rioting during the period of military rule. The only other incidents of importance in 1867 occurred in Tennessee, a state on which military rule had not been imposed.[68] But if rioting waned, the instances of individual crime and violence did not, and the detachments of troops scattered throughout the South had their hands full in enforcing law and order. The standard practice was to send out small details to accompany sheriffs or marshals as a *posses comitatus* to apprehend offenders or, when the civil officials would not act, to carry out military arrests. It was not always a question of the civil rights of freedmen. In Mississippi and Arkansas troop *posses* chased horse thieves and acted as revenue officers breaking up stills. The most difficult area in this respect was Texas, one of the states where the military continued in control until 1870. In addition to widespread violence resulting from the antagonism between blacks and whites, Radicals and Conservatives, that characterized east Texas, in the West there was the violence of a developing frontier. Thus, throughout the state, armed bands of various sorts flourished,

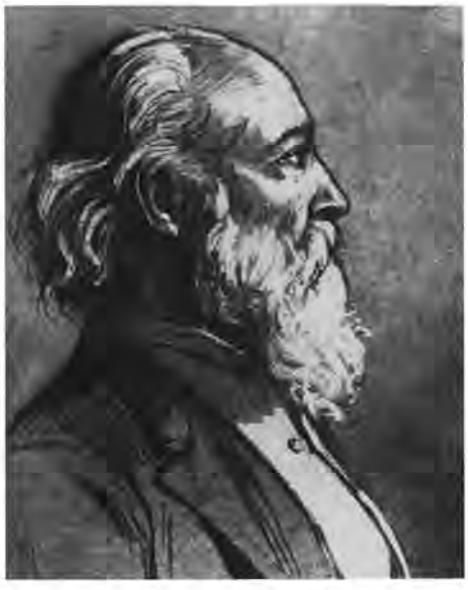
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[65] Swayne to Pope, 20 May 67, S. Ex. Doc. 14, pp. 104,131,133. Wilson, *Federal Aid*, p. 113. Sefton, *Army and Reconstruction*, p. 125.

[66] Stanton to District Commanders, 18 May 1867; Pope to Grant, 22 May, 5 and 17 Jun 67. S. Ex. Doc. 14, pp. 13, 104–06.

[67] GO 25, 3d Mil. Dist. 29 May 67, *SW Rpt*, 1867, pp. 329–31.

[68] See below, Chapter 14.



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and the Army had its hands full combating them.[69] The conclusion may be safely drawn that it was much less successful in coping with these sorts of disorders than with city riots. The point to be made, in any case, is that the military commanders could intervene as they saw fit during the period of military rule.

By mid-1868 the conventions had been held, the constitutions approved, and the Fourteenth Amendment ratified in seven of the ten states placed under military rule in March 1867. Alabama, Arkansas, Florida, Georgia, Louisiana, and North and South Carolina were all readmitted to the Union at that time, although military rule was to be restored for a time in Georgia the following year. Mississippi, Texas, and Virginia did not complete the Reconstruction process until 1870. With its completion in all eleven states of the former Confederacy, Reconstruction entered a new period during which the Army would play a different, but not necessarily a less significant, role.

A Change of Scene—The Fenians

While Congress, the president, and the Army were primarily involved in Reconstruction in the immediate post–Civil War period, there was one case outside the South in which federal military intervention occurred. This was a threatened unsanctioned incursion into Canada by American citizens reminiscent of the Patriot efforts in 1837–1838.[70]

Like the race riots in Norfolk and Memphis, the Fenian invasions of Canada in 1866 also sprang from the availability of large numbers of restless, unemployed Civil War veterans with a lost cause to inspire them, in this case the liberation of Ireland. Led by a former Union general, Thomas Sweeney, and made up of more than 10,000 Irish-American veterans, men from both North and South, the Fenians represented the American branch of the Irish Revolutionary Brotherhood headed by James Stephens in Ireland. In January 1866 the Fenians planned to harass the British Empire by invading Canada and inciting Irish-Canadians into forming a new republic.[71]

Toward this ambitious enterprise the Fenians erroneously assumed the sufferance of the United States. During the late war the British had shown considerable sympathy for the

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[69] See Wilson, *Federal Aid*, p. 127. Sefton, *Army and Reconstruction*, pp. 119, 190–91.

[70] See above, Chapter 6.

[71] Randall and Donald, *The Civil War and Reconstruction*, pp. 649–50. John M. Taylor, "Fenian Raids Against Canada," *American History Illustrated*, vol. 31, no. 5 (August 1978):33–36.

Confederacy. After the war, though fully cognizant of Fenian plans, Secretary Stanton permitted Army arsenals to sell 10,000 rifles to the Irish-American veterans. Despite postwar tension between the United States and Great Britain, the federal government was too preoccupied with Reconstruction and economic expansion to risk military or commercial confrontation with that country. Johnson was faced with a situation similar to that Van Buren had confronted in 1837, and he adopted in the end a policy similar to that of Van Buren, benefiting from the law passed at the latter's request permitting the use of armed forces to prevent filibustering expeditions. But Johnson's administration moved toward enforcement slowly and reluctantly under constant prodding from the British government.[72]

The first enforcement actions were taken under the instructions of subordinate cabinet officials, evidently with presidential sanction but without the issuance of a presidential proclamation. On 14 April 1866 the secretary of the Navy ordered the steamer *Winooski* to Eastport, Maine, to exercise surveillance over violations of the Neutrality Act, and its commander soon reported that a vessel carrying over 500 stand of arms for the Fenians had arrived in the port. After some procrastination, the collector of the customs at Eastport seized the cargo. Meanwhile, Secretary of War Stanton had notified General Grant that Fenians were concentrating at Eastport and had raided Campebelle Island, New Brunswick. Grant ordered the commander of the Military Division of the Atlantic,[73] Maj. Gen. George G. Meade, to go to Eastport with enough men to block further raids. To reinforce the company of artillery already at Eastport, General Meade brought with him two more artillery companies from Boston and enough men from rural Massachusetts and Maine to form a fourth company. Upon arrival at Eastport Meade approved the seizure of the Fenian ammunition ship and placed his troops along the St. Croix River between Maine and New Brunswick. He proclaimed locally that the United States would tolerate no further violation of American neutrality laws. In the face of Meade's opposition, the Fenian raiders at Eastport disbanded to join their brethren a few miles to the west.[74]

During May the Fenians transported weapons and ammunition to cache sites along the borders of upstate New York and northern Vermont. Under orders from Meade, the commander of the Department of the East (New England, New Jersey, and New York), Maj. Gen. Joseph Hooker, had his men intercept as many shipments of arms and ammunition as they could. Despite Hooker's efforts, the Fenians concentrated at Buffalo, New York, and Saint Albans, Vermont. On 1 June a former Union officer, Col. John O'Neill, led a column of 1,200 Fenians from the vicinity of Buffalo into Canada. At Ridgeway, Ontario, O'Neill's men repulsed a smaller force of Canadian militia before withdrawing. The next day the U.S. steamer *Michigan* apprehended O'Neill and 700 of his men as they tried to make boat crossings back to the American shore.[75]

In anticipation of further Fenian incursions, General Grant commanded Meade to have regulars, later to be joined by state militia, patrol the border from Buffalo to Saint Albans.

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[72] See above, Chapter 6. Brian Jenkins, *Fenians and Anglo-American Relations During Reconstruction* (Ithaca and London: Cornell University Press, 1969) emphasizes the delays on the part of the American government in taking action.

[73] The division included the Departments of the East, the Middle Department, North Carolina, and South Carolina.

[74] Except where otherwise noted this account is based on Rpt, Maj Gen George G. Meade, Cmdr Div of the Atlantic, 12 Oct 66, in *SW Rpt*, 1866, pp. 42–44. See also Jenkins, *Fenians*, pp. 137–49, and Freeman Cleaves, *Meade of Gettysburg* (Norman: University of Oklahoma Press, 1960), pp. 341–42.

[75] Taylor, "Fenian Raids," p. 37.

On 2 June General Meade directed Hooker to send all troops within the Department of the East, less than 7,500 men, northward to the frontier. After arriving at Buffalo on the third, Meade decided that O'Neill's raid at Ridgeway had been a feint to divert attention from the main Fenian thrust about to commence near Ogdensburg. Figuratively riding to the sound of the cannon, the indefatigable Meade traveled to Ogdensburg on the fourth.

Again Meade arrived too late to witness an action against the Fenians, for they had already fled Ogdensburg, but other groups were assembling further east at Malone, New York, and Saint Albans, Vermont. The enormity of trying to guard so extensive a border with so few men compelled Meade to alter his tactics. Instead of extending the men all along the Saint Lawrence, Meade had Hooker station them to the rear along the junctions of major roads and waterways that the Fenians would be most likely to use for the transport of men and equipment. The tactic worked and federal troops disarmed and turned back many of their former comrades in arms. During every confrontation between troops and Fenians, except for one minor fire fight at Cape Vincent, New York, where a band of Fenians recaptured weapons confiscated from them earlier, the Fenians peacefully surrendered their arms.

Only one important band of Fenians eluded Meade's net. On 7 June a former Union officer, Brig. Gen. Samuel Spear, led 1,000 poorly armed men from Franklin, Vermont, to Pigeon Hill, a point six miles inside Canada, where a combined imperial force of British regulars and Canadian militia soundly trounced the Fenians. In panic, on the eighth the routed Fenians fled back across the border and meekly surrendered to a single company of federal troops.[76] To prevent sudden flare-ups of Fenian activity Hooker temporarily maintained a token federal force along the border under the command of a brevet major general stationed at Buffalo.

Though troops had been intercepting, disarming, and turning back Fenians since 1 June, President Johnson waited until the sixth to issue a proclamation under the 1838 law, forbidding filibustering expeditions and authorizing General Meade to employ all land and naval forces and members of the militia to arrest violators of the ban.[77] Publicly empowered to do so, General Meade ordered the arrest of the principal Fenian leaders both at Malone and Saint Albans, including General Sweeney; but he generously released the rank and file offering them transportation, at government expense, to their homes. The desire to prevent further mischief along the border by large groups of idle veterans motivated Meade's offer of transportation. In any case, following this action the large number of Fenians who had congregated along the northern borders gradually dispersed.

One other thing was notable about this incident. It was the last time a president was to authorize a call of state militia into the federal service to deal with a domestic disorder until President Eisenhower called up the Arkansas National Guard in connection with the school crisis in Little Rock in 1957, almost a century later. And even in the Fenian case, Meade "for reasons of economy" never exercised his authority to call the militia, and no militiamen participated in the actions against the Fenians.[78]

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[76] Ibid., pp. 37–38.
[77] Richardson, *Messages and Papers*, 8:3631
[78] See *SW Rpt*, 1866, p. 44.

CHAPTER 14

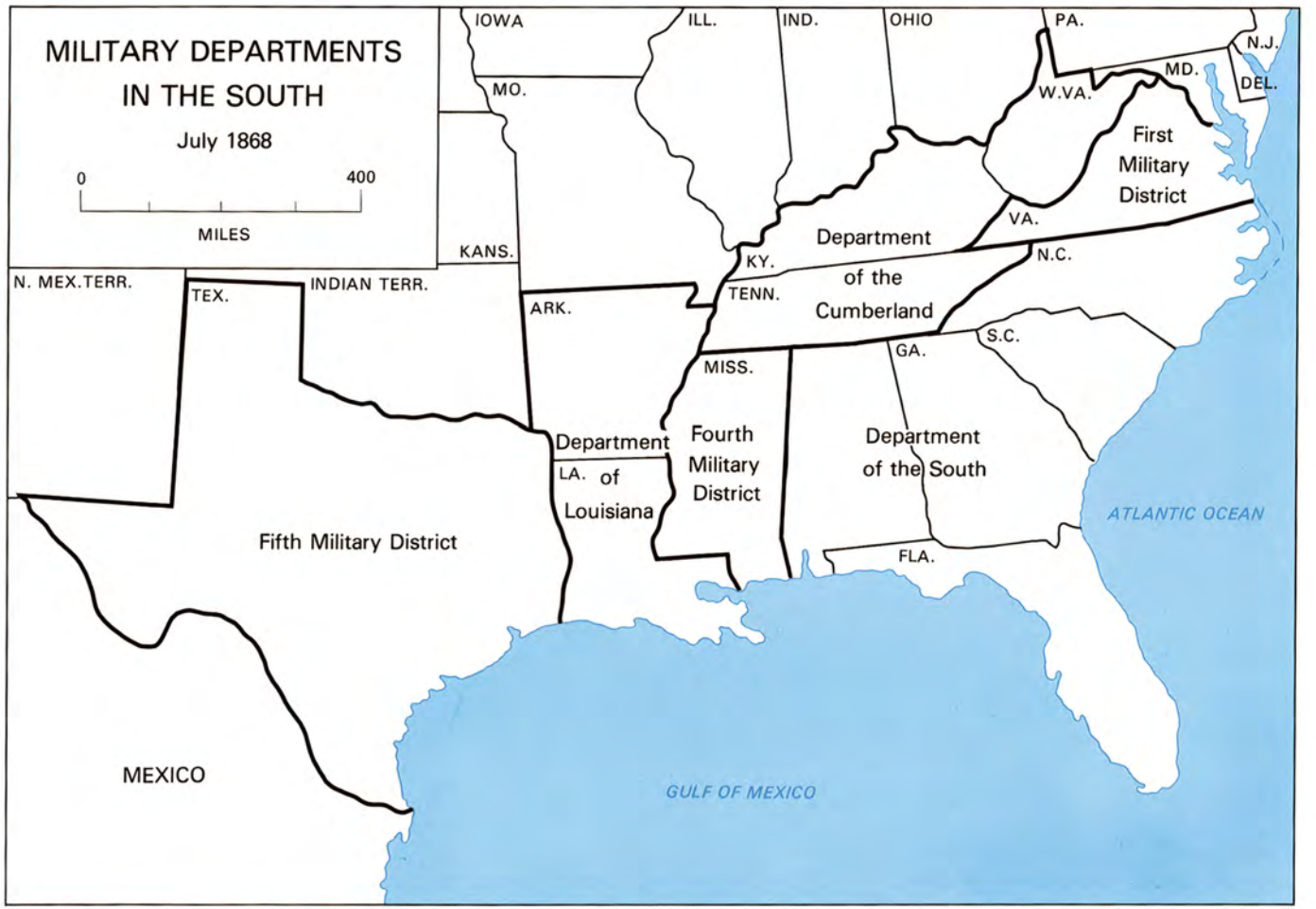
Keeping Order in the Readmitted States: 1867–1872

The relation of the army to the civil authorities in the States recently restored to civil government has been a subject of no little complexity.

——Report of Secretary of War John M. Schofield, 1868.

As each of the ex-Confederate states was readmitted to the Union, the military commanders turned over authority to the state and local civil officials chosen under their auspices. No longer could these commanders make military arrests, conduct trials by military commission, or remove officials from office at will. In maintaining order and protecting the freedmen, Army commanders, at least theoretically, now had to wait for the civil authorities to request aid, as Johnson had wanted them to do during the period of the provisional governments. There was this difference from the earlier period: the new state and local officials were mainly Republicans in sympathy with the Radicals in Congress. Radical Republican policy required that the Army support these new regimes and give some measure of protection to both white Union men and black freedmen against a mounting tide of guerrilla activities carried on by such secret organizations as the Ku Klux Klan. The national government then was almost compelled to devise some means to enable the Army to fulfill this role in the face of legal restrictions on the use of military force in the execution of civil law that now once again applied. The problem was particularly acute as long as Johnson was president, for he was loath to take steps to protect the new governments in the South that had been imposed against his will. When Grant, allied with the Radicals, became president the problem was largely resolved, for he secured legislation enabling him to use troops quite freely to suppress the secret organizations.

Within one month of the readmission of seven more states in 1868, the War Department reorganized the five districts into three departments and three military districts. Still "unreconstructed," Virginia, Mississippi, and Texas became respectively the 1st, 4th, and 5th Military Districts, their commanders retaining their broad powers under the Reconstruction Acts. The War Department combined Georgia, Alabama, Florida, and the two Carolinas into the Department of the South under Maj. Gen. George G. Meade; Arkansas and Louisiana into the Department of Louisiana under Bvt. Maj. Gen. Robert C. Buchanan. Tennessee, the first state readmitted in 1866, retained its status in the Department of the Cumberland under Maj. Gen. George H. Thomas. This was but one of a series of reorganizations that eventually restored the traditional geographic divisional organization, with the departments functioning under the divisions once the remaining states had been readmitted. Thus by 1 November 1871 all the Southern states were included in three divisions: the Division


MILITARY DEPARTMENTS
IN THE SOUTH
July 1868
0
400
MILES
IOWA
ILL.
IND.
OHIO
PA.
N.J.
MD.
DEL.
W.VA.
MO.
First
Military
District
VA.
KANS.
Department
of the
Cumberland
KY.
TENN.
N.C.
N. MEX.TERR.
TEX.
INDIAN TERR.
ARK.
S.C.
GA.
MISS.
Department
LA. of
Louisiana
Fourth
Military
District
Department
of the South
ATLANTIC OCEAN
Fifth Military District
FLA.
MEXICO
GULF OF MEXICO

MAP 4

of the Atlantic under General Meade, which included Virginia in its Department of the East; the Division of the South under General Halleck, which included Arkansas, Louisiana, and Mississippi in its Department of the Gulf; the Department of the South, which included Alabama, Florida, Georgia, Tennessee, and North and South Carolina; and the Division of the Missouri under General Sheridan, which included Texas as a separate department.[1]

The various reorganizations were accompanied by a reduction in the number of troops in the South as Congress continued its parsimony. By October 1869, there were only about 11,000 troops left to police the South, and by October 1872 this number had decreased to slightly over 7,000. The reduction in the number of troops was naturally accompanied by a similar contraction in the number of posts occupied.[2]

The potential for outbreaks of violence was inherent in the situation in the readmitted states. Two centuries of slavery had done little to prepare blacks for the responsibilities of self-government that became theirs after readmission. Lacking education, experience, and initiative, many blacks turned toward scalawags and carpetbaggers for leadership. Except in Mississippi, Louisiana, and South Carolina, the blacks and their allies never came close to dominating the state legislatures of which they were members. Although many unscrupulous carpetbaggers and scalawags exploited the more gullible black legislators, some whites conscientiously joined with hard-working and capable blacks to enact admirable legislation establishing universal suffrage, free public education, and charitable programs. In conjunction with the immense expenditures required to rehabilitate a war-ravaged South, these programs weighed heavily on all classes of Southern whites. As property taxes rose to what many considered confiscatory heights and state budgets doubled, tripled, or even quadrupled, Southern whites denounced the new governments as extravagant and predatory.[3]

For the majority of whites, "Black Reconstruction" became the byword for black arrogance and the exploitation of a debilitated South whose traditional leadership had lost its political rights. To regain political control the old aristocracy joined hands with the white middle class—small farmers, small businessmen, and middle-class professionals. And all rallied around the banners of the Democratic Party and white supremacy. Meanwhile Republican officials turned almost exclusively to black voters for a power base and expanded the size and role of the Negro militia. The growth of black political power and the sight of armed blacks marching down streets, sometimes to the inconvenience of white passersby, created an atmosphere of white resentment and fear—fertile ground for the rise of white vigilante organizations.[4]

Early Troubles in Tennessee and Georgia

Troubles in Tennessee in 1867, not long after its readmission, served as a harbinger of things to come. On 6 July a riot occurred in Franklin, when black Union veterans and ex-Confederates held rallies on the same day. The blacks, who had formed a Loyal League,

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[1] See Sefton, *Army and Reconstruction*, app. A, pp. 256–58.

[2] Ibid., app. B, p. 262.

[3] Stampp, *Era of Reconstruction*, pp. 121–22, 158–68, 183–85. Randall and Donald, *The Civil War and Reconstruction*, pp. 622–26. Franklin, *Reconstruction*, pp. 102–03, 117–18, 151.

[4] Randall and Donald, *The Civil War and Reconstruction*, pp. 626–29. Stampp, *Era of Reconstruction*, pp. 157–58. Singletary, *Negro Militia*, pp. 33 and 49. Allen W. Trelease, *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* (New York: Harper & Row, 1971), pp. xi–xii, and xivi–xivii.



WILLIAM G. BROWNLOW

attended a Radical rally in a grove outside town, while ex-Confederates, meeting in the town, prepared to give them a warm greeting when they returned. As the blacks marched into the town square they were greeted by a fusillade from behind a barricade. The Leaguers returned the fire. The men on the barricade lost one killed and several wounded; the Leaguers had twenth-seven to thirty men wounded. Neither the mayor nor the police attempted to stop the riot, nor did they call for federal troops. Nonetheless, the military command in Nashville did dispatch troops to Franklin the next day, only to find peace had already returned. Had Tennessee been under military rule, the city authorities probably would have been removed, but in its absence the troop commander simply left the civil authorities in control.[5]

In September a feud between the Radical governor, William G. ("Parson") Brownlow, and the Conservative mayor of Nashville threatened new fighting when both tried to determine who should vote in the Nashville municipal elections. Brownlow's choices for election judges would have permitted Negroes to vote; the mayor's would not. When Brownlow threatened to call in the militia to sustain his choices, the mayor promised to use city police to protect his appointees. Fearing a clash on election day, 28 September, General Thomas pre-positioned troops near Nashville, instructing their commander to aid Governor Brownlow "in enforcing the laws and preserving the peace." Meanwhile, he queried General Grant as to his proper course, stating his opinion that he must support the governor if requested to do so. Grant then instructed Thomas to go to Nashville and keep the peace, but really would not commit himself as to whom Thomas should support. "The military cannot set up to be the judge as to what set of election judges have the right to control, but must confine their action to putting down hostile mobs."[6] A further exchange of telegrams still brought Thomas no positive instructions to support the governor rather than the mayor, as he had proposed to do. On 26 September, however, Grant did declare that the "governor is the only authority that can legally demand the aid of United States troops, and that must be by proclamation declaring invasion or insurrection exists beyond the control of other means at his hands." In another telegram later in the day Grant conceded that "the military cannot be made use of to defeat the executive of the state," that Thomas was "not to prevent the

[5] Information based upon testimony of Bvt Maj Gen William P. Carlin, Asst Commissioner of the Freedmen's Bureau, Tennessee, 15 Jul 67. See report of E. S. Townsend, AG, USA, to Secy War, 26 July 67, Ltrs Recd, AGO, 1867, RG 94.

[6] Grant to Thomas, 24 Sep 67, *SW Rpt*, 1867, p. 188. Related papers on which this account is based are also in the report, pp. 184–97.

legal state force from the execution of its orders.''[7] Thomas was at least able to use this rather negative instruction to persuade the mayor not to try to hold his own election, and he posted troops near all the precincts to assure that no trouble arose when the election was held on 28 September under the governor's rules.

The whole episode illustrated the uncertainty both in Washington and in the Southern commands about what the proper role of the military was once civil rule was restored in a Southern state. General John M. Schofield, who became secretary of war in June 1868, stated the problem quite succinctly:

> The relation of the army to the civil authorities in the States recently restored to civil government has been the subject of no little perplexity.
>
> While those governments were yet imperfectly organized, lacking to a great extent the sympathy and support of the most influential citizens, without organized police or militia forces, without arms and without money, and without even authority of law to organize and arm a militia, the military government, which the people had learned by more than three years experience to rely upon for protection of life and property was suddenly withdrawn. . . . The result has been unusual disposition to lawlessness and crime, and comparative inefficiency of civil government in those states.
>
> The only laws of Congress providing for the employment of military force of the United States in the support of the government of any State were passed in the infancy of the republic, with a jealous care to avoid undue interference by the national government in state affairs, and not designed for such a condition of society as now exists in the southern States.[8]

General Thomas, following his own instincts as much as any instructions from Washington, had found a way to support the Radical Republican regime in Tennessee against the incipient revolt of municipal officials of different political persuasion. By mid-1868 General Meade found himself facing the same sort of problem in his five-state Department of the South, as civil authority was restored. The first case arose in Augusta, Georgia, in July 1868 when the townspeople with Southern sympathies demanded immediate ouster of the municipal officials appointed during the period of military rule. The mayor and his associates appealed to the governor, a Radical, and the governor called on General Meade for military support. Meade explained that he had no power to intervene except when called upon by the president under the Constitution and the law of 1807, and refused to commit his troops to the essentially police-type function of preserving public order in the cities. Uncertain of his position, he called on General Grant for clarification and received instructions that only after the state and municipal governments had exhausted all their resources should the general government intervene. But Grant's instructions did not make clear altogether whether commanders of the War Department might themselves decide when such a juncture had been reached without recourse to the presidential authority.[9]

It was while General Meade was operating under this general philosophy of nonintervention that a riot occurred in Camilla, Georgia, that once again dramatized the dilemma of the military commanders in the South. Essentially the disturbance at Camilla arose out of the fear and loathing of white Southerners for the black militia that Radical governors sought to create in the Reconstructed states. Conservative whites looked on the black mili-

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[7] Grant to Thomas, 26 Sep 67, ibid., 190–91.

[8] *SW Rpt,* 1868 (abridged), p. 18. The references that follow to this report are all to the abridged edition.

[9] Wilson, *Federal Aid,* pp. 122–23. Meade to Grant, 30 Jul 68, File 375A 1868: Correspondence Relating to Military Activities in the ''Reconstructed States,'' Jun–Nov 68, RG 94, NARA.



GEORGE G. MEADE

tia along with the Freedmen's Bureau and the Union League as the principal instruments by which Radical governors planned to force upon the South congressional Reconstruction. The negro militias contributed to white paranoia by frequently appearing in the vicinity of white political rallies, ostensibly to prevent disorders, but intended instead to intimidate or harass white ralliers.[10]

Throughout the South in late 1868 Conservative reaction to the Negro militias took the form of armed political clubs—Confederate veterans and others who carried arms drilled periodically and marched through the city streets in a show of power. To avert clashes in Georgia between the Negro militia and the white rifle clubs, on 14 September 1868 the governor of Georgia issued a ban against assemblies under arms by either side. Despite the prohibition, Republican leaders in Mitchell County summoned local blacks to a political rally to be held in the town of Camilla on the nineteenth. That day 300 Negroes, some armed, gathered between Albany in nearby Dougherty County and Camilla.[11]

Several miles outside Camilla, the sheriff and several companions reminded the marchers of the governor's ban and ordered the procession to turn back. Denying that the marchers were an organized, armed group, a spokesman characterized them as a gathering of citizens, some of whom carried side arms for personal protection. The spokesman promised the sheriff that the ralliers would conduct a peaceful meeting. Apparently unconvinced, the sheriff rode back to town and summoned a citizens' *posse* to defend Camilla from an envisioned attack.

When the marchers reached the town limits, James Johns, a local drunk who had earlier vowed to fight any effort by blacks to gather, ordered the Negro band to stop playing. Angry that his words had no effect, Johns shot at the band members. Soon members of the *posse* and ralliers began firing at each other until the latter fled for sanctuary in nearby woods. The *posse* pursued them into the brush, hunting and shooting blacks until sunset. When the gunfire ended, nine blacks lay dead with another thirty-five wounded.

General Meade sent Capt. William Mills to investigate the Camilla affair. Mills reported back on the twenth-third that the sheriff bore much of the responsibility for the embroilment by his failure to keep Johns away from the marchers and by allowing the citizens to believe

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[10] Singletary, *Negro Militia,* Ch. 1, especially pp. 33 and 49.

[11] Except where noted this account is based primarily upon the following: Capt William Mills, 16th Inf, Atlanta, to Bvt Brig Gen R. C. Drum, Asst AG, Dept of the South, Atlanta, 29 Sep 68, File G341–1868: Camilla, Georgia, Riot of 14 Sep 68, RG 105: Records of the Bureau of Refugees, Freedmen, and Abandoned Lands; "The Camilla Riot," *Army and Navy Journal* 6 (17 October 1868):132.

that they were about to be attacked. Mills noted that, after the shooting, the mayor made no effort to investigate the incident or to determine culpability. General Meade, nonetheless, perceiving from the report that the blacks had, by insisting on abstract rights, given the white officers "the opportunity to act as they did" ruled that it was not an occasion for military interference. He turned the report over to the governor for whatever action he deemed necessary. The governor recommended to the legislature that the federal government be asked for troops to be stationed in Mitchell County. A committee of the legislature then visited the area and concurred with General Meade that there was no necessity for the military presence.[12]

Meade continued to receive appeals from all the Reconstructed state governments within his Department of the South—Alabama, Florida, Georgia, and North and South Carolina—for military assistance in enforcing the laws. The commander could find "nothing in the existing laws, or the instructions from superior authority" to justify his answering their calls. However, in view of the approaching presidential election to be held in November of 1868, he decided that he was authorized to employ military forces to preserve the peace on that occasion, and so deployed his troops to various localities in his department. Meade instructed his commanders to act in aid of, and in cooperation with, civil authorities to uphold law and order. But they were authorized also to send detachments to political meetings to "watch the proceedings and see that the peace is preserved."[13] So Meade solved for a time his problem of how to support the Reconstruction governments in the states in his department. But he had continuing uncertainty about his authority and plaintively reported to the War Department "the anomalous condition of affairs existing in this department, and the necessity, if it be deemed proper for the military to interfere in civil affairs, that more power be given to the department commanders than existing laws confer."[14]

The Rise of the Ku Klux Klan

The issue of the right and duty of military commanders to intervene to protect freedmen became a great deal more acute with the rise of secret organizations in the South devoted to the goal of white supremacy. At Pulaski, Tennessee, in early 1866 several young men seeking harmless diversion organized a secret fraternity known as the Ku Klux Klan. When members perceived the frightening effect that their bizarre regalia and nightly jaunts had upon superstitious blacks, they transformed themselves into a latter day version of the antebellum slave patrols. Members of the secret fraternity harassed and then terrorized "independent" blacks, especially those involved in the Union League which Klansmen perceived as an antiwhite secret organization. Passage of the Reconstruction Acts and the imposition of an unwanted Republican governor in Tennessee gave the Klan a political objective—warfare against the local Republican party. In 1867 top officials of the Klan met in Nashville to centralize their organization throughout the state and vest supreme power in the first Grand Wizard, the former Confederate General Nathan Bedford Forrest.

During the spring of 1868 the Klan spread to Alabama and North Carolina. Meanwhile, similarly organized groups with related objectives but with different names, arose elsewhere

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[12] Rpt of Maj Gen G. G. Meade, 31 Oct 68, *SW Rpt*, 1868, p. 92. Wilson, *Federal Aid*, pp. 126–27.
[13] *SW Rpt*, 1868, p. 93. Wilson, *Federal Aid*, pp. 126–27.
[14] *SW Rpt*, 1868, p. 93.

in the South: the Knights of the White Camellia in Louisiana, the Knights of the Rising Sun in Texas, the White Line in Mississippi. Eventually all bore the generic name Ku Klux Klan but resisted any efforts at that time to unify under a single leader. For the next few years night riders of the various organizations robbed, whipped, or murdered blacks or whites who dared to defy them. Prominent members of the new white community in time became restive against the lawlessness of Klansmen, yet feared to criticize or testify against them. Unable to trust local officials and police, whose ranks had been infiltrated by the Klan, the Radical Republican state governors hesitated to employ the Negro militia against the Klan for fear of sparking a race war. From 1868 to 1871 Republican governors in the South found themselves confronted with combinations "too powerful to be suppressed by the ordinary course of judicial proceeding."[15]

Hardly had the new Republican state governments been installed than the legislatures of Alabama, Florida, Louisiana, and Tennessee all passed joint resolutions in keeping with the constitutional formula, asking the president for military aid in subduing the Klan.[16] Johnson did not respond directly to any of these resolutions but referred them to a War Department that was in a considerable state of uncertainty as to what to do about them. He did, through the secretary of war, tell the joint committee of the legislature of his home state, Tennessee, that "the military power of the United States will be employed whenever and for as long as it may be necessary to protect the civil government of Tennessee against lawless violence," but even in that case he issued no proclamation and gave no formal orders to the War Department to act.[17]

Instead, Attorney General William W. Evarts came up with a method for providing troop aid in response to specific requests from federal and state law enforcement officials without any of the formalities attending a request of the president. The U.S. marshal for the Northern District of Florida, in some desperation, wrote Evarts on 12 August 1868 seeking guidance on how to obtain military aid in apprehending lawbreakers and keeping the peace. In response, Evarts cited the Cushing *posse comitatus* doctrine, that had really lain almost dormant since it had been first announced in 1854.[18] This doctrine, it may be recalled, gave U.S. marshals and county sheriffs the right to "command all necessary assistance" within their respective districts, drawing on both military and civilians alike to serve on the *posse comitatus* to execute legal process. Evarts carefully distinguished this power from that of the president to protect the states against domestic violence or to employ military force in subduing combinations in resistance to the laws. And he held that the drafting of federal military personnel into a *posse* should be limited to "rare cases of necessity" where state militia and local civilians proved inadequate or unwilling to form one suitable to help the marshal or sheriff enforce the law. But clearly it would permit at least limited use of troops against the Klan without the invocation of presidential authority. And although Evarts did not realize it at the time, his espousal of the Cushing Doctrine was to open a Pandora's box of innumerable requests by U.S. marshals and county sheriffs, both in the South and the West, for troop assistance in law enforcement. And often they were to equate necessity with

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[15] Trelease, *White Terror*, pp. 18–19, 49–50. Franklin, *Reconstruction*, pp. 160–61, 164.
[16] All with related correspondence in *SW Rpt*, 1868, pp. 20–32.
[17] Schofield to Jt. Select Cmte. of the Legislature of Tenn., 11 Sep 68, ibid., p. 29.
[18] See above, Chapter 7.

convenience—and law and order with the protection of local political, racial, or economic interest.[19]

The War Department dutifully communicated the Evarts opinion to the division and department commanders, adding:

> The obligation of the military individual officers and soldiers in common with all citizens, to obey the summons of a marshal or sheriff must be held subordinate to the paramount duty as members of a permanent military body. Hence the troops can act only in their proper organized capacity, under their own officers, and in obedience to the immediate orders of those officers.

The commanding officer summoned to *posse* duty would have to judge for himself the necessity and legality of the call and limit his action absolutely to "proper aid in the execution of the lawful precept exhibited to him by the marshal or sheriff." If time would permit, indeed, every demand from a civil officer for military aid should be referred to the president and "in all cases the highest commander whose orders can be given in time to meet the emergency will alone assume responsibility for the action." And commanders were admonished to make timely disposition of their forces to anticipate trouble and preserve the peace, instead of relying on commitment under the *posse comitatus* doctrine.[20]

The War Department's instructions to its commanders in the South in mid-1868 seemed to say then: Pre-position troops in incipient trouble spots to the extent possible and use them under the *posse comitatus* doctrine to deal with Klan depredations at your discretion; in the case of large disturbances intervention can only be by order of the president in response to a request from state officials.

Battling the Klan in Tennessee—1868–1869

As noted earlier, President Johnson had authorized the War Department to use troops "to protect the civil government of Tennessee against lawless violence" even though he had not issued the required proclamation. It was in Tennessee then, the very state that had spawned the order, that the Army first attempted to deal with the Klan. The early readmission of that state in July 1866 had carried into power the government of an inveterate Unionist and Radical Republican, "Parson" Brownlow. Unlike the other Southern states that were to be readmitted in 1868 and 1870, Tennessee had a sizable Unionist element, mainly in the eastern part of the state, ready to support a Republican governor. When General Forrest assumed leadership of the Klan's campaign to topple the governor, the Radical Republican Tennessee General Assembly authorized Brownlow to raise a state guard made up primarily of Unionists from the mountainous regions of eastern Tennessee. The assembly soon realized, however, that extensive use of a Unionist militia against the Klan and its sympathizers in the central and western sections of the state might precipitate a miniature civil war.[21]

Under these circumstances, on 1 September 1868 the Tennessee General Assembly had asked President Johnson for federal assistance. The Klan defied civil authorities in much

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[19] Evarts to Alexander Magruder, 20 Aug 68, ibid., pp. 23–24. Evarts' opinion is reprinted in Wilson, *Federal Aid*, pp. 123–24.

[20] Asst AG, War Dept, to Maj Gen George H. Thomas, CO, Dept of the Cumberland, 25 Aug 68, *SW Rpt*, 1868, p. 22. Similar instructions were sent to other department and division commanders, but as the occasion required, not in a general order or circular.

[21] Sefton, *Army and Reconstruction*, pp. 229–30. Trelease, *White Terror*, pp. 32, 43–45.

of the state, the assembly's joint resolution asserted, and attacked at will blacks, white Republicans, and, on occasion, federal soldiers. Moreover, it appeared that in the next general election the Klan planned to turn back Republicans from the polls by intimidation and to overthrow the Brownlow regime. Because many county sheriffs and urban police chiefs feared or collaborated with the Klan, the state could only turn to the militia or to federal troops for aid. The General Assembly preferred federal troops, because they "have no local personal dislikes to influence them to commit wrongs against peaceable citizens, nor be subject themselves, after discharge from the service, to wrongs and outrages from having been in the state service."[22]

On 11 September Secretary of War Schofield asked Thomas how many troops would be needed, and Thomas, on the basis of consultation with Governor Brownlow, said one company in each of twenty troubled counties. To carry out this deployment, Thomas needed additional troops, and seven companies of the 29th Infantry in the Department of Washington were hastily transferred to Tennessee. It still was not enough, and early in 1869 Governor Brownlow called into the field his state guard of 1,600 men. Owing to the combined efforts of state guardsmen and federal troops, the latter normally acting as part of *posses* in given situations, there was an abatement of Klan activities in Tennessee in the spring of 1869. General Forrest as Grand Wizard claimed to have issued an order disbanding the Klan in the state, an evidence that perhaps its decline was as much due to the alarm of even Conservative Southerners at its activities as anything accomplished by the military force.[23]

In other Southern states the effort was less successful, and indeed nowhere outside Tennessee did the president make an unequivocal commitment to support the new state governments. And there were few governors as aggressive as Brownlow. The South Carolina constabulary proved too weak in 1868 to suppress the brotherhood in that state's northwestern counties, and the governor refused to use his predominantly black militia for fear of sacrificing it at the hands of the well-armed, better organized, and more experienced Confederate veterans who made up the Klan. In Alabama and Arkansas there were too few troops, even when parceled out in small units for *posse* duty, to cover each state. In Texas, within the 5th Military District, where troops could operate under the Reconstruction authority, most of the 5,000 troops had to be allocated for defense of the frontier against Indians and bandits. Moreover, most of the troops in Texas and the readmitted states were infantry who found it impossible to pursue mounted Klansmen.[24]

Louisiana—July–November 1868

Federal military force was called on most frequently to deal with violence and disorder fomented by the secret organizations in Louisiana in the summer and fall of 1868. Louisiana had been readmitted in June 1868 with a Radical Republican governor, Henry Clay Warmoth, and a legislature dominated by blacks and their white Radical allies. Almost immediately on Warmoth's ascendancy a rash of violent clashes began between blacks and whites,

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[22] Jt. Resolution of the General Assembly of Tennessee, to President Johnson, 1 Sep 68, *SW Rpt*, 1868, pp. 26–29.

[23] Thomas to Schofield, 23 Sep 68, *SW Rpt*, 1868–69, p. 31. Rpt of Gen Thomas in ibid., pp. 94–103. Wilson, *Federal Aid*, pp. 117–19.

[24] Trelease, *White Terror*, pp. 102, 108, 116–17, and 37, Sefton, *Army and Reconstruction*, pp. 192–93; Wilson, *Federal Aid*, pp. 124–29.

as the former rulers of Louisiana mounted a campaign to restore white supremacy in the state. While the blacks instigated a few of these clashes, it was usually the whites who were the aggressors, and it was nearly always the blacks who suffered most from the violence. Louisiana's version of the Ku Klux Klan, the Knights of the White Camellia, played no small role in these affairs, carrying on the secret organization tactics. While the Knights harassed the governor and legislature in New Orleans during the summer of 1868, night riders killed blacks and white Unionists in the northern parishes. The joint resolution of the Republican Louisiana legislature sent to President Johnson on 1 August 1868 requesting federal military assistance was accompanied by a personal letter from Governor Warmoth. The Republican governor lamented that "no protection exists for citizens in the courts. Men are shot down in the roads, in their homes, and elsewhere. Judges and sheriffs in certain parishes fear to carry out their duties. Desperadoes attack homes of Union men." The Knights of the White Camellia, he charged, planned to assassinate the lieutenant governor and the speaker of the state house of representatives. Warmoth asked the president for a minimal force of two regiments of cavalry, a regiment of infantry, and a battery of artillery to suppress the disorders.[25]

Johnson simply referred the governor's request to the War Department "for consideration and suggestion." The War Department then instructed General Buchanan, now commanding a newly created Department of Louisiana, to keep an eye on the situation and to dispose his troops so that they might be ready to act without delay should the president order him to intervene. He was promptly to telegraph any facts that might make it obligatory for the president to act. Quotations from the Constitution and the laws of 1795 and 1807 followed. As if to remind Johnson forcefully that no action could be taken without his authority, a copy of this letter of instructions to Buchanan was sent to the president before it was sent to the general.[26]

There was no response from Johnson. Meanwhile, Evarts had issued his opinion and the War Department relayed it to Buchanan on 25 August. Buchanan promptly promulgated the doctrine to his post and detachment commanders.

> In such cases the military commander will be required to render the assistance called for; provided that, in the exercise of sound discretion, he is satisfied that the necessity for such service exists. But should he not be thoroughly satisfied of this, he will decline to act until he can make a report to, and receive special instructions from these headquarters, in each case.[27]

Secretary of War Schofield broadened Buchanan's authority somewhat on 14 September. "The peculiar condition of the southern States at this time," he wrote Buchanan, "renders it necessary for the army to do all that the laws allow for the preservation of the peace. . . . It is the wish of the President that you exercise within the limits of your lawful authority full discretion in your action, to the end that in any event peace may be preserved."

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[25] Jt. Resolution of General Assembly of Louisiana, 1 Aug 68. Warmoth to Johnson, 1 Aug 68. Both in *SW Rpt*, 1868, pp. 19–20. On the violence and the motives behind it, see Taylor, *Louisiana Reconstructed*, pp. 161–71.

[26] Asst AG, WD, to Buchanan, 10 Aug 68; Secy War to Johnson, 7 Aug 68, *SW Rpt*, 1868, pp. 20–21. Taylor, *Louisiana Reconstructed*, p. 171, claims that Johnson was sarcastic in refusing the personal appeal of a Warmoth emissary.

[27] *SW Rpt*, 1868, pp. 22–24. Cir No. 2, Hq, Dept of La., 1 Sep 68, File 375A 1868: Correspondence Relating to Military Activities in Reconstructed States, RG 94, NARA. Actually, Buchanan in Louisiana rather than Thomas in Tennessee was the first to receive instructions on the Evarts opinion.

Schofield advised Buchanan that the best way of preserving the peace was to position troops in incipient trouble spots, something the commander had full authority to do. If this instruction gave the departmental commander ample authority to act to preserve the peace, it said nothing about responding to the requests of Governor Warmoth to protect freedmen and white Radicals against the Knights of the White Camellia and other secret organizations.[28]

Meanwhile, the focal point of violence had shifted from the northern parishes to New Orleans and its surrounding territory. Acting on information from the Freedmen's Bureau that there was danger of an attack on a black torchlight procession the following night, on 11 September General Grant himself ordered Buchanan to deploy his troops to prevent it. Buchanan consequently brought all his troops within reach into the city and there was no trouble.[29]

Ten days later, however, after Buchanan had withdrawn his troops from the city, a new wave of violence broke out as Southern whites mounted an intensive campaign to prevent blacks from voting in the November presidential and congressional elections. By this time, Bvt. Maj. Gen. Lovell H. Rousseau had succeeded Buchanan as commanding general of the Department of Louisiana. Rousseau was a Kentucky Unionist and a friend of President Johnson, not unsympathetic to the cause of the Louisiana Democrats. Unsure of his authority and dubious that he had the strength to cope with widespread disorders, Rousseau defined his mission as strictly that of keeping the peace, and he was not above sacrificing Radical Republican interest in this endeavor.[30]

The first major violence in New Orleans occurred on 22 September when two rival processions, white and black, clashed on Canal Street. Three blacks were killed, a number on both sides wounded, and two stores gutted. Rousseau rushed in troops after the event and, in cooperation with the city police, was able to prevent any recurrence. But the peace was short-lived. Only two days later disorders began in distant Saint Landry Parish, and soon after spread to the parishes around New Orleans and to the city itself. Saint Landry was a bastion of the old order where there were few white Radicals, and the Republicans relied heavily on the blacks for support.[31] On 24 September local Democrats beat a Radical newspaper editor. When blacks gathered to demand punishment for the attackers, there was a clash with white groups in which four blacks were killed and three whites wounded. The parish sheriff with a white *posse* arrested some of the blacks for disturbing the peace and lodged them in jail, whence most were removed the next night and murdered by white vigilantes. These events moved Rousseau to dispatch a staff officer to investigate, but he took no military action although the officer did report that it was impossible to prosecute the perpetrators of the lynchings because blacks were too intimidated to testify. Meanwhile, the disorders that had commenced in Saint Landry's spread through the adjacent parishes, as the white clubs and societies carried out their campaign of intimidation against the blacks. Rousseau dispatched

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[28] Schofield to Buchanan, 14 Sep 68, *SW Rpt*, 1868, p. 33.

[29] Ibid., pp. 34–35. Wilson, *Federal Aid*, p. 145.

[30] On Rousseau and his policy see Joseph G. Dawson, *Louisiana, Army Generals and Reconstruction, 1862–1877* (Baton Rouge and London: Louisiana State University Press, 1982), pp. 86–92. Rousseau stated in his report to General Grant on 6 November 1868: "My duty was simply to aid in checking and suppressing violence to the fullest extent of the limited means at my command, and to prevent the public peace being broken." *SW Report*, 1868, p. 120–25.

[31] A good account of the whole Saint Landry incident and its background is Carolyn E. Delatte, "The St. Landry Riot: A Forgotten Incident of Reconstruction Violence," *Louisiana History* 17 (Winter 1976):45–59.



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a military force to Saint Bernard Parish, near New Orleans, in mid-October to deal with disorders there, but in general took no strong action. By this time he was sufficiently alarmed to ask for reinforcements, and the War Department dispatched six infantry companies to his command from Mississippi.[32]

On 26 October 1868, before Rousseau received his reinforcements, Governor Warmoth importuned him "to take charge of the peace" in Orleans, Jefferson, and Saint Bernard parishes, as the situation there had gotten totally out of control. Warmoth promised to put both the police force and the local sheriffs under Rousseau's control. The departmental commander promptly referred the request to Washington for guidance. "You are authorized," Schofield responded, "and expected to take such actions as may be necessary to preserve peace and good order, and to protect the lives and property of citizens." The response hardly told Rousseau whether he could take charge as Warmoth asked, but apparently on the basis of this counsel Rousseau did deploy his troops to the city and keep them there until after the elections on 3 November. And as rioting continued, on 28 October he took firmer control, issuing a proclamation to the citizens enjoining peace and good order and prohibiting political processions and unauthorized parties of armed men.[33]

The proclamation and the arrival of reinforcements from Mississippi to help enforce it were probably not the decisive factors in bringing the disorders to an end. In conferences with Rousseau in the midst of the "excitement," Warmoth agreed to dissuade blacks from voting in the interests of maintaining peace and order. Rousseau maintained later that he did not take the initiative in this matter, but he did defend the action as necessary and showed no concern about the consequent denial of the rights of blacks.[34]

Before the 3 November elections, another crisis arose. The Radical Republican state legislature had recently taken control of the New Orleans police out of the hands of the city's mayor and council and placed it in those of a metropolitan police board composed of three white Radicals and three blacks, responsible to the governor. This board organized a police

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[32] Dawson, *Army Generals*, pp. 86–87. Taylor, *Louisiana Reconstructed*, pp. 167–71. *SW Rpt*, 1868, pp. 34–35, 125–26. Wilson, *Federal Aid*, p. 145.

[33] Warmoth to Rousseau, 26 Oct 68; Rousseau to Schofield, 26 Oct 68; Schofield to Rousseau, 27 Oct 68. *SW Rpt*, 1868, p. 35. Rousseau's Rpt, 6 Nov 68, ibid., p. 121.

[34] Rousseau's Report in *SW Rpt*, 1868, p. 123. Dawson in *Army Generals*, p. 89, states categorically that Rousseau suggested that Warmoth issue a statement requesting blacks not to vote. But his references are to Rousseau's report which does not say so and to Henry Clay Warmoth, *War, Politics, and Reconstruction, Stormy Days in Louisiana* (New York: Macmillan Co., 1930), pp. 76–77. Warmoth does not discuss this matter at all.



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force of 243 blacks and 130 whites, characterized by Rousseau as all men of poor character, that Governor Warmoth sought to use as a substitute for militia. The mayor and council, supported by the bulk of New Orleans whites, refused to accept the board's police force and contended that the law was invalid. A collision between two rival police forces impended. On 29 October Rousseau fired off new queries to the War Department. If the two police forces collided, should he interpose and if so, when? If they did not collide should he meddle to decide which was the legitimate force? Schofield simply put the ball back in Rousseau's court. "It is impossible to give instructions in detail from this distance. . . . You already have ample authority to do what is necessary to preserve the peace, and you must take the responsibility of action."[35] Then after receiving a wire from Warmoth requesting that Rousseau be instructed to support "the legally constituted authorities" against the officials of the mayor, Schofield had second thoughts. He now told Rousseau he could hardly avoid choosing which was the legal police force, for he could not support an "unlawful organization. It looks to me at this distance as if your troops would be a good temporary substitute for both the rival police forces, but of that you must judge."[36]

This would seem to have given Rousseau authority to do what Warmoth had asked, to "take charge" of law enforcement in the area. But Rousseau took a different course. He was able to persuade the metropolitan police board to appoint a former Union general, J. B. Steedman, Collector of Internal Revenue in New Orleans, as a temporary chief of police and Steedman reorganized the force, replacing the mixed group with what Rousseau characterized as "about 500 stout, courageous white men." Meanwhile the whole question of legality was referred to the courts on an application for a writ of injunction against the mayor. While this was transpiring, Rousseau renewed his request for guidance from the War Department. "Please inform me whether I must interfere in case there is no collision and no breach of the peace." This time the answer came from Andrew Johnson himself: "You are expected and authorized to take all legitimate steps . . . to prevent breaches of peace or hostile collison between citizens. Questions relating to the civil polity of the State must be left to the proper civil authorities." The answer to Rousseau's pointed query seems then to have been "No."[37]

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[35] Rousseau to Schofield, 29 Oct 68; Schofield to Rousseau, 29 Oct 68, *SW Rpt*, 1868, p. 36.

[36] Schofield to Rousseau, 29 Oct 68; Warmoth to Schofield, 29 Oct 68, ibid., pp. 39–40.

[37] Rousseau to Schofield, 30 Oct 68; Johnson to Rousseau, 31 Oct 68; Rousseau to Schofield, 31 Oct 68. *SW Rpt*, 1868, pp. 37–38. Sefton, *Army and Reconstruction*, pp. 216–17.

In any case, with the Army and the reconstituted police force guarding the polls in New Orleans, and most of the blacks not voting, the November election passed peacefully in the city and vicinity. And indeed peace was restored for some two years thereafter. But the achievement of peace and order was clearly at the expense of black rights and it reverified for the white clubs and secret societies what the New Orleans riot had first taught—that intimidation of the blacks could work and the Army could not or would not prevent it. The success of the intimidation campaign was evident in the election results. Horatio Seymour, the Democratic candidate, carried Louisiana by more than a two to one majority. Grant, the Republican, received not half the votes that Warmoth had in his campaign for governor only a few months earlier. Democrats were also elected to Congress, but a number were refused their seats on the grounds of intimidation and fraud.[38]

The Enforcement Acts

Ulysses S. Grant, who succeeded Andrew Johnson as president on 4 March 1869, was far more ready than his predecessor to use the Army actively to support the Republican governments in the ex-Confederate states. Yet he too was conscious of the constitutional and legal restraints, and in the end sought legislation to permit him a freer hand in dealing with the principal opposition—the secret organizations such as the Ku Klux Klan. Two months after the general's inauguration, a United States senator from Georgia, Henry Wilson, pleaded with the new president for military intervention to stop further political murders in Georgia, "the worst of all states for the security of friends of the country." New General in Chief William T. Sherman forwarded Wilson's plea to the commander of the Department of the South, Maj. Gen. Alfred H. Terry, who had succeeded General Meade. During the next two months General Terry made a thorough study of Klan activities in Georgia and submitted his report on 14 August to John M. Schofield, who had remained for a time as Secretary of War in the Grant administration. On testimony of numerous eyewitnesses who revealed much in exchange for confidentiality, Terry concluded: "There can be no doubt of the existence of numerous insurrectionary movements known as the 'Ku Klux Klans,' who, shielded by their disguise, by the secrecy of their movements, and by the terror they inspire, perpetrate crime with impunity."[39]

Eager to employ troops against the Klan, General Terry recommended that Congress void its provisional recommendation of June 1868 that Georgia be readmitted to the Union and that the Army resume its former powers of Reconstruction in that state. Terry argued that Georgia had reneged on the condition for readmission by electing ineligible ex-Confederates to the legislature and by excluding newly elected black delegates from the same body. The general justified his request for greater powers of military intervention on the grounds that the Klan's outrages against persons and property ceased simply to be crimes against state law. He considered them violent opposition to the policies of the United States government guaranteeing equal rights to all citizens.[40]

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[38] See Taylor, *Louisiana Reconstructed*, pp. 172–73. A mass of material on the disputed electoral contests is in H. Misc. Doc. 154, 41st Cong., 2d sess., Louisiana Contested Election, ser. 1435.

[39] Terry to AG, 14 Aug 69, *SW Rpt*, 1869, pp. 89–94. Sefton, *Army and Reconstruction*, p. 200.

[40] Ibid.

Without reinstituting full military government in Georgia, Congress, by a law passed on 22 December 1869, enacted strict new guidelines for Georgia's readmission. All members of the state legislature refusing to take the "iron clad oath" that they had not served as leaders in the Confederacy were to be removed from the legislature by a specially appointed military board. Once the newly reconstituted legislature had ratified the Fourteenth Amendment, Georgia could then reapply for admission. Section 7 of the new law provided that the president could, on the application of the governor of the state, "employ such military or naval forces of the United States as may be necessary to enforce and execute the preceding provision of this act."[41]

In January 1870, to assure peace during Georgia's "second Reconstruction," President Grant converted the state into a separate military district and gave Terry the same powers military commanders had exercised under the Reconstruction Acts. In the ensuing months Terry used these broad powers to expedite "reconstruction" of the Georgia legislature and to employ freely his units as occupying forces in the most troubled sectors of the state. Though the Klan continued to operate in Georgia, it did so with more caution, and Georgia at least ceased to be considered by the Radicals to be the "worst of all states for the security of the friends of the country."[42]

In other states in General Terry's Department of the South—Alabama, Florida, and the Carolinas—Grant dared not encroach upon the state's rights until he first established to the satisfaction of Congress that the Klansmen were violating federal laws and that the state and local authorities were unable or unwilling to stop the marauders. As a first step, Grant importuned Congress for legislation extending the number of federal crimes to include offenses against persons and property, matters customarily reserved to the jurisdiction of the states.[43]

On 31 May 1870, as a measure to satisfy Grant and enforce the Fifteenth Amendment permitting blacks to vote, Congress passed the first of the so-called Enforcement Acts. This first act made it a crime for two or more persons "to band together or go in disguise upon the public highway . . ." to coerce or prevent citizens from exercising their franchise under the Fifteenth Amendment. On 28 February 1871, Congress passed a second Enforcement Act authorizing federal courts to appoint supervisors of elections and making interference with their duties a federal offense. In case of violation of those laws, Congress authorized federal marshals and their deputies to summon either bystanders as a *posse comitatus* of the proper county "or such portion of land or naval forces, or militia, as may be necessary to the performance of the duty to which they are charged." If that means failed, the act allowed the president to employ military units under military command. This law then authorized the Army to police elections, and this became a major facet of its role in the South.[44]

Even before passage of the first two Enforcement Acts, Grant realized that the extension of federal law, by itself, would permit the Army merely to harass the Klan. In order to prosecute, the federal courts needed witnesses, but witnesses were most reluctant to come forward while friends of accused Klansmen remained free to retaliate. The Republican governor of North Carolina, William H. Holden, had warned the president as early as October

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[41] 16 *Statutes at Large* 59–60.

[42] Material on the carrying out of this "second Reconstruction" in Georgia is in S. Ex. Doc. 41, 41st Cong., 2d sess., Reconstruction of Georgia, ser. 1406. See also Sefton, *Army and Reconstruction*, pp. 202–06.

[43] Randall and Donald, *The Civil War and Reconstruction*, pp. 683–84.

[44] 15 *Statutes at Large* 140–46; Franklin, *Reconstruction*, p. 166.

1869 that federal troops would be useless in the South unless Congress empowered them to suspend *habeas corpus* and arraign suspected Klansmen before military tribunals.[45]



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On 5 December 1870, President Grant urged Congress to examine the need for reimposing military rule, at least in those sections of the readmitted states where the Klan enjoyed virtual hegemony. The Senate responded by establishing a select committee of five Republicans and two Democrats to investigate conditions in North Carolina, a state at that time particularly distressed by the Klan. From early December until 10 March 1871 numerous reports and scores of witnesses, including captured Klansmen, persuaded the committee that the Ku Klux Klan sought to assure the Democratic Party a monopoly in the South. Toward that political objective the Klan incited its members to commit crimes, including murder, against Republicans and blacks. Although Klansmen had committed hundreds of crimes, by means of disguise, coercion, and perjury, the Klan had kept almost all its members from being prosecuted in North Carolina.[46]

The testimony before the select committee galvanized congressional Republicans into approving, on 20 April 1871, the third and most significant of the Enforcement Acts—"An act to enforce the provisions of the fourteenth amendment . . . and for other purposes." The new law gave the president powers in the South that had not been invoked since the military occupaton in 1865. It imposed strict federal penalties upon anyone who acted under cover of state law to deprive a citizen of his civil rights under the Fourteenth Amendment or conspired to "obstruct the U.S. Government; hinder the execution of its law; intimidate its officers or any people testifying in court; or travel in disguise upon the public highway or upon the premises of any person or class to deprive them of their rights."

Section 3 of the act, which was to become part of the permanent law of the United States governing military intervention to "enforce the laws of the union" read as follows,

> That in all cases where insurrection, domestic violence, unlawful combinations, or conspiracies in any State shall so obstruct or hinder the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such state of any of the rights, privileges, or immunities, or protection, named in the Constitution and secured by this act, and the constituted authorities of such state

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[45] Trelease, *White Terror*, p. 210; Franklin; *Reconstruction*, p. 166.

[46] Following the North Carolina investigations, reported in the Senate on 10 March 1871, members of both houses undertook a more detailed investigation of Klan activities in Alabama, Florida, Georgia, Mississippi, Tennessee, and North and South Carolina. The report and record of hearings, laid on the table 19 February 1872, runs to 13 volumes in both the House and Senate versions. H. Rpt. 22, 42d Cong., 2d sess., Affairs in the Late Insurrectionary States, ser. 1529–; S. Rpt. 41, 42d Cong., 2d sess., The Ku-Klux Conspiracy, ser. 1484–.

shall either be unable to protect, or shall, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such state of the equal protetion of the laws to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy shall oppose or obstruct the laws of the United States, or the due execution thereof, or impede or obstruct the due course of justice under the same, it shall be lawful for the President, and it shall be his duty to take such measures, by the employment of the militia or the land and naval forces of the United States, or either, or by other means, as he may deem necessary for the suppression of such insurrection, domestic violence, or combinations; and any person who shall be arrested under this and the preceding section shall be delivered to the marshal of the proper district, to be dealt with according to the law.

Section 4 of the act granted the president extraordinary powers to declare any state or part thereof, where combinations should be powerful enough to threaten the overthrow of the constituted authorities by violence, in rebellion against the United States. In those areas in rebellion the president could declare martial law and suspend the writ of *habeas corpus*, with certain conditions. Any exercise of this extraordinary power, however, had to be preceded by a proclamation, "as now provided by law," commanding the insurgents to disperse. And this fourth section was to be in force only until the end of the next regular session of Congress.[47]

Enforcing the Ku Klux Act

Grant was now free to use military force in the South to suppress the Klan through direct federal action. But to use the srongest portion of the act, he had to move quickly before the provision permitting martial law expired. The ink was hardly dry on the act when, on 3 May 1871, he issued the preliminary proclamation required by the law ordering "combinations of lawless and disaffected persons in the late theater of insurrection and military conflict" to cease violating the civil rights of individuals under the Fourteenth Amendment.[48]

Grant accompanied his proclamation with instructions, relayed to commanders in the South by War Department General Orders, that

the regular forces of the United States stationed in the vicinity of any locality where offenses described by the . . . act may be committed, shall . . . be employed by their commanding officers in assisting the authorized civil authorities of the United States in making arrests of persons accused under the said act; in preventing the rescue of persons arrested for such cause; in breaking up and dispersing bands of disguised marauders, and of armed organizations, against the peace and quiet or the lawful pursuits of the citizens in any state.[49]

Under these instructions, commanders could rely on some authority other than the *posse comitatus* doctrine in fighting the Klan.

But Grant simply did not have the regular force available to blanket the South and there was no reliable miltia in the region that could be brought into federal service to fulfill the role. The president decided therefore to make an example of the Klan in one of its strongholds. By concentrating in one area a large number of troops with full authority under the Ku Klux Act, Grant hoped to expedite throughout the South the demise of the order. General Terry, commanding the Department of the South, had suggested that strategy to Grant and

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[47] 17 *Statutes at Large* 13–15.
[48] Richardson, *Messages and Papers*, 9:4088–89.
[49] WD GO 48, 15 May 71.

recommended the northern counties of South Carolina as the proper place for carrying it out. This area had been the scene of a major riot in Laurens and its vicinity in October 1870, in which thirteen men were killed and several hundred wounded, and another at Unionville in January 1871 when eight black militiamen were lynched.[50] Major Lewis Merrill, commander of the post at Yorkville, South Carolina, presented a report to Terry in June 1871 that painted a grim picture of Klan domination in the area.[51]

Merrill's reports provided Terry with a detailed inside view of the organization, objectives, and power of the Klan. From reliable Klan informants Merrill learned that Klansmen in South Carolina referred to their own and similar organizations throughout the South collectively as the "Invisible Circle." Within each state, the Klan, White Camellia, White Line, Rising Sun, or whatever, was organized pyramid-fashion with strictest compartmentalization between echelons and units of the same echelon. At the lowest echelon, that of the dens, each of ten or more members, the men rarely knew the size or identities of the other dens or of the higher echelons. Dens frequently required new members to prove themselves by committing minor "crimes." Later den leaders required the newcomers to perform arson and murder—all in the name of white supremacy and the Democratic Party. In order to compel Negroes to vote Democratic or to drive them altogether from the polls, the Klan regularly beat or killed them and any whites sympathetic to the cause of Negro civil rights.

Major Merrill reported that in the northwestern counties of South Carolina up to three-fourths of the white men in that region belonged to the Klan. Yorkville alone had about 120 Klansmen organized into twelve dens whose combined leadership included several prominent businessmen, some state law enforcement officers, and a trial justice. Informants in the telegraph and railroad stations kept the Klan leaders posted on the plans and movements of federal troops. Despite the plainest evidence, local civil authorities would not convict accused members of the Klan.[52]

Swayed by Merrill's report and General Terry's recommendation to test the Ku Klux Klan in South Carolina, President Grant sent his attorney general, Amos T. Akerman, to interview Major Merrill and to examine conditions firsthand. In mid-September Akerman met with Merrill, agreed with the young officer's assessment, and recommended that the president make an example of Spartanburg, York, Chester, Union, Laurens, Newberry, Fairfield, Lancaster, and Chesterfield counties where "the instances of criminal violence perpetrated by these combinations [the Klan] within the last twelve months . . . could be reckoned in the thousands."[53]

Akerman's report convinced Grant that the condition required for intervention under Section 4 of the Ku Klux Act had been met—namely existence of an organized and armed combination in rebellion against the government of the United States. In October Grant issued two proclamations preliminary to armed federal intervention. Noting that authorities in South Carolina had ignored his May warning Grant, in a proclamation on 12 October 1871, commanded members of the Klan in the designated area "to disperse and retire within five days

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[50] On these riots see Wilson, *Federal Aid*, pp. 119–20.

[51] Merrill, 7th Cav, to AG, Dept of the South, 9–11 Jun 71, Incls 1–4, File 258AGO 1871: Reports of Major Lewis Merrill . . . Concerning Ku Klux Klan, RG 94, NARA.

[52] Ibid.

[53] Trelease, *White Terror*, pp. 402–03.

and deliver to the United States marshal, his deputies, or any military officer all arms, ammunition, uniforms, disguises and other means and implements used."[54] When that proclamation too went unheeded, the president suspended the writ of *habeas corpus* by proclamation in the affected counties on 17 October and ordered the post commanders to conduct massive arrests and trial for violations of the Fourteenth and Fifteenth Amendments.[55]

From the seventeenth through the nineteenth of October General Terry assembled more than three companies from Kentucky, Tennessee, and Georgia to reinforce the 7th Cavalry and units of the 18th Infantry already in South Carolina. The reinforcements, nearly 600 new men, raised the total federal forces in the states to over 1,000 men. Terry divided them into detachments of one or two companies and assigned them to posts at Chester, Yorkville, Spartanburg, Newberry, and Unionville. Attorney General Akerman placed the U.S. marshal in South Carolina, Louis E. Johnson, in charge of the campaign against the Klan, and persuaded General Terry to let Major Merrill act as Johnson's field commander. The designation of the marshal seemed to fulfill the requirement of Secton 3 of the Ku Klux Act, that any person arrested was to be delivered to the marshal of the district. In a sense this made the Army appear to serve as a *posse comitatus*; in fact the Army was acting under orders of General Terry and ultimately the president.

Based upon evidence accumulated in advance of the president's proclamation of 12 October, Merrill drew up a list of several hundred suspected Klansmen and then assigned military detachments to accompany Marshal Johnson and his deputies in making arrests. Merrill and the marshal then posted in advance the federal detachments at numerous points throughout the northern counties. On signal, troops and deputies coordinated a massive dragnet, simultaneously hauling in scores of suspects. By permitting Merrill's troops to detain the suspects for several weeks without an indictment, the Ku Klux Act made it possible for Merrill to obtain numerous confessions in exchange for promises of immunity and light treatment. The confessions led to the arrest of Klan leaders and other members guilty of capital crimes. By 1 January 1872, the Army in South Carolina had arrested more than six hundred men, most of whom were tried and convicted in the U.S. court at Columbia.[56]

The Army was successful in breaking the back of the Klan in northern South Carolina. It might have continued the South Carolina tactics, eliminating the Klan infrastructure, area by area, but the resources and the will were simply not there. The battle against the Klan continued in the old way, with the military furnishing *posses* to federal and state civil authorities to assist in arrests, either under the *posse comitatus* doctrine or the Enforcement Acts. In fall 1871, General Terry reported that he had furnished more than 200 such *posses* in the previous year, and the following year he reported the dispatch of 160. The use of the Army in law enforcement in other departments in the South was proportionate.[57]

In the end then the legal dilemma involved in using the Army to suppress the Klan and support Republican governments in the South was solved by the invocation of the Cushing Doctrine and the passage of the Enforcement Acts. One of these acts provided future presidents with another legislative authority for use of troops to "enforce the laws of the Union."[58]

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[54] Richardson, *Messages and Papers*, 9:4089-90.

[55] Ibid., pp. 4091-93.

[56] Sefton, *Army and Reconstruction*, pp. 224–25. Wilson, *Federal Aid*, p. 122. Trelease, *White Terror*, pp. 403–04.

[57] *SW Rpt*, 1870–71, p. 63; 1871–72, p. 84. Sefton, *Army and Reconstruction*, pp. 222–28.

[58] Section 3 of the Ku Klux Act, in simpler language, survives as Section 333 of Title 10 of the U.S. Code. It was cited by Eisenhower as one of the authorities for his use of troops at Little Rock, Arkansas, in 1957.

In the war on the Klan, pursued with some vigor in the early 1870s, the Justice Department rather than the Army had to take the lead, and the Army role was largely that of furnishing *posses* to accompany marshals and to overcome any violent resistance to their serving warrants. It was a mission not unlike that which the Army had had in Kansas in the 1850s, but now covering a much wider territory. The whole effort could hardly be called an unqualified success. A few thousand troops in blue uniforms could not police eleven predominately rural states. Marshals, too, were limited in number and not always enthusiastic about enforcement against overwhelming opposition of Southern whites. And troops could not be furnished every time a marshal called. The federal courts in the South were also limited in number and usually clogged with Enforcement Act cases.[59]

After 1871, the Klan did disappear from the scene gradually, but the military offensive was only partially responsible for its decline. Political and economic factors intruded to do the job less dramatically. Even before Major Merrill subdued the Klan in the northern counties of South Carolina, the growing criminality of lower-class members of the secret societies had begun to alienate the normally law-abiding middle- and upper-class whites. Respectable Southerners also perceived that Northern anger over Klan excesses had helped to prolong Northern suport for military Reconstruction. To hasten withdrawal of federal troops, Southerners progressively abandoned the clandestine tactics of the Klan for overt political action on behalf of the Democratic Party.[60]

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[59] For a general picture of the federal effort under the Enforcement Acts, see Everette Swinney, "Enforcing the Fifteenth Amendment, 1870–77," *Journal of Southern History*, vol. 28, no. 2 (May 1962): 202–18. Swinney tells of the complaint of a U.S. marshal in Kentucky who was refused a troop escort: "The Ku Klux never fire on United States soldiers, but they do not hesitate to shoot marshals whenever an opportunity is presented," p. 216.

[60] Franklin, *Reconstruction*, pp. 172–73; Randall and Donald, *Civil War and Reconstruction*, pp. 680–82; Trelease, *White Terror*, pp. 415–18.

CHAPTER 15

To the End of Reconstruction: 1872–1877

I repeat that the task assumed by the troops is not a pleasant one to them; that the Army is not composed of lawyers capable of judging at a moment's notice just how far they can go in the maintenance of law and order, and that it is impossible to give specific instructions providing for all possible contingencies that might arise.

——Ulysses S. Grant, Message to Congress, 13 January 1875.

In the 1870s the political scene, both in the South and in the nation at large, changed rapidly. By 1872 the leading Radicals in the national government, men like Thaddeus Stevens and Edwin M. Stanton, had been removed by death, retirement, or political defeat. A group of reform-minded Liberal Republicans, most of whom had originally been of Radical persuasion, broke with the Grant administration, repelled by its corruption and disillusioned by the party's program in the South, and in 1872 nominated their own candidate for president, Horace Greeley. The Democrats endorsed Greeley, forming a coalition of extremely diverse elements in the election of that year. Meanwhile, the majority wing of the Republican party, known as the Stalwarts, staunchly supported Grant and secured his election to a second term in 1872 by a considerably larger majority than he had achieved in 1868. The Stalwarts generally represented the North's urban political machines and the vested interests of oil, railroads, steel, and textiles. Led by men like Roscoe Conkling and Benjamin Butler, this group vigorously supported Grant's policy of continuing to use the troops in the South to maintain Republican rule.

The same factionalism that afflicted the national Republican party also afflicted its branches in several Southern states, notably Arkansas, Louisiana, and South Carolina, producing in the troubled region innumerable disputed elections and rival governments. And while Republicans engaged in this internecine warfare, the Democratic party, which had come to represent the vast majority of Southern whites, inexorably moved toward wresting control over the state governments from the Republican party entirely. By 1876 the Democrats had taken over all the ex-Confederate states save Florida, Louisiana, and South Carolina. By the compromise that grew out of the disputed presidential election of 1876, they also were to regain control of these states and establish a solidly Democratic South for years to come.

The years 1872–1877 were years of a continuing struggle for control in the South that produced a large number of civil disorders. The old Southern white ruling class abandoned the clandestine methods of the secret organizations for the more overt method of rifle clubs that were, in fact, a sort of unofficial white militia. As Union Leaguers sought to keep the blacks voting and voting for Republicans, the rifle clubs squared off against the black mili-

tia and set out to intimidate blacks into voting Democratic or staying away from the polls entirely. The idea of the rifle clubs seems to have originated in Mississippi where the campaign manager of the Democratic party, J. Z. George, a former Confederate general, organized veterans into rifle companies called "Red Shirts." Perhaps out of a growing conviction that the Northern public had grown tired of military intervention in Southern affairs, the Red Shirts disdained secretive methods and marched periodically in broad daylight in the streets of towns and cities. The Red Shirts dispersed Republican rallies, intimidated blacks, and sometimes provoked one-sided battles with the black militia. Former Confederate officers in other states soon emulated George's Mississippi Plan, but selected misleadingly innocuous names for their local organizations such as the Peoples' Club, the White Man's Party, the White Line, and, in Louisiana, the White League.[1]

Army forces, in ever smaller numbers, continued to play an active role in controlling resultant disorders under policies established earlier by Grant and a Radical Congress. Critics would charge that their actual role was to maintain Republican regimes (and the Radical faction of the Republican party) in power and to thwart the majority of the Southern whites in their political aspirations. Whether this was true or not, the pattern of Army activities in the South in the period after 1872 continued to be what it had been during that of Radical ascendancy. Troops were routinely assigned to accompany marshals and sheriffs as *posses*, although in most states the number of such missions declined considerably from what it had been in the heyday of the Klan. They also continued to guard the polls at elections in troubled areas, ostensibly to keep the peace and to see that no qualified voters failed to exercise their franchise because of violence or intimidation. Again the critics charged that the real role was to guarantee Republican victory at the polls. A third type of mission involved intervention in local clashes, usually between blacks and whites, normally at the request of local, state or federal officials. The legal justification for these interventions was more dubious, and Army officers sought to avoid them whenever possible. Nevertheless, there were frequent interventions of this sort, which commanders sometimes undertook on their own initiative in terms of a general, largely unspecified, mission of keeping the peace within their departments.[2]

The most difficult and complicated instances in which the Army was called upon to intervene arose from major civil disturbances attending disputed elections and the appearance of rival claimants for state office that threatened to produce little shooting wars between factions. In these affairs Army commanders sought to preserve neutrality, but they recognized an implicit obligation to preserve the peace. They sought guidance diligently from Washington but did not always get it, for these quarrels, often involving factions of the Republican party, presented dilemmas for the Grant administration as well as for the commanders in the field. Requests for federal military support frequently came to Washington from both parties to a dispute, each citing the constitutional guarantee of "a republican form of government." President Grant therefore had to chose which was the rightful government of a state

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[1] Singletary, *Negro Militia*, pp. 129–39. Randall and Donald, *The Civil War and Reconstruction*, pp. 684–85. Stampp, *Era of Reconstruction*, pp. 201–03. Trelease, *White Terror*, pp. 419–20.

[2] See for instance Rpt of Maj Gen Irwin McDowell, Department of the South, in *SW Rpt*, 1874, pt. 1, p. 45–51 that recounts instances of this sort in Georgetown, S.C.; Lancaster, Ky.; Humboldt and Trenton, Tenn.; Edgefield, S.C.; and Sumter County, Ala.



WILLIAM H. EMORY

in accordance with the Supreme Court decision in *Luther* v. *Borden*,[3] before he could direct any effective military action. It would be fair to say that, after initial hesitation, the Grant administration normally chose to support those regimes that most closely reflected Stalwart Republican views and enlisted the greatest black support. But it was not always an easy choice, for the situations were usually complicated and the shifts in political allegiance remarkably swift.

The first such political disputes arose in Arkansas and Louisiana—both within the Department of the Gulf commanded after 1 November 1871 by Bvt. Maj. Gen. William H. Emory.[4] Shortly after assuming the command, Emory asked his superior, Maj. Gen. Henry W. Halleck, commanding the Division of the South, for some guidance in case political disputes in his command became violent. "You will use the troops of your command," Halleck informed him, "to preserve order as in your judgment may be proper without referring to these headquarters . . . but reporting such action."[5] Emory was later to testify that he also was governed by the instructions given by Secretary of War Schofield to General Buchanan in 1868, that he should do all that the laws allowed to preserve the peace and position his troops in anticipated trouble spots in advance.[6] These instructions were evidence of a policy of both higher military headquarters and the administration in Washington to leave much to the judgment of the commander on the spot. Instructions from Washington always emphasized that commanders in the South had a responsibility for preventing or breaking up disorders—unusual for military commanders in civilian communities in the United States.

Rival Legislatures in Louisiana—January 1872

The political turbulence in Louisiana between 1871 and 1877 exceeded that of any of the other Reconstructed states in complexity, duration, and the degree of federal military involve-

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[3] See above, Chapter 6.

[4] The department was established at that time, embracing the states of Arkansas, Louisiana, and Mississippi as part of Maj. Gen. Henry Halleck's Division of the South. It continued to consist of the same states and to be under the Division of the South when the latter was rearranged and assigned to Maj. Gen. Irwin McDowell on 25 November 1872. War Dept GO 66, 1 Nov 71 and GO 100, 25 Nov 72.

[5] Asst AG, Div South, to Emory, 2 Dec 71, H. Misc. Doc. 211, 42d Cong., 2d sess., *Testimony Taken by the Select Committee to Investigate the Condition of Affairs in the State of Louisiana*, ser. 1527, p. 93.

[6] Testimony before Select Cmte, ibid., p. 61. See above, Chapter 14 on Buchanan's instructions.

ment. Louisiana was relatively peaceful from the elections of 1868 until mid-1871. Troubles began when a rival faction of the Republican Party, headed by James F. Casey, collector of the customs at New Orleans and brother-in-law of President Grant's wife, launched an effort to overthrow Gov. Henry Clay Warmoth. One of the other leaders of the Customs House Ring, as this faction was usually called, was Stephen B. Packard, U.S. marshal in New Orleans, another the black lieutenant governor, Oscar J. Dunn. The Ring forced the first test of strength with Warmoth at the Republican Convention in New Orleans in August 1871, called to select a new Republican state central committee. Packard deviously used his position as a marshal to call on Maj. Gen. Joseph J. Reynolds, then commanding in Lousiana, for a *posse* to guard the convention against "thugs and bruisers," not mentioning that the real purpose was to keep out Warmoth supporters. Reynolds dispatched a special detachment of troops from Jackson Barracks, supported by two Gatling guns, for the ostensible purpose of protecting the customs house, where Packard had contrived to have the convention meet. When Warmoth attempted to interrupt a meeting that was proceeding without his supporters, the troop commander, supposedly thinking he was about to start a riot, forced him to leave the hall. Warmoth convened his own convention across the street, but the national Republican Party recognized the choices of what became known as the Gatling Gun Convention as the Republican state central committee.[7]

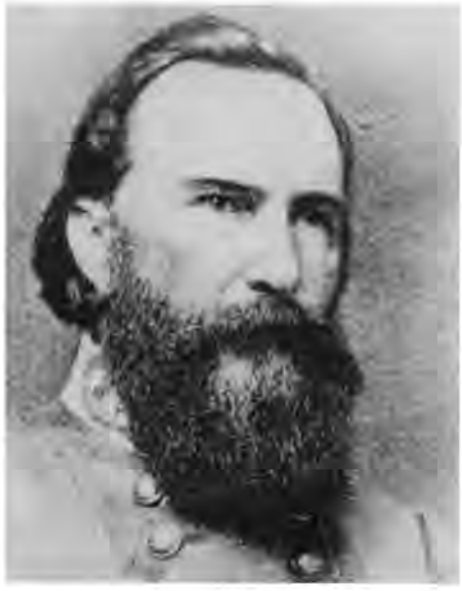
The anti-Warmoth faction planned as its next move the impeachment of the governor and his removal from office. The Louisiana Constitution of 1868 provided that the lower house of the assembly should bring impeachment charges and the state senate should conduct the trial thereon. Immediately the charges were voted, the governor would be suspended from office. Early in December 1871 Lieutenant Governor Dunn, who would normally succeed in case of impeachment, died suddenly. There followed a series of intricate political maneuvers. First Warmoth convened the state senate (but not the house) and secured the selection of P. B. S. Pinchback, another black leader but then a member of Warmoth's faction, as lieutenant governor. Then on 1 January 1872, when the Louisiana legislature was scheduled to meet, the house convened but the senate was unable to muster a quorum. Marshal Packard had arranged to have eleven Republican and three Democratic senators leave New Orleans aboard the U.S. revenue cutter *Wilderness*. Packard had gained the support of the man who had been the speaker of the house the previous year, George W. Carter, and was reasonably sure that body would vote impeachment charges. He knew he could not get the necessary two-thirds vote in the senate for conviction, but with the senate lacking a quorum Warmoth would be removed from office at least temporarily. The Customs House Ring plan also included a challenge to the legality of Pinchback's election as lieutenant governor. If the whole scheme succeeded, Carter would become acting governor of the state.[8]

When the House got down to business on 2 January, the Carter forces managed to re-elect him as speaker by a small majority, but on the following day the Warmothites mustered enough strength to challenge the election, and the house adjourned in disarray amid threats of open clashes between the two factions in the streets of New Orleans. Having been apprised of the situation, General Emory, very much aware of the "fatal consequences"

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[7] Taylor, *Louisiana Reconstructed*, pp. 216–18. Dawson, *Army Generals*, pp. 108–11. See also Althea D. Pitt, "The Collapse of the Warmoth Regime, 1870–72," *Louisiana History* no. 2 (Spring 1965), 16: 161–88 for a succinct account of some very complicated political maneuvering.

[8] Taylor, *Louisiana Reconstructed*, pp. 22–23. Dawson, *Army Generals*, p. 116.



JAMES B. LONGSTREET *(in the uniform of a Confederate general).*

of Baird's delay in the 1866 riot, decided to position his troops so that they could preserve order. He brought 3 of his 4 companies from Jackson Barracks into the city (with two Gatling guns) and ordered the commander at Baton Rouge, the only other military post in the state, to send 4 of his 6 companies to New Orleans. By 5 January, with the arrival of 2 of the companies from Baton Rouge, Emory had 5 companies posted in the city. Meanwhile, on the fourth, Packard had dispatched U.S. deputy marshals to arrest Warmoth, Pinchback, and other members of the governor's faction. But their supporters very soon posted bail, and they were released by afternoon. On his release, Warmoth immediately called a meeting of the legislature for 1730, informing his own supporters but not those of Carter. Under the guard of state militia organized by ex-Confederate general James B. Longstreet, the Warmoth house selected a new speaker, O. H. Brewster. With Warmoth now holding the fort in the state house (Mechanics Institute), Carter called a meeting of a rival legislature at the Gem Saloon on Royal Street, just off Canal.[9]

The danger of a major riot rapidly escalated, as Carter organized his followers for an effort to take the state house and Longstreet prepared to defend it with his militia and the metropolitan police. At 1100 on the fifth, both Governor Warmoth and General Longstreet made application to Emory for assistance, representing that a mob of 2,000 men were threatening to attack the state house at noon. Emory immediately sent word to Carter at the Gem Saloon that if the crowd attacked "they would be met by United States troops," and he deployed his little force to Rampart Street, ready to act. The threat had the desired effect. At the end of the day, Emory could telegraph to Washington that "Nothing but the free display of the United States forces at hand, and the acquiescence which each of the contending factions and the citizens generally yield to the United States authorities, have prevented a serious fight here today." He asked for, but did not "demand" another regiment.[10]

Warmoth sent his own telegram to President Grant asking that Emory "be instructed to cooperate with me in preserving the peace and protecting the government from attack and overthrow." He made the plea himself, Warmoth said, because with many senators absent the legislature could not raise a quorum.[11] Neither Warmoth's nor Emory's request was met.

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[9] Emory testimony, H. Misc. Doc. 211, p. 61. Dawson, *Army Generals*, p. 119. Taylor, *Louisiana Reconstructed*, pp. 222–24.

[10] Emory to AG, War Dept, 5 Jan 72, H. Ex. Doc. 209, 42d Cong., 2d sess., *Correspondence Between the War Department and Col. Emory*, ser. 1513, p. 2. Emory's testimony, H. Misc. Doc. 211, p. 61. Dawson, *Army Generals*, p. 119.

[11] Warmoth to Grant, 5 Jan 72, *SW Rpt*, 1872, pt. 1, p. 96.

The president made no reply to Warmoth, and the War Department told Emory that he must demonstrate his need more clearly before he could have another regiment. It did formally approve the course Emory was taking, but only after some delay. Secretary of War William W. Belknap advised Grant that he should "let General Emory act in accordance with his own judgment." This course freed the Washington authorities from taking any action to decide the merits of the contest.[12]

In any case, for the next nine days Emory kept his troops deployed within the city (where they were reinforced on 10 January by the second two companies from Baton Rouge), posted in a position between the state house and the Gem Saloon. He parried all attempts by both sides to get him to act in their favor and seriously pondered the question of formally imposing martial law, a course urged on him by the Carterite mayor of New Orleans and many businessmen of the city. On 9 January he proposed to the War Department that he take such a step, but later withdrew his request. The president settled this issue quite positively with a message to the mayor on 12 January saying that "Martial law will not be proclaimed in New Orleans under existing circumstances, and no assistance will be given by federal authorities to persons or parties unlawfully resisting the constituted authorities of the state."[13] It seemed to be a way of telling the Carter faction that he would not support them, whatever his reservations about Governor Warmoth.

Meanwhile, in New Orleans, a new crisis loomed. On the night of 9 January, a Warmoth supporter in the legislature was shot to death while resisting arrest by Carterite officials. The next day metropolitan policemen armed with rifles prepared to invade the Gem Saloon, ostensibly to arrest those responsible for the shooting, but actually to break up the Carter legislature. Both sides appealed to Emory for aid, Carter asking that he protect the Gem Saloon, and Warmoth that he assist in making the arrests. Emory rejected both appeals and later testified that, believing Warmoth hoped to act "under cover of United States troops," he withdrew them from their positions "and none were there or in the immediate vicinity when the governor's forces arrived."[14]

Nevertheless, Warmoth's move on the Gem Saloon was successful. Although Carter and three others for whom the police held warrants could not be apprehended, the police broke up the rival legislature in the saloon. Carter and some of his followers reassembled in the customs house and elsewhere, but Warmoth had obviously got the upper hand. He was sufficiently confident to tell Emory on 11 January that he could safely withdraw his troops to Jackson Barracks. After some dickering with a special committee of New Orleans businessmen who had tried, but failed, to persuade the two sides to reach a compromise, Emory did so.

Warmoth was too optimistic. The Carter forces rallied and for the second time threatened to storm the state house. On 13 January Warmoth once again importuned Emory for protection, alleging that "an opposition party of several thousand men are reported to make a riot today at noon, and that threats are made that not a stone of the state capitol shall be left upon another after they are through with their work." Emory once again ordered his troops into the city with their Gatling guns, under orders to notify the ring leaders of the mob

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[12] AG, War Dept, to Emory, 8 and 10 Jan 72, H. Ex. Doc. 209, pp. 4, 6. Belknap quoted in Dawson, *Army Generals*, p. 119.

[13] Grant to Mayor Benjamin F. Flowers, 12 Jan 72, relayed thru War Dept to Emory, H. Ex. Doc. 209, p. 8.

[14] H. Misc. Doc. 211, p. 61. Dawson, *Army Generals*, pp. 120–21. Taylor, *Louisiana Reconstructed*, p. 225.

that "if any violence is used, it will be my duty to disperse them with grapeshot."[15] The troops moved as far as Conti Street, a few blocks from the state house, where they remained for two or three hours. Emory later testified that when they found "there was no demonstration of any kind, they were sent back to their barracks."[16] Evidently Carter's supporters were dissuaded from action by the mere threat of military opposition from U.S. troops.

After the events of 13 January, Emory seems to have concluded that he was being used by Warmoth, and that by protecting the state house from attack he was compromising his avowed neutrality in the political dispute. Also he had developed doubts of the legality of his course, having heard of newspaper reports that Attorney General George H. Williams had questioned it. So on Sunday, 14 January, he decided to end his intervention for the time and await further orders from Washington. He notified both Warmoth and Carter that he would not again call the troops into the city without further orders from the government.[17] Emory notified the War Department of this decision by telegram around noon. By nightfall he had learned that Carter, taking advantage of his proposed withdrawal, had issued inflammatory statements well calculated to lead to a riot the next day, and he hastily sent another message to Washington, urgently requesting some guidance. "I have been compelled to warn him that I shall recall the troops and place them in a position on Canal street to avert this impending riot until I can get an answer from Washington. . . . I therefore urgently request that you will immediately instruct me if my course is approved in withdrawing the troops, and what my further action shall be."[18] Later that night on receipt of a new appeal from Warmoth warning that "an attack will be made on the state house sometime during the next eighteen hours," Emory once again implored the War Department to tell him what course he should follow. On the morning of the fifteenth he moved his troops some distance from the barracks towards the city and renewed his appeal to Washington for a policy decision.[19]

In the meantime, Warmoth had also appealed personally to the president for support and had forwarded a resolution from the legislature he controlled, signed by Lt. Gov. Pinchback for a senate that was not in session, formally asking for federal military assistance under the constitutional and legal formula. Grant and Attorney General Williams were still unwilling to take sides. "Of course," Grant wrote Belknap, "if there is danger of bloodshed, I should like to prevent it; but I prefer the testimony of others interested in peace and quiet, rather than those interested in establishing the claims of either of the two factions to be the legitimate legislature of the State before taking action."[20] Attorney General Williams accordingly told Warmoth that the president did not feel justified in resolving the conflict between legislatures "at this time" and would not interfere in state matters "except in a clear case of legal right and overruling necessity."[21]

The instructions sent by the War Department to Emory, received at 1100 on 15 January while he had the troops standing by for orders to move into the city, reflected Grant's views.

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[15] Warmoth to Emory, 11 and 13 Jan 72, *SW Rpt*, 1872, pt. 1, pp. 98–99. Dawson, *Army Generals*, pp. 122–23.

[16] Testimony in H. Misc. Doc. 211, p. 62. Cf. Dawson, *Army Generals*, p. 123.

[17] Incl in Emory to AG, War Dept, 14 Jan 72, H. Ex. Doc. 209, p. 10.

[18] Emory to AG, War Dept, 14 Jan 72, ibid., p. 11.

[19] Emory to AG, War Dept, 14 Jan 72, Rcd 2330; Emory to AG, WD, 15 Jan 72, Rcd 1000. H. Ex. Doc. 209, pp. 11–12. Warmoth to Emory, 14 Jan 72, *SW Rpt*, 1872, pt. 1, p. 99.

[20] Grant to Belknap, 15 Jan 72, H. Ex. Doc. 209, p. 15. Warmoth to Grant, 14 Jan 72, quoted in Dawson, *Army Generals*, p. 124. Louisiana Legislature to Grant, 15 Jan 72, H. Ex. Doc. 209, p. 14.

[21] Williams to Warmoth, 16 Jan 72, H. Ex. Doc. 209, pp. 15–16.



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"The Attorney General had given no opinion whatever. Your action as indicated in your telegrams last night is approved. Exercise your own discretion as to the course to be pursued, but do not bring the United States troops to the city without orders from here."[22] The two statements in the final sentence were essentially contradictory, but Emory took it to mean that he should order the troops back to Jackson Barracks, and he did so. Either Carter's force turned out to be less formidable than pictured, or else the mere threat of the use of U.S. troops disarmed the threat. No assault took place on the state house, and for about a week afterward, "everything was quiet."[23]

There was to be one final crisis. On Saturday, 20 January, the state senate finally managed a quorum and in a vote that was a surprise to the Carter faction confirmed the nomination of Pinchback for lieutenant governor. Carter, in some desperation at his inability to control either branch of the legislature, issued a call for his followers to assemble on 22 January at 1000 at the Henry Clay statue on Canal Street to mount another effort to take the state house by force of arms. Citing this new threat to the peace, Emory once again asked the War Department what he should do. At 1000, just as the Carter men were gathering at the Henry Clay statue, Emory received his new guidance. "The President directs that you hold your troops in readiness to suppress a conflict of armed bodies of men, should such occur; and to guard public property from pillage or destruction. Keep this Department informed of your action."[24]

Emory immediately communicated these instructions to each of the contending parties. Carter read them to several hundred of his supporters who had gathered at the Clay statue—Emory reported it was "a very insufficient force to carry the State House by assault"—and the crowd, at his behest, dispersed. It was the end of the troubles, as the Carter legislators made their peace with Warmoth. A relative quiet again reigned in Louisiana for about ten months.[25]

Emory's actions had quite clearly prevented "the collision of armed bodies," and as he claimed "at no time was the General Government or its troops a party to the contest."[26] Modern critics have given Emory high marks on his performance.[27] Yet it can hardly be denied

[22] AG, War Dept, to Emory, 15 Jan 72, H. Ex. Doc. 209, p. 13.
[23] Emory testimony, H. Misc. Doc. 211, p. 62.
[24] AG, War Dept, to Emory, 22 Jan 72, H. Ex. Doc. 209, p. 19.
[25] Emory to AG, War Dept, 22 Jan 72, H. Ex. Doc. 209, pp. 19–20.
[26] Emory's rpt in *SW Rpt*, 1872, pt. 1, pp. 94–95.
[27] See Taylor, *Louisiana Reconstructed*, p. 225 and Dawson, *Army Generals*, p. 127. Dawson says that by sending the soldiers before the fighting began "he defused the worst threat to the peace and stability of Louisiana since the tragic riot of July 1866."

that had Emory not kept the peace, Warmoth would have been overthrown, so in a measure he did serve the governor's purpose. And certainly it would have been hard to find any legal justification for Emory's intervention without any direction or proclamation from the president until the very last act. There is hardly a better illustration of the peculiar nature of the Reconstruction period in the history of the use of federal force in domestic disorders.

Louisiana—The Elections of 1872 and Their Aftermath

In the shifting sands of Louisiana politics, by November 1872 the Customs House Ring faction, identifying firmly with Grant's Stalwarts, had gained control of the Republican party in Louisiana and nominated William P. Kellogg for governor. Warmoth threw his support to a fusionist ticket of Democrats and liberal Republicans headed by John McEnery, a ticket that received a majority of white support in the state. P. B. S. Pinchback, Warmoth's lieutenant governor, turned against the governor and joined the Stalwart faction, which was solidly supported by the blacks in Louisiana. In accordance with the Enforcement Acts, General Emory positioned his troops near polling places all over the state, but the election, though peaceful, was shot through with fraud. And in the immediate aftermath the election board appointed by Warmoth certified McEnery as winner, while a rival board of Stalwart Republicans declared Kellogg the governor-elect. Similarly, the two boards chose different legislatures though some men were certified as members of both.[28]

Again there was danger of riot, and General Emory positioned his troops to preserve the peace. This time the Grant administration decided quickly that it would support the candidate of the Customs House Ring. Attorney General Williams instructed Marshal Packard in New Orleans, a Stalwart partisan, to enforce the decrees of the U.S. courts and promised that Emory would furnish troops for the purpose. The War Department instructed Emory accordingly. When the Warmoth board made a public announcement of McEnery's election, federal circuit court judge Edward H. Durrell ruled that it had violated a restraining order of his court and authorized Packard to occupy the state house and prevent any unlawful assemblage there. In this way Packard, as a U.S. marshal, was able to get military support for the occupation of the state house, where the legislature met on 9 December 1872. The lower house promptly impeached Governor Warmoth and declared Pinchback acting governor.[29] Following Pinchback's suggestion, the legislature passed a resolution formally calling on President Grant for aid against domestic violence. On 12 December, Grant officially recognized Pinchback as the lawful governor of Louisiana and the legislature assembled at the Mechanics Institute as the lawful legislature. Orders followed to Emory to "use all necessary force to preserve the peace" and to "recognize the authority of Governor Pinchback," but the president issued no proclamation.[30] In accordance with these instructions, Emory acted to support the claim of General Longstreet, whom Pinchback had reappointed to command the state militia, to possession of the state armory, where a body of Warmoth's old militia had barricaded themselves. Emory was able to get the old militia to turn over the

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[28] Taylor, *Louisiana Reconstructed*, pp. 207–52 details the complicated series of events surrounding this election.

[29] Dawson, *Army Generals*, pp. 135–37. Pinchback was to remain governor until the Louisiana senate made disposition of the case. In the event it never did so; Pinchback remained governor until succeeded by Kellogg in January, the only black to be chief executive of a state.

[30] Emory, *Army Generals*, p. 137–38. Wilson, *Federal Aid*, p. 146 and Docs. 72 and 73.

arsenal by using his tactic of simply informing those threatening the peace of his orders and his intention to follow them.[31]



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The McEnery group did not give up, and as the new year dawned prepared to hold its own legislative assembly and to inaugurate their chief as governor. The authorities in Washington decided that Emory should take no action against peaceable assemblies and so on 6 January both legislatures convened, Kellogg's in the state house and McEnery's in Odd Fellows Hall. Emory deployed practically his entire force, which now included a troop of cavalry and two batteries of artillery, a total of 438 men, into the city, pursuing the now familiar tactic of preventing any overt acts of violence on either side. The day passed peaceably, as did 13 January when the rival governors were both inaugurated in separate ceremonies. For this latter event Emory posted only one company of soldiers at the state house, leaving the remainder at Jackson Barracks.[32]

The situation continued peaceful until late in February, when McEnery raised a militia of his own under another former Confederate officer, Fred N. Ogden. Ogden launched an attack on the Jackson Square police station and Emory, acting under orders of the commanding general of the Army, William T. Sherman, that he was "to prevent any violent interference with the State government of Louisiana," broke up the resulting fight. Meanwhile, in a special message to Congress on 25 February Grant had indicated his intention to continue to recognize Kellogg's de facto government. Emory consequently warned McEnery that he would use the "whole force of the United States" to prevent any attack on Kellogg's government. Nevertheless, during the remainder of 1873 and most of 1874, the McEnery group maintained its shadow government while the Kellogg group remained the de facto government of Louisiana.

Meanwhile, in the rural parishes of Louisiana the struggle between Kellogg and McEnery partisans for local office went on apace, generating a great deal of violence with strong racial overtones. The most serious disturbance took place in April 1873 at Colfax, a town in Grant Parish in central Louisiana. Here two fusionist candidates for parish sheriff and judge had been declared elected by the Warmoth board and these men had taken office. Governor Kellogg replaced them with two Republicans. The new parish regime established and armed a black militia unit, fortified the Colfax courthouse against attack, and generally acted in

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[31] Emory to AG, War Dept, 13 and 14 Dec 72, H. Ex. Doc. 91, 42d Cong., 3d sess., Condition of Affairs in Louisiana, ser. 1665, pp. 25–6.

[32] Dawson, *Army Generals*, pp. 141–42.



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an arrogant manner toward the whites. The deposed fusionist judge issued writs for the arrest of a number of blacks and on 13 April appeared before the courthouse with a large white *posse*, demanding the surrender of the accused men. The black militia leader refused and a fire fight followed that endured for several hours, ending with the *posse* setting fire to the courthouse and shooting some of the black militia as they attempted to escape. The *posse* took thirty-seven prisoners and that night took them out and shot them.[33]

The exact toll of blacks killed in the Colfax riot has never been determined, but it probably exceeded one hundred, more than those fallen in the affair in New Orleans in 1866. Governor Kellogg dispatched a contingent of the metropolitan police to the area, and called on Emory for troops. The federal commander promptly attempted to dispatch a contingent, but its arrival was delayed by the refusal of white steamboat captains to transport the soldiers. They got to Colfax eight days after the riot had occured and could do little more than inspect the area and help bury the dead. The metropolitan police found only nine people to arrest as perpetrators of the killings, and only four were ever convicted.[34]

The Colfax riot was the first act in a continuing violent campaign against Republicans throughout Louisiana that threatened to undermine the Kellogg government. Against this kind of activity by white Democrats, Emory could not bring his military forces to bear effectively. They were too few to be positioned in advance in trouble spots and were most likely to arrive too late when trouble actually developed. Emory did position small detachments in various parishes to assist U.S. marshals and Kellogg officials, but they were largely unsuccessful in suppressing the violence against freedmen that was part of the Democratic drive to regain white supremacy in Louisiana.[35]

Louisiana—The Crisis of 1874 and Afterward

The emergence of the White League in Louisiana in spring 1874 brought the whole effort to unseat Kellogg to a climax. After Louisiana's first White League started at Opelousas in April 1874, other leagues blossomed throughout the state during the next several months. They demonstrated their power and tactics effectively at the town of Coushatta in Red River

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[33] Ibid., pp. 143–44. Taylor, *Louisiana Reconstructed,* pp. 268–71.

[34] Dawson, *Army Generals,* pp. 145–46. On the long legal battle that led to the Supreme Court's declaring certain parts of the Enforcement Acts unconstitutional, see Taylor, *Louisiana Reconstructed,* pp. 272–73.

[35] On the missions of some of these detachments, see Dawson, *Army Generals,* pp. 147–53.

Parish in August, when members of the league first forced six Republican officials to resign, and then while escorting them out of town apparently contrived to have them murdered by armed riders.[36] Only two weeks later came the overt attempt to take over the state government, culminating in what became known as the battle of Liberty Place.

In New Orleans the White League organized its adherents into military organizations under the overall command of "Colonel" Fred N. Ogden, who doubled also as McEnery's militia commander. Confederate veterans predominated in most of the units. The League sought diligently to obtain weapons and the metropolitan police sought as diligently to prevent their getting them, seizing several caches on 9 and 10 September. Then on 12 September the police learned that the steamer *Mississippi* had arrived in port carrying a large consignment of arms. They planned to prevent the landing of these weapons, precipitating the clash with the White League that followed. But there is evidence that the White League leaders had planned a good deal more than securing the weapons before the clash took place.

On 14 September a crowd numbering about 5,000 gathered at the Clay statue on Canal Street, ostensibly to protest the metropolitan police action. Soon turning from the original issue, its members demanded Kellogg's resignation. When the governor refused, they voted to recognize McEnery as the lawful chief executive, and since McEnery was (by design) absent from the state, named his running mate, D. B. Penn, as acting governor. Penn called on all eligible males to join a Louisiana state militia and help drive Kellogg's faction from office. By creating a militia, Penn bestowed a certain status on the White League units under Ogden that were already positioned for action.[37]

The disposition of the U.S. forces in Louisiana on 14 September provided Penn and Ogden with an unusual opportunity to stage a coup d'etat. Emory was in the midst of exchanging the 19th Infantry, experienced in Louisiana, for the 3d, which was coming in from the plains and was not yet acclimated to the Deep South. Emory, by September, still had detachments in Baton Rouge, Colfax, Greenville, Monroe, Pineville, and Shreveport; but in the summer of 1874, owing to an outbreak of yellow fever, he removed his own headquarters and most of the troops at Jackson Barracks to Holly Springs, Mississippi, 350 miles away from New Orleans. Only a corporal's guard of sixteen men remained in the city. General Emory himself had left the department in August to visit his family in the North and only returned to Holly Springs on 11 September.[38]

So this time Emory had not positioned his troops to prevent trouble, and Ogden quickly took advantage of their absence. He brought his own pre-positioned units, reinforced by other White Leaguers to a total of about 5,000 men, onto Poydras Street and erected barricades to prevent any access to the *Mississippi*. At approximately 1615 General Longstreet and the chief of the metropolitan police led about 3,500 militia and policemen against Ogden's position. Ogden's men used their numerical superiority and greater exerience to outflank and hurl back Longstreet's column. When the shooting stopped, the White Leaguers held the field, having killed 11, wounded 60, including Longstreet, and captured the chief of police. Ogden's men sustained 21 killed and 19 wounded.[39]

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[36] Dawson, *Army Generals*, p. 162. Taylor, *Louisiana Reconstructed*, pp. 288–91.

[37] Taylor, *Louisiana Reconstructed*, pp. 292–93. Dawson, *Army Generals*, pp. 169–70. Singletary, *Negro Militia*, pp. 74–75.

[38] Dawson, *Army Generals*, pp. 156–66.

[39] Singletary, *Negro Militia*, pp. 77–78. Taylor, *Louisiana Reconstructed*, pp. 293–94, whence figures are derived.

After the victory in the battle of Liberty Place, Ogden and Penn expelled Kellogg and his followers and took possession of the state house, together with the state arsenals and armories, police and telegraph stations, in well-planned actions. By nightfall on the fifteenth, the coup d'etat had been effected.

Before he was forced from his office and his telegraph line cut, Governor Kellogg had appealed to Grant to suppress what he called "insurrection". And Grant responded promptly to the request, issuing a proclamation on 15 September ordering the insurgents to disperse and retire within five days or face the military power of the United States.[40] Meanwhile General Emory at Holly Springs was reacting. He had received an urgent message from Marshal Packard on 14 September warning of a coming clash. Emory dispatched four companies of infantry under Col. John R. Brooke from Holly Springs late that night, planning to have them arrive before the gathering of the White Leaguers. Unfortunately, the train was delayed, and Brooke's men did not arrive until after the overthrow of Kellogg. The sixteen-man detachment in the city, meanwhile, could do no more than guard the customs house. And even Brooke's four companies were a totally inadequate force to oppose Ogden's White Leaguers, now masquerading as the Louisiana militia.

Unable to carry out his orders from Emory that he was to prevent the overthrow of the Kellogg government by violence, Brooke asked for massive reinforcements in a message Emory promptly relayed to his superior, Maj. Gen. Irwin McDowell, commanding the Division of the South at Louisville. Very soon six infantry companies from other states in the Division of the South were on their way to Louisiana. The War Department also ordered Emory to proceed to New Orleans and take charge, directing him to take such action for the dispersal of the insurgents as the emergency required. Emory and John McEnery, who had been invited to come back and assume the governor's chair, arrived in New Orleans by the same train at 2000 on 16 September. On 17 September, armed with Grant's proclamation, Emory called on McEnery and Penn, who now desisted in the face of the threat of federal military force. They ordered all their "state troops" to turn in their "captured arms" and return to their homes. They would not, however, surrender the occupied state buildings to Kellogg, only to the Army, so Colonel Brooke was appointed military governor of the state for one night. The next day he turned the control back over to a much chastened Kellogg who now realized he could only be secured in his position by the presence of federal troops. Some troops stayed on guard at the state house until removed by War Department order on 16 November 1872.[41]

Having restored Kellogg's control in New Orleans, Emory now faced the more difficult task of restoring officials who supported Kellogg in the rest of the state. To accomplish this task, Emory had in his command by the end of September some 1,182 soldiers organized into twenty-six companies, troops, or batteries, including four troops of the 7th Cavalry that General Sheridan had sent from the Division of the Missouri.[42] Emory retained about two-thirds of this force in and around New Orleans. The rest were posted at Baton Rouge, Colfax, Coushatta, Monroe, Pineville, Shreveport, and Saint Martinsville, with most of the

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[40] Richardson, *Messages and Papers*, 9:4230–31. Wilson, *Federal Aid*, pp. 155–56.

[41] Dawson, *Army Generals*, pp. 171–77. Exchange of telegrams, War Dept and Gen Emory, 16 Nov 72. S. Ex. Doc. 17, 43d Cong., 2d sess., *Correspondence Relative to Certain Disorders in the State of Louisiana*, ser. 1629, p. 63.

[42] Figures from Dawson, *Army Generals*, p. 180. A fifth troop of the 7th Cavalry was added in October, see p. 185.

cavalry commanded by Maj. Lewis Merrill, the bane of the Klan in South Carolina, stationed in the area around Shreveport. These troop detachments in the outlying parishes were employed exclusively in furnishing *posses* to U.S. marshals, and occasionally to sheriffs who would support Kellogg, to assist in restoring Kellogg officials to power and to make arrests under the Enforcement Acts. The measure of success achieved in this endeavor is problematical. The Kellogg officials were nominally restored but could exercise little power without the direct support of the troops. And the intimidation of freed blacks by the White League continued unabated. Troop commanders in general found it a frustrating experience. Some, like Major Merrill, continued in a diligent effort to support Republican regimes and protect the freedmen, but others, like Col. Henry A. Morrow of the 13th Infantry, sent north to investigate conditions in Merrill's area of responsibility, simply concluded that the best course was to withdraw the troop detachments and let the respectable white elements take over.[43]

Most of the officers in this duty were highly critical of the U.S. marshals whom they accompanied as either lacking in energy in making arrests or too eager to assert their rights to direct the actions of the troops. Lieutenant Donald MacIntosh, commanding Company G of the 7th Cavalry operating in the Shreveport region, was particularly critical of Marshal J. B. Stockton for his exaggerated view of his authority, commenting that "Had I concurred with him in his views . . . and used the troops . . . accordingly, instead of being here, the chances are I would now be swinging from a tree with a rope round my neck, or be a prisoner in one of the parish jails in Northern Louisiana."[44] This fate of landing in a parish jail did befall Lt. Benjamin H. Hodgson of the 7th Cavalry and the marshal he was supporting, Edgar Seelye. After making some arrests in the towns of Vienna and Homer, the sheriff of Lincoln Parish surrounded the federal party with a much larger force and arrested both Hodgson and Seelye. In the end, after some complicated legal maneuvering the men were released and Hodgson was delivered into military custody, but the whole episode illustrated the growing audacity of the White League.[45]

In New Orleans, as the 1874 elections for the state legislature and Congress approached, General Emory somewhat wearily informed the War Department of this new boldness on the part of the White League, even in the city of New Orleans. Hundreds of improved small arms and two howitzers, taken from the state arsenal in the coup, had not been returned. Almost nightly, bands of twenty to sixty White Leaguers promenaded in the streets sporting the new weapons. Emory suspected that the White Leaguers hoped to demonstrate the powerlessness of Kellogg to stop them; and, if federal troops intervened, to show that Kellogg remained in office only because of the support of federal bayonets.[46]

Alarmed at the thought of 6,000 armed White Leaguers marching in the streets of New Orleans on election day, the secretary of war questioned Emory on the feasibility of stationing troops near polling places a day or two before the election. Belknap explained that President Grant wanted troops close enough to the polls to prevent riots and intimidation of voters,

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[43] On the activities of these troop detachments see Dawson, *Army Generals*, pp. 183–95 and the documents in S. Ex. Doc. 17. For Merrill's views see his various reports on conditions in the northern parishes, passim; for Morrow's, his report to Emory on 24 Dec 74, pp. 71–74.

[44] MacIntosh to Merrill, 14 Nov 74, S. Ex. Doc. 17, p. 15.

[45] See the lengthy exchanges in ibid., p. 25–50. A military court convicted Hodgson of conduct unbecoming an officer in making the arrests and of cutting a telegraph wire.

[46] Emory, to AG, USA, 1, 5, and 7 Oct 74, ibid.

yet distant enough to preclude accusations of military interference in politics.[47] There were more than one hundred polling places, but only a few with adequate facilities for quartering troops. General Emory proposed therefore that rather than station only a few troops at each precinct, the troops should be concentrated at a few strategic locations from which they could sally forth to trouble spots anywhere in the city. Emory stationed 10 companies at Jackson Barracks east of the city, 11 companies along the riverbank between Jackson Barracks and Canal Street, 3 companies near the state house in the center of town, and 1 cavalry troop near his own heaquarters.[48]

Confident of Democratic electoral success, the White League made no serious effort to test General Emory's forces during the election, though clearly intimidation of blacks did go on. The Democrats did win a majority in the General Assembly, claiming 71 out of 106 seats. But Governor Kellogg's electoral board disqualified many of the supposedly victorious Democrats, providing each party with 53 seats and leaving five contests to be settled by the assembly when it met.[49] While awaiting the electoral board's report, Emory put his troops on the alert but perhaps reflecting his own wish to take no further overt action to support Kellogg, he queried the War Department whether he was still authorized to act on his own, or whether he must await another application from Kellogg to the president. The reply was positive: "The President directs that you make arrangements to be in readiness to suppress violence and have it understood that you will do it."[50] On 15 December Emory instructed the commander at Jackson Barracks to ready all units, including the attached artillery company, to stand by for a signal—an order from department headquarters or three naval guns fired in quick succession—to deploy into downtown New Orleans. Emory then leaked out the substance of his directive to the New Orleans press for whatever salutary effect publicity might have on the White League.

By mid-December 1874 Grant had decided that he needed more vigor in the command in Louisiana and sent Lt. Gen. Philip Sheridan to New Orleans. Sheridan arrived on New Year's Day, 1875, ostensibly as a visitor, but actually empowered to detach Emory's Department of the Gulf from the Division of the South and attach it to his Division of the Missouri. He determined very soon to do so, feeling that Emory was no longer able to deal with the situation. He planned to relieve the Department of the Gulf commander in the end, and he did so on 11 March. But during the legislative crisis Emory remained in command in New Orleans under Sheridan's direction.[51]

This crisis came soon after Sheridan's arrival. The legislature met on 4 January and under Sheridan's guidance Emory deployed a sizable force to the city, positioned to control any outbreaks. Colonel Regis de Trobriand was in command of the company of the 13th Infantry placed in front of the state house. The meeting of the Louisiana house soon turned into one of those comic-opera episodes that had so characterized the two rival legislatures in 1872. The Democrats, taking advantage of the hubbub created by spectators who seem to have entered the hall freely, seized control of the legislative body, elected their own speaker, and then chose Democrats for the five positions which the Returning Board had left vacant. Then

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[47] AG, USA, to Emory, 27 Oct 74, ibid.
[48] Emory to AG, War Dept, 28 Oct 74, ibid., pp. 62–63.
[49] Taylor, *Louisiana Reconstructed*, pp. 302–04. Dawson, *Army Generals*, p. 197.
[50] AG, War Dept, to Emory, 16 Dec 74. Emory to AG, War Dept, 15 Dec 74. S. Ex. Doc. 17, p. 65.
[51] Dawson, *Army Generals*, pp. 197–202, 213.

they asked Colonel de Trobriand to evict all Republicans who had been seated by Kellogg's electoral board rather than by a majority of the popular vote. Faced simultaneously with a request from the governor's militia commander that he restore order in the chamber, de Trobriand moved in and cleared the halls of the unruly spectators, but then left the chamber, allowing the Democrats to proceed with their business.

De Trobriand almost immediately received a verbal demand from Kellogg that he unseat the Democrats who the governor charged had been illegally chosen. The colonel requested that he put it in writing, and Kellogg did so, addressing notes to both de Trobriand and Emory. Emory, at Sheridan's behest, complied with the request and ordered de Trobriand to act on it. The latter reentered the house chamber, supported by a contingent of soldiers with fixed bayonets. Then he forced the removal of the five Democrats who had not been certified by the returning board. The rest of the Democrats then stormed out of the legislative hall and left the Republicans free to select their own candidates for the five contested seats and to organize the house with a Republican speaker.[52]

The Army had once again protected the Radical Republican state government. And General Sheridan, still a Radical at heart, intended to keep it in power. To do so, he knew he must attempt to break up the White League. On 5 January he requested that President Grant or Congress declare the members of the White League to be "banditti," to permit their arrest and trial by military commission.[53] What Sheridan was actually asking was for either a declaration of martial law in Louisiana or a return to military government. The time had long past when even Northern public opinion would support such a demand, and Sheridan was met by a chorus of opposition, the worst of course coming from the Democrats of Louisiana. And while Grant deliberated on what to do, the Senate forwarded to the president on 8 January a resolution asking for information on allegations of unjustifiable military intervention with the organization and proceedings of the general assembly of the state of Louisiana.[54]

Grant replied to the Senate's resolution on 13 January. In defense of de Trobriand's actions in the lobby of the state legislature, Grant claimed that the special circumstances prevalent in that state seemed to exempt the general and his superiors from any intentional wrongdoing. Grant continued,

> Knowing that they had been placed in Louisiana to prevent domestic violence and aid in enforcement of the State laws, the officer and his troops of the United States may well have supposed that it was their duty to act when called upon by the governor for that purpose. . . . any attempt by the governor to use the police force of that state at this time would have undoubtedly precipitated a bloody conflict with the White League, as it did on the 14th of September. . . . there is no doubt that the presence of U.S. troops prevented bloodshed and loss of life. Both parties relied upon them as conservators of the peace. I repeat that the task assumed by the troops is not a pleasant one to them; that the Army is not composed of lawyers capable of judging at a moment's notice just how far they can go in the maintenance of law and order, and that it was impossible to give specific instructions providing for all possible contingencies that might arise. The troops were bound to act upon the judgment of the commanding officer . . . or wait instructions which could only reach them after the threatened wrongs had been committed which they were called on to prevent.[55]

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[52] Ibid., pp. 202–06. Wilson, *Federal Aid*, pp. 159–63. Taylor, *Louisiana Reconstructed*, pp. 304–05.

[53] Sheridan to Secy War Belknap, two telegrams, 4 Jan 75, S. Ex. Doc. 13, 43d Cong., 2d sess., *Affairs in Louisiana*, ser. 1629, p. 21.

[54] Ibid., p. 1.

[55] Richardson, *Messages and Papers*, 9:4259–68.

But the president made no request for the power to make military arrests of members of the White League in Louisiana that Sheridan wanted, and the latter was not able to act any more than Emory had been to suppress what was a continuing white insurrection against the Kellogg government. The Senate did approve the Army's action in New Orleans, and a committee of the lame duck Republican House passed a resolution on 20 March recognizing Kellogg as the "lawful governor." By a compromise reached between the factions, a congressional committee ruled on the disputed seats in the legislature and granted a Democratic majority. This Democratic majority voted impeachment proceedings against Kellogg in February 1876, but the state senate, which his supporters still controlled, immediately acquitted him and he was never deposed from office. He ended his administration as he had begun it, unable to govern the state without the support of federal bayonets.[56]

The Brooks-Baxter War in Arkansas

In the Arkansas gubernatorial election of November 1872, the Stalwart candidate, Elisha Baxter, defeated his liberal Republican opponent, Joseph Brooks, in a close contest. Brooks charged fraud immediately but made no overt effort to displace Baxter until April 1874, by which time something of a political realignment had taken place, with many of Baxter's Stalwart supporters shifting to Brooks and many Liberals and Democrats switching their allegiance to Baxter. With some hope of Grant's support, on 15 April 1874 Brooks secured from the circuit court of Pulaski County a ruling that he was the lawful winner of the contest. He then encircled the state capitol with a force of 250 armed men and two cannon, and drove out Baxter and his supporters. Both sides then organized their militia, mixed groups of blacks and whites in both cases, to a combined total between them of perhaps 3,000 men.[57] Both men requested the officer in charge of the federal arsenal in Little Rock to turn over arms and ammunition to their respective followers, but were refused. On 15 April Brooks appealed to President Grant to order that the arsenal issue him the arms as rightful governor of Arkansas; Baxter on the same day, making the same claim, asked for the support of the U.S. troops in Little Rock against Brooks' "revolutionary movement." Attorney General Williams replied for the president, denying the requests of both men. To Baxter he pointed out that he had not made proper application for federal assistance under the Constitution and the laws, and that the controversy was one which should be settled by state authority, unless one of the enforcement acts was involved; to Brooks he replied that the president did not believe that his right to the office of governor had "been fully and finally determined by the courts of Arkansas."[58]

The War Department followed with orders sent directly to the commanding officer at the Little Rock post, Capt. Thomas E. Rose, instructing him "to take no part in the political controversary in . . . Arkansas unless it should be necessary to prevent bloodshed or

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[56] Taylor, *Louisiana Reconstructed*, pp. 307–10. Wilson, *Federal Aid*, p. 163.

[57] On the development of the controversy and the political factors involved, see Earl F. Woodward, "The Brooks and Baxter War in Arkansas, 1872–74," *Arkansas Historical Quarterly* no. 4 (Winter 1971), 30:315–36.

[58] Wilson, *Federal Aid*, pp. 165–67. Baxter to President, and Brooks to President, 15 Apr 74; Williams to Baxter and Williams to Brooks, 16 Apr 74. H. Ex. Doc. 229, 43d Cong., 1st sess. Political Controversy in Louisiana, ser. 1614, pt. 1, pp. 3–4.

collision of armed bodies."[59] General Emory meanwhile had Rose place in readiness two companies of the 16th Infantry, all his available forces, with instructions to observe "strict non-interference" until further orders. Attorney General Williams directed the U.S. marshal at Little Rock to "take notice of existing troubles and notify the officer commanding United States troops if collision is imminent. He is expected to prevent bloodshed."[60]



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On 17 April Captain Rose did place his two companies between the two camps and warned both Baxter and Brooks to avoid either a collision or interference with the movement of federal troops. The captain's action effectively denied Baxter's then numerically superior forces the opportunity to retake the state buildings. When the president learned that Baxter's men were intercepting Rose's telegrams and preventing other telegrams from reaching Brooks, Grant ordered Rose to seize the telegraph office and protect all lines of communication.[61] Governor Baxter complained to President Grant of Rose's neutral stance. "There is an armed insurrecton against the legal state government," he said, "and I call upon you to aid in suppressing it; but if you will not, then leave me free to act and order U.S. troops . . . to their own ground and keep them out of the way." Grant replied neither to this request nor to a similar one sent on the twenty-first. The president likewise did not respond to a request from Brooks for military support on the twentieth.[62]

Mounting tension between the two camps threatened to erupt into a bloody melee on the twenty-first. An ardent follower of Baxter, H. King White, had armed about 2,000 Negro field hands and organized them into a military formation complete with its own marching band. White marched his rabble "regiment" to Baxter's headquarters at Little Rock's Anthony House. There White harangued his men to the point where they appeared ready to march against Brooks' headquarters in the capitol. After hearing the incendiary speech, Captain Rose misinterpreted the abrupt movement of the band as the beginning of an attack. When Rose wheeled his horse toward White's platform, the steed knocked two band members to the ground. The irate White yelled that not even a Union officer could ride roughshod over his "fine negro soldiers." Rose ordered White to disperse his men, and the two had words. Gunfire punctuated the air for about five minutes before White's men finally left Anthony House. Several men were wounded, and an innocent bystander was killed. Later

[59] Asst AG to CO, Little Rock Barracks, 16 Apr 74, ibid., p. 15.

[60] Emory to AG, 16 Apr 74, and reply 17 Apr. Atty Gen Williams to Isaac C. Mills, U.S. marshal, Little Rock, 17 Apr 74. Ibid., pp. 5, 15–16.

[61] Grant to Rose, 18 Apr 74, ibid., p. 18.

[62] Baxter to President, 19 and 21 Apr 74. Brooks to President, 20 Apr 74, ibid., pp. 6–9.

that day, acting under General Emory's order of the sixteenth to prevent bloodshed or collision of armed parties, Rose sent each of his two companies to intersections where trouble had broken out. The troops quickly scattered the would-be combatants and imposed a truce.[63]

While Rose maintained his force in position to keep the two factions from clashing, Baxter took a new tack. Writing President Grant on the twenty-second, he proposed to convene the general assembly on 11 May and let it decide the legitimacy of the two rival claims. In return Baxter asked Grant to protect the assembly and support its decision with troops, if necessary. Grant agreed and ordered Rose to withdraw his men as soon as Brooks consented to the proposal. By that time, however, Brooks, who had gained a numerical superiority and had received 2,000 new Springfield rifles, just shipped down the river from Saint Louis, showed no inclination to risk power for favorable arbitration.[64]

On 27 April, by telegram, followed by formal letter on 28 April, Baxter appealed to the president under the constitutional and legal formula asking aid "to suppress armed insurrection against the legal government of Arkansas." Since the general assembly was not in session, Baxter explained, he could make the request in its place. The violence in and around Little Rock had to be suppressed if the assembly was to convene as he proposed on 11 May.[65] Grant made no immediate reply to Baxter's formal appeal, because he was not ready to interpose federal force to support either of the claimants. Meanwhile, the scale of violence mounted in and around Little Rock, with small but violent clashes occurring, the largest on 7 May when Brooks' men fired on a boatload of Baxter's adherents traveling on the Arkansas River. In the ensuing gunfire twenty men were killed or wounded.[66]

Seemingly, the initiative passed to Brooks on 7 May, when the Arkansas Supreme Court ruled that the Pulaski Circuit Court had the right to issue its decision declaring Brooks governor. Two days later Brooks again requested Grant's aid "to quell insurrection and domestic violence."[67] Again Grant made no response, seeking some sort of compromise. Attorneys in Washington representing both sides attempted to frame such a compromise, proposing that the general assembly, meeting on the fourth Monday in May rather than the eleventh of May, should decide the issue. Respective forces would be disbanded beforehand, except for one company in each camp to act as a bodyguard for each contender. Brooks accepted the agreement but Baxter would not, since the proposed meeting of the legislature would take place in the state house, which Brooks controlled. Instead he insisted on the legislature meeting on 11 May as he had proposed and in his own camp at Anthony House. He renewed his call on the president to protect the legislature during the session. Brooks then secretly ordered his men to intercept and turn back trains and boats bringing legislators supporting Baxter to the capital.[68]

Despite Brooks' efforts, twenty-nine delegates reached Little Rock in time for the meeting on the eleventh, but they were insufficient to form the quorum required for conducting state business. The members present nonetheless petitioned Grant for protection, claiming that a quorum would have been present but for Brooks' interference with the railroads coming

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[63] Rose to Secy War, 21 Apr 74, ibid., pp. 21. Singletary, *Negro Militia*, pp. 59–61.

[64] Baxter to Grant and Grant to Baxter, 22 Apr 74, H. Ex. Doc. 229, pt. 1, p. 9. Secy War Belknap to Rose, 23 Apr 74. Wilson, *Federal Aid*, Doc. 88, p. 310. See also text, pp. 172–73.

[65] Baxter to Grant, 27 and 28 Apr 74, Wilson, *Federal Aid*, pp. 173–74.

[66] Ibid., p. 174. Woodward, "Brooks and Baxter War," p. 331.

[67] Brooks to Grant, 9 May 74, Wilson, *Federal Aid*, pp. 174–75.

[68] Ibid., p. 175 and Docs. 89 and 90, p. 310–11. Woodward, "Brooks and Baxter War," pp. 332–33.

into Little Rock. The president, still seeking a compromise, asked that the legislature adjourn for ten days to permit members of Brooks' faction to join it, and that it then meet in the state house under the protection of federal forces to settle the issue. "I urgently request," he wrote, "that all armed forces on both sides be disbanded, so that the general assembly may act free from any military pressure or influence."[69] Baxter agreed to the adjournment on condition that Brooks' forces first abandon the state house and surrender their arms, but Brooks, in high dudgeon, refused to honor a decision by any legislature except the one he had called for the fourth Monday in May under the earlier agreement.[70]

The Baxter assembly reached a quorum on 13 May and immediately petitioned the president to provide the necessary military support to enable its members to take over the state house.[71] Moved by a request from the general assembly where two requests from Baxter had failed, Grant finally intervened. First, however, in accordance with the Supreme Court division in *Luther* v. *Borden*, he had to determine which man, Baxter or Brooks, had the lawful clain to the governorship. In an opinion rendered to Grant on 15 May, Attorney General Williams noted that whereas Brooks had based his claim upon the finding of a county court, Baxter rested his upon the decision of the state board of electors, as sustained by the Arkansas General Assembly. Inasmuch as the constitution of the state of Arkansas had long before conferred exclusive jurisdiction over contested gubernatorial elections on the general assembly, Williams upheld that body's recognition of Elisha Baxter.[72] Williams also noted that although Baxter had, in fact, governed Arkansas for two years before being forcibly evicted, recognition of Brooks' claim would establish a precedent for making future coups legitimate.

Following this opinion, Grant formally recognized Baxter as governor, and on 15 May 1874 issued a proclamation commanding "all turbulent and disorderly persons to disperse and retire peaceably to their respective abodes within ten days," meaning, of course, the followers of Brooks.[73] The president subsequently directed General Emory to have all troop commanders in Arkansas recognize and protect Governor Baxter and his appointees. Baxter, as it turned out, needed no active military assistance. As soon as Brooks' backers heard of the proclamation, they dispersed, and Baxter took peaceable possession of the state capitol.

This was not really the end of the story. The conflict between the Republican factions continued with the net result that a Democrat, A. H. Garland, was elected governor in the November election of 1874. Although his accession was contested by Baxter's lieutenant governor, V. V. Smith, Garland's right to the office was finally upheld by Congress in 1875.

The Army's role in the matter had been, in the first instance, simply to prevent armed clashes between the rival governments. This had become active support of one of these governments only after a considerable delay, but once Grant had decided to render that support, the opposition melted away, testimony to the extent to which a mere handful of federal troops could be decisive in settling political quarrels in the South. As an odd aspect of

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[69] Members, Ark. Legislature to Grant, 10 May 84; Grant to Brooks and to Baxter, 11 May 74. Wilson, *Federal Aid*, Docs. 91, 93, 94, pp. 311–12.

[70] Brooks to Grant, 11 May 74, ibid., Doc. 95, pp. 312–13. Woodward, "Brooks and Baxter War," pp. 333–34.

[71] Ibid., p. 176.

[72] Excerpts in Wilson, *Federal Aid*, pp. 178–79.

[73] Richardson, *Messages and Papers*, 9:4226–27.

the affair, the federal government billed the state of Arkansas for $250,000 to reimburse it for the expenses Captain Rose had incurred in keeping the peace.[74]

The Army and the Elections of 1876

The approaching presidential election of 1876 was manifestly crucial. The Democrats had won control of the House of Representatives in 1874 and the Republicans maintained only a narrow lead in the Senate. Democratic candidate Samuel J. Tilden was the first serious contender proffered by the party since before the Civil War. The vote in the South and particularly in the states of Florida, Louisiana, and South Carolina, the only three remaining under Republican rule, promised to be critical for the Republicans and indeed it turned out to be.

On 7 September the War Department issued a general order alerting commanders to the procedures to be followed in the South during the election. It contained a long set of instructions from Attorney General Alphonso B. Taft, setting forth the duties of U.S. marshals in the South to protect everyone in his right to vote and to suppress any disorders around the polling precincts in keeping with the First Enforcement Act. And Taft reiterated the power of the marshals to summon the whole force of the community, including military personnel in organized bodies to form *posses* for this purpose. The War Department repeated, for the benefit of the military commanders, the instructions on the obligations for furnishing such *posses* and the responsibilities of the commanders that it had first issued when Evarts announced his opinion in 1868.[75]

Departmental commanders in the South reacted accordingly. In the Department of the Gulf—expanded on 26 June 1876 to include Alabama and part of Tennessee as well as Arkansas, Louisiana, and Mississippi—Emory's successor, Maj. Gen. Christopher C. Augur, deployed troops at sixty-two locations on election day. The concentration, as well might have been expected, was in troubled Louisiana. Within South Carolina, Maj. Gen. Thomas H. Ruger, commanding the Department of the South, placed five to ten soldiers "practically every place on the map." The deployment in the other states in his department—Florida, Georgia, North Carolina, and part of Tennessee—was on a lesser scale. Days before the election departmental commanders gave their subordinates commanding posts and detachments stringent reminders to avoid the appearance of trying to influence the voters. They were to keep their men within barracks or camp limits, away from the polling places, but ready to quell disturbances if called on by civil officials to do so. If commanders judged their barracks or camp too far from polling places for their men to provide timely assistance, they were to move small detachments to forward positions for that purpose.[76]

Election day itself passed without any major disturbance anywhere in the South, although certainly this peaceful result was in part due to the positioning of the troops. The troubles came later in two states, Louisiana and South Carolina.

In Louisiana, two months of disturbed conditions ensued as state returning boards and

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[74] Wilson, *Federal Aid*, pp. 176–79.

[75] War Dept GO 96, 7 Sep 76. On the Evarts opinion, see above Chapter 14.

[76] Quote from Sefton, *Army and Reconstruction*, p. 247. Cir No. 10, Hq, Dept of South, 28 Oct 76. Cir No. 18, Hq, Dept of Gulf, 1 Nov 76. All in File 4788, Use of Troops in the South during the Presidential Election of 1876, RG 94, NARA.



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congressional investigators tried to verify the results, as well as the legality of an election in which fraud and intimidation of voters played a large role. As the returning board appointed by Governor Kellogg undertook to determine the results, General Augur assembled his scattered detachments, and following a familiar pattern established by his predecessor, deployed nearly three regiments in New Orleans to protect the board in its work. On the twentieth and twenty-second of December the board certified Republican victories at all levels. The Democrats refused to accept the results, and the situation soon became much the same as it had been following the election of 1872. Instead of Republican Stephen B. Packard (the former U.S. marshal who had long been a mainstay of the Stalwart faction), the Democrats insisted that Francis T. Nicholls (an ex-Confederate general who had lost an arm and a foot in the war) had been elected as governor, and that a true count of the vote would give them control of the legislature.

In the outlying parishes, too, there were the usual disputed elections for local office, and Sheridan directed Augur to return as many detachments as possible from New Orleans to the interior parishes for protection of congressional investigators as they sought evidence of voter intimidation. Despite Sheridan's precautions, White Leaguers continued to harass blacks and to evict recently elected Republican officeholders.[77] In Monroe, Capt. Clayton Hale, 16th Infantry, reported that 500 well-armed Democrats had publicly sworn their intention to seat Nicholls' men in Ouachita Parish by force, despite the presence of Hale and his twenty-nine enlisted men. Hale commented that, no longer awed by the moral force of troops in Union blue, the local rifle clubs would respect only a superior physical force.[78]

With the prospect of two governors and two legislatures once again emerging, the danger of renewed hostilities loomed ahead in New Orleans. Augur appealed to his superiors for guidance and received the War Department's direction, relayed by Sheridan on New Year's Day, 1877, to "prevent violence and keep the peace,"[79] but there was no mention of supporting Packard's claim. Under these instructions, Augur posted soldiers at several locations throughout the city when the Democratic and Republican legislatures convened separately. The Republican legislature passed a resolution asking Grant for military protection, and Governor Kellogg sent it on to the president. Kellogg also, a few days after-

[77] For detailed accounts see: U.S. Congress, House, *Recent Election in Louisiana*, Misc. Doc. 343, 44th Cong., 2d sess., 1876–77.

[78] Hale to Asst AG, Dept of Gulf, 15 Dec 76, File 4788: Use of Troops in the South.

[79] Quoted in Dawson, *Army Generals*, p. 242. See also Sefton, *Army and Reconstruction*, p. 248.



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ward, asked that Grant recognize Packard as governor and instruct Augur to protect him. But this time Grant specifically declined direct support, while promising that federal troops would suppress any violence that might arise.[80] In effect, Grant was going back to the policy he had followed in the Warmoth-Carter affair of January 1872, and not that adhered to in supporting the Kellogg regime.

Following his instructions to the letter, Augur remained neutral when the Nicholls forces staged a coup on 9 January, seizing several police stations, the state arsenal, and the Cabildo Building that housed the Louisiana Supreme Court without any real opposition. The Democrats then proceeded to replace the Republican court with one of their own, but wisely refrained from attacking the state house, which they knew would provoke a federal military response. Kellogg, Packard, and the U.S. Marshall in New Orleans all appealed to both Augur and the authorities in Washington but received no decision, such as Grant had made in the wake of the 1874 coup, to force Nicholls' followers to surrender the public buildings they had seized. Grant did refuse to recognize the supreme court set up by the Democrats and declared that if there should be necessity for recognition of either claimant to the governorship "it should be Mr. Packard." Packard, acting on this pronouncement, ordered the opposing forces, including the new supreme court, to disperse, and when they refused he again called on Augur for military assistance but was rebuffed. On 16 January, Simon Cameron, who had succeeded Belknap as secretary of war, instructed Augur to preserve the status quo in Louisiana until congressional committees, then investigating the election within the state, would return to Washington. As a result, the Nicholls forces remained in control of most of the state offices, except for the state house itself, where Packard was ensconced, and two governors and legislatures continued to contest for power.[81] This situation continued with Augur's troops stationed in the city to prevent disorder until after the election of 1876 finally had been decided.

Augur himself diplomatically urged that Grant not recognize Packard. Hinting at bloody consequences, Augur requested that, prior to recognition of Packard, he be furnished with a battery of light artillery. Later Augur boldly stated the case against recognition of the Republican: "Packard's opponents are numerous, united and aggressive; his friends few, unorganized and furnish no moral or material support. From present appearances his government

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[80] Dawson, *Army Generals*, p. 243.

[81] Ibid., p. 244–49. Cameron to Augur, 9 Jan and reply 10 Jan 77. Both in file 4788: Use of Troops in the South.

can only be maintained by use of U.S. troops."[82] Grant was impressed and on 1 March informed Packard that "public sentiment will no longer support the maintenance of State government in Louisiana by the use of the military." The president finally decided not to recognize either claimant, but to use troops only to protect life and property on both sides.[83]

Grant left the ultimate political fate of Louisiana in the hands of his elected successor, Rutherford B. Hayes, and Hayes had in fact already bargained away the Republican claim to the governship of Louisiana by what has generally been known as the Compromise of 1876. In return for acquiescence by the Democrats to Hayes' receiving the disputed electoral votes of Florida, Louisiana, and South Carolina, and thus assuring his election to the presidency by one electoral vote, the president-elect agreed to recognize Democratic governments in Florida, Louisiana, and South Carolina and to end the Army's civil mission in the ex-Confederate states.[84] On 20 April 1877 Hayes wrote Secretary of War George W. McCrary, "In my opinion there does not now exist in Louisiana such domestic violence as is contemplated by the Constitution . . . to invoke the military power of the United States for the defense of the state. The state constitution and laws alone should be used to settle the disputed claim." Hayes instructed the secretary to have General Sherman withdraw all troops from New Orleans. Packard withdrew his claim and departed the city, ending the long dispute. Democratic government and white supremacy had been restored in Louisiana.[85]

Meanwhile, two weeks earlier, the federal government had decided to take similar action in South Carolina. In November 1876, when South Carolina's Democrats mobilized their rifle clubs behind the candidacy for governor of former Confederate general Wade Hampton, the Republican incumbent twice requested and received military aid from President Grant. Although Grant's commander in South Carolina sedulously avoided the appearance of taking sides in the partisan struggle, contemporary critics of Reconstruction cited South Carolina as the latest example of a Republican president using the Army of the nation to keep loyal carpetbaggers in power.[86]

The South Carolina troubles began with a tragic incident at Hamburg on 4 July 1876, when a Negro militia company jostled two white men attempting to ride a buggy through the company's ranks as it marched down the street. The two white men swore out a complaint, and the local sheriff ordered the militia leaders to appear in court on the eighth. When the leaders failed to appear, an ex-Confederate general, M. C. Butler, ordered members of his Sweetbriar Sabre Club to bring their cannon and surrounded the militiamen barricaded in their armory. The Negro militia refused to surrender until the first cannonballs tore through the walls of their refuge. Members of the Sweetwater Sabre Club subsequently took twenty-five Negro prisoners to a wooded area and killed five of them. Governor David Chamberlain took no action against Butler, and a flurry of new rifle clubs sprang up throughout the state. By October 1876 South Carolina Democrats had organized nearly 13,000 men into sixty-eight rifle clubs to counterbalance the Negro militia and to support the bid of Wade

[82] Augur to AG, USA, 15 Feb 77, ibid.

[83] Sefton, *U.S. Army and Reconstruction*, p. 250; Dawson, *Army Generals*, pp. 244–45.

[84] Actually, the election of Hayes was decided by a fifteen-man commission representing the House, the Senate, and the Supreme Court. The compromise involved the Democrats' accepting the decision of the commission without further protest. See Kenneth E. Davison, *The Presidency of Rutherford B. Hayes* (Westport, Conn.: Greenwood Press, 1972), pp. 42–44.

[85] Hayes to McCrary, 20 Apr 77, File 4788: Use of Troops in the South; Sefton, *U.S. Army and Reconstruction*, pp. 250–51.

[86] Except where noted this account is based primarily on Wilson, *Federal Aid*, pp. 182–87.

Hampton for the governorship.[87]

Alarmed by the existence of so many rifle clubs on the eve of the election, on 7 October Governor Chamberlain applied to President Grant for military aid against insurrection and domestic violence in several counties of South Carolina. The president acted favorably on Chamberlain's request, issuing a proclamation on 17 October labeling South Carolina's rifle clubs as "combinations too powerful to be controlled by the ordinary course of justice," and ordering the clubs to disband within three days.[88]

Grant also directed General Sherman to reinforce the 683 troops already in South Carolina with an undisclosed number of men from General Scott's Division of the Atlantic, a command which included Virginia and the Department of the South. Sherman directed Ruger to distribute his troops in small detachments throughout South Carolina with orders to act immediately at the first sign of public violence.

The attitude of white South Carolinians toward the troops mellowed dramatically during the two weeks between Grant's proclamation and election day. Upon hearing the presidential manifesto, prominent citizens protested that rifle clubs did not exist to disturb the peace, but to protect lives and property, especially at a time when Radical Republican state authorities were busily arming the Negro militia. In a speech on 20 October, Wade Hampton persuaded his followers not to worry about the troops: "These men . . . are no longer our enemies, but are the best friends we have in the North. Treat them kindly . . . I am glad that they have come, for they will recognize and sympathize with our efforts in behalf of Republican freedom."[89]

In another speech Hampton related that he had had a most agreeable chat with General Ruger. Whatever Hampton's motives, his words had an amazing effect. When the troops debarked at Columbia on 4 November, throngs of whites cheered them. The unaccustomed show of affection from white Southerners first surprised and then somewhat embarrassed the men in blue.[90]

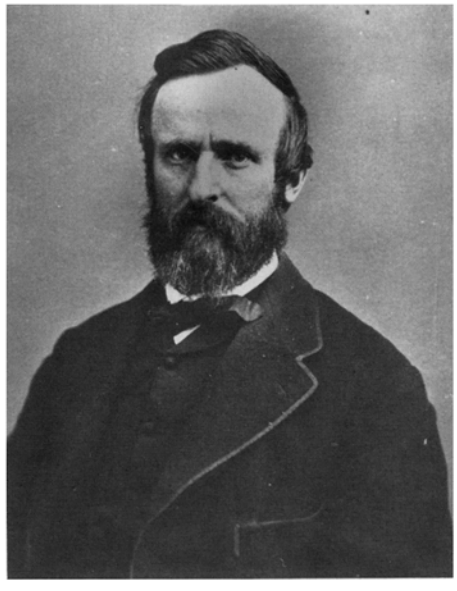
Like New Orleans, Charleston in 1876 enjoyed relative calm on election day, but not after. The ubiquity of federal troops, combined with Democratic confidence in an electoral victory, discouraged any violence during the voting.

In the wake of apparent Democratic victories, trouble erupted in Charleston as it had in New Orleans. Months before the election, Republicans had terrified Negroes with stories that the victory of Wade Hampton would mean the restoration of slavery. As a result, Wade Hampton's victory spurred numerous gatherings of armed blacks in downtown Charleston between 8 and 10 November. The threat of a bloody encounter between the blacks and Charleston's rifle clubs led Colonel Hunt to cancel orders for his men to return to their barracks at Summerville, over twenty-two miles northwest of the city. Whites welcomed the sudden reappearance of Hunt's men and asked to serve on *posses* with the local police and help the Army maintain order. With the Citadel as Hunt's base of operations, the troops patrolled the streets and separated belligerent mobs of blacks and whites. On the ninth, Hunt

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[87] Singletary, *Negro Militia*, pp. 139–40.
[88] Richardson, *Messages and Papers*.
[89] "Our Troops in South Carolina," *Army and Navy Journal* 14 (4 November 1876), p. 200.
[90] Ibid.

personally interceded between leaders on both sides, recommending that armed blacks disband first, to be followed by the rifle clubs. The mayor of Charleston, a Radical Republican Stalwart, insisted that the rifle clubs be the first to disarm. After a dispute between the colonel and the mayor over who had the authority to maintain peace in Charleston, a dispute won by Colonel Hunt, the militiamen and the rifle clubs both disarmed under the surveillance of Hunt's troops.[91]



RUTHERFORD B. HAYES

Meanwhile, Governor Chamberlain refused to accept the validity of Hampton's election or the return of a Democratic majority to the state legislature. As inauguration day, 7 December, approached, South Carolina, like Arkansas and Louisiana before it, faced the probability of rival governors and legislatures. Fearful of a coup by the rifle clubs, Chamberlain again turned to President Grant for support. On 26 November, under orders from the president, General Sherman ordered General Ruger to assemble a new peacekeeping force in the state capital. Ruger assembled 8 companies from the 18th infantry, 1 battery from the 1st Artillery, 2 batteries from the 2d Artillery, and 3 from the 3d Artillery. Together with some miscellaneous detachments, Ruger's forces at Columbia exceeded 450 men. From 28 November 1876 through 10 April 1877 the Army alone prevented a civil war from breaking out in Columbia. When the South Carolina legislature convened on 28 November, Chamberlain's secretary of state seated only those bearing approved certificates of election. Both the accepted and excluded Democrats withdrew from the assembly and established their own legislature. Later, on the grounds that the president's instructions were only to preserve peace between the two factions, General Ruger refused a request from Governor Chamberlain to disperse the Democrats. He was upheld in his appeal by Attorney General Taft, who insisted that Chamberlain first use his own men to quell the revolt.

Only when the Democrats and their rifle clubs attempted to stop Chamberlain and the Radical Republican legislature from governing, did Ruger's troops move to support the Republicans. On 5 December, when some rifle clubs entered Columbia to seize the state house and seat Wade Hampton, General Ruger encircled the building with a ring of troops. For the next three months Ruger's men continued to separate the antagonists. After Rutherford B. Hayes took the oath of office, however, he recognized Hampton as the legal governor. Chamberlain stepped down in April, and federal troops withdrew from the capital. With the withdrawal of the troops from civil duty in Charleston and New Orleans in April 1877, Recon-

[91] Ibid.

struction came to an end and the United States entered a new era in which the use of troops in civil affairs was to involve quite different issues.

The Reconstruction Era was a unique period in the history of the use of federal military forces in domestic disorders. For fifteen years Army commanders in the eleven ex-Confederate states exercised a responsibility for keeping peace and order that at all other times and places in American history has belonged primarily to local civilian authority. It was not just that the number of specific instances of federal intervention during these years exceeded the number of cases occurring either before or after, but that the Army, as the instrument of federal Reconstruction policy in the South, was almost continually engaged in aiding, or sometimes replacing, civil authority in enforcing federal law.[92]

Although the political framework changed several times during the period, the responsibility of the military commanders for keeping the peace remained relatively constant. Even in the Johnson period, the military responsibility was there, even if the president did not wish it to involve, as it was to later, the enforcement of laws granting black equality. During the period of congressional Reconstruction it was exercised as part of a general responsibility of military district commanders practically to govern their districts. In the third period, after the ex-Confederate states had regained their place in the union, it remained a sort of residual function from the earlier period, exercised both under new federal laws and under a general obligation imposed by the national administration. It was in this third period that the issue was most confused, and that Army commanders on the spot had their greatest difficulty in determining how far their responsibilities did go. The War Department always made clear that they should act to preserve peace and order on their own initiative. It also gave them clear authority to assist federal marshals in carrying out the Enforcement Acts. Maintaining peace and order in the actual circumstances existing and providing the real muscle in enforcing the rights of freedmen involved a constant conflict with the majority of whites in the South as they sought to regain political control of their states. An undeniable racial conflict was involved. In the words of Maj. Gen. Christopher C. Augur, penned in 1876,

> The disturbing questions that have arisen or are likely to arise here, making the presence of troops at times very desirable in the interests of peace and order, spring mostly from two sources:
>
> First. The unsettled relations of the two races resulting from their several conditions, as owners of the soil and its cultivators, as capitalists and laborers, as, generally, political opponents.
>
> Second. The inefficient administration of both criminal and civil justice.
>
> The most fruitful, unquestionably, results from political antagonism.
>
> A very ugly feature of all the questions arising under either of the above heads, and a very embarrassing one in their treatment, is the ease and readiness with which they are made to assume the form of purely a question of races.
>
> It would appear that many of the troubles get their start in a mutual distrust of the two races and of each other's purposes; leaving each excitedly suspicious of the other and apprehensive of some concealed mischief in what the other does. Innocent assemblages and gatherings—two neighbors going out to shoot—are readily tortured into a threatening demonstration and invite immediate preparation to counteract it. While parties are in this excited condition a few evil-disposed persons have it in their power to bring on collisions with their sequences of outrage and bitter and estranged feelings.
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> In the condition of affairs thus briefly but it is believed fairly stated in general terms, and when the civil authorities fail or are unable to do anything, it is the duty of troops, so far as they can legally, to interpose to prevent collision, to restore confidence, to give protection to innocent persons, and to

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[92] On the unique character of the experience, see Sefton, *Army and Reconstruction*, pp. 252–54.

aid in the restoration of such a degree of security as permits a resumption of ordinary business and labor. . . .

The necessity for this interposition of troops is found to be more general in the country parishes where the population is sparse, and where if mischief is intended it can be prepared for in greater security, and with increased changes for the escape of offenders.

The duty thus imposed upon the troops is exceptional, and of very delicate character, and requires the exercise of good judgment and discretion. But however prudently and impartially officers may discharge this delicate trust, it is almost impossible for them to escape the censure and animadversions of a few impracticables. Some desire, and think it is the duty of troops to far exceed the limit of their proper action, and are disappointed and complain if they do not; others, whatever may happen, do not wish the troops to do anything.

What Augur left unsaid was that the mission involved enforcing unpopular federal laws in a hostile environment and, particularly in his own department, the support of claimants for state office whose principal backing came from blacks, not whites. In this last area, the federal commanders were unlikely to exercise much discretion, but were compelled to await their orders from Washington. For unlike the mission of carrying out the Enforcement Acts, although certainly not unrelated to it, in the case of rival claimants to state office the federal government acted in specific instances on the appeal of state governors and legislatures under formulas established by the Constitution and the laws of 1795 and 1807. In these instances the action involved a choice by the president as to which was the legitimate government of a state and to the issuance of a proclamation calling on the opposition to disperse. Presidents received more appeals from state governments (sometimes from two rival ones at the same time) for assistance under the constitutional guarantee of a "republican form of government" during the years 1868–1876 than they had received in the whole period from 1788 to that time. And it was the only period in our history when they had frequently to choose between state governments in accordance with the *Luther* v. *Borden* dictum.

A striking feature of this whole unusual experience, as far as the Army was concerned, was the success achieved by small contingents of troops in controlling violence where far larger numbers of rioters were involved. It usually sufficed for a platoon or even a squad of men in blue to appear to restore order. Marshals could seldom make arrests at all under the Enforcement Acts without some measure of troop support. To this extent then the Army's mission in the South during Reconstruction was a success. But in a larger sense, if that mission be conceived as primarily one of protecting the rights of freedmen under the Fourteenth and Fifteenth amendments, as certainly the Radicals of the 1860s conceived it to be, then it could hardly be called a success at all. The statistics of the various riots and encounters between blacks and whites during Reconstruction almost invariably show an extremely high ratio of black to white casualties. Quite beyond this there can be no doubt that the tactics, covert and overt, of the secret societies and the rifle clubs eventually triumphed in 1877, and when the troops were removed, white supremacy had been restored throughout the South.

CHAPTER 16

Epilogue and Retrospect

From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress.

——Posse Comitatus Act, 18 June 1878.

The frequent use of troops in the South between 1865 and 1877 for purposes normally reserved for civil authority and outside the framework of older laws governing such action provoked an almost inevitable reaction in Congress. One month after the election of 1876, several congressional Democrats charged that if federal troops near polling places had not intimidated voters, Tilden would have captured the electoral votes of Louisiana and South Carolina. Taking a broad view of the whole panorama of Reconstruction, other Democrats alleged that in previous years troops had not only intimidated voters, but had also seized political prisoners, interfered unnecessarily with civil governments in the states, and, in the case of Louisiana, had even removed an entire legislature and replaced it with one politically more acceptable to the Radical Republican federal government.

On 9 December 1876, the House passed a resolution asking President Grant to furnish all his orders or directions and those of his executive departments relating to the use of troops in Virginia, Louisiana, Florida, and South Carolina since 1 August 1876. In furnishing a bulky report, Grant answered the implied criticism by defending the legality and constitutionality of his use of troops not only in the elections of 1876, but earlier. "I have not employed troops on slight occasions," he wrote, "nor in any case where it has not been necessary to the enforcement of the laws of the United States. In this I have been guided by the Constitution and the laws which have been enacted and the precedents which have been formed under it." He reviewed the various statutes under which he had been acting, starting with the Constitution, Article IV, Section 4, and its statutory embodiment in Section 5297 of the *Revised Statutes*.[1] He offered Governor Chamberlain's request for aid to South Carolina as the most recent instance of intervention on that basis. He then cited the Enforcement Acts as the basis on which he had acted against the Klan and employed troops at election time. In using troops in the elections, he admitted he had issued no proclamations, but explained,

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[1] The laws of the United States were brought together in a single body for the first time in 1874 in the *Revised Statutes of the United States* with suitable combinations and minor changes in language. For instance, the laws of 1795 and 1807 were combined in Section 5297, while Lincoln's law of 1861 permitting the use of military force to deal with combinations too powerful to be overcome by the ordinary course of judicial proceedings became Section 5298. Section 2 of the Ku Klux Act was codified as Section 5299 of the *Revised Statutes*. Section 5300 stated the requirement for a proclamation under the other three titles.

> In case of insurrection against a state government or against the Government of the United States a proclamation is appropriate; but in keeping the peace of the United States at an election . . . no such call from the State or proclamation by the President is prescribed by statute or required by precedent.

It is noteworthy that Grant did not, at any point, cite the *posse comitatus* doctrine as authority for actions taken by troops in the South.[2]

Few congressmen questioned Grant's right to use military force under the statutes, or the constitutionality of those statutes, but several did raise questions about the frequent use of *posses* under the Cushing Doctrine, noting that command of Army forces fell into the hands of marshals and sheriffs without any approval of the commander in chief.[3] It was somewhat ironic that it was the Southern Democrats who raised the questions about the Cushing Doctrine. For Cushing had really dredged it up in 1854 out of British law to serve Southern interests in enforcing the Fugitive Slave Act.[4] But it now clearly had been turned against the white Southerners, and they were well aware of it, for they had seen firsthand how it could be used to enforce unpopular laws or sustain unwanted regimes.

In the first instance, the Democratic target was the use of troops to support Republican regimes in Louisiana and South Carolina. To that end, a Democratic representative from Tennessee offered a rider to the Army Appropriations Bill for 1877 that read,

> That no part of the money appropriated . . . shall be applied to the pay, subsistence, or transportation of troops . . . to be used or employed in support of various claimants to political office. . . . Nor shall the Army . . . be used in support of the claims or pretended claims of any State government, or officer thereof . . . until the same shall have been duly recognized by Congress.[5]

This rider, one that seems in retrospect to have been aimed more at the president's powers to choose between rival state governments promulgated in *Luther* v. *Borden* than at the *posse comitatus* doctrine, almost secured passage in the 2d session of the 44th Congress. An appropriations act carrying the rider as well as a reduction of Army manpower from 25,000 to 17,000 (one representative defended the cut because the president had misused the Army for "purposes dangerous to the liberties of the country") passed the House but was defeated in the Senate. The two houses could reach no compromise and no Army appropriations bill was passed, leaving the soldiers without pay for almost a year.[6]

The new 45th Congress that met in November 1877 was a product of the election of 1876. The Democratic majority already existing in the House was swollen by many more Southern Democrats. Between the adjournment of the 44th Congress and the convening of the 45th, two events of some importance with regard to the use of troops in domestic disturbances occurred. The first was President Hayes' withdrawal of troops from the capitals of Louisiana and South Carolina, the second Hayes' extensive use of federal troops in the Great Railway Strike of 1877.[7] Certainly, Hayes' action in withdrawing troops alleviated some of the Southern fears of new military interventions, but Southern Democrats still feared that some

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[2] Grant to House of Representatives, 22 Jan 77, Richardson, *Messages and Papers*, 9:4372–375. The documents submitted by Grant were embodied in H. Ex. Doc. 30, 44th Cong., 2d sess., *Use of Troops in Certain Southern States.*

[3] See debates on Army Appropriations Bill in *Congressional Record*, 44th Cong., 2d sess. (1877), pp. 2111–252 passim.

[4] See above, Chapter 7.

[5] *Congressional Record*, 44th Cong., 2d sess. (1877), p. 2119.

[6] *Congressional Record*, 44th Cong., 2d sess. (1877), pp. 2111–253 passim. The quote is from a speech by Congressman Thomas F. Bayard of Delaware, p. 2157.

[7] This use will be treated in another volume in this series.

new Radical president might reinvoke the Enforcement Acts or return to the use of troops under the Cushing Doctrine.[8]

The use of troops in the railway strike brought some Northerners who opposed Hayes' action over to the side of those who wished to restrict the powers of the president. Some Westerners also thought restrictions might shift the emphasis away from the South toward the West. But it was still the Southern Democrats who took the lead in urging restrictions. After agreement had been reached that the Army should retain its strength of 25,000 after all, the debate turned to this question. And this debate finally turned on the use of the Army under the Cushing Doctrine. On 27 May 1878, Representative J. Proctor Knott of Kentucky offered the following amendment as a rider to the Army appropriations bill.

> From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section and any person willfully violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding ten thousand dollars or imprisonment not exceeding two years, or by both such fine and imprisonment.[9]

The Knott Amendment, to become known as the Posse Comitatus Act, won approval of both houses of Congress and was signed into law as part of the Army Appropriations Act on 18 June 1878.[10] Some of those who opposed it in the Congress charged that it was taking away from the president entirely the power to use troops to repress internal disorders except on request of a state governor or legislature, that President Washington could not even have dealt with the Whiskey Rebellion under its terms.[11] This interpretation of the Posse Comitatus Act has often been raised by those protesting against federal troop intervention in the many instances it has occurred since 1878. And indeed the question of what the real meaning of the Posse Comitatus Act was has been a subject of some dispute ever since its passage. To judge by its wording, however, as well as the speech of Representative Knott in introducing the measure, all that it really did was to repeal a doctrine whose only substantial foundation was an opinion by an attorney general, and one that had never been tested in the courts. The president's powers to use both regulars and militia remained undisturbed by the Posse Comitatus Act, and by the law of 1861 and the Ku Klux Act they had in fact been substantially strengthened during the Civil War and Reconstruction Era. But the Posse Comitatus Act did mean that troops could not be used on any lesser authority than that of the president and that he must issue a "cease and desist" proclamation before he did so. Commanders in the field would no longer have any discretion, but must wait for orders from Washington. In all fairness, this seems to have been the intention of the founders, whose fears of the use of military enforcement of the law sprang from the tradition of the American Revolution.

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[8] The Supreme Court in 1882 was in fact to declare most of the clauses of the Enforcement Acts unconstitutional in the case of *United States* v. *Harris*. It did leave Section 3 of the Ku Klux Act intact, and Section 4 had expired some time since.

[9] For the lengthy debates on the issue see *Congressional Record*, 45th Cong., 1st sess. (1877), pp. 298–335 passim, and 44th Cong., 2d sess. (1878), pp. 3536–4686 passim. For the introduction of and the debate on Knott's amendment, see pp. 3845–847.

[10] 20 *Statutes at Large* 145–52. Today it is Section 1385 of Title 18 of the *U.S. Code*.

[11] See for instance the speech by Congressman Mills Gardner of Ohio, 27 May 58, ibid., 3851-852.

It seems highly unlikely that they ever would have approved of a doctrine based on British law and a British experience that included the use of Red Coats to enforce the unpopular measures of a British Parliament.[12]

On 7 July 1878, the War Department issued a general order calling the attention of all officers of the Army to the provisions of the Posse Comitatus Act.[13] It then went on to enumerate "those provisions of the Constitution and of acts of Congress understood as to be excepted from the operation of the above section, authorizing the employment of military forces for the purposes of executing the laws." The enumeration included principally Article 4 of the *Constitution;* Sections 5297-99 of the *Revised Statutes* embracing the laws of 1795, 1807, 1861 and the Ku Klux Act; the Civil Rights Act and the Second Enforcement Act; and the Van Buren legislation relating to enforcement of neutrality.[14] In addition, the general order listed certain miscellaneous provisions relating to enforcement of laws on Indian lands, the preservation of timber in Florida, and the protection of the rights of a discoverer of a guano island, "his widow, heirs, executor, administrator or assigns."

The issuance of this General Order No. 49 marked the close of an era in the use of federal military force in civil disturbances. Beginning with the passage of the Fugitive Slave Act in 1850, a certain looseness had developed in the application of constitutional and legal restraints. This looseness had been vastly accentuated during the Civil War when Lincoln invoked his war powers to assign the Army a large role in the administration of civil law. It was further accentuated in the South during Reconstruction, when Congress passed laws and the executive branch developed doctrines that, in the last analysis, permitted the use of troops for almost any purpose the incumbent administration wanted to use them for. The Posse Comitatus Act, whatever may have been its political motivation, reestablished the old restrictions and rules.

Oddly enough, the effect in the South, where the period of Reconstruction had really come to an end anyway with Hayes' withdrawal of the troops in 1877, was far less important than it was in the West where the Cushing Doctrine had enabled marshals and sheriffs to call on local commanders to assist them and local commanders to furnish this assistance at their discretion. Given the frontier conditions involved and the delays involved in getting presidential approval before troops could act in a local situation, this proved to be one of the less salutary effects of the Posse Comitatus Act.

The passage of the Posse Comitatus Act provides a convenient breaking point from which to look back on the history of the use of federal military force in domestic disorders for the first ninety years under the Constitution. The instances of its use were many and varied, justifying the provisions that the founders placed in the Constitution and early national laws that legitimized the practice. These uses fall into the two main categories established by the Constitution and the early laws. The first involved the enforcement of federal law or authority against "combinations too powerful to be overcome by the ordinary course of judicial proceedings." The second involved the constitutional guarantee of "a Republican form of government" to the states. In the first type of case, the president could act on his own initiative, in the second, only on the receipt of an application from the legislature of a state or

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[12] For a contrary view see David E. Endgdahl, "The New Civil Disturbance Regulations: The Threat of Military Intervention," *Indiana Law Journal* 49 (1974):597-98.

[13] War Dept GO 49, 7 Jul 78.

[14] These two acts were declared unconstitutional by the Supreme Court in the 1830s.

the governor if the legislature was not in session. In both types of cases, the use of force depended on the discretion of the president, for he did not necessarily have to respond to the appeal of a state. The president, normally using the War Department as his agent, made the basic decisions and set what may be termed the rules of engagement for the troops involved.

The instances of the use of federal military force in domestic disorders before the Civil War were almost all of the first type—the enforcement of federal law or authority—normally against dissident groups. The Whiskey Rebellion, Fries Rebellion, the enforcement of embargo laws, Nullification, the actions in Kansas and the expedition to Utah, all were cases where presidents acted to enforce the laws of the Union without any appeal from state authority. The early cases of state requests were less significant, and presidents turned down most of them. The only case in which a president acted, the Chesapeake and Ohio Canal incident in the 1830s, was never really regarded as the precedent that it constituted. The really important precedent grew out of a case when President Tyler refused to act, the Dorr Rebellion in Rhode Island, where the Supreme Court decision in *Luther* v. *Borden* established firmly the principle that when rival state governments opposed one another, the president had the right to decide which was legitimate and to respond to the legitimate government's request for military support against its rival. This precedent had to be invoked a number of times during the Reconstruction epoch, when appeals from rival state authorities to the president for military assistance became frequent affairs. Much of the use of federal military force in the South during Reconstruction, however, was not at the request of state authorities but like most of the pre-Civil War cases involved the enforcement of federal law, notably the laws guaranteeing the civil rights of freedmen. Since its use at the request of Radical state regimes was usually for the same purpose, the two types of cases were practically indistinguishable during Reconstruction.

The enforcement of American neutrality constituted a peculiar type of use of federal force in domestic affairs. It was carried out under its own set of laws beginning with the first neutrality law passed in Washington's administration in 1794, greatly strengthened by the Van Buren Law of 1837. The interventions in the Burr Conspiracy, the Patriot War, and the Fenian incursion were all incidents of intervention to enforce neutrality laws.

In the development of the legal basis for troop intervention, the first and fundamental law was that passed in 1792, the Calling Forth Act, that fulfilled the constitutional provision giving Congress power "to provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions" (Article I, Section 8). In keeping with the constitutional provision, the Calling Forth Act gave the president power to call militia into the federal service either to enforce the laws of the Union or to protect states from domestic violence at their request. It gave him no right to use regulars for this purpose. This law, which governed Washington's action in the Whiskey Rebellion, was replaced in 1795 by a somewhat less restrictive law, but one that still gave no authority for the use of regulars in such affairs. Quite clearly, the sentiment of the time was that only militia should be used in enforcing the laws of the Union when the use of military force became necessary. Meanwhile, the Neutrality Act of 1794 was passed permitting the use of either regulars or militia to prevent filibustering expeditions against powers with whom the United States was at peace. It was really this law that led directly to another law passed in 1807 permitting the president to use the regular military forces for the same purposes that the law of 1795

permitted him to use the militia. The development of law on the two types of action followed a roughly similar course, although the laws were based upon different constitutional clauses. The Calling Forth Act of 1792 authorized the president to call militia into the federal service both to overcome resistance to federal authority and to protect the states against domestic violence on the appeal of their legislatures. The authorization to call militia and not regulars was in keeping with the constitutional provision and with the feeling of the time that any use of regulars in these domestic affairs smacked of the type of tyranny all good patriots thought the British had practiced during the Revolution. The law of 1795, passed in the aftermath of Washington's action in the Whiskey Rebellion, restricted the president to the use of militia first, as the earlier law had. Meanwhile, other laws had been passed permitting presidents to use regulars as well as militia to prevent violations of neutrality. Jefferson used these laws to authorize the use of a mixed force in dealing with the Burr Conspiracy. And in the aftermath of that conspiracy, feeling that he needed authority to use regulars to suppress domestic conspiracies and insurrections as well as violations of neutrality laws, in 1807 Jefferson secured passage of a law permitting the use of regular military forces in all cases where the law of 1795 permitted the use of militia. From 1807 on, presidents had a choice, and from a variety of circumstances they nearly always chose to use regulars. There was a variety of circumstances dictating this choice, but these can be summed up as reflecting a lack of reliability of militia to overcome local prejudices and act with unity under national authority. In cases where there were actually rival factions, each supporting its own militia—as in Kansas in the fifties and in many Southern states during Reconstruction—to call on militia was to engender a civil war between factions. The net result was that by the end of Reconstruction the whole idea of using militia as the principal federal force in handling domestic disorders had become passe. It is noteworthy that the Posse Comitatus Act contained no restrictions on the use of federalized militia as it did on the Regular Army. This retreat from the original conception of the founders was to be reflected in future uses of military force in domestic disorders.

In the development of laws on the subject, the Lincoln law of 1861 vastly strengthened the powers of the president under the laws of 1795 and 1807. The Civil Rights Act, the Enforcement Acts, and undoubtably in the last of these, the Ku Klux Act, strengthened those powers even further. The Ku Klux Act, in fact, added a permanent provision to the law. Independent of these provisions of law the development of the Cushing Doctrine permitted the use of troops in certain circumstances to enforce law without direct invocation of presidential authority. This doctrine was initially invented to allow federal marshals and judges to obtain quick military assistance in enforcing the Fugitive Slave Law of 1850. But it was little used for this purpose. Rather, it was reinvoked in the Reconstruction Era to permit federal officials and Radical regimes in the South means of securing military assistance without the long and involved process of securing presidential orders. However, even there it was never used in its purest form, and most troop interventions in the South were carried out, as Grant insisted, either under the provision that allowed presidents to use troops to enforce federal laws, strengthened as they were in the Enforcement Acts, or as a result of requests from state governors or legislatures under the other formula. But it is certainly notable that local commanders enjoyed more freedom of action during the Reconstruction period than any other time, and it was this increased freedom of action that the Posse Comitatus Act forbade.

One of the striking features of nearly all these uses of military force, whether federalized militia or regulars, was that they were successful in overcoming resistance to federal authority without bloodshed. Deadly force may have been threatened, but, except in the case of John Brown's raid, was seldom used. Massacres of civilians as have occurred in many other countries in such instances never marred the record of the U.S. Army. One may ask why this measure of success? Why have a few soldiers usually been able to overcome mobs of much greater numbers? The answer would appear to be that the military force was under strict discipline and that resisters understood this fact. Until the Civil War brought forth a contest of wills between those who would and would not obey federal authority, there were few who wished to resist its military symbols. The Mormons were almost an exception; but in the end they, too, decided to avoid open conflict. And even after the Civil War, Southerners generally shrank from reopening the conflict. Small contingents of troops were able to keep order, even if they could not prevent widespread flaunting of federal laws aimed at securing the rights of the freedmen.

Where soldiers were employed over wide areas as law enforcement agents they had the least success. Even military force was not enough to make Jefferson's embargo a success. In Kansas, the Army could never completely control the acts of desperadoes, particularly in the southeastern part of the territory where its force could not be brought to bear effectively. In Utah, the Army could face down the Mormons and enable gentile officials to take office, but could not, under restrictions put on it, actually ensure the exercise of power by those officials when it came to punishing Mormon miscreants. And in the Reconstruction Era the Army in the South kept the general peace much better than it was able to enforce federal law guaranteeing the rights of citizens, black or white.

In all succeeding incidents the precendents established by Washington in the Whiskey Rebellion were generally followed. Perhaps the most important of these was the instruction that the military should not in itself perform any police or judicial functions. Such functions were reserved for civilian authority. Thus soldiers were not to make arrests, nor to conduct civil trials. Their task was to overcome any organized resistance to the enforcement of the laws and to assist federal marshals and state and local law enforcement personnel in making arrests. In no case was martial law ever declared, except in the unusual circumstances of the Civil War and Reconstruction.

A second principle of importance was that minimum force must be used even in overcoming overt resistance. In the Whiskey Rebellion, when no overt resistance appeared, the federalized militia was quickly withdrawn. In Kansas, Army commanders refused to undertake tasks that might involve the widespread shedding of citizens' blood. And Jefferson Davis as secretary of war did issue instructions that stipulated the use of moral rather than physical force whenever possible. Even in the Reconstruction Era, federal commanders never sought to prosecute pitched battles with Southern whites.

These principles established by Washington—military subordination to civilian authority in enforcing the laws and quelling domestic disorder and the use of minimum force—became abiding principles in the use of federal military force in the internal affairs of the republic.

Bibliography

The sources used in the preparation of this volume are listed below. They consist of both secondary and primary materials. Most of the primary material came from printed collections of documents and congressional hearings and reports, although some material from NARA (National Archives and Records Administration) was used as well as some private manuscript collections. The extent to which the episodes described in this volume attracted national attention is attested by the wealth of material in printed congressional documents, which formed the most important source used. So much good historical work has been done on them also that it was possible to write much of this account from secondary works alone. Where printed materials did suffice, little effort was made to find manuscript materials. In shaping the account of each episode, however, usually a mix of secondary works and primary sources has been used.

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