

Lincoln as Commander-in-Chief and the Law of War

First Draft of Emancipation (July 22, 1862)

In pursuance of the sixth section of the act of congress entitled "An act to suppress insurrection and to punish treason and rebellion, to seize and confiscate property of rebels, and for other purposes" Approved July 17, 1862, and which act, and the Joint Resolution explanatory thereof, are herewith published, I, Abraham Lincoln, President of the United States, do hereby proclaim to, and warn all persons within the contemplation of said sixth section to cease participating in, aiding, countenancing, or abetting the existing rebellion, or any rebellion against the government of the United States, and to return to their proper allegiance to the United States, on pain of the forfeitures and seizures, as within and by said sixth section provided.

And I hereby make known that it is my purpose, upon the next meeting of congress, to again recommend the adoption of a practical measure for tendering pecuniary aid to the free choice or rejection, of any and all States which may then be recognizing and practically sustaining the authority of the United States, and which may then have voluntarily adopted, or thereafter may voluntarily adopt, gradual abolishment of slavery within such State or States—that the object is to practically restore, thenceforward to be maintain[ed], the constitutional relation between the general government, and each, and all the states, wherein that relation is now suspended, or disturbed; and that, for this object, the war, as it has been, will be, prosecuted.

And, as a fit and necessary military measure for effecting this object, I, as Commander-in-Chief of the Army and Navy of the United States, do order and declare that on the first day of January in the year of Our Lord one thousand, eight hundred and sixtythree, all persons held as slaves within any state or states, wherein the constitutional authority of the United States shall not then be practically recognized, submitted to, and maintained, shall then, thenceforward, and forever, be free.

"I think the constitution invests its commander-in-chief, with the law of war, in time of war." (August 26, 1863)

Further reading: <http://blogs.dickinson.edu/hist-projects/2010/10/24/limits-of-presidential-war-powers-by-matthew-pinsker/>

Emancipation Proclamation (January 1, 1863)

Whereas, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and sixty-two, a proclamation was issued by the President of the United States, containing, among other things, the following, to wit:

"That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom. That the Executive will, on the first day of January aforesaid, by proclamation, designate the States and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State, or the people thereof, shall on that day be, in good faith, represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such State shall have participated, shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State, and the people thereof, are not then in rebellion against the United States."

Now, therefore I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-in-Chief, of the Army and Navy of the United States in time of actual armed rebellion against the authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion, do, on this first day of January, in the year of our Lord one thousand eight hundred and sixty-three, and in accordance with my purpose so to do publicly proclaimed for the full period of one hundred days, from the day first above mentioned, order and designate as the States and parts of States wherein the people thereof respectively, are this day in rebellion against the United States, the following, to wit: Arkansas, Texas, Louisiana, (except the Parishes of St. Bernard, Plaquemines, Jefferson, St. John, St. Charles, St. James Ascension, Assumption, Terrebonne, Lafourche, St. Mary, St. Martin, and Orleans, including the City of New Orleans) Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia, (except the forty-eight counties designated as West Virginia, and also the counties of Berkley, Accomac, Northampton, Elizabeth City, York, Princess Ann, and Norfolk, including the cities of Norfolk and Portsmouth[]), and which excepted parts, are for the present, left precisely as if this proclamation were not issued.

And by virtue of the power, and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free; and that the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.

And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defence; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages. And I further declare and make known, that such persons of suitable condition, will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God.