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CIVIL WAR HISTORY

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The cover illustration of Robert Gould Shaw is from *Battles and Leaders of the Civil War*, ed. Robert Underwood Johnson and Clarence Clough Buel (New York, 1888), IV, 58.

CAPTIVE BLACK UNION SOLDIERS IN CHARLESTON—WHAT TO DO?

Howard C. Westwood

"THIRTEEN PRISONERS Fifty-fourth Massachusetts, black. What shall I do with them?" That message, hastily penned by Confederate General Johnson Hagood on the night of July 16, 1863, near the beginning of the Union attack on Fort Wagner, also noted that two of the blacks were "refugee" slaves, the rest free.¹

The general's question posed a conundrum. The Confederacy had been struggling with it for months and would continue to struggle with it until the war was dwindling to an end. By mid-1863, the Union, after long hesitation, was taking blacks into its army by the thousands. Inevitably some had become Confederate captives. In time there were many more. Some had been slaves in the state where captured. Some had been slaves in another of the Confederate states. Some had been slaves in a Union slave state. Some had been free, residents of a Union state or even of the Confederacy (notably Louisiana). Many blacks had donned the Union uniform voluntarily; but not a few, especially among slaves of Confederate states, had been forced into the army, either by formal conscription or by irregular means. Nearly all would be in the ranks, and eventually some would be commissioned. Captive, too, would be some of their white officers. Finally, among captives there would be officers and men of white units operating in conjunction with black units. The law of every Confederate state made slave insurrection or aiding such insurrection a crime; and, as viewed by the Confederates, slaves in arms as Union soldiers were engaged in insurrection. The conundrum: were all these captives regular prisoners of war or were they all common criminals; or were some the former and some the

I am most indebted to a number of South Carolinians for generous help in giving me information and leads, notably William L. McDowell of the S.C. Department of Archives and History, N. Louise Bailey of the staff of the S.C. House of Representatives Committee on Historical Research, David Moltke-Hansen of the South Carolina Historical Society, Armand Derfner of the Charleston bar, and Rebecca Meriwether of Columbia.

¹ *Official Records of the Union and Confederate Armies*, ser. 2, 6:123; Papers of F. W. Pickens and M. L. Bonham, Library of Congress, 3:519. Hereafter, citation to the *ORA* will be to series 2 except where otherwise indicated, and citation to the Pickens/Bonham Papers will be to volume 3.

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latter? Or were some captives something in between, in some new, unprecedented status? Or were some simply to be slain, without ceremony? Confederate statesmen, politicians, military commanders, judges, lawyers, and ordinary soldiers and civilians were to face this puzzle. Nowhere in the Confederacy was it posed more starkly than in Charleston. For, from late 1862 until almost the end of the war, in Charleston and its near regions there was repeated conflict with Union forces that included slaves of the local citizenry and, by 1863, slaves from elsewhere as well as free blacks.

General Hagood's query, after receipt at district headquarters, was forwarded at once to General Beauregard, commander of the Department of South Carolina, Georgia, and Florida, headquartered in Charleston. With it went word that the captive blacks had been ordered to the city under a strong guard and "without their uniforms."² On the next day, July 17, the department sent a copy of Hagood's note to South Carolina Governor M. L. Bonham. At the same time, Beauregard informed Richmond that he had black prisoners from the Union forces, several of whom "claim to be free, from Massachusetts." He asked, "Shall they be turned over to State authorities with the other negroes?"³

It reflected the confusion in the Confederacy at that time—the time of Chancellorsville, Gettysburg, Vicksburg, and Port Hudson—that neither General Beauregard nor Governor Bonham yet knew that on May 1, 1863, President Davis had approved a joint resolution of the Confederate Congress that, as we shall see, answered Beauregard's question. The general and governor both thought that President Davis's proclamation of December 23, 1862, promulgated on Christmas Eve, was still applicable: that "all negro slaves captured in arms be at once delivered over to the executive authorities of the respective States to which they belong to be dealt with according to the laws of said States" and that "like orders be executed in all cases with respect to all commissioned officers of the United States when found serving in company with armed slaves."⁴

Doubtless Beauregard thought that the proclamation had been carefully formulated, for it had followed by less than a month quite different instructions that he had received from Secretary of War Seddon. In mid-November 1862, one of Beauregard's district commanders had captured four slaves, armed and in Union uniform, and Beauregard immediately had sought Seddon's guidance. After checking

² *ORA*, 6:124.

³ Bonham Papers, p. 519; *ORA*, 6:125.

⁴ *ORA*, 5:795-97. In his message of Jan. 12, 1863, opening the third session of the First Confederate Congress, President Davis said that he would treat the "enlisted soldiers" (meaning whites) as "unwilling instruments" of crime and would release them on parole. James D. Richardson, *Messages and Papers of the Confederacy*, 2 vols. (Nashville, 1905), 1:290-91.

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with the president, Seddon on November 30 had instructed Beauregard to avoid a dilemma. On the one hand, delay and "military inconvenience" would be caused by turning the slaves over to civil tribunals, and, on the other hand, they could not be recognized as "soldiers subject to the rules of war and to trial by military courts." The way between the dilemma's horns, Seddon instructed, was to have the "general commanding the special locality of the capture" inflict on the slaves "summary execution."⁵ Obviously, Davis's proclamation, coming so soon after Seddon's harsh instruction, must have been thought through. And notably, it said nothing about free blacks. So Beauregard wanted further guidance. Indeed, as it turned out, most of the black captives claimed that they had not been slaves.

A very recent episode had shown Beauregard that he was in a delicate area. It had been only a month since General Hagood had forwarded a report that several young Confederate soldiers had been captured by Union forces at an observation outpost along one of the coastal waters. They were "sons of wealthy planters or themselves owners of slaves" and were lodged in the Beaufort jail instead of being treated as prisoners of war subject to exchange. It was said that the young men were kept hostage for black Union troops or their officers who might be captured by the Confederates.⁶

It was well for Beauregard to take warning from that report, for the facts behind it were sobering. It seems that the young Confederates were a sergeant and eight privates captured by the Union navy and that the navy had acceded to a demand of Union General Hunter, then army commander in the Sea Islands region, that they be turned over to him. Hunter knew that regiments of former slaves in his command had been one of the causes for the institution of a Confederate policy denying prisoner-of-war treatment to blacks and their officers. When he had found that among the navy's prisoners were "young darlings" of southern families "rich, powerful and malignant," "pets of the aristocracy," he wanted them as hostages.⁷ Moreover, on the very day of the report that Hagood had forwarded, Hunter had instructed the commander of one of his black regiments, a one-time Jayhawker, Colonel James Montgomery, that "every rebel man you may capture, citizen or soldier, you will send in irons to this place to be kept as hostages for the proper treatment of any of your men who may accidentally fall into the hands of the enemy."⁸ While Beauregard would

⁵ ORA, 4:945-46, 954.

⁶ ORA, 5:970.

⁷ It is virtually certain that the captives in the Beaufort jail were the Confederate soldiers, captured by the Union navy, whose custody as hostages Hunter had demanded of Admiral DuPont, naval commander in the area, of Secretary of Navy Welles, and of President Lincoln. ORA, 5:846-47, 659, 666, 697, 698, 708, 711-13. Hence, I infer that Hunter's demand had been met.

⁸ ORA, 5:770.

not have known of Hunter's instruction to Montgomery, he did know of a letter that Hunter had written to President Davis as recently as April 23, 1863, that revealed his attitude. Back in August 1862, when Hunter had been first trying to take slaves into his army, Davis had had his War Department issue an order declaring Hunter an outlaw and providing for his execution as a felon, on presidential order, if captured, and the execution of any other captured Union officer engaged in "instructing slaves, with a view to their armed service in this war." In his April letter, Hunter had announced to Davis that if the August order were not revoked, "I will at once cause the execution of every rebel officer and every rebel slaveholder in my possession."⁹

While, by the time of the Union expedition against Fort Wagner, Hunter had been superseded by General Gillmore as the Union army commander,¹⁰ it was obvious enough to Beauregard that measure and countermeasure, retaliation met by retaliation, might soon make war uncivilized, and that he should exercise caution in his treatment of captive blacks. Indeed, there already had been a breakdown of the Union-Confederate prisoner exchange cartel so that any exchange was limited to "special agreements." The Confederate treatment of blacks had been one of the principal causes of the breakdown and would persist as an obstacle to repair.¹¹

While Beauregard was writing Richmond, Governor Bonham was asking his state attorney general what evidence was required to render blacks captured in arms "amenable" for delivery to the state's executive under the presidential proclamation. On the next day, July 18, the attorney general opined that, since 1740, "by the laws of South Carolina a negro is presumed to be a slave until the contrary appears." Moreover, he advised, authoritative commentary had declared that "color is prima facie evidence that the party bearing the color of a negro, mulatto or mestizo is a slave." Hence, he concluded, General Beauregard must deliver to the governor all Negroes captured in arms in South Carolina "unless by evidence before him he is satisfied that the prima facie presumption of slavery arising from color has been rebutted."¹²

The governor sent Beauregard a copy of his attorney general's opinion, and they conducted "some informal proceedings."¹³ Though more blacks than those first reported by General Hagood were being captured, of the few who did not claim to be free none was a South Carolinian. The presidential proclamation had ordered that slaves should be turned over to the executive of the state "to which they

⁹ ORA, ser. 1, 14:448-49, 599; *Charleston Mercury*, June 9, 1863.

¹⁰ *Charleston Mercury*, June 9, 13, 1863.

¹¹ ORA, 6:136; William Best Hesselstine, *Civil War Prisons* (1930; reprint ed., New York, 1964), pp. 87-89, 112-13, 186-88, 216-30.

¹² Bonham Papers, p. 521.

¹³ *Charleston Mercury*, Aug. 15, 1863.

belong." Also, among the captives, there were white officers of black units, and the proclamation had ordered that "like orders be executed" for such men. Beauregard apparently thought that the proclamation meant what it said, that his slave captives and their officers were not to be turned over to South Carolina authorities, but, presumably, were to be sent to the "belonging" state. The governor—who was a lawyer and formerly had been both a United States and a Confederate congressman¹⁴—read words not for what they said but for what they intended; in his view, however strained, the state "to which they belong" was intended to be the state where the "offense" of slave rebellion and the capture had occurred—South Carolina. But on the question of the free blacks, Beauregard and the governor did agree that further word from the president was needed.

As a result, on July 21, Beauregard followed up his recent inquiry to Richmond with a wire: "What shall be done with the negro prisoners who say they are free? Please answer."¹⁵ And on the next day the governor wrote Beauregard formally demanding custody of the captured slaves and white officers and asking that the free blacks be retained—not exchanged or paroled—pending word from Richmond. As to the slaves, said the governor, if Beauregard disagreed with his interpretation of "to which [state] they belong," they also should be retained until the president could resolve the question. On the following day, July 23, the governor wrote Secretary of War Seddon, enclosing a copy of his letter to Beauregard, requesting not only the slaves and white officers but also the free blacks; the latter, he said, had violated a South Carolina statute of 1805 prescribing death for any person "concerned or connected with any slave or slaves in a state of actual insurrection within this State."¹⁶

On the day the governor had written Beauregard, Seddon had wired the general that, pursuant to a resolution of the Confederate Congress, "all negroes taken in arms" were "to be handed over to the authorities of the State where captured to be dealt with according to the laws thereof." And on the day the governor wrote Seddon, Beauregard wired the secretary of war that he did not know of the resolution, that, indeed, a congressman had informed him that "it failed to pass."¹⁷ But finally the governor located a copy of the resolution and, on July 27, sent it to the general.¹⁸

This was the resolution of May 1. It provided, as Seddon's wire had

¹⁴ Edward McCrady, Jr., and Samuel A. Ashe, *Cyclopedia of Eminent and Representative Men of the Carolinas*, 2 vols. (Madison, Wis., 1892), 1:88-90; Charles Edward Cauthen, *South Carolina Goes to War* (Chapel Hill, 1950), p. 166.

¹⁵ ORA, 6:134.

¹⁶ ORA, 6:139-40, 145-46; Bonham Papers, p. 523.

¹⁷ ORA, 6:139, 145.

¹⁸ *Charleston Mercury*, Aug. 15, 1863.

indicated, that all "negroes and mulattoes" (slave or free) who are "engaged in war . . . against the Confederate States" or who "give aid or comfort to the enemies of the Confederate States" shall, on capture, "be delivered to the authorities of the State or States in which they shall be captured to be dealt with according to the present or future law of such State or States."¹⁹ Hence, on July 29, the governor was advised by Beauregard that the blacks, slave and free, were at his disposal. The governor, however, was not yet ready to take custody, and at his request they were kept in Castle Pinckney, the military prison, until August 19, when they were transferred to the Charleston jail.²⁰

For a time, however, the governor was confused about the white officers. Perhaps he had not read closely the congressional resolution before sending it to the general. For, on August 8, he wrote Seddon requesting that the officers also be delivered to him.²¹ Two days later, though, he had found that the resolution explicitly provided that captured officers from black units would not be turned over to state authorities but would be tried by a Confederate military court and "be put to death or be otherwise punished at the discretion of the court," subject to the president's power to commute sentence.²² Thus, on August 10, the governor wrote Seddon again, withdrawing his request for the officers. But in this further letter, Bonham raised a question: would it be quite right for a free black to be given one sentence—South Carolina law, as we have seen, prescribed death, subject only to the governor's general power of commutation—but his officer to be given a less severe punishment, as was possible under the congressional resolution? His letter suggested some arrangement between the state and Confederate authorities for uniformity of treatment. Bonham also advised Seddon that he would proceed with the trial of slaves and any free blacks from Confederate states but would delay action on free blacks from the North, hoping to hear word on the question he had raised.²³ The governor was beginning to glimpse something of the conundrum.

In the meantime, there was mounting public outrage that the defenders of Charleston were confronting armed blacks. The press reported that the Confederate troops were indignant at the thought that a white man might one day be exchanged for a Negro. The northern blacks were described as "a mongrel set of trash." Incidents were reported of blacks, seeking to surrender, being summarily shot. To lend grim humor to the issue, there was quoted the story of a Frenchman who

¹⁹ ORA, 5:940-41.

²⁰ *Charleston Mercury*, Aug. 13, 15, 20, 1863; commitment to jail of Alfred Whiting and other Negro soldiers, S.C. Archives, Commitments, 1863, 1864, penal system papers, 1860-65, 7:238, dr. 3.

²¹ ORA, 6:190-91.

²² ORA, 5:940-41.

²³ ORA, 6:193-94; Bonham Papers, p. 535.

begged for quarter from a Scot: "I canna stop to quarter ye," he remarked, "but I'll cut ye in twa." And suiting his actions to his words he passed on." Indeed, the account of the opening engagement in the Fort Wagner attack told that the blacks "received no tender treatment during the skirmish, and the marsh in one place was thick with their dead bodies."²⁴

One of the local papers, virulently anti-Davis, knowing that the governor had demanded that free black captives be turned over to him, assumed that their continued residence in Castle Pinckney was due to "that serbonian bog of indecision—Richmond."²⁵ The authorities were quick to correct the paper's misunderstanding; already the governor was preparing for criminal proceedings. On August 10, he had instructed his attorney general to convene a court for the trial of such of the captives as appeared to be slaves or to be free blacks of the Confederate states, and on the next day Bonham ordered a three-man commission—two of his staff and another "prominent citizen"—to examine all the black prisoners.²⁶

On August 14, the commission reported to the governor. There were, by then, twenty-four black captives other than hospitalized wounded. Each of the twenty-four was questioned separately. One prisoner seemed defiant; all the others were respectful. Only four appeared to be slaves. Of the twenty free men, none was from a Confederate state (though one seemed to be from Maryland). All were from the Fifty-fourth Massachusetts Regiment (Colored). Questioning disclosed, however, that the entire unit contained not more than fifty or sixty blacks from Massachusetts and but a few more from other New England states; in fact, about a third of the regiment had come from Ohio.

The commissioners had, for the most part, believed the stories they heard, for they were convincingly similar. All but the one defiant captive were utterly disillusioned by their treatment in the Union army and were eager to return to civilian life. In substance their complaints were three: (1) their enlistment had been solicited by the promise that their service would not be for combat but merely for garrison and fatigue duty; (2) promises of bounty and rates of pay had been grossly violated; and (3) in battle they had been put in the forefront "as breastworks for the White Troops," told by their officers that they would be shot from behind if they did not advance. Some said that their officers deserted them. Two prisoners were unarmed officers' servants, carrying into the attack only canteens for their officers.²⁷

²⁴ *Charleston Courier*, July 17, 20, 22, Aug. 1, 1863; *Charleston Mercury*, Aug. 15, 1863.

²⁵ *Charleston Mercury*, Aug. 11, 12, 1863.

²⁶ *Ibid.*, Aug. 13, 15, 1863; Bonham Papers, p. 536.

²⁷ Bonham Papers, pp. 540-41. In the Bonham Papers, pp. 542-49, immediately following the commission's report, are notes of interviews with each of the 24 blacks; legibility is difficult. (At that time there were twenty-odd hospitalized wounded black captives in addition to those held in Castle Pinckney; see *ORA*, 6:187-88; *Charleston*

On August 14, the day the commission filed its report with the governor, Seddon was writing Bonham in reply to the letter of August 8, which had requested custody of the blacks' officers. Seddon pointed out that the congressional resolution superseded the presidential proclamation and that the officers were thus to be handled by the military. He assured Bonham that "appropriate proceedings will be instituted and severe punishment inflicted upon the officers taken in the unworthy and criminal service of commanding negroes, thereby inciting to servile insurrection and all its attendant horrors within your State."²⁸

Though Seddon's letter was not in fact a reply to the governor's letter of August 10, in which he had withdrawn his earlier request but had raised the question of uniformity of punishment for free blacks and their officers, it seemed to say that the military would deal harshly with the officers. So, on August 19, with Seddon's letter received, the governor transmitted a copy to his attorney general, telling him to "defer no longer the trial of the free negroes of the Federal States found in arms with slaves."²⁹ By August 21, the governor had assigned as counsel to the blacks a very able Charleston lawyer, Mr. Nelson Mitchell; on that day Bonham sent instructions to the Charleston sheriff to allow Mitchell and "lawyers associated with him" to have access to the prisoners "for the purpose of preparing for their defence."³⁰

Soon—perhaps at Mitchell's request—the governor appointed as his co-counsel Mr. Edward McCrady, also a very able Charleston lawyer. The governor ordered the attorney general personally to prosecute the case, designating as his co-counsel one of the members of the commission that had examined the prisoners.³¹ The matter was now

Courier, Aug. 11, 1863.) The professed disillusionment of the blacks probably was not feigned. Early in 1863, Governor Andrew of Massachusetts secured authority from the War Department to raise and organize black troops; thus was created the Fifty-fourth Massachusetts. But there were few blacks in Massachusetts or even in all of New England. An intensive recruiting drive was launched throughout much of the North. Unquestionably, recruiters offered strong inducements. The failure to make good on promised compensation is a familiar story. Familiar too is the fact that Col. Robert Gould Shaw, commanding the Fifty-fourth, sought and secured a lead spot in opening assaults in the Fort Wagner operation; see Dudley Taylor Cornish, *The Sable Arm* (New York, 1966), pp. 105-10, 150-56, 184-96. Interestingly, though the preliminary Emancipation Proclamation had not referred to blacks' becoming soldiers, the final proclamation had announced that the freed slaves would be received into the armed service "to garrison forts, positions, stations, and other places and to man vessels"; see James D. Richardson, *Messages and Papers of the Presidents, U.S., Congress, House Misc. Doc. 210 (1897)*, 53d Cong., 2d sess., pt. 6, pp. 96-98, 157-59. When general recruitment of blacks began in early 1863, many had the impression that they would be assigned to garrison and fatigue duty; see Cornish, *Sable Arm*, p. 240.

²⁸ *ORA*, 6:202.

²⁹ Bonham Papers, p. 553.

³⁰ *Ibid.*, p. 560.

³¹ *ORA*, 7:673. The attorney general's co-counsel was Mr. A. P. Aldrich, who had been a member of the examining commission subscribing to the report to the governor. Bonham Papers, p. 541.

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coming to a head. On August 25, the court met and organized for the trial.³² It was the police court for the Charleston District, sometimes called the provost marshal's court, with criminal jurisdiction over slaves and free blacks, and its decisions were not subject to appeal. The proceedings began on September 8; but only the four alleged slaves were brought to trial, despite the governor's instruction of August 19 that the free black captives were to be tried also.³³

It is not known whether the trial was confined to the four slaves as a result of lawyers' tactics or as a result of the receipt by the governor of a further letter from Seddon, written on September 1, replying to Bonham's letter of August 10.³⁴ When the governor read this further letter, he was to find new confusion injected into Confederate policy. In Richmond, the complexity of the conundrum was becoming apparent. In early June, Seddon had written an old school friend, who had suggested that captured officers and men of black regiments be put to work "in the Chesterfield coal-pits," that the law required that slaves be turned over to the states and that blacks "without free papers when not claimed by the owners" would "be liable to be sold as slaves."³⁵ But that easy dictate hardly met the problem. The problem was soon to be posed to Richmond more insistently by General Kirby Smith, commanding the Department of the Trans-Mississippi.

In mid-June, Smith sent to Richmond copies of letters written to General Richard Taylor, one of his district commanders who had custody of some blacks "captured in arms." Smith did not know of the congressional resolution; like Beauregard, he had understood that the legislation had not been adopted, leaving in force the presidential proclamation. One of the letters to Taylor had been sent by Smith's assistant adjutant general; it told Taylor that "no quarter" should be given to slaves in arms, but, if quarter were given, they should be turned over to the executive authorities of the state where captured. (Apparently Smith, like Governor Bonham, interpreted "to which they belong" in the proclamation not to mean what the words said.) The letter went on to say that if such blacks were executed by the military, Union retaliation would be provoked; but the author naively added that if they were turned over to the civil authorities to be tried under state law, "no

³² *Charleston Courier*, Aug. 26, 1863.

³³ Bonham Papers, pp. 568-72. This citation is to the report on the trial made to the governor by what appears to have been the five members of the tribunal conducting it. The report refers to the court as "Police Court for Charleston District." The governor referred to it as "the provost-marshal's court for Charleston district." *ORA*, 7:673; see also Bonham Papers, pp. 536, 597; and *Charleston Courier*, Aug. 26, 1863. The court had been recently created. Its creation and powers are recounted in a letter to the author of Oct. 21, 1960, from Mr. William L. McDowell, deputy director, South Carolina Department of Archives and History.

³⁴ *ORA*, 6:245-46; Bonham Papers, pp. 561-64.

³⁵ *ORA*, 5:960, 966-67.

exception can be taken." The other letter to Taylor was from Smith himself, who hoped that Taylor's subordinates "recognized the propriety of giving no quarter to armed negroes and their officers. In this way we may be relieved from a disagreeable dilemma." But if blacks were taken captive, Smith added, they should be turned over to state authorities for trial. In sending copies of the two letters to Richmond, Smith wrote, "Unfortunately such captures were made by some of Major-General Taylor's subordinates."³⁶

With Smith's communication in hand by mid-July, Seddon had a reply sent which suggested a different policy. The reply did not mention officers, only the blacks. They, "as deluded victims," ought to be "treated with mercy and returned to their owners." However, "a few examples might perhaps be made," though "to refuse them quarter" would make them, "against their tendencies, fight desperately."³⁷ If, by the time Smith received this word, he had been informed of the congressional resolution, he must have wondered if his secretary of war intended to follow it; for the resolution was perfectly clear—all blacks, slave or free, were to be turned over to state authorities to be dealt with under state law; it made no provision either for refusing quarter or for the military's return of a slave to his owner.

In any event, Governor Bonham's letters, especially that of August 10 suggesting uniform treatment of free blacks and their officers, forced Seddon to seek instruction from his president. Perhaps he wanted such guidance because of a recent action by the president of the United States. On July 31, the Union's War Department had promulgated a proclamation by President Lincoln announcing that the Union would protect all of its citizens, "of whatsoever class, color, or condition," and that "for every soldier of the United States killed in violation of the laws of war a rebel soldier shall be executed, and for every one enslaved by the enemy or sold into slavery a rebel soldier shall be placed at hard labor on the public works. . . ."³⁸ When Seddon received Bonham's August 10 letter, he sent it to President Davis for instruction. The president returned it, inviting Seddon to state his own views. On August 23, Seddon resubmitted the letter with his endorsement, saying that "the free negroes should be either promptly executed or the determination arrived at and announced not to execute them during the war." They should not be treated as prisoners of war, said Seddon, but dealt with so as "to mark our stern reprobation of the barbarous employment of such inciters to insurrection." Seddon suggested that the way to do this

³⁶ *ORA*, 6:21-22.

³⁷ *ORA*, 6:115. It seems that a little later Seddon wrote Smith suggesting that captured white officers "be dealt with red-handed in the field, or immediately thereafter." Herbert Aptheker, *To Be Free—Studies in American Negro History*, 2d ed., (New York, 1968), p. 94.

³⁸ *ORA*, 6:163; *Charleston Mercury*, Aug. 10, 1863.

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"effectually" would be "by holding them to hard labor during the war." Seddon did not suggest how this course might be squared with the May 1863 congressional resolution.

On August 25, President Davis returned Bonham's letter to Seddon with his own endorsement added. He noted that the congressional resolution "gives no discretion to the Executive so far as the captured negroes are concerned." But, said Davis, the statute did provide, in the case of "white men serving with negroes" (Davis did not say "officers"), that he had the power "to commute penalty" that might be imposed by a military court. This, Davis noted, indicated "a purpose to make discriminations" between individual cases. So, Davis concluded, Bonham's suggestion that there be "the same line of action" by the state and by the Confederate governments (in their respective treatment of free blacks and officers) could not be given a definite answer "as each case must depend upon its circumstances"—unless (and here the conundrum surely was confessed), "as you intimate," it be decided "not to bring any case to trial." As to that possibility Davis said that he did "not know how far the power of the Governor extends."³⁹

It was with the problem thus back in his lap that Seddon wrote to Bonham on September 1. His letter quoted his own endorsement to the president and the president's return endorsement. To the governor he recommended that "the captured negroes be not brought to trial, or if condemned, that your power of executive clemency be exercised" to allow for the possibility of an "arrangement on this question, so fraught with present difficulty and future danger." The difficulty and danger referred to, of course, was Union retaliation.⁴⁰

Whether or not it was this word from Seddon that prompted the decision not to go forward with the trial of the free blacks when the four alleged slaves were tried, that decision at least was consistent with a position then being taken by the Confederate agent of exchange in a conference with his Union counterpart on the breakdown of the prisoner exchange cartel. At the conference, as the Union agent reported to his superior on August 25, the Confederate agent said that his people would "die in the last ditch" before giving up their right to send captured slaves back to slavery but that they were willing to make "exceptions" for free blacks.⁴¹ Obviously, the seeming neat simplicity of the Confederate Congress's resolution was becoming befogged.

The trial of the four slaves, however, did proceed. It lasted for three days, from September 8 to 10. The court was a five-man tribunal. There were two charges: that, being slaves, the defendants had been in insurrection against the state; and that they had been "concerned and connected with slaves" in insurrection. Allegedly, two of the defendants had

³⁹ ORA, 6:193-94.

⁴⁰ ORA, 6:245-46, 194; Bonham Papers, pp. 561-64. The South was keenly aware of the threat of retaliation; *Charleston Courier*, Oct. 2, 1863.

⁴¹ ORA, 6:225-26.

been slaves in Missouri and two in Virginia. The second of the two charges presumably was designed to cover the case were it decided that only its own slaves could be deemed to be in insurrection against South Carolina; the evidence was to show that in any case the defendants had been encamped with two Union regiments of South Carolina slaves.

At the trial, the only evidentiary conflict was whether or not one of the defendants in fact had been a slave. Time was largely devoted to lawyers' arguments, chiefly on the question of "the jurisdiction of the court, as a Civil Tribunal, to try offenses committed by persons engaged as soldiers in the act of war, and in the ranks of the enemy." The unanimous decision of the judges, announced without elaboration, was that the court had no jurisdiction. Thereupon the court ordered that the prisoners be recommitted to jail and that the governor be notified of its decision.⁴² The captives were subsequently held in the Charleston jail, month after dreary month, along with other captured blacks. Already in the jail when they had arrived were four black Union sailors, at least three of whom were free-born New Yorkers.

Despite the fact that from the Republic's early days the Union to which the Confederate states had been parties had enlisted blacks in its navy (though not in its army),⁴³ the Confederates treated these black sailors harshly. As crew members of the Union gunboat *Isaac Smith*, they, with the boat's officers and rest of the crew, had been captured in Charleston's waters in late January 1863. In time, the officers and white crewmen were exchanged. The Confederate exchange agent had included the names of the blacks in the exchange list furnished to the Union agent, but that had been a deception. Not until August did Union authorities hear that the blacks in fact were incarcerated in the Charleston jail. The three black New Yorkers had managed to have smuggled out a note to the United States consul in Nassau telling of their fate: "in close confinement," "almost dead," fed "but a little corn bread and water." Their note was forwarded to Washington, where, on August 3, Secretary of Navy Welles sent it on to Secretary of War Stanton for his "special attention." General Hitchcock, the Union commissioner for exchange, advised Stanton that there had been "other cases like this" and that, in his view, "they can only be effectually reached by a successful prosecution of the war." Stanton then ordered Hitchcock to have three South Carolina prisoners held "in close custody as hostages for the three colored men" and to communicate that action to Richmond.⁴⁴ Three captive privates of a South Carolina Confederate cavalry unit were put to "hard labor on the public works" in Washington.⁴⁵ But in Charleston

⁴² Bonham Papers, pp. 568-72.

⁴³ Herbert Aptheker, "The Negro in the Union Navy," *Journal of Negro History* 32 (Apr. 1947): 169, 170-74, 179.

⁴⁴ ORA, ser. 1, 14:199-202; ORA, 5:708, 823-27; ORA, 6:171-72, 188.

⁴⁵ Elon A. Woodward, *The Negro in the Military Service of the United States—A Compilation* (1888), National Archives, microcopy M-858, roll 5, p. 422A.

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jail the three New Yorkers and a fourth black crewman remained confined.⁴⁶

For Governor Bonham, by mid-September, the conundrum had become most sharply posed. The Confederate Congress had decreed that all captured blacks were to be turned over to state authorities "to be dealt with according to" state law. But the governor's own state court had ruled that a South Carolina crime had not been committed by "persons engaged as soldiers in the act of war," even though they had been slaves. While Bonham later was to write Seddon that "the correctness" of that decision "may be questioned," he could hardly defy it. Aside from its finality under state law, the standing of the counsel involved gave it force. Prosecuted by the attorney general and defended by two of the state's leading lawyers—characterized by Bonham himself as "eminent"—the outcome of the case could not be shrugged off.⁴⁷ While the court's ruling, on its face, seemed applicable to slaves of South Carolina as well as other states, the governor in time did have at least some South Carolinian slaves tried before other state courts, and they were executed. But beyond that he did not go; with his president fuzzily suggesting that blacks not be brought to trial and with the secretary of war, obviously troubled by the problem of Union retaliation, recommending that the governor postpone a decision, Bonham simply "suspended further action," leaving the blacks in the Charleston jail at the expense of the state and local civil governments.⁴⁸ His bafflement

⁴⁶ Luis F. Emilio, *History of the Fifty-Fourth Regiment of Massachusetts Volunteer Infantry, 1863-1865*, 2d ed. rev. (Boston, 1894), p. 413. Emilio's history, though based on painstaking research, including interviews with survivors, was written before records were fully organized and has some errors, including, on pp. 97 and 406, a mistaken identification of the prisoners tried by the Charleston court.

⁴⁷ Each defense counsel, Nelson Mitchell and Edward McCrady, had been prominent members of the state legislature in prewar days and were leaders of the Charleston bar. *Biographical Directory of the South Carolina House of Representatives*, 3 vols. to date (Columbia, 1974), 1:356, 360, 364, 369, 373, 376; Mary C. Simms Oliphant and T. C. Duncan Eaves, eds., *The Letters of William Gilmore Simms*, 5 vols. (Columbia, 1954), 3:221, n. 250; obituary, *Columbia Daily Southern Guardian*, Apr. 21, 1864 (Mitchell); *Biographical Directory*, supra, pp. 364, 369, 373, 376; McCrady and Ashe, *Cyclopedia*, 1:151-58 (McCrady). In Emilio, *History of the Fifty-Fourth*, pp. 97, 406-8, it is said that Mitchell suffered obloquy and poverty as a result of his representation of the defendants. The statement is based on hearsay, principally an unsigned letter appearing in *Harpers Weekly* of April 8, 1865. Quite inconsistent with any such statement is the fact that both Mitchell and McCrady were selected as members of a citizens' committee to welcome President Davis on his visit to Charleston in November 1863, several weeks after the trial; see *Charleston Courier*, Oct. 30, 31, Nov. 2, 1863. Inconsistent, too, is the highly commendatory obituary published after Mitchell's death in February 1864; see *Southern Guardian*, supra; Henry A. DeSaussure, "Death Records," *South Carolina Historical Magazine* 59 (Apr. 1958): 116. It is notable also that McCrady again was elected to the state legislature in 1864. McCrady, incidentally, had been a member of the state convention of December 1860 and had voted for secession. *Biographical Directory*, p. 392; McCrady and Ashe, *Cyclopedia*, pp. 151-58; Cauthen, *South Carolina Goes to War*, pp. 65-66.

⁴⁸ ORA, 6:1081-82; ORA, 7:873.

must have increased when he found, as surely he soon did, that white officers of black units were not being given the severe treatment by the military that Seddon had so confidently predicted. With only a few exceptions, nowhere in the Confederacy was the pertinent provision of the congressional resolution actually carried out; the officers were treated rather as prisoners of war.⁴⁹

Nearly a year after the Charleston trial, the governor picked up word from the Richmond press that further complicated the problem. It was reported that recently captured Union soldiers who had been slaves were being delivered to their former owners. Puzzled, on June 24, 1864, the governor wrote Seddon asking for any pertinent regulations.⁵⁰ There is no record of a reply. Two months later, on August 23, he wrote Seddon again, saying that, in line with Seddon's letter of September 1, 1863, he had suspended action as to all captive blacks except those who had been South Carolina slaves, but he wanted to bring the question "again to your attention, in order that something definite may be done if practicable." He explained that his term of office would end in December and that he would "be glad" to dispose of the matter before then.⁵¹

That the governor was in a mood to place the whole business behind him is suggested by the fact that his office had just requested the state auditor to recommend "a suitable and proper fee" to be paid to the lawyers who had conducted the prosecution and the defense in the trial of the previous September. In early September 1864, the auditor, after consulting "eminent members of the bar," recommend that a proper fee would be one thousand dollars "to each of the Council on the part of the State and on the part of the prisoners respectively."⁵² This recommendation reached the governor just after he had received a reply from Seddon to his August 23 letter. Seddon's reply, dated August 31, must have made Bonham wonder whether all the trouble and expense undertaken by the state had been worth the candle.

Seddon said, in effect, that the Confederate executive and military were ignoring the congressional resolution of May 1, 1863, because of "embarrassments" from its "rigid enforcement." ("Embarrassments," of course, referred to Union retaliation.) Moreover, some state authorities had objected to having blacks turned over to them and often complained about the "inability . . . to obtain criminal trials." So, said Seddon, captives who had been slaves were being returned to their owners under a statute of October 1862. But "free negroes of the North

⁴⁹ Brainerd Dyer, "The Treatment of Colored Union Troops by the Confederates, 1861-1865," *Journal of Negro History* 20 (July 1935): 273, 282; Aptheker, *To Be Free*, pp. 94-95.

⁵⁰ ORA, 7:409.

⁵¹ ORA, 7:673.

⁵² Bonham Papers, pp. 597-98.

are held in strict confinement, not as yet formally recognized in any official dealing with the enemy as prisoners-of-war, but, except in some trivial particulars indicative of inferior consideration, are treated very much in the same manner as our other captives." Seddon concluded with advice that the governor deliver slaves to their owners and free blacks "to the Confederate authorities."⁵³

The October 1862 statute referred to by Seddon had been adopted at the closing of the second session of the First Confederate Congress as a reaction to President Lincoln's preliminary Emancipation Proclamation. It had provided that the secretary of war should establish depots in each state to hold slaves captured by the Confederate military. Each slave would be returned to his owner on due proof of the owner's claim; newspaper advertisements of the slave would be published, and until proof of claim was forthcoming the slave would be employed by the military on public works. The bill whence came the statute had provided also that captured free blacks should be delivered to the governor of the state where captured "to be dealt with according to the laws of such State," but the House committee handling the bill had eliminated that provision.⁵⁴ Thus, the measure was very different from the severe congressional resolution of May 1, 1863. Indeed it may be that the 1862 statute had been intended initially to apply only to noncombatant slaves, fugitive or seized by Union forces, captured by the Confederate military; and it certainly had not been designed to cover the case of slaves of a non-Confederate state (Delaware and Maryland).⁵⁵ In any case, whatever the intended scope of that statute, and even though the 1863 resolution had not amended it in express terms, the latter most certainly had superseded the former with respect to slaves captured in arms. But now the Confederate executive, by sheer fiat, had superseded the 1863 measure in its entirety with the much narrower and milder 1862 statute.

If, on Governor Bonham's reading of Seddon's August 31 letter, he questioned what the military would do with free blacks "not as yet formally recognized . . . as prisoners-of-war," that uncertainty was removed in a letter sent a few weeks later, at Seddon's instruction, by General Lee to General Grant. This letter, sent on October 19, defended the propriety of the Confederates' returning to their owners captured Union soldiers or sailors who had been slaves of "citizens or residents of the Confederate States," but stated, unambiguously, that all other blacks in the Union armed services "are regarded as prisoners of war, being held to be proper subjects of exchange, as I recently had the honor to

⁵³ ORA, 7:703.

⁵⁴ *Public Laws of the Confederate States of America—First Congress, 2d Sess.*, ed. James M. Matthews (Richmond, 1862), pp. 89-90; *Journal of the Congress of the Confederate States of America, 58th Cong., 2d Sess.*, Sen. Doc. 234 (1904), 5:537-38.

⁵⁵ ORA, 7:583; Dyer, "Treatment of Colored Union Troops," pp. 275-77.

inform you. No labor is exacted from such prisoners by the Confederate authorities."⁵⁶

When, if ever, that authoritative word reached Bonham it must have heightened his confusion. Obviously, in his Charleston jail there were many free blacks, and they certainly were not being treated as prisoners of war. Further, he felt that some among his prisoners had been slaves, and Seddon's August 31 letter had advised that they be delivered to their owners, not kept in jail. But from the evidence available to him, Bonham could not identify either the slaves or their owners. Even as to the four who had been tried the year before, there was a problem. As to one, an alleged Virginia slave, evidence of his slavery was not clear; he may have been a free-born Ohioan. Two of the others were from Hannibal, Missouri, and the third from Norfolk, Virginia.⁵⁷ Identifying their owners and returning them would be, to put it mildly, impractical at that stage of the war. Finally, as the end of his term loomed near, the governor gave up. On December 8, he wrote Seddon that on that day he had ordered the Charleston sheriff to deliver all the prisoners to the Confederate military. "A few of them, it is supposed, may be slaves," he wrote, "but the State has no means of identifying them or their masters." He told Seddon that he had given the military "the evidence from which it is supposed that some of them may be slaves."⁵⁸

In the meantime, for nearly a year and a half, the blacks had been suffering a jail confinement with scantest fare and most miserable conditions.⁵⁹ Neither the Confederacy nor the state ever had notified the Union authorities of their identity; they had been nonpersons. While rumors reached the North that there were black prisoners in South Carolina, there was no way for the Union authorities to know who of the missing were dead and who imprisoned. But finally there came in August 1864 another smuggled note brought by an exchanged white officer. The note pleaded that something be done to release the prisoners from their "destitute condition." The note was signed, "Mass.," but appended a list of forty-six blacks in the Charleston jail as of June 13,

⁵⁶ ORA, 7:990-93, 1010-12. Grant's reply to Lee refused to discuss "the slavery question," adhering to the position that all captured Union soldiers "regardless of color . . . must be treated as prisoners of war." ORA, 7:1018-19, 1029-30.

⁵⁷ The Charleston court's report to the governor identified the Missourians as Henry Kirk and William Harrison, the Virginians as George Council and Henry Worthington. Evidence conflicted, it said, as to whether Worthington was a slave; see Bonham Papers, pp. 568-72. The descriptive roll of Co. B, Fifty-fourth Massachusetts (Colored), RG 94, National Archives, Washington, D.C., shows George Council—not "Council." The roll of Co. H shows the other three. The rolls show the residence of each. Worthington is shown as from Ohio, where, according to his Compiled Military Service Record (also RG 94), he was born. There were two men in Co. H named William H. Harrison, one shown as "1st," the other as "2d." The Compiled Military Service Record for each shows the "1st" as having been captured and the "2d" as killed at Fort Wagner in July 1863.

⁵⁸ ORA, 7:673.

⁵⁹ Emilio, *History of the Fifty-Fourth*, pp. 402-3, 414-15.

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1864, most from the Fifty-fourth Massachusetts, including the four who had been defendants in the trial of the preceding September. In a few days the list was published in the New York press.⁶⁰ But, as we have seen, the blacks remained in jail until turned over to the Confederate military in December.

From that time, their circumstances, miserable as they had been, worsened. For their destination was the military prison stockade at Florence, South Carolina, which rivaled Andersonville. Disease was rife, and some died, including two of those who had been defendants at the September trial, victims of fever.⁶¹ The Confederacy was disintegrating. By late January 1865, General Winder, in charge of prisons in the area, wanted to move his Florence prisoners; but he was "at a loss to know where," for "in one direction the enemy are in the way. In the other the question of supplies presents an insuperable barrier." He urged "paroling the prisoners and sending them home." Bonham's successor as governor and General Chesnut, a leading South Carolinian, agreed with him.⁶² But Winder's proposal was not accepted. Instead the prisoners were moved from place to place in North Carolina.⁶³ In the meantime, by the end of January the Confederate Congress had drastically amended the May 1, 1863, resolution so that it became nothing more than a condemnation of the employment of Confederate slaves as Union soldiers and a mere authorization to the president to retaliate as he thought proper. President Davis approved the amendment on February 8.⁶⁴ Finally, in early March, as General Sherman drove northward, most if not all of the black captives who had survived were released near Goldsboro, North Carolina. It is uncertain from records whether they were paroled, exchanged, or simply released.⁶⁵ No matter. The nonpersons had become persons again. And in Charleston, the struggle with the conundrum was no more. On February 18, Charleston had been occupied by the Union army.

⁶⁰ Ibid., pp. 218, 395, 411-13; Compiled Military Service Records for Henry Kirk, William H. Harrison "1st," and Henry W. Worthington, of Co. H, Fifty-fourth Mass., RG 94, National Archives.

⁶¹ Emilio, *History of the Fifty-Fourth*, pp. 419-22, 431. Worthington died on Jan. 12, Harrison on Jan. 26, both at Florence, according to their Compiled Military Service Records.

⁶² ORA, 8:96.

⁶³ Emilio, *History of the Fifty-Fourth*, pp. 422-23.

⁶⁴ ORA, 8:197; *Journal of the Confederate Congress*, 4:501, 503, 507, 510, 520, 545; 7:521, 528.

⁶⁵ Emilio, *History of the Fifty-Fourth*, pp. 422-23; Compiled Military Service Records for George Counsel, Co. B, Fifty-fourth Mass., and for Henry Kirk, Co. H, Fifty-fourth Mass., RG 94, National Archives.

POLITICS IN MEDICINE: THE GEORGIA FREEDMEN'S BUREAU AND THE ORGANIZATION OF HEALTH CARE, 1865-1866

Todd L. Savitt

The mortality of the negroes in and near large towns and cities still continues to be very great. The small-pox still rages among them. One colored carpenter in this city [Macon], who employs four hands, said . . . that it was as much as he and his men could do to make the coffins that were ordered from him.

New York Times, Jan. 22, 1866

I was sorry to hear that the small-pox had broken out in Athens. . . as for the Negroes I don't care how many of them have it—so they die. It is a real luxury now to know that they are shuffling off their thieving coils.

Martin J. Crawford to Mrs. Howell Cobb,
Nov. 3, 1865¹

For the present I do not regard it my duty to assume the charge of those cases of smallpox that may occur in the city—it is fully able to provide its own sanitary institutions, and support its own poor.

Dr. J. W. Lawton, surgeon-in-chief, Medical Department, Freedmen's Bureau, Georgia, to Dr. A. T. Augusta, assistant surgeon, Lincoln Hospital, Savannah, Nov. 21, 1865²

OF ALL THE FUNCTIONS and activities of the Bureau of Refugees, Freedmen and Abandoned Lands (Freedmen's Bureau), provision of medical care should have been the least controversial. Bureau physicians were not enforcing labor contracts, adjudicating disputes between former masters and slaves, or teaching blacks to read, write, and calculate. They were establishing and manning hospitals, dispensing drugs, treating smallpox, cholera, and malaria. Their mandate was to facilitate for blacks the transition from free medical care provided by slave-

¹ Quoted in Alan Conway, *The Reconstruction of Georgia* (Minneapolis, 1966), p. 64.

² Georgia, Surgeon-in-Chief, Letters Received Unentered, 1865-67, box 1; hereafter cited as Ga LRU.