

THE THIN BLUE LINE: LAW AND ORDER DURING THE FEDERAL OCCUPATION
OF NEW ORLEANS, 1862-1865

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Introduction: “Sentiments Wholly Unchanged”

When morning dawned on April 24, 1862, David Glasgow Farragut’s forces were weaker than they were on April 23, but not by much. Farragut’s sailors had just run the gauntlet between the elevated guns bristling out of Forts Jackson and St. Philip about seventy miles south of New Orleans during the night, and had suffered only one small ship sunk and one severely damaged. Despite the fact that Farragut’s attack and subsequent hit-and-run did almost no damage to the forts, he had achieved a total tactical victory. The twin forts were the only substantial defense the Confederacy had in place on the Mississippi to protect what James Seddon had called “the commercial emporium of the South,” New Orleans, and Farragut had circumvented them. The Federal navy having passed the forts by, New Orleans was at the mercy of Farragut and his nineteen vessels boasting 192 naval guns.¹

Despite the fact that lightly-armed New Orleans was clearly at the mercy of Farragut’s fleet, when Farragut arrived and demanded surrender of the city, the Confederates vacillated. No one wished to be saddled with the ignominy of having to surrender the city to the Yankees. The mayor passed the buck to General Mansfield Lovell, the commander of all Confederate forces in and around New Orleans. Lovell deferred back to the mayor, who consulted with the city council before responding to Farragut that he could not surrender the city.² Farragut reported finding New Orleans “under the dominion of the mob,” where looting was rampant and millions of dollars’ worth of boats and cotton bales were flaming on the city’s docks.³ The people at large

¹ Earl J. Hess, *The Civil War in the West: Victory and Defeat from the Appalachians to the Mississippi* (Chapel Hill, NC: University of North Carolina Press, 2012), 77-78.

² Toxie L. Bush. "The Federal Occupation of New Orleans," (master's thesis, Louisiana State University, 1934), 92-96.

³ Bush, "The Federal Occupation of New Orleans," 87-88.

had ignored Mayor John T. Monroe's pleas to maintain order, and the results were ugly riots throughout the city. Magazines and stores were looted, all work ceased, and food supplies dried up. Monroe called upon the Foreign Legion, a body of militia comprised entirely of foreign citizens residing in New Orleans, to attempt to restore order, with limited effect.⁴

Farragut demanded surrender once more, this time threatening bombardment if the city refused to capitulate, but New Orleans remained defiant.⁵ The *New Orleans Bee*, hearing that General Benjamin Butler would arrive in Farragut's wake with 10,000 men, wrote, "He will behold a people conquered, but neither affrighted or dismayed – conscious that they are in the power of hostile fleets and legions...but with sentiments wholly unchanged."⁶ Butler was ignorant of the situation into which he was steaming. Not only had policing New Orleans always been a somewhat eccentric affair, but on top of the usual challenges Butler would also face an insurgent attitude in the city as the *Bee* had predicted. Unless Butler adroitly navigated the challenges which he faced, he stood little chance of maintaining a hold on the city of 170,000 people. Although the city could not offer any determined resistance, prolonged counterinsurgency efforts would prevent the Federal army and navy from controlling the Mississippi, which was the reason New Orleans was targeted in the first place.⁷

This thesis will detail how Butler and his successors managed to alter New Orleans' insubordinate attitude by exploring the methods utilized to enforce the law in New Orleans

⁴ Chester G. Hearn. *When the Devil Came Down to Dixie: Ben Butler in New Orleans* (Baton Rouge, LA: Louisiana State University Press, 1997), 68.

⁵ John T. Monroe to Common Council, April 25, 1862, John T. Monroe Papers, Louisiana State University Library, Baton Rouge, LA. Hereafter cited as "*Monroe Correspondence*, [date]." Accessed December 18, 2014, <http://cdm16313.contentdm.oclc.org/cdm/compoundobject/collection/p15140coll10/id/4275/rec/28>.

⁶ *New Orleans Bee*, May 2, 1862.

⁷ Hess, *The Civil War in the West*, 75-77.

during the Union army's capture and subsequent occupation of the city. It will place special emphasis on the army's role as police officers, and its control of the civil courts in achieving these aims. During the course of the paper, I intend to demonstrate that, although sometimes brutal, General Benjamin Butler's tactics for keeping order in New Orleans not only shut down resistance in 1862, but paved the way for continued peace under Federal rule.

In chapter one, I will establish a baseline for law enforcement in antebellum New Orleans by examining its police department under the civil authorities. The purpose of this chapter is to place the examination of law enforcement in New Orleans under martial law into proper context, so that the antebellum police department serves as a valid model against which the reader can contrast the Federal policies.

In the second chapter, I will argue that Federal law enforcement methods, particularly under General Butler, were effective in curbing mob activity, keeping peace within the city, and crucial to reestablishing New Orleans' powerful economy. I will show that Butler's tactics, although often brutal or controversial, nevertheless resulted in quelling resistance in New Orleans.

Of particular emphasis for this study is Butler's controversial "Woman Order," General Order number 28, which is the topic of chapter three. To date, no scholarly work has examined the specific impact of the "Woman Order" on crime in New Orleans, and I will attempt to demonstrate that the impact of an undesirable and controversial order was desirable and completely effective in achieving its aims without bringing harm to the women of New Orleans. I will draw upon gender theory in order to get an idea of what the women's behavior meant to themselves and what it meant to Butler, and how Butler's response holds up when placed against a nineteenth century actor's perception of gender roles.

Chapter four explores Butler's personal corruption as well as the changing of the guard as Butler was relieved by General Nathaniel Banks. Banks' policies deviated little from Butler's, except in the areas of race relations and leniency. Banks' actions ultimately paved the way for the municipal authorities to re-take control of the law enforcement duties near the end of the war.

A Historiography of Law Enforcement in Nineteenth Century New Orleans

This chapter will examine the historiography of crime and law enforcement in New Orleans during the nineteenth century, selecting from among works which look at Antebellum New Orleans, Civil War New Orleans, and some which look at both in order to gain an understanding of where current scholarship lies with respect to Benjamin Butler's reputation as the "Beast Butler," and whether Butler's edicts had an adverse or favorable impact on crime in New Orleans. Several factors will be explored within the existing historiography, including the police department, legal rights of slaves and free blacks, the red light districts, and violent crime perpetrated within the New Orleans city limits.

Many books speak to the general unrest and fragility of law and order in New Orleans, and some will be highlighted here, but *The Urban South and the Coming of the Civil War* by Frank Towers puts New Orleans in a national perspective. Towers illuminates the political and social unrest present in New Orleans prior to the outbreak of the Civil War.¹ He points out that mob and election violence was prominent well before Farragut or Butler arrived in New Orleans, and that management of the police department, undermanned though it was, remained essential to controlling the city. The importance of the police department is an essential point of discussion to order in New Orleans during the Civil War.

The definitive work on the New Orleans Police Department during the nineteenth century is Dennis C. Rousey's *Policing the Southern City: New Orleans, 1805-1889*.² In his book, Rousey delves into the police department when it was founded in the 1790s and traces its

¹ Frank Towers, *The Urban South and the Coming of the Civil War* (Charlottesville, VA: University of Virginia Press, 2004), 28-29.

² Dennis C. Rousey, *Policing the Southern City: New Orleans, 1805-1889* (Baton Rouge, LA: Louisiana State University Press), 1997.

development through the modernization of police departments in the 1830s and 1840s, through the Civil War, and to the doorstep of the twentieth century. Rousey looks at questions as simple as what type of uniforms the early department opted to wear to those as complicated as the use of deadly force, which is still in debate to the present day.

Rousey argues that New Orleans was one of the first police departments to modernize following the London Metropolitan Police's decision to modernize in 1829, and that New Orleans' police practiced modern tactics sooner than any other department west of the Appalachians, and perhaps west of the Hudson.³ Rousey writes that New Orleans' finest were decidedly pro-Confederate, as was most of the populace of the city during the early days of the war. Rousey's research covers the process during the Civil War of conversion from a Confederate-sympathetic force to one which, if not entirely favorable to the Union, was willing to pledge allegiance to the Federal government and enforce its laws. Rousey explores the process of removing those in the department with Confederate sympathies and replacing them with loyal Union men. In the interim, Rousey argues that Union troops filled the boots of New Orleans police officers and did so competently.⁴ Rousey also examines the return of law enforcement to civilian authority in 1863 and the changes to the department as a result. All police officers were required to take oaths of loyalty to the Union, and although some shirkers slipped through, Rousey argues that the force was stronger after the restructuring than before.⁵ Overall, Rousey's tone is complimentary of the early police department's efforts and efficiency, although numerous cases of malfeasance and impropriety existed within the department.

³ Rousey, *Policing the Southern City*, 13-14.

⁴ *Ibid.*, 112-113.

⁵ *Ibid.*, 105.

The thin blue line does not feature prominently in other scholarly works, but there is some discussion of police work in Judith Schafer's *Brothels, Depravity, and Abandoned Women: Illegal Sex in Antebellum New Orleans*.⁶ Schafer's work focuses on the relationship between the police department and the red light district, so much of her research points to police officers at their worst, either committing crimes themselves, looking the other way as crimes were committed, or being completely inadequate.⁷

Schafer's work is instructive in understanding how actual prostitutes behaved and were treated prior to the war, outside of Butler's declaration. Schafer explores laws defining lewd acts and detailing the punishments to be meted out for committing those offenses. In this, Schafer points out, there could have been a great deal of ambiguity in how the law was interpreted, as laws prohibiting 'lewd acts' or 'obscene language' could be widely interpreted by the arresting officer, and by extension, the prosecuting attorney.⁸ Schafer points out that sentences included fines and workhouse time, but few women working in the sex trade wound up in prison. She also discusses the lack of punishment for clients caught perpetrating sex acts with prostitutes. Schafer points to the racial divide, where people of color or white women were charged for illegal interracial acts, but white men were usually spared this ignominy.⁹

Schafer also dedicates space to interracial relationships, and the plight of sex slaves in particular. Sex slavery differed from prostitution in that sex slaves were legally slaves owned by masters used almost exclusively for carnal satisfaction and prostitutes were free women, white

⁶ Judith K. Schafer, *Brothels, Depravity, and Abandoned Women: Illegal Sex in Antebellum New Orleans* (Baton Rouge, LA: Louisiana State University Press), 2009.

⁷ *Ibid.*, 3-7.

⁸ *Ibid.*, See page 21 for information regarding the obscene language provisions, and chapters 7 and 8 for more on lewd women and the complications of enforcing the city's anti-prostitution laws.

⁹ *Ibid.*, 31.

and black, who were compensated for their time. Schafer argues that this disturbing chapter in the history of slavery was among the first to begin to pull at Northern heartstrings as abolitionist sentiment grew, and whose depravity may have directly contributed to the cause of the Civil War. Schafer provides as complete a window into the antebellum New Orleans sex trade as exists in current historiography.

Another book on the New Orleans sex trade, Emily Landau's *Spectacular Wickedness*, focuses on prostitution during the turn of the century, but provides additional insight into prostitution in New Orleans during and just after the war.¹⁰ Building upon Schafer's work, Landau looks at prostitution in New Orleans focusing on the last half of the nineteenth and the first two decades of the twentieth centuries. Although much of the book takes place outside of the Civil War era, one of its chief arguments is that the red light district in New Orleans was the culmination of an effort by elite Louisianans to reestablish the strict Southern hierarchy post-war without the institution of slavery.¹¹ As sex slaves had been outlawed with slavery, the New Orleans sex trade consisted of de facto sex slaves, dependent on their upper echelon white clientele for subsistence just as had been their antebellum sisters before them. The history of prostitution is only one aspect of our focus, however.

Historiography of Louisiana's role in the war, the fight for New Orleans, and its subsequent occupation is much more extensive and varied than the other works already considered. Most of these works perpetuate the "Beast Butler" mythos, whether they are expounded from a pro- or Anti-Butler perspective. One such volume, *Louisiana in the*

¹⁰ Emily E. Landau, *Spectacular Wickedness: Sex, Race, and Memory in Storeyville, New Orleans* (Baton Rouge, LA: Louisiana State University Press), 2013.

¹¹ *Ibid.*, 209.

Confederacy by Jefferson Davis Bragg, tends toward Southern sympathies.¹² Bragg looks at both Butler's perspective and Confederate reaction, but dedicates more space to the reaction of Governor Thomas Moore to Butler's General Order No. 28 than he gives to Butler in its defense. Bragg points to Butler's heavy-handedness in dealing with the banks by stating that Butler put them in difficult circumstances by ordering the circulation of Confederate currency to be discontinued.¹³ Despite the less favorable slant Bragg bestows upon Butler, there is a certain appreciation for Butler's capabilities which Bragg lets slip.

John D. Winters' *The Civil War in Louisiana* also discusses the "Beast Butler" mythos, and includes a racial dimension.¹⁴ Winters examines the concern with which Butler viewed the various foreign consuls housed within the city, which included Dutch, French, Spanish, and British representatives. Winters outlines various extreme measures undertaken by Butler in order to be absolutely certain that none of the foreigners residing in New Orleans made any efforts to aid the Confederacy, including the appropriation of private property, which drew censure from Secretary of State Seward. In at least one case, Butler's paranoia was vindicated as a Spanish ship carrying \$300,000 worth of arms, powder, and shot was captured by the Federal navy, but Winters points out that more often than not, Butler was censured and ordered to return any confiscated property.

More modern accounts of Butler's occupation of New Orleans paint a similar picture of the "Beast" without the Southern slant. One such volume is Chester Hearn's *When the Devil Came Down to Dixie: Ben Butler in New Orleans*. Hearn paints a more complete picture of

¹² Jefferson D. Bragg, *Louisiana in the Confederacy* (Baton Rouge, LA: Louisiana State University Press), 1941.

¹³ *Ibid.*, 117-118.

¹⁴ John D. Winters, *The Civil War in Louisiana* (Baton Rouge, LA: Louisiana State University Press, 1963), 128-129.

Butler as military governor of New Orleans. Despite the titular reference to Butler's unsavory reputation, Hearn is largely satisfied with Butler's governance of New Orleans, corruption and money laundering aside. It seems clear from Hearn's writing that Butler's reputation was not one earned overnight; that there was unfavorable sentiment towards him prior to the issuance of General Order No. 28. Butler's dealings with locals had been swift, often curt, and his refusal to consider local custom or bend to local sentiment had not won him any friends.¹⁵

While Hearn points out that Butler's personal corruption allowed him to amass a great fortune, he handled the political challenges of the occupation adroitly. Whether the perpetrators wore rags or the blue uniforms of Federal troops, Butler sought to crack down on crime wherever he saw it.¹⁶ Hearn examines Butler's treatment of the Mumford case as an example of the tactics Butler employed against civilians who violated the laws of occupation. Rather than riot, as many had expected the inhabitants of New Orleans to do in response to the Mumford execution, many simply bowed their heads and returned home. According to Hearn, Butler took this as a sign of submission of the people to the rule of the Union, and believed that this display of power would act to subjugate the people of New Orleans and ultimately serve to keep peace in the city.¹⁷

Hearn spends several chapters pointing out that personal crime was not all that Butler dealt with, as numerous difficulties with the banks of New Orleans needed to be resolved. Perhaps foremost among these concerns was the amount of hard currency in the New Orleanian banks. Much of the city's specie had been evacuated prior to Butler's arrival, which led to many banks tendering patrons' deposits in the completely worthless Confederate currency. Butler ruled that the banks needed to render all deposits either in hard currency or U.S. currency to be legally

¹⁵ Hearn, *When the Devil Came Down to Dixie*, 90, 94-95.

¹⁶ *Ibid.*, 160.

¹⁷ *Ibid.*, 137.

recognized as valid. Winters also discusses Butler's dealings with the banks, and even goes so far as to opine that many of Butler's harshest dealings were with the banks, and that these dealings could be one of the stronger inspirations for his infamous moniker.¹⁸

These issues were only the tip of the economic iceberg, as Hearn addresses instances where the banks acted as fronts to smuggle money and matériel out of New Orleans to further the Confederate cause. In one instance Butler's men seized more than \$800,000 dollars' worth of silver and supplies earmarked for the Confederacy. This and other similar instances illustrate both the tenacity with which Butler pursued violators of martial law and the efficiency of his men in sniffing out and quelling disturbances.¹⁹ Winters notes that Butler cracked down on the banks because he felt it necessary to do so in order to keep the general public from being economically devastated by occupation.²⁰ Hearn makes a similar claim, arguing that Butler sanctioned the banks out of a necessity to keep the banks from conspiring to keep currency out of public hands.²¹

One factor which cannot be overlooked when considering crime during the Federal occupation of New Orleans are the crimes perpetrated by the occupying forces. Of offenses committed by the occupying Union forces, little attention is given, save briefly by Winters. He notes that Union soldiers in New Orleans were almost perpetually inebriated, which led to a sort of prohibition in order to stem the drunk and disorderly incidents.²² More important to the study of Butler is the extent to which he and his cronies were involved in corrupt dealings. Both Hearn and Winters examine Butler's extra-legal dealings with disapproval, even if these dealings

¹⁸ Winters, *The Civil War in Louisiana*, 125-126.

¹⁹ Hearn, *When the Devil Came Down to Dixie*, 146.

²⁰ Winters, *The Civil War in Louisiana*, 127-128.

²¹ Hearn, *When the Devil Came Down to Dixie*, 147.

²² Winters, *The Civil War in Louisiana*, 137.

occasionally resulted in Butler turning right around with the "donations" and using them to purchase food, find jobs, and acquire other necessities for the poor people of New Orleans, especially African-Americans.²³ Winters' treatment of Butler is peppered throughout his book, but he believes that Butler made at least one million dollars during his tenure, partly through a shoddy sugar deal.²⁴ Hearn carefully details Butler's personal wealth increase during his tenure in New Orleans. Between shoddy quartermaster dealings, purchasing coal and selling it back to the Navy at grossly inflated prices, and laundering tax revenue, Hearn argues that "millions" of dollars are unaccounted for between May 1862 and December 1862, when Butler was reassigned, and the reader infers that Hearn believes in part that Butler's unfortunate epithet is derived from his unscrupulous economic practices.²⁵

The final item which merits consideration, and which deserves more attention, is that of Butler's censorship of the press. Few scholars pay this feature of occupation much mind, and only Winters treats the issue at length.²⁶ Winters looks at dealings Butler had with several different papers, including shuttering the *Daily Delta* for refusing to print one of his declarations, and the famous *Picayune* for offering Butler insult. Overall, Winters counts seven separate papers shut down at least temporarily for slighting Butler or ignoring one of his orders.²⁷ The censorship of the press also extended to the school system, but little work has been done with that facet of the occupation.²⁸

²³ Winters, *The Civil War in Louisiana*, 126-127; Hearn, *When the Devil Came Down to Dixie*, 177-178.

²⁴ Winters, *The Civil War in Louisiana*, 139.

²⁵ Hearn, *When the Devil Came Down to Dixie*, 222-223.

²⁶ Winters, *The Civil War in Louisiana*, 131.

²⁷ *Ibid.*, 131-132.

²⁸ *Ibid.*, 132.

A great deal of scholarship has been undertaken to research Benjamin Butler's occupation of New Orleans, and there remains more information to be uncovered. Most scholarly works treat Butler as the controversial figure he is, extolling his work without offering too much praise because of his personal corruption. Regardless of how much praise or censure scholars offer Ben Butler, most concede that New Orleans transformed from a rebellious town when he arrived to one preparing to reenter the Union by the end of Butler's tenure only seven months later.

From Crescent City to Confederate City, March, 1804 - April, 1862

Joseph Holt Ingraham, a Northern Episcopal minister, teacher, and author touring the South on his way to eventual settlement in Mississippi, entered a New Orleans boarding house in 1834 when suddenly, outside his room, a "violent altercation" erupted between two street toughs. So brutal was the struggle, that it prevented Ingraham from hearing the person he was standing beside. Ingraham briefly joined the excited throng of onlookers who quickly congregated to egg on the brawlers. Ingraham moved out of the way "just in time to escape being run down, or run through at their option probably, by half a dozen gen d'armes in plain blue uniforms," clamoring to enter the fray and break up the ruckus. The police succeeded in removing the combatants, and the street became quiet once more. To a Northerner, this scene was extraordinary, but Ingraham noted in his memoirs of the event, "affairs of the kind are no uncommon thing [in New Orleans]."¹ Ingraham made special note of some of the more notable (to a Northern audience, anyway) features of the police in New Orleans, including the uniforms, weaponry, and organization which prevailed in the famous Southern City.²

The law enforcement history of New Orleans is as old and varied as any city in North America. The city's history has always been especially shady, and the very nature of crime in the town demanded law enforcement before most contemporary cities needed their laws enforced on a large scale. The manner in which laws were enforced in a city which was a harbor to river men, pirates, and prostitutes alike needed to be unique as the city itself. This chapter will trace the development of law enforcement in New Orleans from its acquisition by the United States

¹ Joseph Holt Ingraham, *The South-West, By A Yankee in Two Volumes, Vol. 1* (New York: Harper & Brothers, 1835), 95, accessed January 22, 2015, <http://www.gutenberg.org/files/35133/35133-h/35133-h.htm>.

² Ingraham, *The South-West*, 95, 112.

through the first year of Louisiana's attempted secession from the Union in order to illustrate some of the difficulties the occupying Union army would face when the city was captured in April, 1862.

When William C.C. Claiborne of Virginia entered New Orleans in 1804 as the Louisiana Territory's first governor, he faced a daunting task. The system of law and order in place in the Crescent City was in disarray and in need of overhaul. The American takeover in March 1804, constituted the third time in four years that New Orleans had changed hands. One year prior, New Orleans had been French territory governed by a Spanish Cabildo.³ The city government was not entirely sure whether to enforce Spanish or French law, or both, and ultimately the decision rested with individual representatives, who could rule as they pleased, without regard to the laws of either Spain or France. This odd arrangement of amalgamated jurisdictions left a lot of room for liberties within the judiciary, which itself was practically a "vacuum" of justice.⁴ Jefferson had wanted New Orleans in order to dominate the Mississippi River and the commerce which floated those waters. New Orleans, however, came with substantial baggage: New Orleanians.⁵

Prior to the Louisiana Purchase, New Orleans had a rudimentary system of law enforcement. The city hired lamplighters as ad hoc policemen, and the local governor acted as the judiciary, judging cases based on French law, Spanish law, or local precedence. New Orleanian lamplighters from about 1790 through 1805 acted as law enforcement officers each

³ Peter J. Kastor, "An Apprenticeship to Liberty": the incorporation of Louisiana and the struggle for nationhood in the early American republic, 1803-1820" (PhD diss., University of Virginia, 1999), 119-121. The Cabildo in New Orleans can refer either to the building where the city government was seated or the city council which governed there.

⁴ Mark F. Fernandez, "New Orleans, A Tale of Two Cities: The Legal System that Wasn't." *Louisiana History: The Journal of the Louisiana Historical Association* 51, no. 4 (Fall 2010): 391.

⁵ Kastor, "An Apprenticeship to Liberty," 11.

night once the lamp-lighting was complete.⁶ The fact that their primary function was recognized as lamplighters and not as patrol officers says a great deal about the emphasis placed on law enforcement. Patrols were also only undertaken at night, leaving any daylight incidents to fate. Criminal records from this period do not survive, so crime statistics are unknown, but one can presume that minor crimes were predominant given local attitudes toward law enforcement. Major criminal activity was dealt with by military tribunals, and the civil authority deferred to military authority in serious matters such as piracy.

Governor Claiborne brought civil law and order with him, having been authorized by Congress in the Breckinridge and Governance Acts of 1804 to exercise both executive and legislative authority, Claiborne authorized the city of New Orleans to establish a law enforcement body more suited to the task of enforcing the new laws and keeping the peace.⁷ The result was the militia-like gendarmerie in 1805 to replace the inefficient hybrid lamp-lighter/police force which had patrolled the city streets since the 1790s. Prior to the establishment of a more modern police force, the New Orleans gendarmerie wore military-like uniforms, carried pikes, swords, and muskets, and spent more time strong-arming their charges than protecting or serving them. This corps of enforcers certainly looked more like a military force than a modern police department.⁸

For the most part, New Orleanians actually welcomed the change in styles of government and law enforcement “with a vengeance, displaying a zeal that was as likely to alarm the Americans as it was to please them.”⁹ The only demand the locals had was that their amalgamated Hispanic and French cultures be allowed to remain intact. Public leaders believed

⁶ Rousey. *Policing the Southern City*, 15.

⁷ Governance Act of 1804 as cited in Kastor, “An Apprenticeship to Liberty,” 655-661.

⁸ Rousey, *Policing the Southern City*, 15.

⁹ Kastor, “An Apprenticeship to Liberty,” 120.

that Louisianans would become loyal members of the United States once the government institution became firmly established in New Orleans.¹⁰ The impact and potency of the new American justice system, as well as the loyalty displayed by native Louisianans would be put to the test as the United States was pulled into war with Great Britain.

General Andrew Jackson, the U.S. Army's commander for the southwestern part of the country, recognized in 1814 that New Orleans would be vulnerable to British attack just as had Washington, DC, which had fallen to the British earlier the same year. Jackson declared martial law in New Orleans, which alarmed citizens and politicians alike, who feared American muskets as much as they feared British ones.¹¹ The system of American government had been predicated upon the ideal that the civil authority outweighed the military authority, and Jackson's declaration of martial law posed a serious challenge to that ideal. Jackson's declaration also served as a test case for how martial law would work in the United States, how much authority the military governor would assume, and how that power would be surrendered once the need for martial law no longer existed.¹²

There was no precedent in American history for what Jackson was doing. In the War of 1812, no military limits or boundaries had been tested or established. Jackson took it one step farther than Claiborne had recommended, by placing himself in charge of the city and by suspending the writ of habeas corpus. The Constitution guaranteed habeas corpus except in "Cases of Rebellion or Invasion," and the Constitution also empowers Congress with the ability

¹⁰ Kastor, "An Apprenticeship to Liberty," 206.

¹¹ Remini, Robert. *Andrew Jackson and the Course of American Empire, 1767-1821*. Baltimore: Johns Hopkins University Press, 1977, 311-312; as cited in Warshauer, Matthew, "The Battle of New Orleans Reconsidered: Andrew Jackson and Martial Law." *Louisiana History: The Journal of the Louisiana Historical Association* 39, no. 3 (Summer 1998): 261-291. Note that Remini's book is cited in Warshauer's article as "*Andrew Jackson and the Course of Empire, 1776-1821*."

¹² Deutsch, Eberhard P. "The United States Versus Major General Andrew Jackson." *American Bar Association Journal* 46, no. 9 (September 1960): 967.

to suspend that right.¹³ Jackson decided that, because the Constitution didn't explicitly prohibit it, that he had the authority to suspend habeas corpus under the purview of martial law.

Jackson's decision not only to put his soldiers in charge of law enforcement but also to suspend habeas corpus and other civil rights and supplant them with martial law was a controversial one.¹⁴ Jackson did not tentatively enforce his declaration of martial law, but actively engaged himself in confiscating weapons and tools deemed critical to the war effort, insisting that all incoming and outgoing traffic report to the adjutant general's office, and enforcing Governor Claiborne's muster order against all shirkers who had dragged their feet to report for duty.

Jackson's instigation of martial law poses many interesting questions both in light of New Orleans' status as a frontier city with a barely-established legal code and considering the relationship between the American military and American civic leaders.¹⁵ Was it so easy for Jackson to override the civilian authority? More important still, what would impel him to return his powers to the civil authority once the danger had passed? It truly was that easy for Jackson to assume martial power, and his checks and balances were so far away that Jackson remained the sole authority in New Orleans during the few months that martial law remained in place. Numerous petitions were sent to the state and war departments imploring the government to rescind Jackson's rule, but Washington sent no reply, seemingly allowing martial law to continue without condoning it. The issue became moot once word of the ratification of the Treaty of Ghent reached New Orleans on March 13, 1815. When Jackson heard the war was over, during the course of a single day he rescinded martial law, mustered out his militia troops, and pardoned

¹³ US Constitution, art. 1, sec. 9, cl. 2.

¹⁴ Matthew Warshauer, "The Battle of New Orleans Reconsidered: Andrew Jackson and Martial Law," *Louisiana History: The Journal of the Louisiana Historical Association* 39, no. 3 (Summer 1998): 264-266 [hereafter cited "Andrew Jackson and Martial Law"].

¹⁵ Warshauer, "Andrew Jackson and Martial Law," 5.

all civilians detained under the authority of martial law.¹⁶ No one questioned Jackson's authority to declare martial law in the aftermath of the war, and Jackson had laid down the authority of martial law so quickly that the memory of the issue soon faded away, not to be raised again until the Civil War.

The New Orleans Police Department returned to work following the termination of Jackson's martial law as the militarily-clad gendarmerie. As before the war, the gendarmerie was primarily concerned with quelling nighttime disturbances and returning fugitive slaves. Law enforcement historians widely recognize London's as the first police department in the world to modernize in 1829, and departments on the western side of the Atlantic followed suit within fifteen years or so. Boston modernized its police department in 1838, New York City modernized its thin blue line in the mid-1840s. New Orleans had begun its modernization as early as 1836, perhaps making the Big Easy a standard-bearer for the North American continent as a whole.¹⁷

Prior to the mid-1830s, the gendarmerie had been geared towards preventing or putting down slave insurrections, but the "common man" politics of the era ran against the grain of such a military-like institution as the New Orleans Police Department (N.O.P.D.).¹⁸ The gendarmerie reminded too many Americans of a standing army, so popular sentiment drove the department to re-tool. The reforms of 1836 were aimed at making the police department more effective in combating crime while making the force less combative. The law enforcement reforms underway in London highlighted "containment and repression" of crime, emphasizing public

¹⁶ Warshauer, "Andrew Jackson and Martial Law," 273.

¹⁷ Rousey, *Policing the Southern City*, 31-32.

¹⁸ *Ibid.*, 30-31.

order over previous methods.¹⁹ The N.O.P.D. had taken to heart the reforms of the London Metropolitan Police and remade its force under the style of a more republican-minded police department with more intimate patrols, more men, and less aggressive armament.²⁰

One of the principal challenges facing the modernizing police department was river traffic and the laborers who worked shipping goods up and down the Mississippi. A boatman who had begun his journey in St. Louis had not had the opportunity to drink or enjoy a woman's company in weeks, perhaps months. A boatman who began his journey in Illinois, Minnesota, or even Ohio or Kentucky might have endured obligatory abstinence for up to four months. Once in New Orleans, the riverboats and their crews unloaded their goods and received their pay, which pay could be very easily be squandered by all the city had to offer.²¹ Gambling and drinking, of course, were both options, but liquor and cards were both available on the river. What these men wanted most were women.

Prostitution in New Orleans was big business for prostitutes, madams, pimps, proprietors, and hotel owners, all of whom wanted a share of the millions of dollars of river transit, and combating prostitution in a city infamous for its red light districts was no mean feat. Inevitably, as the thin blue line patrolled the same stretches of street every day and were immersed in the aroma of the New Orleans sex trade, those whose duty it was to enforce the law yielded to temptation while on duty. The modern patrol method of dividing the city into beats made police officers at once more accessible to the general populace and more susceptible to committing crimes themselves. In one instance in 1850 a "young woman" arrested and held on charges of theft was allegedly raped in the guardhouse by the lieutenant on duty, Charlie Petrie. No

¹⁹ William M. Meier, *Property Crime in London, 1850-Present* (New York: Palgrave-Macmillan, 2011), 30.

²⁰ Rousey, *Policing the Southern City*, 35-36.

²¹ Lyle Saxon, *Old Louisiana* (New Orleans: Robert L. Crager & Co., 1950), 246.

witnesses for either the plaintiff or defendant stepped forward, the alleged act having been perpetrated in the absence of other officers, so the case was dismissed for lack of evidence.²²

Another case in the 1850s saw two policemen accused of sexually assaulting thirteen-year-old Marie Auguste Vogelsang. In this case the officers in question were unequivocally guilty, but in a remarkable turn of events that left observers scratching their heads, the charges against the policemen were dropped because the girl had been a prostitute prior to this incident, and her parents had attempted to blackmail the officers in exchange for a promise not to testify.²³

Perhaps the most tragic circumstances in New Orleans throughout its entire history involve the intersection of slavery and prostitution. No reforms undertaken by the impressively modernizing police department had any impact on this darkest chapter of New Orleans history due to the fact that it was completely legal up to the Civil War, and continued well after.²⁴ New Orleans was famous, and would become even more famous by the turn of the century, for its bi-racial sex market.²⁵ Whether interracial or not, the sex trade in New Orleans certainly took advantage of those who were least capable of evading prostitution's long arms, and the law readily punished the female prostitute stuck in her abysmal state rather than the master or pimp to whom she answered, or the clients who abused her.

Like their white counterparts, free black women enjoyed a higher social status than did slaves. They enjoyed far fewer rights and opportunities than white women but managed to secure

²² *Daily True Delta*, August 21-25, 1850, as cited in Rousey, *Policing the Southern City*, 52. The New Orleans *Daily True Delta* is sometimes referred to as the *Daily Delta*, *True Delta*, and sometimes as simply *Delta* in modern scholarship. In *Butler's Book*, the general himself almost exclusively refers to the paper as the "*True Delta*." I have elected to use *Daily Delta* as the moniker of choice here because it is the name which the paper's editor most often uses in the paper's nameplate throughout 1862.

²³ Schafer, *Brothels, Depravity, and Abandoned Women*, 50-51.

²⁴ Landau, *Spectacular Wickedness*, 50, 75.

²⁵ *Ibid.*, 2-3.

a modicum of legal protection, even as prostitutes.²⁶ Remarkably, despite the rampant slave trade in mulatto, quadroon, and octoroon women, there is little evidence of police or legal bias against free black women engaged in prostitution, or of free black women being apprehended and sold into sex slavery. One free black woman from Ohio, Eliza Potter, described unease at passing by an auction where people "as white as white could be" were auctioned off to the highest bidder. No attention was paid Potter, however, despite her skin color, and she attended many such auctions out of morbid fascination.²⁷ Black women arrested on charges of prostitution were cited for the same infractions as their white counterparts, including indecent exposure, and no evidence suggests that the punishments of free black women were harsher than those bestowed on white women.²⁸

Many slaves, whether sexually exploited or not, became intolerant of their circumstances and attempted to flee their masters. Fugitive slaves would continue to be nuisances until nearly halfway through the Civil War, and N.O.P.D. arrest and jail records were replete with slaves being logged in and out.²⁹ Arrest records indicate that many runaways were local, as they were usually returned to their masters the day following their arrest. In circumstances where free blacks were detained, they would be obliged to produce 'free papers.' If the individuals did not have free papers, regardless of free status, they were sent to jail on suspicion of being a runaway

²⁶ H.E. Sterkx, *The Free Negro in Antebellum Louisiana* (Cranbery, NJ: Associated University Presses, Inc., 1972), 240.

²⁷ Eliza Potter, *A Hairdresser's Experience in High Life* (New York: Oxford University Press, 1991), 171-172, 174; as cited in Landau, *Spectacular Wickedness*, 56-57.

²⁸ Sterkx, *The Free Negro in Antebellum Louisiana*, 230-231.

²⁹ New Orleans (La.) Dept. of Police Reports of Arrest, Second District, 1862-1864. March 21, 1862- June 30, 1864. New Orleans Public Library, New Orleans, LA, TB205a 1862-1864 roll # 2000-40.

until the appropriate documentation could be furnished.³⁰ Slaves accused of being runaways and other offences were tried by juries composed of slaveholders, who were often inclined to return guilty verdicts.³¹

One of the more compelling and despicable aspects in the relationship between slaves and the law was the disparity in sentencing and punishment for crimes committed by slaves compared to those dealt out to white convicts. Whether convicted of murder or petty theft, slaves were almost always dealt harsher punishments for the same crime as their white, or even free black counterparts.³² The main reason for the vast chasm that separated white jurisprudence from black jurisprudence was the "Black Code," or "Code Noir," which spelled out specific punishments for slaves who committed certain crimes against their master, mistress, or the owner's family. For example, any slave who "willfully and maliciously str[uck] his master, mistress...or any white overseer" was either to be sentenced to death by hanging or hard labor in prison of a term "not less than ten years."³³ In early November 1854, a slave named Joe assaulted his master, E.O. Johnson, and was sentenced to death by hanging.³⁴ For a similar crime

³⁰ Mary R. Bullard, "Deconstructing a Manumission Document: Mary Stafford's Free Paper," *The Georgia Historical Quarterly* 89, No. 3 (Fall 2005), 288, accessed February 2, 2015, <http://www.jstor.org/stable/40584841>.

³¹ *State of Louisiana vs. David, slave of William L. Drake*. Louisiana Supreme Court Case Docket 312, accessed November 29, 2014, <http://hdl.handle.net/123456789/15689>.

³² Louisiana State Legislature. *Annual Report of the Board of Control of the Louisiana Penitentiary to the General Assembly, November, 1861*. Baton Rouge, LA: 1861. Louisiana State Archives. Microfilm. P78-206, roll 13. Cited hereafter as "Louisiana Penitentiary Report."

³³ Lilane Crete, *Daily Life in Louisiana, 1815-1830* (Baton Rouge: Louisiana State University Press, 1978), 154.

³⁴ New Orleans *Daily Crescent*, "City Court" November 9, 1854. Microfilm. New Orleans Public Library, "New Orleans *Daily Crescent*, January 1, 1854 – December 31, 1854."

committed in 1862 by a white couple upon a white young woman, the conviction carried a fine of \$500, and the couple served no jail time.³⁵

It seems that white convicts were universally given sentences that were either the same or more lenient than those given to colored convicts. Even the most feared of events, the slave revolt, produced dissimilar sentences, sometimes vastly. Nine slaves cooperated in a slave revolt with a white man, William Troye of New Orleans in 1860, but the revolt was easily brushed aside and the perpetrators jailed. Each of the nine slaves was sentenced to life at hard labor, whereas Troye, the white accomplice, was sentenced to thirty days in the state penitentiary.³⁶

Another example of sentencing disparity is the case of the slave Joshua, who was accused and convicted of raping a white woman, and sentenced to life at hard labor.³⁷ Within the same calendar year, another man, Joseph Howard, was also convicted of rape and sentenced to six months in the state penitentiary.³⁸ The wildly incongruent sentencing practices were not lost on Joshua's owner and friends, who petitioned Governor Thomas O. Moore on Joshua's behalf seeking a pardon for him. One of the petitioners was C. Lawes, a former parish attorney general himself, and implored the governor for Joshua's pardon because the witnesses' testimonies of the assailant did not match Joshua's description. Additionally, Lawes argued, Joshua's Fifth

³⁵ State of Louisiana vs. Baptiste Ferrat and Catherine Ferrat. New Orleans Municipal Court Case # 15853, April 1862. New Orleans Public Library. All New Orleans court documents in the New Orleans Public Library utilize the case number as the library call number.

³⁶ Louisiana Penitentiary Report. The extent of Mr. Troye's involvement in the revolt is undisclosed in the penitentiary record, but one must assume that his involvement was very scant given his sentence.

³⁷ L.M.P. to J.H. Longborough, February 7, 1860. Louisiana State Archives. Microfilm. P1978-196, roll 7.

³⁸ Louisiana Penitentiary Report. Unfortunately, the Penitentiary Report sheds no light on why Joseph Howard's sentence was so light. The report merely records the inmate's name, crime, and sentence.

Amendment protection against double jeopardy had been violated because he had been convicted during his third trial.³⁹ No reply from the governor's office survives.

Each of these difficulties the police department faced, prostitution, racism, jailing, and sentencing bias, contributed to the difficulty of enforcing law in a metropolis as large and diverse as New Orleans. The N.O.P.D. was forced to hire more officers and provide them competitive wages, but the wages were never enough to entice many to the profession who were not themselves recent immigrants.⁴⁰ These immigrant officers faced substantial problems, especially as the Know-Nothings rose to power on the back of anti-immigrant sentiment in the mid-1850s. The offices of mayor and sheriff of New Orleans were both filled with Know-Nothings following the mid-term elections of 1854, and the anti-government and anti-immigrant sentiment which followed intersected to reduce police funding in 1855 and 1856, leading directly to a reduction in police jobs and freezes in hiring and raises.⁴¹

Given that a plurality of policemen were Irish, and most Irish were Democrats, the police force tended to suffer when Democrats suffered, and prosper when Democrats prospered.⁴² Whether fair or not, some people either trusted or mistrusted the department alongside the Democratic Party. The politicization of the police department was always an issue with voters and policemen alike, and voter intimidation became commonplace in elections where it appeared as though Democrats' power was challenged.⁴³ The setbacks the Democratic Party had

³⁹ C. Lawes to Moore, February 2, 1860. Louisiana State Archives. Microfilm. P1978-196, roll 7.

⁴⁰ Rousey, *Policing the Southern City*, 43-44.

⁴¹ Nicholas J. Hoey to unknown friend, June 18, 1856. Nicholas J. Hoey Letters, Mss. 3258, Louisiana and Lower Mississippi Valley Collections, LSU Libraries, Baton Rouge, La.; Rousey, *Policing the Southern City*, 71-72.

⁴² Rousey, *Policing the Southern City*, 59.

⁴³ Hoey to unknown friend, June 18, 1856.

experienced during the Know-Nothing phase may have provided the party with the experience necessary to organize successfully Louisiana's secession a few years later.⁴⁴

As Louisiana prepared to vote on secession in January 1861, the stock of the Democratic Party had never been higher, and although Louisiana had traditionally been a moderate and firmly pro-Union state, the consensus of members of the state government was that it was Louisiana's duty to preserve the rights of the slaveholding states was greater than the state's duty to the Union.⁴⁵

Law enforcement being a function of the municipality, and neither the state nor federal governments, Louisiana's decision to secede did not initially impact the N.O.P.D. directly. Governor Thomas O. Moore put out a call for volunteers to defend Louisiana, but few New Orleans police officers heeded his call. Most police officers in the Big Easy were older than twenty-five, family men, and they found it barely possible to support their families on the \$30-\$50 monthly salary then paid patrol officers. These men would find it virtually impossible to subsist on the \$15 monthly salary of a private, if, indeed, pay came at all. Even the salary offered officers in the Louisiana Guard would be insufficient, so most police officers, while sympathetic to the Confederate cause and their Democratic leaders, stayed on the beat while their state prepared for war around them.⁴⁶

One of the immediate tasks the department had was to suppress disloyalty to the Confederacy. Many of these arrests came as part of a typical counterintelligence effort to detect Northern spies, and naturally some spies were neutralized. Unionists' firearms were confiscated and given to the militia. Sometimes the misuse of force and suppression of First Amendment

⁴⁴ Towers, *The Urban South*, 30.

⁴⁵ Bragg, *Louisiana in the Confederacy*, 5-6.

⁴⁶ Rousey, *Policing the Southern City*, 103.

rights was rather blatant, as not only abolitionists were arrested, but anyone who could be heard predicting Northern victory might serve time as well.⁴⁷ These types of arrests were not mere phenomena attributable to excitement as the war got underway--they persisted well into the war. The latest arrest made by officers in the Second District on the charge of being an abolitionist was April 1, 1862, mere days before Farragut's fleet would arrive offshore.⁴⁸

As the war went on and the Federal blockade began to take effect, the impact on the N.O.P.D. became more pronounced. State penitentiaries and workhouses alike relied on cotton to keep the inmates busy and profitable, and as demand for inmate labor evaporated, some inmates were released early.⁴⁹ Some criminals were released only days into their sentences for lack of work, much to the chagrin of the police who had labored to capture wrongdoers. "[N]eedless for me to say that this course so clogs the workings of the police as to prevent them from preserving the property of citizens from the continued depredations of these bands of lawless men and the frequent burglaries...of late are attributable doubtless in a great measure [to] this cause alone," New Orleans Mayor John Monroe wrote exasperatedly to Louisiana State Attorney General Thomas Semmes.⁵⁰ Monroe was receiving pressure directly from New Orleans Chief of Police John McClelland and his subordinates, which may indicate that this problem was widespread, even before the war was underway.

⁴⁷ Rousey, *Policing the Southern City*, 103-104.

⁴⁸ New Orleans (La.) Dept. of Police Reports of Arrest, Second District, 1862-1864. March 21, 1862- June 30, 1864. Arrest records from the Second Police District are the only records which survive from this period, therefore all arrest records referenced from this time period are from the Second District, which is assumed to be a representative sample of the city as a whole.

⁴⁹ Senate Committee on the Louisiana Penitentiary, *Special Report of the Senate Committee on the Louisiana Penitentiary*, by Thomas J. Buffington, *Other Legislative Records, 1860-64* (entries 22-27) Louisiana State Archives, Microfilm Roll # 359, file 13.

⁵⁰ John T. Monroe to Thomas J. Semmes, February 16, 1861. Louisiana State Archives Microfilm. P1978-196, roll 7.

The larger issues surfaced as it became apparent that a Union fleet might attack New Orleans. Some of these reports came in as early as December 1861, but the citizenry handled the initial reports coolly, and worry set in only as it became apparent that the Union fleet would attack soon.⁵¹ Some fifty police officers were members of the Louisiana Volunteers, which Governor Moore activated in March. Temporary replacements for these officers were older and generally unfit for military service, which may have impacted the force's readiness for what lay ahead.⁵² General Mansfield Lovell declared martial law in New Orleans and the surrounding areas on March 15 as the city prepared to repel the Yankee fleet. In addition to the usual provisions of martial law, curfew, mustering the militia, and so forth, General Lovell's declaration also cut off communication between prisoners and anyone else, save by special permission of Lovell himself.⁵³

On hearing that Farragut had traversed the blockade, abject panic gripped the city.⁵⁴ Governor Moore had placed a moratorium on the circulation of bills whose denominations exceeded \$5, and this coupled with shops closing early resulted in a remarkable currency and food shortage in New Orleans. Out of that panic sprung riots.⁵⁵ Almost simultaneously, General Lovell ordered the withdrawal of his troops from New Orleans so as to avoid their capture. The police department found itself unequal to the rioting coupled with the loss of martial support

⁵¹ *Confederate Military History, Vol. XIII, Louisiana, Extended Edition*, ed., Clement A. Evans (Wilmington, NC: Broadfoot Publishing, 1988), 35.

⁵² *Daily Delta*, March 2, 1862.

⁵³ Mansfield Lovell, *Orders No. 652, Orders of the Adjutant General's Office, 1862-65 and Orders of the Major General's Office, 1862*, Louisiana State Archives, Microfilm Roll 359, file 20.

⁵⁴ Bragg, *Louisiana in the Confederacy*, 97.

⁵⁵ C.C. Memminger to Thomas O. Moore, April 12, 1862. Louisiana State Archives. Microfilm. P1978-196, roll 7; Elisabeth Joan Doyle, "Civilian Life in Occupied New Orleans, 1862-1865." (PhD Diss, Louisiana State University, 1955), 29-30, accessed October 11, 2014 in PROQUESTMS ProQuest Dissertations & Theses Full Text, <http://ezproxy.tcu.edu/docview/193818190?accountid=7090>.

from Lovell's withdrawing troops, and the city settled into an uneasy, semi-lawless state until Farragut's men arrived a few days later.

"This city will be governed...however much they struggle against it,"¹

April 25-June 8, 1862

Captain Bailey was an unwelcome, but not unexpected visitor to Mayor John T. Monroe of New Orleans at half past one o'clock on April 25, 1862.² Captain Theodorus Bailey of New York, a veteran of the Mexican War, had been designated by Flag Officer David G. Farragut to request the surrender of New Orleans. Bailey and an aide, Lieutenant George H. Perkins (USNA, 1856) of New Hampshire, disembarked from their dingy amid protests and proceeded to City Hall to seek an audience with Mayor Monroe. The two officers demanded the unconditional surrender of New Orleans, the removal of the Louisiana state flag from City Hall, and that the flag of the United States be hoisted above the Customhouse, Post Office, and Mint.

Monroe was a shrewd politician, so he sought any means possible not to accede to the demands of these audacious Yankee officers insisting he surrender his city. He also knew that his situation was delicate, for his city could offer no means of resistance to even a single Yankee warship, and Farragut had brought a whole fleet with him.³ Monroe dodged the request, replying "that General Lovell was in command here, and that I was without authority to act in military matters."⁴ Major General Mansfield Lovell (USMA, 1842), was the commander of the Confederate army's Department Number 1 in Louisiana, which included the City of New Orleans and surrounding areas. Lovell had been tasked with defending New Orleans, and the ease with

¹ Sarah Butler to Harriet Heard, May 15, 1862 in *Private and Official Correspondence of General Benjamin F. Butler*, vol. 1, *April 1860 to June 1862*, ed. Jessie Ames Marshall (Norwood, MA: Plimpton Press, 1917), 487, accessed December 2, 2014. <https://archive.org/details/privateofficialc01butl>. Cited hereafter as "*Butler Correspondence vol. 1*, [page]."

² *Monroe Correspondence*, April 25, 1862.

³ Winters, *The Civil War in Louisiana*, 85.

⁴ *Monroe Correspondence*, April 25.

which Farragut's fleet had managed to circumvent his defenses no doubt angered and embarrassed Lovell, who was vain to a fault.⁵ Lovell was no more interested in proffering the surrender of New Orleans than had been Monroe before him, and also made excuses to Bailey and Perkins as to why he could not surrender the city, and referred the officers back to Monroe. Monroe contested through his convoluted logic that the Post Office, Mint, and Customhouse were property of the Confederate States government, and not his to surrender. Monroe requested time to consult with the city council. Bailey and Perkins surreptitiously exited via a back way to avoid the mob that had gathered, which was loudly swearing vengeance upon the two Yankee officers, and returned to Farragut.⁶

The city council convened a special session that evening, which continued into the following morning. The



Figure 2.1. *Landing of Captain Bailey and Lieutenant Perkins on the Levee, New Orleans, with a flag of truce, to demand the surrender of the city to the Federal government*, engraving by Frank Leslie, 1896. New York Public Library Digital Gallery, accessed December 10, 2014, <http://digitalgallery.nypl.org/nypldigital/id?813183>.

council followed Monroe's urgings and voted that the municipal government did not have the authority to surrender the city to the Federal navy on behalf of the Confederate government, but declared that no resistance be made to the armed forces of the United States. Upon learning of

⁵ Braxton Bragg to Thomas O. Moore, November 14, 1861. As cited in John Winters' *The Civil War in Louisiana*, 64.

⁶Winters, *The Civil War in Louisiana*, 97.

the vote, Monroe sent a note to Farragut, informing him of the council's decision to offer no resistance but also reiterating his and the council's decision that New Orleans could not be surrendered by them at that time. "To surrender such a place were (sic) an idle and unmeaning ceremony. The city is yours by the power of brutal force, and not by any choice or consent of its inhabitants. It is for you to determine what shall be the fate that awaits her."⁷

This line of Monroe's note dared Farragut or any other Federal representative to obligate New Orleans to capitulate or yield to their demands. This simple act of defiance began the tenuous occupation of New Orleans and efforts by the Union army and navy to quell the city of New Orleans and the countless insurgents living in the city. Although wholly powerless to repel their conquerors, New Orleanians remained obstinate as long as they could without endangering themselves. Additional communiqués were exchanged between Farragut and Monroe, but yielded no fruit as the former continued to insist upon the "unqualified surrender of the city," and the latter continued to claim absence of authority.⁸ The flag of Louisiana continued to flutter above City Hall, and the flag of the Confederacy continued to wave over the city from the Post Office, Customhouse, and Mint even as U.S. Navy warships moored on the city's shores.

The true state of the city's peril was lost on no one as hundreds of businesses shuttered their windows and barred their doors, thousands of citizens shut themselves up in their homes as a general panic gripped the city. School was canceled, women buried silverware and other fineries (little suspecting just how much danger actually threatened their silverware), and Confederate currency, already of dubious value before this, was simply discarded in the streets as

⁷ *Monroe Correspondence*, April 25, 1862.

⁸ Farragut to Monroe, April 26, 1862 in *Monroe Correspondence*.

useless scrap.⁹ Fear was so acute that the city's business would remain stagnant for over a week as people feared a great battle might take place in their town.¹⁰

These fears were somewhat realized when a small band of marines left Farragut's ships with the Stars and Stripes in hand, determined to hang it from the Mint to comply with Farragut's orders. Though enduring shouts and protests from the gathered multitude, the marines were allowed to complete their mission and return to their moorings in peace. The banner itself was not suffered to remain long, for a group of six New Orleans gentlemen endeavored to remove the offending standard as soon as the Marines were out of sight. William B. Mumford of New Orleans headed the little group, which also included Vincent Hefferman, N. Holmes, John Burns, and James Reed.¹¹ Egged on by the crowd, Mumford and company hauled the standard from its place and tore it to shreds as the crowd cheered.¹²

Until someone could restore order, general chaos reigned, and like the civil unrest, the awkward standoff between Farragut and the obstinate civil authorities would continue until Major General Benjamin Franklin Butler arrived on May 1.

⁹ Hearn, *When the Devil Came Down to Dixie*, 65.

¹⁰ "The City," *New Orleans Daily Delta*, Thursday, May 1, 1862. Microfilm Roll 22, "New Orleans *Daily Delta* -- Jan. 1, 1862 to Dec. 31, 1862. New Orleans Public Library.

¹¹ Bush, "The Federal Occupation of New Orleans," 92.

¹² Multiple accounts of this event exist, including Winters' *Civil War in Louisiana*, 98; Benjamin Butler's personal memoirs, found in Benjamin F. Butler. *Autobiography and Personal Reminiscences of Major-General Benjamin F. Butler: Butler's Book. A Review of His Legal, Political, and Military Career* (Boston: A.M. Thayer & Co., 1892), 438. Cited hereafter as *Butler's Book*; and Hearn's *Devil Came Down to Dixie*, 69-70.

Butler has left his indelible mark upon American history, and his name was already famous when his ship moored in New Orleans. Born in New Hampshire and raised in Massachusetts, Butler was an autodidact who had acquired his station as a successful lawyer and politician in Massachusetts by a combination of immense personal talent, tireless work ethic, and a substandard moral conscience. As an ardent War Democrat, Butler saw military service as his



Figure 2.2. *Benjamin Franklin Butler: An American soldier, politician, and lawyer.* Engraving by Thomas W. Herringshaw, 1889. Florida Center for Instructional Technology, College of Education, University of South Florida, accessed December 20, 2014, http://etc.usf.edu/clipart/18200/18239/butler_18239.htm.

ticket to fame and glory, and perhaps a run at the White House. He was already famous for his war contraband declaration at Fort Monroe, Virginia, which refused to return runaway slaves to their Virginian masters under the pretext that they were being used to further the cause of rebellion against the United States, and that captured slaves were therefore contraband of war.¹³

Butler brought with him a force of about 10,000 men, 2,500 of which arrived with the general about midday on May 1, 1862. As his men approached the city on their transports, thick black smoke hung in the air, the result of

¹³ Hearn, *When the Devil Came Down to Dixie*, 31-32.

thousands of bales of cotton being burned on the docks of New Orleans to prevent it falling into Federal hands.¹⁴ The expected arrival of Federal troops had drawn numerous spectators, some of whom were armed, but both the crowd and Butler's men behaved themselves as the soldiers disembarked.¹⁵

Butler set to work at once, ordering his men to occupy the Mint, Post Office, and Customhouse and to raise the flag of the United States above each. He then established his headquarters at the St. Charles Hotel and sent for Mayor Monroe. Monroe initially replied that Butler would need to come and see him, as was customary, and that he would be willing to meet with Butler in the City Hall the following morning. The Yankee messengers convinced Monroe that Butler would not appreciate such a response, and Monroe reluctantly made his way under their care to the St. Charles.

When Monroe arrived at the St. Charles Hotel, a number of civilians had preceded him, and had gathered outside the hotel shouting threats against Butler. The clamor was so great that the meeting between Butler and Monroe had to be postponed because of the ruckus issuing from the mob. Ever the creative problem solver, Butler had four or six Napoleon artillery pieces placed outside the hotel, and was satisfied with the expeditious pacification of the crowd.¹⁶ When Butler and Monroe reconvened, they ate dinner, during the course of which Butler's band treated his guests to a splendid performance of the Star-Spangled Banner. Those in the crowd who still lingered outside listened sullenly to the chords of the John Stafford Smith tune to which

¹⁴ Harrison Soule. "From the Gulf to Vicksburg" published in *War papers : being papers read before the Commandery of the State of Michigan, Military Order of the Loyal Legion of the United States*. Vol. II. (Wilmington, NC: Broadfoot Publishing, 1993), 62.

¹⁵ *Daily Delta*, Friday, May 2, 1862.

¹⁶ Hearn, *When the Devil Came Down to Dixie*, 84. Hearn notes that Butler wrote in his memoirs that he had placed six pieces outside the hotel. Correspondence between General and Mrs. Butler reveals that there may have been four Napoleons, and not the six that Butler mentions in his later papers.

Francis Scott Key's poem had been set.¹⁷ Following this evocative rendition, Butler informed the mayor and his entourage that he wished the city's government to remain in operation during the occupation, and that Butler intended only to supplant the Confederate government's functions within the city, so long as the city government did not actively oppose the Federal efforts there.¹⁸

Butler gave Monroe a copy of the proclamation which he would have the city papers print in the morning so that he would be aware of the terms of it. Monroe somewhat misguidedly sought to recommend changes to Butler before the proclamation was issued. Butler rejected all of Monroe's recommendations out-of-hand. He told Monroe that Butler had always been "a friend to Southern rights," but that he was in New Orleans to "put down Southern wrongs."¹⁹ Ultimately, Monroe had to agree that Butler's decision to allow the municipal government to continue and operate the city during the Union army's occupation was the best solution for the city and the army. This course of action would allow the city to operate with no opposition from Butler, and autonomy was what Monroe and many New Orleanians ultimately wanted. The following morning, during a special meeting of the city council, Monroe recommended, and the council unanimously accepted, Butler's offer to remain in operation with the proviso that the city government and its officers not use the leeway granted them by Butler to subvert the occupying forces.²⁰

That same morning, May 2, newspapers circulated Butler's proclamation in their daily publications, with the exception of the *Daily Delta*, which was out of publication on Butler's orders. The proclamation itself, which totals over 1,400 words, declared martial law within the city, and specified a number of provisos by which New Orleanians would have to abide. Armed

¹⁷ Doyle, "Civilian Life in Occupied New Orleans," 19.

¹⁸ *Monroe Correspondence*, May 3, 1862.

¹⁹ *Butler's Book*, 378.

²⁰ *Monroe Correspondence*, May 4, 1862.

bodies and persons, including the European Legion, which had been keeping order within the city since General Lovell's evacuation, would disarm and disband.²¹ Special permits were required to wield firearms, and then these could be obtained only if the weapons were to be used to obtain food.²² Butler ordered that the only flags eligible to be displayed in the city were those of the United States and those of respective nations' consulates, where applicable. Businesses and churches were to reopen their doors immediately. Any person refusing to take an oath of allegiance to the United States would be considered still in a state of rebellion, and deprived of personal and property rights until such time as he returned to the fold. Butler also specified that killing a soldier of the United States, whether by an individual or mob, was "simply assassination and murder...and will be so regarded and punished."²³

Butler lost no time in enforcing the protocols of his proclamation, as he promptly shut down the *Daily Delta* press, whose owner had flatly refused to print the proclamation in the morning's edition. Butler's troops occupied the print shop and printed the proclamation themselves, and all New Orleans was aware of the commanding general's proclamation the next day. Obliging, the city returned to work, and life in New Orleans slowly began its return to normalcy.

The example of the *Daily Delta* illuminates one of the more controversial aspects of Butler's governorship of New Orleans, censorship of the press. Butler was not shy about abridging freedom of the press, but he was also quick to forgive repentant printers willing to

²¹ *Butler's Book*, 379.

²² Mark Cox, Office of the Provost Marshal to Edward J. Gay, "Arms Permit" issued to Edward J. Gay, April 27, 1864. Louisiana State University Special Collections Y:16, Box 46, Folder 453. Accessed December 16, 2014, <http://cdm16313.contentdm.oclc.org/cdm/compoundobject/collection/p15140coll10/id/389/rec/3>; Bush, "The Federal Occupation of New Orleans," 97.

²³ *Butler's Book*, 380.

recant their rebel ways and swear allegiance to the Union. The *Daily Delta* was shut down for almost four weeks, between May 2 and May 28. While never outright hostile toward Butler, the editor of the *Daily Delta* never endeared himself to the Yankee occupiers. The paper in its April 27 edition had encouraged citizens not to defy or oppose the incoming troops. "The officers of the United States," the paper reminded its readers, "are entitled to all the protection of the laws of war. They should not be insulted while in the performance of such duties as may be imposed upon them by their government. Let our people demean themselves with the moderation and dignity of men and freemen."²⁴ When Butler landed in the city a few days later, the *Delta* gave a short history of Butler, and emphasized his Southern sympathies.²⁵

When Butler reinstated the paper on May 27, the paper resumed business as usual save for a few remarks in June which immediately catch the reader's attention. The first, published on June 8 during the recounting of the hanging of William Mumford, of whom more will be written shortly, the *Delta* wrote that Mumford "justly received the reward of his treason and madness, in the presence of thousands of spectators."²⁶ Given the reaction of other New Orleanians, it is safe to presume that few others felt the same way about how Mumford received justice.²⁷ Later, on June 12, the *Delta* re-printed a glowing editorial praising General Butler:

Our political Generals have been, as we predicted from the outset, costly, and in some instances troublesome encumbrances to the army. We must make one exception, however, to the remark, and that is General Butler. He has shown himself not merely a dashing soldier, but an able administrator. His measures in New Orleans prove that his sagacious mind has grasped all the delicacies and difficulties of a most embarrassing position, and that he is equal to

²⁴ *Daily Delta*, April 27, 1862.

²⁵ *Ibid.*, May 2, 1862.

²⁶ *Ibid.*, June 8, 1862.

²⁷ Hearn, *When the Devil Came Down to Dixie*, 139-141.

every emergency. If any one [sic] can exercise the spirit of rebellion from the Crescent City, it is General Butler.²⁸

Although each of the city's other papers were compelled to pacification, no other shows the same amount of respect toward Butler as did the *Delta*.

Butler's actions and proclamations throughout that first day and the next several days were all undertaken with the express purpose of first, re-starting New Orleans' stagnated economy, and second, quelling insurgent activity before it had a chance to foment. As the purpose of the present examination is on law and order, our attentions will focus on the latter, but the topic also demands a brief treatment of the economic situation in New Orleans. Butler wanted the city back to work immediately, which would achieve the dual purposes of getting people back to work and out of mischief, and get the people fed, both of which were fast becoming major problems.

The food shortage in particular had become a major issue even before Farragut or Butler had made landfall. General Lovell's retreat from the city had caused widespread panic among residents, and all businesses, from banks and brothels to barbershops and merchants, had shut down completely. The most immediate consequences of these shutdowns meant no access to hard currency unless a person had it in hand, and no access to additional foodstuffs, unless they had been stored up. Looting and rioting had become widespread, with the majority of targets being foodstuffs.²⁹

Butler's order for all businesses to resume operations immediately sought to alleviate these troubles, but did nothing to increase the fast-dwindling stores of food in the city. Butler

²⁸ "General Butler," *Daily Delta*, June 12, 1862, originally printed in the New York *Herald*, May 31, 1862.

²⁹ Doyle, "Civilian Life in Occupied New Orleans," 29-30, see also Hearn, *When the Devil Came Down to Dixie*, 69-70 for rioting following the Mumford incident.

used his powers to requisition food for the city's poor citizens, who had been hit hardest by the sudden stoppage in municipal commerce and the war in general. He donated one thousand barrels of beef to the city out of his own pocket to alleviate the hunger³⁰. This Special Order 166, dated July 2, established a superintendent and deputy superintendents whose sole duties it was to procure "provisions for the poor of New Orleans."³¹ These provisions were to be sold at government-sponsored markets at fixed prices which the city's indigent could afford. In the event that a person could not afford food and was in need of it, Butler directed the deputy superintendents to work with local clergy in order to arrange the donation of Federal foodstuffs to those whose need was greatest.

Despite the altruistic motive, these programs would not be in full swing until the end of the summer, and the city's poor needed food immediately. In order to restore order, Butler had to put an end to the rioting and get some food to New Orleans sooner. He authorized the provisioning of a ship laden with flour in Mobile, hitherto prevented from selling its wares in New Orleans because of the Federal blockade, in order to help feed the city's 140,000 hungry souls.³² Butler also authorized the Opelousas Railroad to acquire food from any market necessary for the time being so as to alleviate the city's immediate needs. These measures sustained the city until the end of May, when the first of many such provision ships arrived from

³⁰ Bush, "The Federal Occupation of New Orleans," 99.

³¹ Benjamin F. Butler, *Private and Official Correspondence of General Benjamin F. Butler*, vol. 2, *June, 1862 to February, 1863*, ed. Jessie Ames Marshall (Norwood, MA: Plimpton Press, 1917), 30, accessed December 2, 2014. <https://archive.org/details/privateofficialc02butl>, cited hereafter as "*Butler Correspondence*, [page]."

³² *Butler Correspondence*, 30-31; *Monroe Correspondence*, May 3, 1862.

New York City.³³ The increased availability of food allowed Butler to relax some of the cost-fixing measures, but that brought him up against his next obstacle: banks.

Economic crime is often overlooked in the presence of such depravity and lewdness as was found in New Orleans. The economic indiscretions committed by both the city's banks and ultimately by General Butler himself proved extremely harmful to the city. Butler's personal corruption will be explored in the final chapter, but the shady dealings of the city's banks will be explored here. Butler had ordered the banks open along with the rest of the city's businesses and churches, and the banks had obliged, but the availability of specie, or hard currency, was limited. This shortage was partially created by the fact that six million dollars' worth of the city's gold had been sent north with Lovell's troops at the first whispers of Farragut's attack, and partly due to Butler's confiscation of \$200,000 worth of gold from state banks upon his arrival.³⁴ Currency availability, therefore, was limited to Confederate money, the use of which had been prohibited by Butler in his proclamation of May 2.

Rather than see the city's commerce halted as a result of the currency shortage, Butler suspended the moratorium on Confederate currency, at least until either specie or Federal paper money had become available. While this temporarily resolved the money issue, the banks were also quick to take advantage of the situation by claiming that the hundreds of thousands, perhaps millions, of dollars' worth of Confederate paper money in their vaults constituted legal tender. Armed with this assumption, banks then proceeded to tender payments in Confederate money from accounts whose initial deposits had been made in specie, and declared the deposits and payments like for like.

³³ Doyle, "Civilian Life in Occupied New Orleans," 30-31; *Monroe Correspondence*, May 4, 1862.

³⁴ Bush, "The Federal Occupation of New Orleans," 88; *Butler Correspondence*, 14-15.

One depositor with an account at the Bank of Louisiana, Dennis Sullivan Durand, had opened an account with the bank with approximately \$1,000 worth of specie.³⁵ Durand had returned to the bank during May, 1862 seeking to withdraw some of his funds, and the bank processed the withdrawal in Confederate banknotes. Durand was no fool, and knew that the money issued him was worthless, so he demanded payment in specie, as his deposit had been made. When the bank teller and manager refused, Durand sued the bank for payment in specie. Durand's was not the only such case, but it was the first to be tried, and so established precedence for similar cases to follow.³⁶

The question of the banks' conduct, as with all other conduct cases, came before Major Joseph M. Bell to be tried. Butler's declaration of May 2 had decreed that all criminal cases during the time of martial law would be tried before a military tribunal, whose word would be final. To the post of judge of the provost court, Butler had appointed Joseph Bell, like Butler a successful lawyer from Massachusetts, who at the time of his appointment had been serving as Butler's aide-de-camp without salary. Bell was good-looking, had a good sense of humor, and was a talented attorney, his father-in-law being the dean of the Massachusetts state bar.³⁷ Bell opened his court on May 4, and as time passed and Butler found it necessary to close more and more local courts, Bell saw his workload increase to sometimes more than one hundred cases in a day. By June 12, Bell was the sole criminal judge in the whole city of 160,000 people. Bell was famous for the speed with which he handled his cases, sometimes burning through one every two minutes as he dispensed justice to lawbreakers. Perhaps the most innovative feature of

³⁵ *Daily Delta*, June 6, 1862.

³⁶ Thomas W. Helis, "Of Generals and Jurists: The Judicial System of New Orleans Under Union Occupation, May 1862-April 1865," *Louisiana History Quarterly* 29, no. 2 (Spring 1988): 150, accessed December 16, 2014, <http://www.jstor.org/stable/4232652>.

³⁷ *Ibid.*, 146.

Bell's courtroom practices was his decision to allow blacks to testify against whites in court, something hitherto unknown in Louisiana jurisprudence.³⁸

The proceedings of Bell's court were reprinted faithfully by the *Daily Delta* on the front page of each edition, and the case of the Bank of Louisiana would likely have been followed closely by *Delta* readers. The bank continued to contend that Confederate currency was a valid form of remittance for account withdrawals where specie had been deposited.³⁹ Bell, as usual, did not take long in rendering a decision when he ruled against the banks and ordered that all deposits made with specie must be returned in specie.⁴⁰

Bell's ruling posed a problem for banks, since much of the city's deposits had been sent out of the city as soon as Farragut's fleet approached, and all the banks had to hand was worthless Confederate money. The banks and their representatives naturally appealed the case to Butler, hoping the corrupt aristocrat himself would be sympathetic to the plight of the moneylenders. Their grounds were Bell's lack of jurisdiction in the matter and the basis of the laws on which the decision was rendered. They were soon disappointed, as Butler issued a decision only a few days later sustaining Bell's ruling. Butler quickly dismissed their concerns about Bell's courtroom being legitimate, and repudiated the laws the defendants were using to defend their actions; laws which had been enacted by Governor Thomas O. Moore the previous fall. Butler declared the actions of Governor Moore moot because Louisiana was in rebellion at the time, and those laws could hardly be recognized within the United States. "Durand,"

³⁸ Helis, "Of Generals and Jurists," 149.

³⁹ *Daily Delta*, June 14, 1862.

⁴⁰ Helis, "Of Generals and Jurists," 150.

concluded Butler, "is now the creditor of the bank," and he was due "his gold, to which by the laws of banking, laws of the State, and the United States he is entitled."⁴¹

Chicanery did not begin or end with the banks, and the other major offender of financial laws and martial law proclamations was the municipal government itself under Mayor Monroe's tutelage. Butler had fully intended to keep his promise to Mayor Monroe and the city council to allow the municipal government to continue its various functions indefinitely, so long as it did not attempt any subversion of the Federal presence. Mere days elapsed between the council's acceptance of Butler's terms with the explicit condition that "no intelligence or aid" be given the Confederates, and the subsequent breaching of those terms by Monroe and company.⁴² Monroe and the council did not, apparently, feel that the scope of Butler's definition of aid included either arms or thousands of dollars worth of gold, which were promptly smuggled out of the city on May 4 by Confederate agents. Monroe also began to arrange the passage of several Confederate soldiers who had been captured at Forts St. Philip and Jackson and subsequently paroled, back to Confederate lines before their fair exchange.⁴³ Mayor Monroe and former Senator Pierre Soulé had sought to offer surreptitious aid to the Confederacy under Butler's very nose. These acts of subversion, coupled with Monroe's reaction to the notorious "Woman Order" to be discussed later, Butler removed Monroe as mayor on May 19 and replaced him with General Shepley.

While smaller scale operations continued to trickle aid to the Confederates in Louisiana, Butler

⁴¹ Henry Martin Lazelle and Leslie J. Perry eds., *The War of the Rebellion: v. 1-53 [serial no. 1-111] Formal reports both Union and Confederate, of the first seizures of United States property in the southern states, and of all military operations in the field, with the correspondence, orders and returns relating specially thereto. 1880-1898. 111v* (Washington, D.C.: United States War Department, Government Printing Office, 1886) , 472-473, accessed January 15, 2015, <https://books.google.com/books/reader?id=B75ZAAAAYAAJ&printsec=frontcover&output=reader&pg=GBS.PR1>. Cited hereafter as "*War of the Rebellion*, [page]."

⁴² *Monroe Correspondence*, 27.

⁴³ *Butler's Book*, 438-439.

did a good job of sniffing out potential mischief. Once deposed from office, Butler shipped Monroe and Soulé off to the tiny military outpost of Ship Island, ten miles off the coast of Mississippi. The six men whom Monroe had attempted to smuggle back to Confederate lines were sentenced to death by hanging as escaped prisoners.⁴⁴

Characteristic of Butler, he acted quickly. Save for the mayor and city council, he had shut down all municipal functions and replaced elected city officials with military appointees on May 6. Butler appointed Captain Jonas H. French as chief military inspector of New Orleans to act as chief of police until control of the police department could be returned to civilian control.⁴⁵ Other municipal offices and functions went to other Federal officers, but Captain French and Major Bell wielded almost total control of law enforcement of New Orleans.

French's first act as commandant of police was to sack all existing police officers and offer to re-hire them contingent upon the officer candidate swearing an oath of allegiance to the United States. French was discouraged, though probably not surprised when, of approximately 400 active officers, only eleven opted to swear the oath and keep their jobs.⁴⁶ There was some speculation that perhaps three quarters of now former New Orleans police officers were willing to affirm their allegiance to the United States, but many were deterred by the "fear of the slung shot bowing [sic] knife and revolver that they would catch it in the dark."⁴⁷ French posted advertisements in the local papers offering police jobs to any who were fit and willing to swear allegiance, and applications poured in, perhaps exceeding one thousand. Many of the applicants were too old or disabled to be able to serve on the force, but French had a pool of loyal Union

⁴⁴ *Butler's Book*, 439.

⁴⁵ *Butler Correspondence*, 42.

⁴⁶ Rousey, *Policing the Southern City*, 107, 113.

⁴⁷ *New Orleans Daily Picayune*, June 1, 1862, as cited in Rousey, *Policing the Southern City*, 107.

men from which to build his new department.⁴⁸ In the meantime, French inserted occupying troops, most of whom were from Massachusetts, in law enforcement duties until he had recruited enough police officers loyal to the Union.

One area where Butler could have stirred up more trouble than he did was that of racial relations. Before the war, slaves were subject to tremendous criminal bias given the absence of a right to testify in court and sentencing bias that meted out much harsher penalties for slaves than their free counterparts.⁴⁹ Free blacks were obliged to show 'free papers' to prove their freedom whenever any official demanded to see them.⁵⁰ This policy changed when Judge Bell took the bench and a free black named Henry Dominique was brought before him. Dominique had been arrested for not having free papers on his person. Bell ruled that "the presumption was that every man was free, unless the contrary was shown. No man needed free papers."⁵¹

Bell's decision proved typical of the occupying Federals' attitudes toward racial relations. In his farewell address, Butler echoed David Hunter's sentiment that "the existence of slavery is incompatible with...the Union."⁵² Butler's General Orders No. 88 stipulated that "No person will be arrested as a slave...unless the person arresting knows that such person is owned by a loyal citizen of the United States."⁵³ He went farther than this, declaring that "slavery is inconsistent with martial law," and ordered all slaves from Georgia, South Carolina, and Florida within his jurisdiction freed.⁵⁴ He was willing to do what he could to combat slavery because he

⁴⁸ Rousey, *Policing the Southern City*, 107-109.

⁴⁹ Louisiana Penitentiary Report, the entire report details prison sentences, as well as racial identity for all Louisiana inmates. See chapter one for specific sentencing discrepancies.

⁵⁰ Bullard, "Deconstructing a Manumission Document," 288.

⁵¹ "Common Council," *Daily Delta*, June 6, 1862.

⁵² *Butler Correspondence*, 556-557.

⁵³ *Ibid.*, 437.

⁵⁴ *Daily Delta*, May 30, 1862.

felt the practice was a blight on society. Eager to maintain peace, however, Butler stopped short of using slaves as leverage against Louisianans.⁵⁵

Thousands of refugee slaves had flocked to New Orleans following Butler's arrival, which quickly outpaced the army's ability to enforce order amongst the refugees. Butler was able to find foodstuffs for the refugees out of rations earmarked for his own men, but policing behavior of the refugees and of New Orleanians against the refugees was another matter altogether.⁵⁶ Even using his old "contraband" mantra from his peninsular days, Butler was hard pressed to find work for ten thousand refugees. Part of the solution to the problem was to use the contraband labor to do construction work, but there was not enough work. Butler also called on some refugees in order to raise the Louisiana Native Guards, a brigade of "free colored men" who were initially recruited to fend off a rebel assault, but in a brilliant twist of irony, were ultimately employed by Butler to enforce the law against their former oppressors and masters.⁵⁷

With the Union army now tasked with overseeing virtually every aspect of law enforcement, the citizens of New Orleans were at the mercy of the officers and men of the occupying forces and vice versa. Many New Orleanians had no interest in being governed by the Yankees in Washington, much less have patrols of Yankee soldiers walking their streets and enforcing their own laws against them. The city was still in the process of determining how much resistance it could safely offer without incurring the wrath of Butler or his minions. Semi-

⁵⁵ R.S. Davis to J.W. Phelps, July 31, 1862 in *Butler Correspondence*, 126-127; Butler's farewell address, *Butler Correspondence*, 557.

⁵⁶ Nathan W. Daniels, *Thank God My Regiment An African One: The Civil War Diary of Nathan W. Daniels*, ed. C.P. Weaver, (Baton Rouge, LA: Louisiana State University Press, 1998), 6-7; *Butler's Book*, 426.

⁵⁷ Butler to Stanton, Aug 14, 1862 in *Butler Correspondence*, 191-192; James G. Hollandsworth, Jr., *The Louisiana Native Guards: The Black Military Experience During the Civil War* (Baton Rouge, LA: Louisiana State University Press, 1995), 36-37. Most Native Guard regiments were stationed on the city's outskirts or guarded railroad tracks, but several served in the city itself at some point.

insurgent demonstrations from organized groups like the Council of Ten, to informal acts of defiance along the lines of William Mumford sprung up all around, and Butler had to decide how to treat the offenders.⁵⁸

Others, rather than overtly resist Butler's men and risk greater punishments, attempted to resist by mocking the occupiers or treating them with supreme disdain. A shopkeeper by the name of Fidel Keller was arrested and convicted of displaying the skeleton of an alleged Union soldier slain at the Battle of Chickahominy in the window of his bookstore. Butler alleged that the remains and the placard displayed created "contempt" toward "the authority of the U.S. and our Armies," among the people who saw the dead 'soldier.' The fact of the matter was that the skeleton was of Mexican origin and had been procured for a medical student. The real origin of the remains did not soften Butler's heart, who sentenced Keller to two years' hard labor at Ship Island for desecration of the dead and the implied public mockery of Union casualties.⁵⁹ One case which Butler himself was keen to quash involved a group of thieves who masqueraded as Union soldiers and pretended to search homes under Butler's authority as they robbed the premises'. These men were sentenced to be hanged.⁶⁰

In another case, six preachers were arrested for the simple misdemeanor of omitting the prayer for President Lincoln from their Sunday services. Three principal offenders, Episcopal Reverends W.T. Leacock, William Fulton, and Charles Goodrich, claimed that they had been forbidden from asking for divine intervention on Lincoln's

⁵⁸ President of the Council of Ten to Butler, July 13, 1862 in *Butler Correspondence*, 61. The Council of Ten was just one of many organizations which swore to kill Butler. Like the rest, the Council's threats seem to have been nothing more than bluster.

⁵⁹ *Butler Correspondence*, 24. This order comprised Special Order No. 151.

⁶⁰ Helis, "Of Generals and Jurists," 151.

behalf by none other than the Right Reverend Major General Leonidas Polk, then serving the Confederacy as a corps commander with the Army of Mississippi. The three ministers claimed that, since Polk was their religious superior, they need answer only to him and to God. Butler, naturally, rejected their argument. Keen on minimizing the rebellious impact these men could have on their congregations, Butler sent the three preachers to Fort Lafayette, New York, to be jailed in exile" during the remainder of the war."⁶¹

Many such infractions were inane enough, and usually merited light sentences, but one of the more common transgressions committed against the stipulations of martial law was that concerning flags and banners. Butler's decree of May 1 had specified,

All ensigns, flags, devices, tending to uphold any other authority save those of the United States and foreign consulates, must not be exhibited, but suppressed. The American ensign, the emblem of the United States, must be treated with the utmost respect by all persons, under pain of severe punishment.⁶²

Flags were certainly one of the most passive of methods for resisting Federal authority.

Beginning with Monroe's refusal to remove the flag of Louisiana from the public buildings, brandishing Confederate flags seemed the best way for New Orleanians to protest their unwanted change of government. Penalties for breaching Butler's prohibition on non-U.S. flags varied, from a fine, to time on Ship Island. Frank W. Andrews, for example, received a \$20 fine for "hurrahing for Jeff Davis, waving a secession flag and using treasonable language."⁶³ Perhaps the less severe infraction belonged to M. Gill, who was fined \$100 for permitting his children to display a Bonnie Blue flag on his home, but Mr. Gill received the stiffer punishment.⁶⁴ It is

⁶¹ Hearn, *When the Devil Came Down to Dixie*, 173-174.

⁶² *Butler's Book*, 380.

⁶³ Rousey, *Policing the Southern City*, 109.

⁶⁴ *Ibid.*, 111.

possible that the seemingly arbitrary and subjective punishments for flag display simply got stiffer as the year went on, as Thomas Karney was convicted of hoisting a Confederate flag on his home in August, and in contrast to either Andrews' or Gill's fines, Karney received a full year of prison in the parish jail.⁶⁵

Flags and banners had been a large part of the debate from the outset with the Mumford incident at the mint, which came to a head in late May when Captain French had him arrested. Butler was intensely interested in the outcome of Mumford's trial, as he was convinced that Mumford's offense was "heinous" in the extreme, and that the consequences of thousands of citizens following Mumford's example would have been calamitous.⁶⁶ Butler wanted to set an especially rigid precedent for Mumford's case both because of the offense which had been committed, and partially because no one really thought that Butler would dare hang Mumford. Mumford was a man of "considerable education, some property, and much influence with the lower class," and it was thought that Butler would not dare harm a man of such repute. Even once Major Bell handed down Mumford's sentence, to be hanged by the neck until dead, many believed that Butler would commute his sentence.⁶⁷

New Orleanians in general felt that Mumford was not only being punished more severely than his crime warranted, but also that Mumford had been well within his rights to do what he did. Not only had Butler's proclamation and martial law not yet been issued, many contented that New Orleans was not yet within Union control, and that the occupying army had no jurisdiction to punish Mumford for a crime committed outside their authority to punish. Butler

⁶⁵ *Daily Delta*, August 7, 1862.

⁶⁶ *Butler's Book*, 438. Despite the New Orleans *Daily Crescent* reporting the names of other men who served as Mumford's accomplices, Butler seems to have been solely interested in the man who actually tore down the standard. See *Daily Crescent*, April 28, 1862 and Bush, "The Federal Occupation of New Orleans," 91.

⁶⁷ *Butler's Book*, 439.

flatly rejected these arguments, holding that Mumford's actions were dangerous in the extreme, and that he needed to make an example of Mumford to prevent future demonstrations of rebellion. Butler also contended that New Orleans was under Federal jurisdiction at the time of the Mumford incident because Farragut's force was in New Orleans and the city could offer no real opposition to Federal authority.

Butler withstood petitions by people who did not know Mumford to heartfelt and sincere supplications from Mumford's wife and still would not yield. No unhallowed hand would stop him in his course, as even perhaps the most convincing of supplicants implored Butler on the morning of the execution to spare Mumford's life. Dr. William Mercer, one of the city's elite and president of the Bank of Louisiana, came to Butler's office and offered his own life in exchange for Mumford's. Although greatly touched by the gesture, Butler refused, insisting that it was Mumford's life which was needed to expiate the crime committed against the Union.⁶⁸

An angry mob had appeared near the U.S. Mint, where the gallows had been erected for Mumford's execution, as though daring Butler to execute him. Several hundred, perhaps over a thousand demonstrators surrounded the gallows, some drinking, practically all spewing the most vituperative threats against Butler and his men unless Mumford were granted reprieve. If Mumford was executed, the crowd vowed to avenge his loss with Butler's death "by any possible means."⁶⁹ Butler, as though daring the populace to resist him, allowed the execution to proceed. Once the rope was taut, the stunned crowd simply faded away, back to their homes.⁷⁰ This was the anticlimax for which Butler had gambled, and one of the defining moments of the occupation. Butler knew that the people would back down when faced with harsh tactics, and so

⁶⁸ *Butler's Book*, 441-443.

⁶⁹ *Ibid.*, 440.

⁷⁰ *Daily Delta*, June 8, 1862.

he utilized them with maximum efficacy. While some cities may have been incensed at Mumford's execution, New Orleans settled back into its daily routine, and no more serious large-scale demonstrations would take place.

Butler's first few months in New Orleans had certainly been eventful ones. He had struck a deal with the mayor and city council only to be forced to rescind that deal a few days later and create a military-municipal government from scratch. Butler had adroitly navigated through food and specie shortages, and the city had food to eat and was back to work. Although far from quelled and not yet back on track to reenter the Union, New Orleanians were safe at night. None of these issues were enough to bring Butler his later infamy in southern eyes, much of which derived from a single order.

"Woman Order" and Subsequent Impact on Crime -- May 15, 1862 - December 16, 1862

As it had with the several flag instances, resistance in New Orleans to Federal occupation remained largely passive through the summer. Butler's handling of the mob outside the St. Charles Hotel on the evening of May 1 and his sentencing of William Mumford thoroughly demonstrated that Butler was adept at addressing male exhibitions of force head-on and coming out ahead. The men, particularly the businessmen of the city, made it a point to keep the terms of Butler's orders as best they could to avoid kindling his wrath. Butler had the men more or less under control, but confronted an even greater challenge in the efforts of the women of New Orleans' style of resistance.

Knowing that they were immune to the physical retaliation to which the male insurgents of New Orleans were subject, the women of the city took advantage of every means at their disposal to make the Federal troops in New Orleans miserable. At first, the women of New Orleans abandoned the mere courtesies to which gentlemen encountering ladies on the street were accustomed, gathering up their skirts and glaring at the officers before bustling away, for example. In the event that a Federal officer boarded a streetcar with one or more ladies on board, the ladies would immediately arise and file out of the car rather than share a ride with the invader.¹ One woman went so far to avoid contact with Yankees that she actually managed to fling herself into a gutter when a group of Union officers approached her. As the men rushed to help her up, she coldly refused their aid, insisting that she "would rather lie there in the gutter than be helped up by a Yankee."² All of these forms of disrespect represented the most passive

¹ Hearn, *When the Devil Came Down to Dixie*, 101.

² *Butler's Book*, 415.

forms of resistance available to women who desired to show scorn for their conquerors, but still retain some modicum of decorum.

Many women, however, abandoned decorum altogether in an effort to display as much disdain for the Yankees as possible. As General Butler rode the streets one day, a group of women standing on a balcony overlooking the street noticed Butler's approach and whirled, exposing the contents of their hooped skirts. Butler laughed off this incident, but understood that at the heart of it lay a larger issue. Butler recognized that women, especially of "prepossessing appearance," were likely to both

catch and command the attention of citizens and soldiers alike. He knew that, if his troops attempted to arrest a woman, and the woman called for help, many strangers would come to her aid. He feared a riot caused by a woman's arrest might result if he attempted to arrest such women as had demonstrated their utmost disdain for him on the balcony.³



Figure 3.1. *Women of New Orleans Insulting Federal Officers.* Engraving by Uncredited Artist, Aldine Engraving Company, 1892. *Butler's Book*, 416.

But the problem with rude women was growing, and could not be ignored. Flag Officer (soon to be Admiral) Farragut came ashore one Saturday evening to dine with one of Butler's colonels and attend church the following morning. As Farragut and his entourage "in full

³ *Butler's Book*, 416-417.

uniform" walked to their destination, "there fell upon them what at first they took to be a sudden and very heavy shower," but turned out to be the contents of a chamber pot. The perpetrator proved to be one of the "ladies of New Orleans."⁴ The following morning, as another of Butler's officers, Colonel (then Captain) Robert S. Davis, went to church, prayer-book in hand, he encountered two respectable-looking women in the narrow street and moved aside so that they could pass. As he moved aside, one of the women "deliberately stepped across in front of the other and spit in his face."⁵

Each of these men was troubled by his experience, as one can imagine that having the contents of a chamber pot upended onto one's head would not leave the best of impressions upon an officer. Davis, in particular was distressed at his situation, which had been on the way to church as he implicitly made the offending ladies a show of respect. Davis went so far as to offer Butler his resignation. "I came here to fight enemies of the country, not to be insulted and disgusted," Butler recalled Davis as having said. Butler remembered telling Davis that resignation would not be necessary, assuring him, "I'll put a stop to this."⁶

Just how to put a stop to this behavior, Butler was not yet certain. He knew that the treatment the women of New Orleans received at the hands of his army would probably be closely scrutinized, and that most of the female insurgents could not be treated the same as their male counterparts. As much as Butler would like to round up the lot of them and provide them a complimentary trip to the Federal prison on Ship Island, he knew he could not. No, the women of New Orleans would have to be neutralized by placing them on a level field with his men and

⁴ *Butler's Book*, 417.

⁵ *Ibid.*, 417-418. Butler does not mention Davis' first name in this recollection, but it is probable that he referred to Robert Davis, as this was the only Davis with whom Butler corresponded at this time.

⁶ *Ibid.*, 418.

making allowances for punishment of such passive acts of rebellion as had been perpetrated against him and his officers.

The result was Butler's General Order No. 28, which he issued on May 15, and would prove to be the pivotal order of Federal occupation in New Orleans. It reads:

As the officers and soldiers of the United States have been subject to repeated insults from the women (calling themselves ladies) of New Orleans, in return for the most scrupulous non-interference and courtesy on our part, it is ordered that hereafter when any female shall, by word, gesture, or movement, insult or show contempt for any officer or soldier of the United States, she shall be regarded and held liable to be treated as a woman of the town plying her avocation.⁷

Upon receiving and countersigning the order, Butler's Chief of Staff, George Strong, remarked prophetically, "[t]his order may be misunderstood, General."⁸ Critics of Butler, both contemporary and modern, have lined up to offer their critiques and interpretations of Butler's infamous General Order No. 28, which quickly became known as the "Woman Order."⁹ It would have been foolish for Butler to have anticipated anything other than outcry at his proclamation, and he later indicates that he anticipated backlash, and one cannot help but think that he may have been secretly hoping for additional attentions as a result of the order.¹⁰

The backlash Butler had expected as a result of the Woman Order did, indeed, come, but it was more widespread and more vociferous than even he could have imagined. Mayor Monroe, in what would prove to be his final days in office, issued a letter condemning Butler's order, claiming that it permitted the Federal troops to do

⁷ *Butler's Book*, 418; see also *War of the Rebellion*, 426.

⁸ *Butler's Book*, 418.

⁹ Such has been the infamy of Butler's General Order No. 28 that references to the order almost never appear in any index save as "Woman Order." See *Butler's Book*, 414; Winters, *The Civil War in Louisiana*, 534; Hearn, *When the Devil Came Down to Dixie*, 260; Bragg, *Louisiana in the Confederacy*, 332.

¹⁰ Benjamin Butler to Mrs. Butler, July 15, 1862 in *Butler Correspondence*, 77.

whatever they like to the ladies of New Orleans, predicting that the order would push the people of New Orleans past the breaking point, and flatly refused to enforce it.¹¹ Monroe was already in hot water because of his other misdeeds, and Butler removed him from office on May 19. Aside from Mayor Monroe's, local reactions are not well-known. Since Butler had censored all of the town's newspapers, no editorial critique exists, but there were others who recorded their reactions. Sarah Morgan, a twenty-year-old resident of Baton Rouge, recorded her thoughts on Butler's order when word of the proclamation reached the state capitol two days after its issuance. Morgan and her mother were in shock at the "brutality" of the order, which she felt was powerful evidence that the Yankees had relegated themselves to some sort of sub-human status.¹² Morgan expressed utter horror at the very thought that any Yankee who so pleased could use the order as an excuse to rape (or "Butlerize") her or any other girl on whatever pretext they invented.¹³

Other Louisianans harbored similar sentiments, General P.G.T. Beauregard, commanding troops at Corinth, Mississippi, had the Woman Order re-read to his troops in order to incense them. "MEN OF THE SOUTH," Beauregard asked rhetorically, "[s]hall our mothers, our wives, our daughters, and our sisters be thus outraged by the ruffianly [sic] soldiers of the North, to whom it is given the right to treat at their pleasure the ladies of the South as common harlots?"¹⁴ Beauregard's reaction was swift, being issued on May 19, only four days from the issue of General Order No. 28 in New Orleans. Beauregard, like Miss Morgan in Baton Rouge, felt that Butler's order gave Federal

¹¹ Monroe to Butler, May 16, 1862 in *War of the Rebellion*, 526.

¹² Sarah Morgan Dawson, *A Confederate Girl's Diary* (Bloomington, IN: Indiana University Press, 1960), 34.

¹³ *Ibid.*, 36.

¹⁴ *The War of the Rebellion*, 531.

soldiers in New Orleans free license to take liberties with the city's women as they saw fit. Governor Moore was no more amused than Beauregard. From the state capital in exile in Opelousas, Moore issued a message on May 24 condemning Butler's "foul conduct" from afar, and encouraged Louisianans to resist the invaders as guerilla fighters even if it meant perishing themselves, for this "indignity" needed to be avenged.¹⁵

Confederate newspapers, as can be imagined, universally excoriated Butler's order as hopelessly barbaric, and archetypical of Yankee oppression. Editors of the Jackson *Mississippian* offered a reward of ten thousand dollars for Butler's head, and a "gentle, soft-hearted little Southern lady" wrote the paper pledging enough of her personal fortune to increase the reward amount to sixty thousand dollars.¹⁶ To editors of the *Charleston Courier*, Butler's order was "infamous," and thought "impossible in a civilized country."¹⁷ Editors of the Raleigh *Register* depicted Butler's "Despotism," and portrayed suffering New Orleanians being ground under Butler's "iron heel."¹⁸ Savannah's *Daily Morning*

¹⁵ Moore's Proclamation, May 24, 1862 as cited in Hearn, *When the Devil Came Down to Dixie*, 105.

¹⁶ New York *Tribune*, June 4, 1862, as cited in Hearn, *When the Devil Came Down to Dixie*, 105; *Butler's Book*, 421.

¹⁷ "The Infamous Order of Major General Benjamin Butler." *Charleston Courier, Tri-Weekly*, May 24, 1862. Accessed January 27, 2015.

<http://find.galegroup.com.ezproxy.tcu.edu/ncnp/infomark.do?&source=gale&prodId=NCNP&userGroupName=txshracd2573&tabID=T003&docPage=article&searchType=AdvancedSearchForm&docId=GT3013992791&type=multipage&contentSet=LTO&version=1.0>

¹⁸ "Later from New Orleans--Yankee Despotism." Raleigh *Semi-Weekly Register*, June 4, 1862. Accessed January 27, 2015.

<http://find.galegroup.com.ezproxy.tcu.edu/ncnp/infomark.do?&source=gale&prodId=NCNP&userGroupName=txshracd2573&tabID=T003&docPage=article&searchType=AdvancedSearchForm&docId=GT3016470637&type=multipage&contentSet=LTO&version=1.0>

News called Butler an "inhuman monster," and a "beast," who "dares to violate the honor of our women."¹⁹

Butler's proclamation did not escape the notice of the Confederate government, particularly President Jefferson Davis. Davis issued a proclamation on December 24 proclaiming Butler "a felon deserving of capital punishment...an outlaw and common enemy of mankind." Butler was to be hanged without trial immediately upon capture to pay for his crimes.²⁰ Confederates were not the only ones disturbed by the order, as illustrated by an editorial in the *New York Times*: "If General Butler has issued any such order, he shall be forthwith dismissed from the army."²¹

Word of Butler's Woman Order crossed the Atlantic, and dislike of Butler found a place to germinate in Lord Palmerston's government. Palmerston received a hearty ovation when he declared in the House of Commons feelings of the "deepest indignation," declaring that Butler had "deliberately [handed] over the female inhabitants of a conquered city to the unbridled license of an unrestrained soldiery." Palmerston, convinced that the South was poised to win the war, felt comfortable in venting vituperative invective at Butler as a final parting shot against the United States and

¹⁹ *Daily Morning News* (Savannah, GA), May 22, 1862. Accessed January 27, 2015. <http://find.galegroup.com.ezproxy.tcu.edu/ncnp/infomark.do?&source=gale&prodId=NCNP&userGroupName=txshracd2573&tabID=T003&docPage=article&searchType=AdvancedSearchForm&docId=GT3010946910&type=multipage&contentSet=LTO&version=1.0>

²⁰ James D. Richardson, ed. *The Messages and Papers of Jefferson Davis and the Confederacy, Including Diplomatic Correspondence, 1861-1865* (New York: Chelsea House-Robert Hector, Publishers, 1966), 271. In Davis' proclamation, he also cites William Mumford's execution as additional rationale for declaring Butler an outlaw and ordering his execution. Little did Davis know that Butler had been relieved of command at New Orleans the previous week, and that Davis had an entirely different general in New Orleans to deal with.

²¹ "General Butler's Alleged Proclamation at New Orleans," as reprinted in the *Newark Advocate* (Newark, Ohio), May 30, 1862.

welcome rhetoric to the new Confederate government.²² British newspapers seemed inclined to adopt Palmerston's conclusions, assuming that Butler's order meant that "the ladies of New Orleans, because they might happen to make some gesture or movement which an officer or soldier might interpret as an insult, were to be...subjected to the most degrading association with the vilest of their sex?"²³ "[Butler] has widened the gulf between North and South...[h]e has – the insensate! – made war against women."²⁴ Reaction in France was equally negative, but more muted. "[T]he French government has forbidden the papers to mention your name. The name Marlboro was once used in France to frighten children...you have taken his place."²⁵

Butler was not without his defenders, predictably among Northerners. The *New York Times*, less than a month after calling for Butler's dismissal, counterattacked British Parliament's self-righteous indignation, reminding its readers that Butler was in a rebellious city trying to restore order, so he was free to impose any measure he saw fit that would help quell the rebellion and restore order. The *Times* also blithely recalled the British army's "Beauty and Booty" rally cry at New Orleans during the War of 1812, suggesting that haughty Britain ought not throw rocks from its own crystal palace.²⁶

The *Boston Daily Advertiser* noted that the situation in New Orleans, had, indeed, seemed to calm down since the Woman Order had been issued. Far from conducting himself in a personally reprehensible fashion, the editorial notes, Butler had taken the

²² Hearn, *When the Devil Came Down to Dixie*, 105-106.

²³ The *Times* (London, England), June 14, 1862.

²⁴ Charles Francis Adams to Butler, July 15, 1862 in *Butler Correspondence*, 74. The excerpt quoted is from an un-cited newspaper clipping Adams sent to Butler from a London newspaper.

²⁵ Sumner to Butler, December 5, 1862 in *Butler Correspondence*, 520.

²⁶ "The English Parliament and Gen. Butler," *New York Times*, June 29, 1862.

wife of General Beauregard under his protection.²⁷ Fascinatingly enough, only a single paper from Bangor, Maine called out General Beauregard for being seemingly incensed at General Butler's actions, all the while leaving his very own wife under Butler's capable protection.²⁸ The *Lowell Daily Citizen* took a pragmatic approach to the order, stating simply, "If a woman maliciously abuses or insults union soldiers, she goes to lock-up."²⁹ One of the most vehemently pro-Butler articles proclaimed Butler "the right man in the right place," declaring that New Orleans "found out that it has a master." This paper turned the tables upon the perpetrators, asserting that "no lady, no decent woman of whatever rank, could possibly be guilty of such conduct, under any circumstances. *Prima facie*, therefore, it stamped them as courtezans [sic] of a very low order."³⁰ Butler did not

²⁷ "Affairs in New Orleans," *Boston Daily Advertiser*, May 31, 1862. Accessed January 27, 2015.

<http://find.galegroup.com.ezproxy.tcu.edu/ncnp/infomark.do?&source=gale&prodId=NCNP&userGroupName=txshracd2573&tabID=T003&docPage=article&searchType=AdvancedSearchForm&docId=GT3006377889&type=multipage&contentSet=LTO&version=1.0>. Butler's concern for Mrs. Beauregard was such that he offered General Beauregard a pass to enter New Orleans when his wife took ill and was not expected to live. See Butler to Beauregard, December 5, 1862, *Butler Correspondence*, 520-521.

²⁸ "Gen. Butler's Order," *Bangor Daily Whig & Courier* (Bangor, ME), June 3, 1862. Accessed January 27, 2015.

<http://find.galegroup.com.ezproxy.tcu.edu/ncnp/infomark.do?&source=gale&prodId=NCNP&userGroupName=txshracd2573&tabID=T003&docPage=article&searchType=BasicSearchForm&docId=GT3007241629&type=multipage&contentSet=LTO&version=1.0>.

²⁹ "Multiple News Items," *Lowell Daily Citizen and News* (Lowell, MA), May 31, 1862. Accessed January 27, 2015.

<http://find.galegroup.com.ezproxy.tcu.edu/ncnp/infomark.do?&source=gale&prodId=NCNP&userGroupName=txshracd2573&tabID=T003&docPage=article&searchType=BasicSearchForm&docId=GT3001686924&type=multipage&contentSet=LTO&version=1.0>.

³⁰ Frank Leslie, "General Butler in New Orleans," *Frank Leslie's Illustrated Newspaper* (New York, NY), June 14, 1862. Italics cited directly from original text. Accessed January 27, 2015. <http://find.galegroup.com.ezproxy.tcu.edu/ncnp/infomark.do?&source=gale&prodId=NCNP&userGroupName=txshracd2573&tabID=T003&docPage=article&searchType=BasicSearchForm&docId=GT3012567842&type=multipage&contentSet=LTO&version=1.0>.

care, so long as his order had the desired effect, and allowed his officers and men the ability to police New Orleans in peace. Every other result or reaction was ancillary to this desire.³¹

It is important to understand Butler's perception of gender roles, particularly female roles, in order to comprehend what inspired him to issue the Woman Order and to understand the effect which he imagined it would have on the women of New Orleans. Butler was astounded at the behavior of women who were "bejewelled, becrinolined, and laced creatures calling themselves ladies," towards his men.³² Butler had adopted a certain ideal of what features and characteristics comprised femininity, and he was shocked when he saw people who looked like ladies without conducting themselves in a manner as unladylike as possible.

Butler's conclusion and the stereotypes upon which his assumptions on gender were based have been touched upon by Civil War historians. The Civil War "strained traditional definitions of gender," in the South as Confederate women were obliged to adopt so-called unladylike roles like personal defense and politics in the absence of males who typically performed those functions.³³ Southern women, whether in the absence of men, or perhaps dissatisfied with the 'manliness' displayed by the local men, tended to adopt traits considered masculine by the standards of the times, which in the case of the women of New Orleans included resisting the Yankee occupiers.³⁴

³¹ *Butler Correspondence*, Butler to J.G. Carney, July 2, 1862, 36.

³² *Butler Correspondence*, 35.

³³ George Rable, "Missing in Action: Women in the Confederacy," in *Divided Houses: Gender and the Civil War* eds. Catherine Clinton and Nina Silber (New York: Oxford University Press, 1992), 135; LeeAnn Whites, *The Civil War as a Crisis in Gender* (Athens, GA: University of Georgia Press, 1995), 5.

³⁴ Rable, "Missing in Action," 136.

Confederate women in New Orleans were no less keen to vent bravado about resisting any Yankee who dared enter her city than those of any other Confederate city. For all the bluster about defying Federal power, Confederate women were no more willing to struggle in vain than were Confederate men. But overt resistance is not the issue—the willingness to adopt the male trait of standing up to an enemy is the issue. “Women,” writes George Rable, “no longer saw themselves as passive victims, and however unrealistic their fantasies of resistance, they had begun to form new expectations for themselves.”³⁵ The women of New Orleans had hoped to remain defiant before Federal guns, but when the city surrendered, all they could feel was the shame of a vanquished city that armed men had failed to defend. Clara E. Solomon, a native of New Orleans, remarked to a visitor, “[i]f the men had half the spunk which the women have, New Orleans would soon be ours again.”³⁶ Women seemed fearless in their resistance, as opposed to their male counterparts, perhaps because the men were made to fear repercussions by Butler’s men, while most women were able to sit peaceably by and curse the invaders. This could be a reason why Confederate women went to such unladylike lengths as to spit in the faces of Union officers—they felt as though they were the only ones offering any resistance, so they abandoned their ladylike gender roles in an effort to resist their conquerors.

Butler was used to the gender roles that prevailed in Massachusetts, and he expected the decorum and comportment of Southern ladies to match the decorum and comportment of Northern ladies. Northern women, although they could not fight, strove to make themselves as important to the war effort as possible. Louisa May Alcott noted

³⁵ Rable, “Missing in Action,” 137.

³⁶ *Ibid.*, 138.

in her diary at the outset of the war, “I long to be a man; but as I can’t fight, I will content myself with working for those who can.”³⁷ Rather than public means of expressing their patriotism, to which the women of New Orleans resorted, Northern women expressed their patriotism symbolically through parades, fairs, and flag raisings, and maintained their ladylike reputations.³⁸

Most of Butler’s troops, like Butler himself, were from New England, men “well bred in courtesy toward women, for a well behaved woman can safely travel alone all through New England.”³⁹ The women of New Orleans, noted Butler, were not comporting themselves as the “well behaved” ladies of New England, and he feared the possibility of a culture clash. Far from “[making] war against women,” as the London newspaper had insinuated, Butler was wholly convinced that he was endeavoring to promote the true virtues of women, not to destroy them.⁴⁰

For all the accusations leveled against Butler – that his order was a blank check for Union troops to traipse the countryside raping women as they pleased, that he was making war on women, even that he was a tyrant – little attention has been paid to the real impact of Butler’s Woman Order on crime in New Orleans, and more specifically, crimes committed by and against women. If, after all the bluster, it turned out that incidents of crimes committed by and against women did not increase, then Butler’s tactic actually worked, and he has been maligned as the “Beast Butler” unjustly. If, on the other hand, incidents of rape and other crimes increased in the months following

³⁷ Jeanie Attie, “Warwork and the Crisis of Domesticity in the North,” in *Divided Houses: Gender and the Civil War* eds. Catherine Clinton and Nina Silber (New York: Oxford University Press, 1992), 253.

³⁸ Attie, “Warwork and the Crisis of Domesticity in the North,” 254.

³⁹ *Butler’s Book*, 419.

⁴⁰ *Butler Correspondence*, 74.

General Order No. 28, then there must be some grounds to all the criticism of Butler after all, and the perception of Butler needs to be amended to reflect the abhorrent treatment of women under his jurisdiction.

In order to examine whether crime under Butler increased, it is important to establish a baseline of crimes committed by and against women before and after Butler's arrival in New Orleans. Prostitution was big business in New Orleans, as discussed in the first chapter. Few nineteenth-century states and no antebellum municipalities considered the act of prostitution a punishable offense, which made it difficult to keep the streets of New Orleans reputable. As prostitutes could not be charged for the actual selling of sex, they were often charged with public lewdness, indecent exposure, disorderly conduct, or a bevy of other contrived, but somewhat related charges in order to stem the sex trade. Louisiana state law prevented landlords from renting their rooms to prostitutes, and a municipal statute provided for a fine if a prostitute were to be apprehended during a disturbance of the peace, but the act of prostitution itself was of ambiguous legality. Subsequent ordinances would prevent prostitutes known to engage in lewd behavior from entering coffeehouses or cabarets, but none of these laws prevented the ladies from plying their vocation, so long as the act occurred in private.⁴¹

City ordinance did allow for the penalization of both the proprietor where the alleged act took place and the prostitute who perpetrated the act, and this seems to have been enforced when charges were actually pressed. One sample case involving an act of prostitution witnessed by Officer H. Tricou of the N.O.P.D. listed both the prostitute, H. Smith and her landlord, John Santrock, as defendants. They were accused of "disorderly conduct and indecent attire contrary

⁴¹ Schafer, *Brothels, Depravity, and Abandoned Women*, 17.

to the provisions of the city ordinance." The court found the pair guilty, and fined each five hundred dollars for the incident.⁴²

Similar arrests and citations on charges of prostitution from early 1862 include ludicrous charges, including one for "refus[ing] to extinguish her lamps in her bar room at 9 o'clock."⁴³ The brothel's operator and proprietor, Mrs. Mary Hughes, was fined and released. The next day, Austin Sehar was arrested on the charges of "keeping his coffee house and brothel open past 9 o'clock."⁴⁴ Like Mrs. Hughes, Sehar was fined and not detained. An even more vague charge was leveled against Mrs. Nolly Gavin on April 29, when she was fined for "keeping an open house."⁴⁵ No rapes were reported in the Second District during the first few months of 1862, and the only people cited with prostitution-related charges are the cases mentioned here.

Aside from the bias within the laws themselves penalizing the practice of selling sex but not the solicitation thereof, there seems to be little anti-female bias in police arrest records. Of the 390 total inmates imprisoned by the state of Louisiana in 1860, only twenty were female.⁴⁶ This low imprisonment rate for females underscores the fact that penalties for the many crimes tied to prostitution either carried fiscal penalties or workhouse obligations and did not call for jail time.⁴⁷ Of the arrests which occurred between 1853 and 1856, 17.1 percent of those apprehended were female, and of those arrests 71.1 percent were either for prostitution or

⁴² State of Louisiana vs. Santrock. New Orleans Municipal Court Case # 15846, March 1862. New Orleans Public Library.

⁴³ "Mary Hughes," March 31, 1862. New Orleans (La.) Dept. of Police Reports of Arrest, Second District, 1862-1864. March 21, 1862- June 30, 1864. New Orleans Public Library, TB205a 1862-1864 roll # 2000-40. Hereafter cited as "N.O.P.D. Arrest Records."

⁴⁴ "Austin Sehar, Residing at 58 Philip Street," April 1, 1862. N.O.P.D. Arrest Records.

⁴⁵ "Nolly Gavin," April 29, 1862. N.O.P.D. Arrest Records.

⁴⁶ Louisiana Penitentiary Report.

⁴⁷ Schafer, *Brothels, Depravity, and Abandoned Women*, 18.

gambling.⁴⁸ These figures demonstrate that, far from focusing their efforts on female perpetrators, police officers' seemed to take little interest in the pursuit of prostitutes.

Of the 112 new inmates incarcerated in state penitentiaries in 1860, only two were female. Hanna Cornelius of South Carolina was to serve a one-year sentence for Contravention, and Hope a slave girl, had been sentenced to life for arson. Regarding crimes committed against women, only a single white rape convict was incarcerated in 1860, a man named Joseph Howard, was serving his sentence of six months. One slave was also convicted and sentenced in 1860, and while his name does not make the prison record, his sentence does: life.⁴⁹

Instances of crime during the Federal occupation were tried by Major Bell of the Common Council, as mentioned in the previous chapter. Only a few cases were ever tried under the Woman Order, but they are important and instructive. Eugenia Levi Philips was arrested and exiled to Ship Island for allegedly laughing at the funeral of a Federal soldier and training her children to spit upon Union troops.⁵⁰ Mrs. Philips' case is interesting both because she was the wife of Philip Philips, who had served in the Buchanan administration, and because she did not personally lay a finger (or spit upon) on a single soldier, but due to the fact that she was inciting others to rebellion, she was convicted and sentenced.⁵¹ The incident of Mrs. Philips backfired somewhat on Butler, as the letters she wrote from Ship Island managed to circulate around the city somehow,

⁴⁸ Rousey, *Policing the Southern City*, 92-93.

⁴⁹ Louisiana Penitentiary Report. The crime of "Contravention" is the most ambiguous term in the report, and I was unable to find a suitable description of what this charge entailed. It is possible that the charge of Contravention was left intentionally vague, so as to encompass a greater range of misdemeanors.

⁵⁰ Special Order No. 150 *Butler Correspondence*, 36-37; Rousey, 106.

⁵¹ Winters, *The Civil War in Louisiana*, 135.

and her fellow New Orleanians became sympathetic towards her. She was released and returned to New Orleans after only a few months on Ship Island.⁵²

Butler would later claim that "no arrests were ever made under it or because" of General Order No. 28.⁵³ Although Butler was probably underplaying the far-reaching effects of the controversial order years after it had happened, there is certainly less evidence of rude behavior and violence toward Federal soldiers following the issuance of the Woman Order than there was before it. Although it is virtually impossible to prove a negative when it comes to a lack of crime, the incidences of crime during Butler's tenure indicate a bevy of crime being committed in New Orleans, with the exception crimes related to rape or prostitution. There is a seventeen-month gap in the arrest records kept by the N.O.P.D. between May 20, 1862 and October 5, 1863, during which time the Federal army was in charge of processing arrests and trials. The best evidence for interactions between soldiers and New Orleanians during this period, mostly due to the lack of other sources, are newspapers.

Given the lack of arrest records following the Woman Order, and the famous lack of documentation kept by Major Bell and the Common Council, it is the press which provides most of the information on crime committed in and around the city, often accompanied by some droll comment by the editor about the accused. Interestingly enough, it is a Boston paper which carries the story of the "First Arrest under Woman Order," who was allegedly a nun who had verbally abused a group of Union soldiers and was sent to jail.⁵⁴

⁵² Rable, "Missing in Action," 142.

⁵³ *Butler's Book*, 419.

⁵⁴ "First Arrest under Woman Order," *Boston Daily Advertiser*, June 13, 1862.

The tenor of newspaper reports of crime and punishment vary, but one of the most complete records of the dealings of the Common Council is found in the *Daily True Delta*, which sent a correspondent to the courtroom nearly every day the court was in session.⁵⁵ Crime committed against the Union soldiers and Butler-appointed police officers was heavy during the first six weeks the Council held sessions. On May 30, John Green, a resident of New Orleans, was convicted of assaulting a Federal soldier who was in the discharge of his duties. Green was fined twenty dollars.⁵⁶ On June 4 John Braun was convicted of selling poisoned liquor to Federal troops. The same day, a Thomas Hale was convicted of assaulting police officer Kennedy while he was in pursuit of his duties.⁵⁷ Although the sentence for these men is not disclosed in the article, a man named Joseph Beal was arrested and convicted of assaulting a U.S. officer the next day, June 5, and was sent to Fort Jackson to await trial.⁵⁸ Braun and Hale may have met the same fate.

Violence against police and Federal officers did not abate through June, but once the occupation continued into July, violence slowed. On June 26 Lawrence Curtis was sentenced to one year in the parish prison for "knocking down a Federal soldier."⁵⁹ On June 30, John Scott received one month in the workhouse as recompense for providing Federal soldiers with false tips on which homes to search. This conviction came the same

⁵⁵ "Common Council," *Daily Delta*, May 28, 1862. Beginning with the June 5 issue, the dealings of the Common Council were featured prominently on the front page of the *Delta*.

⁵⁶ *Ibid.*, May 31, 1862.

⁵⁷ *Ibid.*, June 5, 1862.

⁵⁸ *Ibid.*, June 6, 1862.

⁵⁹ *Ibid.*, June 27, 1862.

day that Louis Howard, a free negro, was sentenced to one year in the parish prison for striking a white woman.⁶⁰

While these cases may seem unrelated, and indeed they are, they indicate that there was a shift in reports from the Common Council from New Orleanians doing violence to Federal soldiers and police officers to reverting to a state of violence toward other New Orleanians. This shift represents a slowing of insurgent behavior toward the Federals and a return to 'business as usual.' Violence within the city certainly did not



Figure 3.2. *The Ladies of New Orleans before General Butler's Proclamation. After General Butler's Proclamation.* Engraving by John McLenan, July 12, 1862. Harp Week: On This Day, July 12. Accessed January 19, 2015, <http://www.harpweek.com/09Cartoon/BrowseByDateCartoon.asp?Month=July&Date=12>.

disappear altogether. On July 31, Major Bell found a resident by the name of Mr. Casserly guilty of being drunk and ill-treating his wife, and Casserly was fined two thousand dollars for his transgression.⁶¹ Four days later, a ruffian named J.J. Collier was sentenced to two years in the parish prison for beating a woman with a chair in a house of

⁶⁰ "Common Council," *Daily Delta*, July 1, 1862.

⁶¹ *Ibid.*, August 1, 1862.

ill repute.⁶² It was not until a full week into August that another act of rebellion found its way before Major Bell's court, when Thomas Karney was convicted of hoisting a flag of secession in his house, for which he was sentenced to a year in the parish prison.⁶³ All of these cases indicate that New Orleanians were concerned less and less with roughing up Federal soldiers and police officers, but were the occupying troops equally tranquil?

The incidents of crime, especially violent crime, prostitution, and rape perpetrated by the Union soldiers occupying the city partly reveal the Woman Order's impact on crime. Butler had assigned most of his forces to occupy locations outside the city limits, so only a few regiments, about 2,500 men, were stationed in the city proper. As with civilian crime during Butler's tenure, the Common Council also tried crimes perpetrated by enlisted men and tried courts martial. Indeed, it had been one of Bell's primary functions initially to handle courts martial until the city and circuit courts shut down.⁶⁴ Federal soldiers accused of crime were arrested and hauled before Major Bell just as their civilian counterparts, and sentences against soldiers tended to be heavy.

On the evening of June 17, a New Orleans resident known only as "Mrs. Foley" was at home with her husband when two soldiers from the 31st Massachusetts knocked on her door and demanded entry on the premise that they needed to search her residence, but with the intent of burgling the Foleys. Mrs. Foley refused to admit them, and she reported that the two soldiers, Sergeant Thomas Harrington and Private William H. Rooney, assaulted her (physically, but not sexually), and threatened to shoot her husband if she did not comply with their demands. The police were summoned, and Officer Rosin

⁶² "Common Council," *Daily Delta*, August 4, 1862.

⁶³ *Ibid.*, August 7, 1862.

⁶⁴ Helis, "Of Generals and Jurists," 146.

of the N.O.P.D. arrested the soldiers for entering the Foley home without authority. Undoubtedly knowing the tenuous relationship between Butler's men and the people of New Orleans, especially concerning searches and seizures, Bell took away Harrington's stripes, and fined both men one month's pay.⁶⁵ This kind of direct assault on a lady by Federal soldiers was rare, as other matters involving soldiers tried before the Common Council illustrate.

A few days later, on June 22, Philip Rosse, also of the 31st Massachusetts, was court-martialed for being "rude and insubordinate" to a superior officer. Major Bell ordered Rosse transferred out of the company.⁶⁶ On June 24 Bell tried Private S. Murray, who was accused of abandoning his post without leave and refusing to obey orders. Bell sent Murray to the Parish prison for thirty days to encourage him to remain at his post in the future.⁶⁷ On June 28, editors of the *Delta* couldn't help but notice two Federal soldiers patrolling their encampment wearing nothing but whiskey barrels. The editors inferred that the punishment was for overindulgence, and deemed the punishment, "whimsically apt."⁶⁸

This is not to say that occupying Federal soldiers did not perpetrate crimes against New Orleans residents; on the contrary, of 131 cases tried by Major Bell on November 25, 1862 alone, about a quarter of defendants for that day were from the same regiment of New York Zouaves. One of these soldiers had robbed a man at gunpoint on the road

⁶⁵ "Common Council," *Daily Delta*, June 19, 1862.

⁶⁶ *Ibid.*, June 22, 1862.

⁶⁷ *Ibid.*, June 25, 1862.

⁶⁸ *Daily Delta*, June 28, 1862.

coming into town from Lake Pontchartrain.⁶⁹ A certain degree of rabble-rousing in a city the size and nature of New Orleans is to be expected, especially when the occupying soldiers are paid in specie, bored, lonely, and far from home.

Of the trials of Union soldiers recorded by the city's newspapers, there are the usual drunk and disorderly charges, insubordination, and even violence and armed robbery perpetrated against the people of New Orleans, but charges of rape and other violence against women are conspicuously absent. Perhaps Butler had been right all along in assuming that his soldiers were "men well bred in courtesy toward women," who held to the idea of feminine gender roles better than the ladies themselves.⁷⁰ The outcome of Butler's Woman Order seems to be one of pacification of female resistance, not one of subjugation of a vulnerable populace. The genius of the order was that Butler defined what was unladylike, resulting in a situation where "[a]ll the ladies in New Orleans forebore [sic] to insult our troops because they didn't want to be deemed common women, and all the common women forebore [sic] to insult our troops because they wanted to be deemed ladies."⁷¹ The women of New Orleans had adjusted their behavior to match the definition of "lady" as set by General Butler, which resulted in a virtual cessation of demonstrations against Federal soldiers by the ladies of New Orleans. Far from being *carte blanche* for the Federal soldiers to treat New Orleanian women poorly and rape and pillage at will, there is no evidence to indicate that the Woman Order had any such impact on how soldiers treated their female charges. In his farewell address

⁶⁹ Joy J. Jackson. "Keeping Law and Order in New Orleans under General Butler, 1862," *Louisiana History, The Journal of the Louisiana Historical Association* 34, No. 1 (Winter, 1993): 51-67, accessed September 9, 2014, Stable URL: <http://www.jstor.org/stable/4232997>, 60.

⁷⁰ *Butler's Book*, 419.

⁷¹ *Ibid.*, 419.

Butler went so far as to claim that "the just-minded ladies of New Orleans... have [n]ever enjoyed so complete protection and calm quiet" as during the occupation under his command.⁷² Although undiplomatic in its language, General Order No. 28 curbed the problem of rebellious women, and did so without bringing harm to the ladies of New Orleans.

⁷² Farewell Address by General Butler, December 24, 1862 in *Butler Correspondence*, 554-555.

Return to the Fold: Reversion to Civilian Control, 1863-1865

A rumor had started to circulate as early as August, when Butler mentioned in a letter to his wife that he might be relieved by Major General Nathaniel Banks, to which Butler flippantly remarked, "I wish to heaven he would come!"¹ Although it is highly doubtful Butler wished to be relieved, particularly by Banks, whom he despised, it is probable that Butler doubted the rumor's veracity in light of his success in quelling New Orleans into a relative peace. General Henry Halleck insisted that the rumor was a fabrication of secession newspapers, and told Butler not to worry.² But there were legs to the rumor, for President Lincoln and Secretary of State Seward had been receiving complaints from several consulates since May complaining of Butler's heavy-handed tactics. The consuls were not as altruistic in their motivations as might first appear, for they were not concerned with Butler's control over New Orleanians, but of themselves and certain city occupants who had claimed diplomatic immunity. Butler had not only demanded that former Confederates swear allegiance to the United States, but he demanded it of every occupant of the city, irrespective of whether or not the occupant claimed citizenship of a foreign nation.³

As though this transgression were not enough, Butler had seen through the attempts of some former Confederate sympathizers to seek refuge with the consulates of foreign governments. These ex-rebels had tried to escape Butler's wrath by claiming that they were citizens of one of the consulate nations, which claims Butler simply ignored. Butler's harshness in dealing with the foreign consulates was not altogether unjustified, due in part to

¹ Benjamin Butler to Sarah Butler, August 2, 1862 in *Butler Correspondence*, 149.

² Halleck to Butler, September 14, 1862 in *War of the Rebellion*, 572.

³ Seward to Stanton, June 24, 1862 in *Butler Correspondence*, 10-11.

an incident with an unnamed foreign minister who managed to smuggle an entire incomplete Confederate gunboat out of New Orleans. The lumber and other fittings for the boat had been cut and fitted, and needed only to be assembled when the Federal army arrived. The entire stock of lumber and parts was smuggled out of New Orleans through one of the consuls claiming that it was private goods for sale and owned by a citizen of his nation.⁴ This discovered ploy and others like it did not stop the consulates from giving Lincoln and Seward backlash over the matter.

No examination of crime in New Orleans during the Civil War can ignore Butler's own underhanded dealings. What may have been at the heart of the recoil against Butler, if not backlash over the Woman Order, was Butler's personal conduct.⁵ Butler somehow managed to accrue astounding wealth during his stay in New Orleans, some of which may have been skimmed off the top of army supplies, some from extorted favors from companies in which he held stock, and some skimmed from taxes, fines, or other penalties.⁶ Butler was careful not to dirty his own hands by stealing directly, only where the proof could be lost in the mounds of paperwork of the Department of the Gulf.

Before the first battle of the war had even been fought, Butler had been fully immersed in speculation and war profiteering. A New York hatter offered to sell Butler six thousand kepis to equip his men. Butler agreed, so long as the hat maker agreed to divert ten percent of the invoice cost to Butler's quartermaster to "divide around." The hat maker balked until another supplier informed him that that was how Butler did business -- he

⁴ Butler to Stanton, November 25, 1862 in *Butler Correspondence*, 446. Butler implies that the former consul was French, but stops short of naming names.

⁵ Baron Friedrich von Gerolt to Seward, August 26, 1862 in *Butler Correspondence*, 219-220.

⁶ Hearn, *When the Devil Came Down to Dixie*, 92-93, 145-160, 180-181.

purchased whatever he liked, then passed the invoice through his brother-in-law's accounts receivable office, where he billed the army for the supplies at inflated prices.⁷

As the campaign on New Orleans approached, Butler had speculated that the supply of coal might become short in the weeks leading up to the assault on the city, so he ordered his quartermaster to have the ships under his command ballasted with coal at Butler's own expense instead of the usual stone.⁸ This was done as a speculative measure, which allowed Butler to purchase anthracite cheaply on the east coast and re-sell it to the Navy at an inflated price once Farragut's fuel supply ran low. As of April 17, 1862, he had sold more than 1,000 tons of ballast coal to the Navy operating in the Gulf of Mexico. This behavior may not have been outright illegal, but the coal had been transported west on a government vessel at no charge to Butler himself. A second episode involving five thousand dollars' worth of cotton and turpentine which Butler had shipped east on Navy vessels put an end to the chicanery. Once the cargo reached port and was being unloaded, a concerned quartermaster brought the illicit cargo to the attention of the Lincoln administration, which reimbursed Butler for his expenses, but deposited all proceeds into the treasury.⁹

Perhaps the most famous of Butler's alleged indiscretions involved a set of silver spoons which he appropriated. According to one account, the spoons were confiscated from the home of Confederate General David Twiggs during a search of known Confederates'

⁷ Hearn, *When the Devil Came Down to Dixie*, 30-31.

⁸ Butler to Stanton, April 17, 1862 in *Butler Correspondence vol. 1*, 414; Hearn, *When the Devil Came Down to Dixie*, 56-57.

⁹ Richard Fay to Butler, May 7, 1862 in *Butler Correspondence*, 445-447; C.P. Buckingham to Seward, June 11, 1862, *Ibid.*, 447; Asst. Secretary of the Navy G.V. Fox to Butler, June 1, 1862, *Ibid.*, 533; Butler to Quartermaster General M.C. Meigs, June 10, 1862, *Ibid.*, 579-580; Asst. Secretary of War P.H. Watson to Richard Fay, June 18, 1862, *Ibid.*, 612-613.

homes.¹⁰ According to another account, the silverware was confiscated by a Federal officer screening passes of travelers who were leaving New Orleans. When a woman bearing a pass, Mrs. Ferguson, reached the inspection point, the pass she bore was for herself and her clothing alone, and not for the packet of spoons she carried, so the officer confiscated the spoons and sent Mrs. Ferguson on her way.¹¹ Regardless of which alleged episode lay at the heart of the story, the tale did little to endear Butler to the hearts of New Orleanians, who

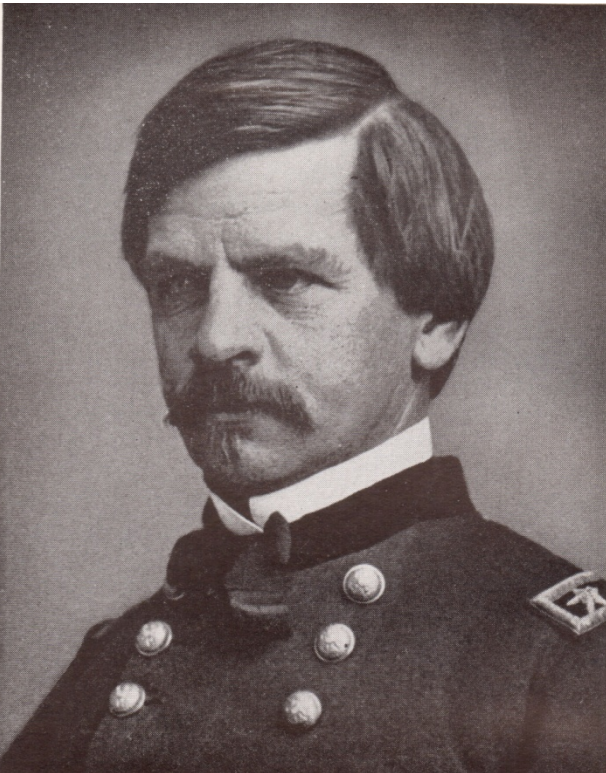


Figure 4.1. Major General Nathaniel Prentice Banks. Undated photograph by uncited photographer. Harrington, *Fighting Politician*, iii.

soon bestowed upon him the ignominious moniker of "Spoons Butler."¹² Whether or not Butler stole a set of spoons as was commonly believed matters little, for the mere perception of Butler as a common thief adversely impacted his post-war reputation.

No matter which issue lay at the heart of the rumors of Butler's relief, Butler finally learned the truth when his successor, General Banks, arrived in New Orleans bearing orders from the War Department to relieve Butler of

¹⁰ Hearn, *When the Devil Came Down to Dixie*, 180-181.

¹¹ William Dana Orcutt, "Ben Butler and the 'Stolen Spoons': The Documents in the Case, from His Unpublished 'Private and Personal Correspondence,'" *The North American Review* 207, no. 746 (January 1918): 67-70, accessed February 2, 2015. <http://www.jstor.org/stable/25121746>.

¹² Hearn, *When the Devil Came Down to Dixie*, 180.

command.¹³ Banks, like Butler, was a capable, self-made lawyer from Massachusetts, and his background suited him well for tough duty in occupied New Orleans. Despite this similarity, Banks was Butler's opposite in many ways, but similar in methods of administration. Unlike Butler, who foresaw challenges and opportunities and prepared for them, Banks tended to wait for the last possible moment to act. Where Butler anticipated a need for coal on an extended naval exercise and stowed away tons of coal, Banks filed an imposing list of needed supplies after he had told the War Department he was ready to embark. Where Butler was very unattractive, Banks was handsome, and even bore a striking resemblance to George B. McClellan. Perhaps what mattered most, however, was the fact that Butler could not hold his tongue, and Banks could.¹⁴ Banks was no better a battlefield commander or administrator than Butler, but Banks did not have Butler's questionable moral conscience, and it is possible that Lincoln trusted Banks's position on slavery more than he trusted Butler's -- a critical consideration with the Emancipation Proclamation due out in a few weeks.¹⁵

Possibly the touchiest realm of Banks's tenure as commander in New Orleans was the question of racial relations. Although no great crusader for racial equality (Banks managed to convince the black officers of the Louisiana Native Guard to resign rather than deal with repercussions of having commissioned black officers), Banks was no lover of slavery.¹⁶ Still, he understood when Lincoln issued the Emancipation Proclamation that New Orleans and the other few federally-occupied areas were specifically exempt from its provisos. But where Butler had striven to keep slaves, former slaves, and free blacks out of plantations, Banks

¹³ *Butler's Book*, 530; Hearn, *When the Devil Came Down to Dixie*, 217.

¹⁴ Harrington, *Fighting Politician*, 86-87.

¹⁵ *Ibid.*, 85-86.

¹⁶ Hollandsworth, *The Louisiana Native Guards*, 43-44.

ordered any fugitive slave in New Orleans either to find work or to return to the plantations to work.¹⁷

Banks's concern for providing plantations with sufficient labor was born of more than a desire to keep the local populace productive or local docks stocked with sugar. Banks wanted to keep the refugees busy in order to keep them out of trouble. Police in New Orleans enforced curfew and assemblage laws from antebellum New Orleans, citing and arresting both free and refugee blacks alike.¹⁸ Crime tended to follow large concentrations of refugees who, not being able to provide for themselves by honest means, resorted to theft and looting.¹⁹ This lawlessness alarmed shop keepers, who had already endured price hikes and supply shortages, and the circumstances demanded attention from Banks.²⁰

Banks's greatest contribution to the anti-slavery movement came in January 1864, when he announced the suspension of slavery in Louisiana. This declaration nullified the slavery provisions found in the Louisiana state constitution of 1853, and Banks's declaration was confirmed by the legislative body forging the new state constitution in May. The following month the Louisiana state Attorney General determined that emancipation provided all blacks the same legal rights as their white alien counterparts. While stopping short of providing the free black populace full protection of the law or suffrage, Banks had helped pave the way for significant change in racial relations in Louisiana. While a powerful anti-negro faction still existed in New Orleans, it was mostly passive until long after Banks

¹⁷ Harrington, *Fighting Politician*, 104-105.

¹⁸ *Ibid.*, 104.

¹⁹ Charles P. Roland, *Louisiana Sugar Plantations During the Civil War* (Baton Rouge, LA: Louisiana State University Press, 1997), 51-53.

²⁰ *Ibid.*, 104.

had departed, and so the racial question posed no further immediate problem for law enforcement in New Orleans.²¹

Banks was initially much more lenient toward rebel sentiment than Butler had been, allowing some resurgence of Confederate nationalism, which did not sit well with many officers, who had labored to keep rebellious attitudes in check.²² The rebellious acts which occurred during the first few months of 1863 were not remarkable, but they were the final efforts to offer resistance to the military government. For example, a man who hurraed for Jefferson Davis during Butler's tenure might be sent off to Ship Island, but under Banks, the same offence would probably receive a small fine.²³

Provost Court Judge (recently promoted to Lieutenant Colonel) Bell resigned, and returned to Massachusetts with Butler, leaving his very critical position open. Bell had served in a difficult position admirably, and the legal community in New Orleans paid Bell a tribute as he departed.²⁴ The practical replacement for Bell was Charles A. Peabody, a Seward crony from New York, who had been appointed to the new position of head of the United States Provisional Court for the State of Louisiana by special order of President Lincoln. Lincoln had intended Peabody's court to remove some of the burden from Bell's provost court, but Bell's departure had the effect of putting most cases through Peabody's docket.²⁵ Peabody wasn't a bad judge, but his orders from President Lincoln gave him judicial authority over the army, and by extension over Banks, and he often used this power to conduct searches and seizures of civilian property at will. As a result the locals quickly lost

²¹ Harrington, *Fighting Politician*, 112-115.

²² Rousey, *When the Devil Came Down to Dixie*, 110.

²³ *Ibid.*, 110.

²⁴ *Daily Picayune*, December 21, 1862 as cited in Helis, "Of Generals and Jurists," 153.

²⁵ Helis, "Of Generals and Jurists," 154.

respect for Peabody.²⁶ Banks managed to circumvent Peabody's authority in June, when he created a new "Provost Court of the Department of the Gulf" using his authority under martial law, and defined the new court's jurisdiction to take almost every case from Peabody's court.²⁷ This adroit maneuver would not be Banks's last.

One of the most creative forms of rebellious demonstrations with which Banks had to contend took place within the confines of the city's public schools. When Louisiana voted for secession, Confederate History replaced United States History, and singing time added songs like "Dixie" and "Bonnie Blue Flag" while omitting such former patriotic hits as the "Star-Spangled Banner" and "Yankee Doodle." Butler had adjusted the public school curricula in September, but it had not yet been implemented upon Banks's arrival, and many schools continued to be indoctrination grounds for Confederate sympathies. The female teachers lost no opportunities to spout anti-Yankee vituperation to their students, and the school system managed to launder enough funds to continue to pay the salaries of absentee male teachers serving in the Confederate army.²⁸ Banks turned his attention to weeding out dissent in the schools, appointing a commission to find and fire teachers and principals found subverting the Union through indoctrination. This effort was one of Banks's most resounding successes, which cleared public education of the direst forms of rebellion.²⁹

In April, after realizing that leniency would not yet work with the people of New Orleans, Banks began to punish anti-Union and pro-Confederate sentiment more harshly. On May 1, Banks ordered all New Orleanians who had not sworn the loyalty oath to leave the city within fifteen days, and forbade any of these people to transfer property. Butler had

²⁶ Helis, "Of Generals and Jurists," 157-158.

²⁷ *Ibid.*, 159.

²⁸ Doyle, "Civilian Life in Occupied New Orleans," 81-87.

²⁹ Harrington, *Fighting Politician*, 95.

threatened to banish these residents, but it was Banks who realized the threat. Once these citizens had made their withdrawal, Banks seized their property under the terms of the Second Confiscation Act, and pro-Confederate sentiment quieted.³⁰

It is unlikely that Banks's leniency caused Union soldiers any additional violence. There is little evidence of continued violence against the occupying Union soldiers still patrolling the city as ad hoc police officers during Banks's tenure. The incidents of the previous summer seemed to have been the last physical demonstrations against the Federal soldiers, since court cases from the first ten months of 1863 do not detail any cases involving soldiers as victims. Cases listing females as either plaintiffs or victims resemble the antebellum cases of the same kind, and no Union soldiers are listed as defendants in cases involving women.³¹ The lack of cases listing Union soldiers indicates that few crimes in 1863 were perpetrated either by or against soldiers.

By October 1863, General Banks felt that a sufficiently strong and loyal police force existed to return direct control of the city's law enforcement to civilian authorities. Record-keeping, and presumably direct department control resumed on October 5, 1863.³² Captain French stepped down from his position as military chief of police, leaving the department under control of the civilian chief, John McClelland.³³ The pattern of good behavior by Union soldiers continued after the civil authorities resumed control. Three rape cases tried

³⁰ Joe Gray Taylor, *Louisiana Reconstructed, 1863-1877* (Baton Rouge, LA: Louisiana State University Press, 1974), 19-20.

³¹ Louisiana First District Court (Orleans Parish) General Dockets, 1846-1880. New Orleans Public Library, Microfilm, VSA-350, Case Dockets #12589 through 16369.

³² N.O.P.D. Arrest Records, October 5, 1863.

³³ Rousey, *Policing the Southern City*, 113.

between the assumption of police control by civilians and the end of 1863 involved civilians alone, and no arrests or cases involved Union soldiers.³⁴

Reconstruction in New Orleans, which had begun the moment Butler had disembarked on May 1, 1862, was now in full swing as municipal functions were shucked from military authority. One by one, all military authorities bowed out of office to be replaced by Louisianans. When Michael Hahn was fairly elected in November 1864 to replace General Shepley as governor, it marked the last major office held by a military appointee to return to the civilian prerogative. General Stephen A. Hurlbut relieved Banks of command in late 1864, but Hurlbut's actions do not factor significantly in this study of law enforcement in New Orleans. Although the military occupation would technically continue well past the end of the war, military law enforcement hadn't been a part of the practice of law enforcement from 1863³⁵

Martial law under Butler and Banks had achieved a great deal in New Orleans during the Federal occupation. New Orleans had gone from a city in a semi-riotous state aching to hurl the Yankees back into the river to a relatively peaceful and prosperous city in 1865. Although rebellious sentiment still persisted for years as in many other former Confederate states, Louisiana sent representatives to Congress, accepted a new state constitution, and even voted in the presidential election in 1864.

This state of complacency had changed dramatically from the riotous rabble which had greeted Farragut and Butler in mid-1862, and it has to be due to the efforts and policies

³⁴ N.O.P.D. Arrest Records, October 5, 1863 through December 31, 1863; State of Louisiana vs. Charles Sanders -- case # 15985; State of Louisiana vs. José Escalande -- case # 15963; State of Louisiana vs. Oscar Griller (man of color) -- case # 15896. Louisiana First District Court (Orleans Parish) General Dockets, 1846-1880. New Orleans Public Library. All Case records at the New Orleans Public Library use their case number as the call number.

³⁵ Taylor, *Louisiana Reconstructed*, 27.

implemented and executed by Butler and Banks. Butler reacted swiftly to quash potential threats and strong arm violators to keep order. He was especially harsh toward a few perpetrators to set an example to keep most of the people in line, and his treatment of locals resulted in safety for his men and relative peace in the Crescent City. Butler's most controversial action, the Woman Order, secured Butler's place in history, but also brought a stop to the ill treatment of his men by the women of New Orleans without imperiling them. Banks, with two or three exceptions, continued Butler's efforts and paved the way for the civil authority to resume the policing responsibilities. Although some of the generals' behavior or policies may not be beyond reproach, they were no doubt effective.

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ABSTRACT

THE THIN BLUE LINE: LAW AND ORDER DURING THE FEDERAL OCCUPATION OF NEW ORLEANS: 1862-1865

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"The Thin Blue Line" examines how law enforcement during the Union army's capture and occupation of New Orleans pacified the insurgent city, with special emphasis on the army's role as police, civil courts, and municipal government. This thesis also carefully explores the impact which Benjamin Butler's notorious General Order No. 28, or "Woman Order," had on crimes perpetrated by and against women during the Federal occupation.