

THE LEIBER CODE'S EFFECTIVENESS IN
JACKSON COUNTY, MISSOURI

A THESIS IN
History

Presented to the faculty of the University of
Missouri-Kansas City in partial fulfillment of
The Requirements for the Degree.

MASTER OF ARTS

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B.A. Park University, 2014

Kansas City, Missouri
2014

2019
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THE EFFECTIVENESS OF THE LIEBER CODE IN
JACKSON COUNTY, MISSOURI

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University of Missouri-Kansas City, 2019

ABSTRACT

This thesis is a case study that examines the problems the US Army encountered in the implementation of the Lieber Code in 1863 Jackson County, Missouri. My arguments are largely based on manuscript sources and microfilmed Provost Marshal Cases from the National Archives and Records Administration that document the types of people who were arrested and punished for the crime of supporting the Confederate guerrilla cause. This study shows the policies that the Union military implemented from 1860-1863 before the Lieber Code was issued, and then explores whether the Code changed policy decisions in Jackson County. This study also shows that General Thomas Ewing Jr. and other officers violated the Code in 1863 when he issued a blanket banishment order that included all the people living in the county if they could not prove their loyalty. This order was a punishment for supporting Quantrill's guerrillas, who had engaged in a devastating raid on Lawrence, Kansas on August 21, 1863. I argue that the Code was used effectively because it rid the Border Region of Quantrill's guerrilla band during the last two years of the war, but that the Code was violated when he banished all civilians from their homes regardless of their active support for the Confederacy.

APPROVAL PAGE

The faculty listed below, appointed by the Dean of the College of Arts and Sciences, have examined thesis “The Lieber Code’s Effectiveness in Jackson County, Missouri,” presented by Tom Scheckel, Master of Arts in History Degree, and certify that in their opinion is worthy of acceptance.

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TABLE OF CONTENTS

ABSTRACT.....	iii
ACKNOWLEDGEMENTS.....	iv
CHAPTER	
1. INTRODUCTION.....	1
2. HISTORICAL CONTEXT, HISTORY OF THE LIEBER CODE, PROBLEMS IT SOLVED.....	7
3. JACKSON COUNTY, MISSOURI AND THE EFFECTIVENESS OF THE LIEBER CODE.....	14
4. FINDINGS OF MY STUDY.....	23
5. CONCLUSION.....	41
BIBLIOGRAPHY.....	43
VITA.....	74

ACKNOWLEDGEMENTS

My interest in American military history clearly started as a teenager after watching many historical documentaries discussing the role of the United States military during the Second World War and the Cold War eras. I was specifically interested in the role the United States military has in protecting our lives from enemies at home and abroad, especially, after the events of 9/11/01. I greatly respect them for doing these kinds of jobs. The only form of skepticism I had as a kid was the federal governments' use of troops to strategically protect us. I asked myself: Is there any proof that the United States government has strategically solved the world's problems by using direct force against our enemies? Has it really benefited us as a nation? Has it really protected us? Then, during this same year, I visited the Truman Library with my Mom and an acquaintance of mine. The visit at the Truman Library really shaped my thinking, and sharpened my focus on studying the history of the United States military's work for the greater good. The Truman Library presented me exhibits showcasing the positive achievements of the United States military such as defeating the Japanese and German armies in 1945. Last but not least the other life event that really impacted me and got me interested in historical writing and teaching was writing a Daughters of American Revolution essay for my sixth grade teacher on the subject of Valley Forge. The research and writing part of the project was fun, exciting, and memorable. Yet, I was limited to writing a paper based only on secondary sources that the school provided me. I am very thankful that I can now use original sources.

I would like to thank the librarians at the Midwest Genealogical Center in Independence, Missouri in helping me find the Provost Marshal Records. Their insightful

advice, especially in helping me be able to access these records online has made it possible for this project to come to fruition. I'd also like to thank the staff at the Miller Nichols Library of UMKC for providing the public the opportunity to use the military records of the soldiers that fought on the Union side of the war. Without this, the project would not have been possible. Also, I would like to thank the archivists at the Jackson County Historical Society in Independence, Missouri for giving me access to the many diary entries, petitions, newspaper clippings, general orders, and letters which have become very useful for this project.

This project would not have been possible if it would not have been for the advice of my mentor, Dr. Mutti Burke. Her warm friendship and outstanding advice has provided me with great insights into what it takes to create a great project. The second person I would really like to thank for helping me write such a project is Dr. Linda Mitchell. Her in-depth knowledge in the changes that have happened in the historical profession, especially on the subject of historiography has really shaped my views on where exactly my story will fit in relation to the writings that other scholars have produced on it. I'd like to thank Dr. Mitchell for leading me by example on the proper ways of teaching people the subject of history. This has greatly impacted me as a future historian and educator. I'd also like to thank Dr. Mitchell for giving me insightful advice on historical writing. Her advice has been good and very insightful for me. Also, I would like to thank Dr. Herron and Dr. Frehner for sharing with me insightful information of Nineteenth Century America, especially on the subject of America's Westward expansion before the Civil War occurred. This information has really shaped this project, and placed it in its proper context. I would also like to thank both Dr. Herron and Dr. Frehner for their words of wisdom and advice on what it takes to become a successful scholar

of history. Also, I would like to thank Dr. Frehner for being another good role model in terms of demonstrating to me and advising me on the many ways I can be able to become a better educator. His advice has always been an inspiration to me. Without it this project would not have been possible. Writing history is truly the best method of teaching people, even if some of them choose not to learn the lessons from it. I would also like to thank Dr. Lynda Payne for taking the time to edit this manuscript and in taking the time in giving me more advice on what it takes to become a successful scholar of history. Her breath of knowledge on writing has been very inspiring and enlightening for me as a Masters student here.

Last but not least I would like to thank both of my parents for tolerating me in spending hours upon hours reading, writing, and lecturing on the subject of history. Without their loving help and support this project would not have been realistically possible.

Sincerely,

Tom Scheckel

DEDICATION

I'd like to dedicate this thesis to both of my parents and to the men and women
serving in uniform to protect our country.

CHAPTER 1

INTRODUCTION

If you walk down Delaware Street in the City Market of Kansas City, Missouri you might pass the site of the former Pacific Hotel. This hotel served as the Union Army's District of the Border headquarters in 1863. Brigadier General Thomas Ewing was made commander of this newly created military District that year. He came from a political background, and gained military experience in the 11th Kansas Cavalry earlier in the war. He was determined to use the military experience from his service in Kansas to influence U.S. military policy and subdue the Confederate guerrilla insurgency in western Missouri.¹ Prior to this point in the war, the U.S. military had made little centralized effort to combat this threat; instead, officers at the local level often implemented policy as they saw fit. The Union military command created the District of the Border and put Ewing in place as commander in order to focus the army's efforts on combating the Bushwhackers and protecting the Unionist civilian population along the Missouri/Kansas Border.

The Civil War had been raging for two years at the point the War Department created the District of the Border. Bushwhackers such as William Clarke Quantrill and "Bloody" Bill Anderson relentlessly attacked Union soldiers and raided Unionist civilians and the Union army found it difficult to stop them. In spite of these difficulties, the federal army was determined to reinforce its occupation of Missouri and keep the state in the Union. The guerrilla problem was more intense in Missouri, but many of the problems faced by Union

¹ He was placed in charge of Jackson County in June 1863. David La Crone, "Thomas Ewing Jr.," *Civil War on The Western Border: The Missouri Conflict 1854-1865*, (hereafter *Civil War on the Western Border*), <https://civilwaronthewesternborder.org/encyclopedia/ewing-thomas-jr> (last modified 2018, accessed April 9, 2018).

soldiers reflected those they encountered in other parts of the occupied South. Officers and rank-and-file soldiers alike wrestled with the issue of how to engage with conquered enemy combatants and civilians. Up to this point, the only known code of conduct to guide soldiers' actions was the 1806 Articles of War, but many believed they had become outdated. This lack of direction often led officers on the ground to determine policy as they saw fit. As a result, the War Department determined that unified rules of engagement were needed and commissioned what became known as the Lieber Code.

The Lieber Code was issued in the Spring of 1863 with a hope that it would help the Union win the war. It was a set of instructions given to Union officers dictating to them proper military conduct. It was created to solve the problems of war, especially as they related to the conduct of soldiers toward civilians and enemy combatants. The Lieber Code of 1863 was meant to solve this problem because it gave Union officers and soldiers a set of rules to follow in fighting the war against the Confederacy. The Code solved the following problems: prisoner exchanges, paroles, treatment of guerrillas, protection of civilians, and generally gave them a set of principles to abide by. It was put in place in order for the government to control the actions of its military, and by doing so the federal government hoped to win the war.

In his award-winning book, *The Laws of War in American History: Lincoln's Code*, John Fabian Witt describes the important role that the Lieber Code has played in Americans' attempts to define the rules of war and to influence international policy. He outlines the US government's early efforts to establish rules of engagement and describes the ways that these measures fell short during the challenges of civil war. Ultimately, he argues that the Lieber Code, which he calls Lincoln's Code since the president commissioned it, was a significant

tool that aided the Union army in its efforts to defeat the Confederacy. While the book is a significant contribution in Civil War studies in that it explores the importance of this policy to the overarching Union military and political strategy, Witt does not examine the effectiveness of the Lieber Code on the ground in military theaters.²

The purpose of this thesis is to examine how the Lieber Code was implemented. Due to the intensity of the guerrilla conflict in Western Missouri, Jackson County is an ideal location to test the effectiveness of the implementation of this new military code of conduct during the Civil War. Unfortunately, as with most laws, the Code was difficult to enforce. Jackson County in 1863 was one place where the federal government failed to enforce its policies as they related to the US military. Instead, the three officers in command of the county felt comfortable using their own policies against the guerrillas even if it meant, in the process, ignoring the Code and harming the civilian population. This was partly because they lacked the basic supplies they needed in order to protect the people they were serving, as the Lieber Code instructed them to do. But in the end, one of their primary motivations was seeking revenge against the actions the Bushwhackers committed against them and Unionist civilians.

Ultimately, I argue, Brigadier General Thomas Ewing violated Article 37 of the Code through issuing General Order No. 11. Article 37 called for the protection of women and children. Order No. 11 violated that particular protection because it called for the banishment of women and children regardless of their loyalties. However, Ewing's violation of the Code was not the only instance when Union officers did not follow federal rules. Two other men violated the Lieber Code in addition to General Ewing: Abram Comingo, who was a politician and provost marshal in Jackson County, and Colonel William Ridgeway Penick,

² John Fabian Witt, *The Laws of War in American History: Lincoln's Code* (New York: Free Press, 2012).

who was “colonel of the fifth regiment cavalry Missouri state militia, a regiment he raised for the service of the United States.”³ Guerrilla warfare was so horrendous in Western Missouri that commanding officers chose to follow their own code of conduct rather than defer to the official rules of war. Both men violated aspects of the Code in their attempts to rid the border counties of Confederate guerrillas and their supporters.

Historiography of the Lieber Code

In recent years a number of historians have explored the history of the Civil War in Missouri and in the Missouri/Kansas border region. The guerrilla conflict has been a special focus of this inquiry. They have explored the history of the armed conflict in the state and have described the hard-handed tactics that the Union army used in its occupation of Missouri. They also have described the motivations and brutal tactics of the Bushwhackers. While historians such as Christopher Phillips have described Union military policies in great detail, none have explored whether the intervention of the Lieber Code actually changed the actions of individual officers or soldiers. This thesis proposes to answer this question through a systematic study of Union military actions in Jackson County, Missouri.⁴

³ Jacklyn Barton, “William Ridgeway Penick,” *Find A Grave*, <https://www.findagrave.com/memorial/5034176/william-ridgeway-penick> (last modified August 9, 2000, accessed May 2, 2019).

⁴ Historical works related to the Border Wars and the Civil War in Missouri, include: Joseph M. Beilein Jr., *Bushwhackers: Guerrilla Warfare, Manhood, and the Household in Civil War Missouri* (Kent: Kent State University Press, 2016); Joseph M. Beilein Jr. and Matthew C. Hulbert, eds., *The Civil War Guerrilla: Unfolding the Black Flag: in History, Memory, and Myth* (Lexington: University Press of Kentucky, 2015); Dennis Boman, *Lincoln and Citizen Rights in Civil War Missouri: Balancing Security and Freedom* (Baton Rouge: Louisiana State University Press, 2011); Jonathan Earle and Diane Mutti Burke, *Bleeding Kansas, Bleeding Missouri: The Long Civil War on the Border* (Lawrence: University Press of Kansas, 2013); Michael Fellman, *Inside War: The Guerrilla Conflict in Missouri during the American Civil War* (New York: Oxford University Press, 1990); Mark Neely Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York: Oxford University Press, 1991.), Christopher Phillips, *The Civil War in the Border South* (Santa Barbara: Praeger, 2013); Christopher Phillips, *The Rivers Ran Backward: The Civil War and the Remaking of the American Middle Border* (New York: Oxford University Press, 2016); T.J. Stiles, *Jessie James: Last Rebel of the Civil War* (New York: Random House Inc., 2002); Lucas P. Volkman, *Houses Divided: Evangelical Schisms & the Crisis of the Union in Missouri*, (New York: Oxford University Press, 2018); Leann Whites, *Gender Matters: Civil War, Reconstruction and the Making of the New South* (New York: Palgrave MacMillan,

I have determined that Union military policies were heavy-handed in the first two years of the war as Union officers attempted to control the guerrilla insurgency. The limits of this control are made apparent by the War Department's decision to establish a specific military district to address the problem, however. In theory, the Lieber Code should have helped with this effort. This thesis is a microstudy based on the Civil War records related to Jackson County, Missouri. When the application of the Lieber Code in Jackson County is closely examined, it reveals that the Code made little difference in the outcome of the war in this arena. While this case study provides only one example of the ineffectiveness of the Code's application, it is likely that research in other areas of the war front would suggest its ineffectiveness there as well. This raises the question on whether or not the Code was really followed in 1863 Jackson County and whether or not it changed anything?

This work relies heavily on military documents that are housed in the National Archives and Record Center in Washington, DC, but were viewed on microfilm and online at various venues, including the Missouri State Archives, and the Midwestern Genealogical Center in Independence, Missouri. I examined additional manuscript documents at the *Avalon Project* online archival collections, at the Missouri Valley Special Collections housed at the Kansas City Public Library Central Branch, and on the Kansas City Public Library's *Civil War on the Western Border* website. I also used correspondence between generals operating in Missouri during the years of 1863-65 that were included in *Official Record of the War of the Rebellion* and were viewed on Cornell University's website.

The single most important primary source base used in this paper is the Union Army's Provost Marshal Records, which originated from court cases generated by a federal

2005); and Leann Whites, "Forty Shirts and a Wagon Load of Wheat: Women, the Domestic Supply Line, and the Civil War on the Western Border," *The Journal of the Civil War Era* 1, no. 1(2011): 56-78.

military court system that tried both civilians and enemy combatants for war crimes. I relied heavily on both the correspondence and the provost marshal documents in this paper. The Provost Marshal Records are a series of court cases created by military police units documenting the relationship Missourians had to the Union Army throughout the war period. The army created a court system that would try people for disloyalty to the Union. The provost marshal system was at first created by General Irwin McDowell in 1861. The provost marshals' primary responsibility was to preserve order in the counties in which they were stationed. Understanding the Provost Marshal records will enable readers to fully grasp the realities the Union army faced in managing the local civilian population during the war. The records also describe the different types of punishments those convicted of disloyalty received throughout the war. Last but not least, I relied on a variety of other sources, such as newspapers, petitions, diaries, letters, pamphlets, paintings, and pictures that are located at the Jackson County Historical Society, but which are housed on the *Civil War on the Western Border* website. These sources shed light on the mindset of the people of Jackson County, especially those who were considered disloyal, as the war progressed. My goal in using various types of sources for this project is to give readers a broader perspective on people's reactions during the war as well as help me develop a better picture of what actually happened in Jackson County between the years of 1861-65.

CHAPTER 2
HISTORICAL CONTEXT OF THE LIEBER CODE, CREATORS OF IT,
PROBLEMS IT SOLVED

Prior to 1863, Article IV of the Constitution, which was written in 1787, regulated the military's conduct during wartime. These regulations were not amended until 1806 when the Articles of War went into effect. The 1806 Articles of War was a code of conduct that prevented abuses from occurring on the battlefield, and was created at a time when the United States was acquiring more western territories, which required the growth of the military. There were two major wars the U.S. military fought between 1806 and the Civil War, but unfortunately the code of conduct was not significantly revised before the Civil War broke out in 1861.¹

The Civil War in the eastern theater was not going well for the Union army. It suffered heavy losses after the battle of Manassas of 1861. On a more positive note, the Union army had managed to occupy Missouri and other border states during the first two years of war. The army defeated the pro-southern Missouri forces and evicted Claiborne Jackson's secessionist government from the state, but its hold was tenuous because of the divided loyalties of the people. The Union military declared martial law in Missouri, imprisoned and banished some civilians for not paying their taxes or due to their connections to Bushwhackers, and issued oaths of allegiance and bonds on the state's civilians. The official Confederate army did not try to retake the state until 1864.²

¹ "Articles of War 1806," <http://suvcw.org/education/documents/articles.htm> (last modified November 11, 2018, accessed November 21, 2019).

² Louis S. Gerteis, *The Civil War in Missouri* (Columbia: University of Missouri Press, 2012), 179-205, Christopher Phillips, *The Rivers Ran Backward* (New York, Oxford University Press, 2016), 242-284.

The absence of a regular Confederate army presence in Missouri for most of the war resulted in the emergence of a Confederate guerrilla insurgency. Jackson County, on the state's western border, was home territory for a massive guerrilla band, resulting in a heavy-handed Union army response. The war in the Missouri/Kansas border region was so savage that combatants on both sides often abided by no rules and frequently killed people indiscriminately. Jackson County was by no means the only place where the war was so savage: Western Virginia, Kentucky, Kansas Territory, Eastern Tennessee, Western North Carolina, and Maryland were all sites of guerrilla warfare, and a heavy-handed Union response. The savagery of the guerrilla war as well as the civilian and prisoner-of-war issues that had arisen due to the Union's success on the battlefield and the resulting need for military occupation had become such a problem that the Lincoln administration sought to resolve these issues through the development of a military code of conduct. President Abraham Lincoln, Francis Lieber, and General Henry Halleck attempted to create a Code that was meant to stop harsh tactics, believing that they further alienated the civilian population. In the end, the ultimate goal of the new policy was to win the war. The solution came in the form of the Lieber Code.

The Lieber Code was written by a Prussian political scientist and teacher at Columbia University in Columbia, South Carolina, by the name of Francis Lieber (March 18, 1798-October 2, 1872). Lieber was raised in Berlin, and fought in the Napoleonic Wars. He was educated in Jena, Germany, and while living there wrote a series of publications opposing the German government, which the government censored. As a result of political persecution, Lieber decided to migrate to England in 1826, and then later to America to find a better job. When the Civil War broke out in 1861, Lieber's attention turned toward supporting the

Union cause, so that America would stay united because he viewed secession as a threat to order and stability. Another factor influencing Lieber's decision to write the Code was his views on slavery. He was against slavery, thereby making him an abolitionist.³ It is ironic that he was both a Unionist and abolitionist due to the fact that he taught at a Southern college before the war, and had a son who fought for the Confederacy. His son Oscar Lieber was drafted to serve in the Confederate army; this hardened Lieber's opposition to the Confederate cause. In the end, Lieber's purpose in writing the Code was to help the Union win the war.

General Henry Halleck was a Union general and lawyer specializing in international law in 1860. He was famously known to have appointed the military committee in the United States War Department to draft the Code. Halleck was the head of the Department of the West from 1861-62, but in the summer of 1862 was promoted to General-in-Chief of all the Union armies. It was in this capacity that he commissioned the Lieber Code. As a general in Missouri during the early years of the war he was in charge of making sure the rules of the federal government were enforced. His primary responsibility was keeping Missouri part of the Union. However, the many obstacles Halleck faced made it difficult for him to achieve this essential goal, including: a divided civilian population; a growing insurgency launching continuous cross-border raids; the difficulty enforcing federal laws; and the challenge of protecting civilians. Early in the war, Confederate Bushwhackers threatened the stability of his rule, and Halleck witnessed the Union military abusing civilians as a result of the guerrilla raids. According to David LaCrone, "Halleck faced the equally tremendous task of organizing his department after months of corruption and securing the state against

³Ibid.

depredation by the anti-Union guerrilla forces of Missouri bushwhackers and their pro-Union counterparts, Kansas Jayhawkers.”⁴ Both of the guerrilla groups disrupted the stability of the Union military’s hold on the state throughout his tenure.

Halleck sought to find a solution to stop these abuses from repeatedly occurring.⁵ This was one of the reasons Halleck worked to create a unified military code of conduct. Halleck became increasingly frustrated with these problems over time. His experience in Missouri led him to alert Lincoln to the problems the officers and soldiers experienced in the field. He hoped to create a reasonable solution that would end the potential abuses that might be committed by Union troops. The Lieber Code gave Union officers and soldiers rules to manage their conduct towards civilians as well as their conduct toward enemy combatants. The ultimate goal of Lincoln, Lieber, and Halleck was to put rules in place that would aid the military in ending the war.

The Lieber Code was meant to address the problems of the Union military conducting itself properly towards civilians.⁶ As the war progressed, the Union army had success on the battlefield and conquered more southern territory, leading the army to confront the problem of occupying and subduing large expanses of hostile territory. Lincoln and Halleck met to discuss the problems of captured enemy soldiers, enemy civilian populations in conquered regions, and the guerrilla insurgencies that emerged in the border states and occupied southern states.⁷ The Code was an instruction manual created to head off potential issues by

⁴David LaCrone, “Henry Wager Halleck”, *Civil War on the Western Border*, <https://civilwaronthewesternborder.org/encyclopedia/halleck-henry-wager> (Accessed November 13, 2019).

⁵ Ibid.

⁶ Witt, *Lincoln’s Code*, 221-222.

⁷ Francis Lieber, *General Orders No. 100: The Lieber Code: Instructions for the Government of Armies of the United States in the Field*, Articles 81-85, *The Avalon Project Papers*, Yale Law School, New Haven CT, http://avalon.law.yale.edu/19th_century/lieber.asp, (Accessed on July 12, 2018).

limiting the actions of officers and soldiers operating on the battlefield and in areas of military occupation. The Code's primary goal was to establish order and discipline within the military in order to protect both military combatants and civilians. At the time, no other nation on earth had stricter rules governing the military's code of conduct.⁸ This made the Lieber Code a unique military law. In the words of historian D.H. Dilibeck, "The true 'genesis' of his effort to create for soldiers a set of guidelines of just conduct drawn from the laws of war were the three major concerns mentioned in his May 1863 letter to Sumner: prisoner exchanges, guerrilla warfare, and the parole."⁹ In the end, they reasoned if they could better control the actions of the military they could bring about a successful end to the war.

Among other things, the Code controlled the actions of soldiers towards civilians by making the distinction between enemy soldiers and civilians clear.¹⁰ It also sought to define who was a guerrilla and how an irregular combatant should be treated.¹¹ Articles 81 and 82 of the Code defined guerrilla fighters, and ultimately argued they were not soldiers, and instead were common criminals. In the Nineteenth Century military commanders did not always make the distinction between guerrilla fighters clear. Early in the Civil War military commanders often could not decide if guerrillas should be treated as enemy soldiers or as civilians. Guerrilla bands would stage ambushes, and were adapt at blending into the civilian population. This made it difficult for Union commanders to determine the status of these

⁸ Witt, *Lincoln's Code*, 1-5.

⁹ Much of my description of the history of the Lieber Code relies on John Fabian Witt's *Lincoln's Code* and D.H. Dilibeck, "The Genesis of This Little Tablet with My Name' Francis Lieber and the Wartime Origins of General Orders No. 100," *Journal of the Civil War* 5, no.2 (June 2015):235

¹⁰ Lieber, *General Orders No. 100*, Article 37, 81-82.

¹¹ Lieber, *General Orders No. 100*, Article 82, 7.

combatants when they were captured. The Lieber Code was clearly meant to solve this problem among others. The federal government hoped that if it clearly set out rules of engagement for the military through the Code, they would be able to better prosecute the war.

The Code was sent to Union officers in the form of a small booklet in the Spring of 1863. Most officers expected the soldiers in their command to obey the rules dictated. Unfortunately, as with many laws and rules, some soldiers chose not to follow them. Before the Civil War, wars were typically waged with great brutality and savagery. Due to the rules of war outlined in the Lieber Code, people today generally call this brutality a war crime.

The goal of the Lieber Code was to end all types of abuses that were in effect in the first two years of the war. The new regulations were meant to help Union soldiers differentiate between the many types of enemies they fought against, including civilians, fellow soldiers, insurgents, spies, and deserters. The Code also told Union officers the things they could and could not do. An example of this is seen in Article 28 of the Code, which states: “Retaliation will, therefore, never be resorted to as a measure of mere revenge, but only as a means of protective retribution, and moreover, cautiously and unavoidably.”¹² Specifically, the Code forbade soldiers from committing acts of revenge against enemy soldiers and civilians. Union officers were forbidden to hurt civilians, unless they found substantial evidence proving they were supporting the enemy. The Code limited where and when they could inflict retaliatory measures against an enemy. In the words of Section One, Article 4, “Martial law is simply military authority exercised in accordance with the laws and usages of war. Military oppression is not Martial law: it is the abuse of the power which that

¹² Lieber, *General Orders No. 100*, Article 28, 3.

law confers.”¹³ In addition, it states that all soldiers should be “exercising”¹⁴ their authority justly accordingly to military laws. When they overstepped these rules, they were “oppressing” the people.¹⁵

During the Civil War the Union army fought against Confederate Bushwhackers in Jackson County, Missouri. Union military officers routinely ignored the directions of the Lieber Code and used retaliatory measures against civilians. The most egregious action was when General Thomas Ewing violated Article 4 and Article 28 of the Code when he issued General Order No. 11. Ewing “oppressed”¹⁶ the people of Jackson County because he believed they supported the Bushwhackers. The Code did not stop this retaliatory abuse from occurring.

¹³ Lieber, *General Orders No. 100*, Article 4, 1.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

CHAPTER 3
JACKSON COUNTY, MISSOURI AND THE EFFECTIVENESS
OF THE LIEBER CODE

Historical Context of the Kansas-Missouri Border

Region Prior to 1860

Jackson County, Missouri was a small trading county located in the western central part of Missouri. Geographically the county was very hilly and filled with many forests. It was largely an agrarian society; with many small farms and villages. The hills, ravines, and woods made it easier for Bushwhackers like Jesse James and Bloody Bill Anderson to stage ambushes on Union troops.

Slavery was a divisive issue in the border region. The majority of people living in Missouri supported slavery from the beginning, thereby making slavery an important part of their lives.¹ The events of Bleeding Kansas that started in 1854 resulted in feuding among pro-slavery and anti-slavery settlers in the region. Free State guerrilla forces, often called Jayhawkers by Missourians, were against the expansion of slavery into western territories, while the proslavery forces, often called Border Ruffians by Kansans, were for its extension.

The historical context of the Kansas-Missouri border region prior to 1861 was one of feuding, rivalry, and cycles of war. The intense hatred between Kansans and Missourians spilled over into the Civil War era. The events of Bleeding Kansas were one of the many reasons the Union army ultimately fought against Confederate guerrillas during the Civil War. The feuding between pro- and anti-slavery settlers created proslavery groups in

¹ Diane Mutti Burke, *On Slavery's Border: Missouri's Small-Slaveholding Households, 1815-1865* (Athens: University of Georgia Press, 2010).

Missouri and free state groups in Kansas, both who plagued the counties lying in the Kansas/Missouri border region. The Union military spent most of its time fighting against these guerrilla bands supporting both sides and faced great difficulty in subduing them. When the larger Civil War broke out in early 1861, many of the men who had fought in Bleeding Kansas guerrilla units ended up serving in Jayhawker or in what eventually were called Bushwhacker units.²

First Battles of the Civil War in Missouri

The Civil War in Missouri started in 1860, when Claiborne Jackson was elected governor of Missouri, on a pro-Union platform. At the time, a majority of Missourians wanted to stay in the Union; they did not want to join the Confederacy even though most were proslavery. After Jackson's inauguration in 1861 he tried to bring the state into the Confederacy. Missouri's Constitutional Convention voted to keep Missouri in the Union, however. In late Spring 1861, General Nathaniel Lyon, who commanded federal forces in St. Louis, overthrew Jackson's government and replaced it with a provisional government led by Hamilton Gamble. The Union military supported this government throughout the four years of war. There was considerable fighting between Union military forces and pro-southern Missouri state forces during the first year of the war. The Union army eventually defeated Missouri state forces and their Confederate allies, and as a result, only guerrilla fighters were

² Nicole Etcheson, *Bleeding Kansas: Contested Liberty* (Lawrence, University of Kansas Press, 2004), 89-113; Tony R. Mullis, "The Illusion of Security: The Government Response to the Jayhawker Threat of Late 1860," *Bleeding Kansas, Bleeding Missouri*, Earle and Mutti Burke, eds., 99-117, Paul Debry, *The Destruction of Jackson County, Missouri in The Civil War: The Tragic Story of The Inhabitants of Jackson County, Missouri, before, during, and after the Civil War. Only the Smoke Stacks Remained* (Provo: CreateSpace Independent Publishing Platform, 2010).

left for the Union army to deal with. Missouri fell under military occupation as the Union army attempted to subdue the guerrilla insurgency and maintain control of the state.³

The Civil War brought an aggressive Union military occupation which exacerbated the guerrilla groups that plagued the state throughout 1862-3. Union authorities had difficulty controlling groups of people that supported the Bushwhackers, so they used heavy-handed tactics against them. There were several bushwhacking groups in Missouri, and they were formed in the early years of the war to counter the Union army's attempts to control the state. Missouri was a contested state during the war, with Missourians supporting both sides of the conflict. Many conventional battles took shape between Union and Confederate armies during the first year of the war but in the last years of the war the conflict was mostly between Confederate Bushwhackers and Union troops, some of them Jayhawker units from Kansas.⁴

The growth of the guerrilla groups made it harder for the Union military to keep the state in the Union, because many civilians supported the goals of the Bushwhackers. Abuses occurred because Union authorities often did not make the distinction between those who supported the Confederacy and those who did not. It made fighting the war in Missouri very difficult. This was one reason why Union officers resorted to the abuse of civilians. The line between loyal Unionists and disloyalists was murky to the point where Union commanders felt comfortable treating most, if not all, civilians as Secessionists.⁵

³ William Harris, *Lincoln and the Border States: Preserving the Union*, (Lawrence: University Press of Kansas, 2011).

⁴ Silvana Siddali, *Missouri's War: The Civil War in Documents: "Are Partisan Rangers Confederate Soldiers?"* (Athens: Ohio University Press, 2009), 1-10,147. See also Phillips, *The Rivers Ran Backwards*; Beilein, *Bushwhackers*; and Fellman, *Inside War*.

⁵ Phillips, *The Rivers Ran Backward* 242; Fellman, *Inside War* 23-73, 132-184; and Beilein, *Bushwhackers*.1.

During the occupation period Bushwhacker groups battled against both occupying Union forces and Jayhawker troops that raided into Missouri from neighboring Kansas. The Jayhawkers were free soil guerrillas during the Bleeding Kansas period that had turned into Union soldiers during the Civil War. Some of the Bushwhackers were soldiers who fought with the Missouri State Guard during the first year of the war but who thought they would be of more use if they remained behind enemy lines to protect their homes and communities. Confederate guerrillas existed throughout Missouri but some of the most notorious groups operated in Western Missouri under the leadership of “Bloody” Bill Anderson and William Quantrill. Civilians living in Missouri secretly supported both groups.⁶

The Union military faced great difficulty in keeping control of the state and subduing the guerrilla insurgency. Meanwhile, civilians were caught in the crosshairs. Some of these guerrilla bands used the civilian population as a shield. By 1863 the insurgency engulfed Missouri; as a result, raids were common. This made it difficult for Union officers to crush the insurgency. This led them to use heavy-handed and sometimes brutal tactics to counter the guerrillas and manage the large hostile civilian population.⁷

Difficulties in Fighting Guerrillas in Jackson County

Jackson County was the scene of several Civil War battles between Union troops and guerrilla forces during the first two years of the war. The First Battle of Independence in 1862 was a battle in which the Union army suffered heavy losses at the hands of irregular Confederate bands that were led by Quantrill. As a result of this loss, the Union army was

⁶Fellman, *Inside War*; and Beilein, *Bushwhackers*.

⁷Phillips, *The Rivers Ran Backwards*.

able to barely hold onto the county. Then a few days later the Union army was able to win the Battle of Lone Jack after suffering heavy losses.⁸

Fighting against guerrillas was a difficult task for any army to achieve, due to the fact that these types of enemies (guerrillas) blended well into the civilian population. Guerrillas regularly staged ambushes against standing armies. Since they often hit their targets and then blended back into the civilian population, it made it harder for conventional armies to eliminate them. There were instances throughout history in which the United States Army engaged the civilian population that they believed were guerrillas, ultimately massacring civilians in the process. Two well-known examples that are the military occupation of the Philippines during the Spanish-American War in the 1890s, and the My Lai massacre of 1973 during the Vietnam War.⁹ Ultimately, the military committed atrocities because they could not figure out the proper methods they needed to use against this type of enemy.¹⁰

Jackson County, Missouri was the scene of some of the worst guerrilla warfare in the entire Civil War. It was a place where the federal government failed to enforce its military laws, because the army faced great difficulty in fighting the guerrillas. Three Union officers who operated in the county, Abram Comingo, William Ridgeway Penick, and Thomas Ewing, ultimately defied the military code of conduct, and instead maintained their own policies against the guerrillas, even if it meant harming the civilian population in the process. Colonel William Ridgeway Penick gave his service in trying to protect the state from another guerrilla attack. According to the Find a Grave website, he was “[a]ppointed major on the

⁸David La Crone, “Battle of Lone Jack,” *Civil War on the Western Border*, <https://civilwaronthewesternborder.org/timeline/battle-lone-jack> (last modified 2018, accessed April 9, 2018).

⁹ John Fabian Witt, *Lincoln’s Code*, 5.

¹⁰ Christopher Phillips, *The Rivers Ran Backwards*, 242-284.

staff of Brig-Gen. Ben F. Loan; then lieutenant-colonel (afterward colonel) of the Fifth Regiment Cavalry, Missouri State militia, a regiment he raised for the service of the United States; later colonel of a regiment serving in the service of the State and Brigadier--a general of militia in Northwestern Missouri.”¹¹ Basically, the focus of his service was to protect loyal people along the border from attacks from known Bushwhackers, such as “Todd, Quantrill, and others, throughout Platte, Clay, Cass, and Jackson Counties.”¹² Abram Comingo was a lawyer and a Provost Marshal General of Jackson County in 1863-65. His job as the provost marshal general was to help keep Missouri in the Union. Their overall goal was to keep Missouri in the Union.

When the war commenced in 1861, Lincoln gave Union officers permission to conduct their policies as they saw fit.¹³ This meant he gave the military the freedom to enact its own policies, without having to ask the government for permission. Since Lincoln did not micromanage the military as some presidents had before his time, problems started to occur. One major problem was that Union soldiers in a place like Missouri often treated all civilians as supporters of the Confederacy. In 1861, the army set up a provost marshal court system to control what they viewed as a sizeable population of civilians who were disloyal to the United States. Reading through over 55 Provost Marshal records, 44 pertained to Jackson County; 21 out of 44 records involved people who were arrested for a variety of reasons, including disloyal speech, aiding the enemy, or drinking and gambling, among other

¹¹ Jacklyn Barton, “William Ridgeway Penick,” *Find A Grave*, <https://www.findagrave.com/memorial/5034176/william-ridgeway-penick> (Accessed May 2, 2019).

¹² Ibid.

¹³ Witt, *Lincoln's Code*; Phillips, *The Rivers Ran Backward*; and Boman, *Lincoln and Citizen Rights in Civil War Missouri*, 343.

infractions.¹⁴ Their punishments included paying for a bond or imprisonment for up to two years. Throughout Missouri during the war, a staggering number of “disloyal” civilians were arrested.¹⁵ In some cases, innocent people were persecuted as a result of the policies. This often was because the soldiers frequently could not tell the difference between a person supporting the Confederacy and someone who did not. The Provost Marshal Records of Jackson County reveal these arrests were a prevailing problem in 1863.¹⁶ These harsh measures made many Missourians angry at the Lincoln administration. This further fueled the guerrillas, who continued to wage their insurgency against the Union army. The soldiers used harsh policies against the guerrillas in an attempt to eliminate their threat. They responded by harshly penalizing the people whom they believed supported those groups.¹⁷

In June 1863, the War Department determined that more was needed to solve the problem of guerrilla violence in the Missouri/Kansas borderlands. They carved a military district in western Missouri and eastern Kansas out of the Department of the Missouri with the primary goal of eradicating the guerrilla threat. General Thomas Ewing Jr. was put in charge with his headquarters in Jackson County. With the aid of Provost Marshal Abram Comingo and Colonel William Ridgeway Penick, General Thomas Ewing Jr. set about to

¹⁴ To arrive at these statistics, I examined all the Union Army Provost Marshal records for Jackson County, Missouri. These records are housed in the National Archives and Records Center in Washington D.C. and are part of Record Group (National Archives Microfilm publications, File No. 60, page 417-421, Union Provost Marshal Papers Relating to Two or More Civilians, Roll 2-88, Numbers 1-773, Reel Number F15181, Frame Number 0415). I used the Provost Marshal index that was generated by the Missouri State Archives and viewed the identified Jackson County records on the *Missouri Digital Heritage* website at <https://sl.sos.mo.gov/records/archives/archivesdb/provost/Results.aspx>. Hereafter, I will reference these records as Provost Marshal Records and will identify individual cases by name and file number.

¹⁵ Neely, *The Fate of Liberty*, 46.

¹⁶ E.B. Alexander to A. Comingo, Dec. 11, 1863, Office of Act’g Ass’t Provost Marshal General, St. Louis, *Civil War on the Western Border*, <https://civilwaronthewesternborder.org/islandora/object/civilwar%3a3825> (Accessed Nov. 6, 2019).

¹⁷ Phillips, *The Rivers Ran Backwards*.

achieve this goal. In the early days of his command it appears that he planned to use the tools provided by the Lieber Code to help him win the war in this district. The Union army operating in Jackson County continued to face the problem of making the distinction between the Bushwhackers and loyal Unionist civilians. Ewing tried to do this by implementing Articles 81-85 of the Code, which distinguished who was a partisan guerrilla from those who were not and outlined how they should be treated. However, through this process he violated Article 37, which called for the protection of women and children. This article declared that all women and children were to be protected by the United States military.

The Lieber Code was meant to provide clarity on the issues faced by officers in places like Jackson County, but the problem of civilian support for the guerrilla insurgency blurred the line between enemy combatant and civilian. The Union army was faced with determining how to treat civilians who were actively aiding the enemy. Given this confusion, most officers in Jackson County did not ultimately follow all aspects of the Code. The most glaring example of this abuse is General Ewing's Order No. 11. This order was an abuse of Article 37 of the Code, which argues that the army should protect women and children. They should not be punished through banishment and confiscation of private property. Although Ewing might have argued that the people he banished were supporting the Confederacy, the main thing Ewing used to determine whether or not a person was loyal to the federal cause was the oath of loyalty. Civilians who did not choose a side or who did not sign an oath were treated as Confederate supporters. Ewing ultimately evicted everyone from their homes regardless of their loyalties. But Ewing's violation of Article 37 was not the only instance when Union officers did not follow the new rules, Union soldiers also were motivated to seek revenge against the Bushwhackers and their supporters, thus also violating Articles 4 and 28.

CHAPTER 4

THE FINDINGS OF MY STUDY

The Lieber Code was applied unevenly in Jackson County. The Code ultimately helped the army beat the Bushwhackers and support Unionist widows; however, these efforts were undermined after General Order No. 11 was issued on August 25, 1863.

There are many instances in which military officers in Jackson County employed the Lieber Code to great effect. In fact, the officers in charge of Jackson County had implemented many policies similar to those in the Lieber Code prior to receiving it. The Provost Marshal records show that bond payments and loyalty oaths were used before, during, and after the Code was released. In Article 10 of the Code it states the following, “Martial law affects chiefly the police and the collection of public revenue and taxes, whether imposed by the expelled government or by the invader, and refers mainly to the support and efficiency of the army, its safety, and its safety of its operations.”¹ In particular, martial law called for the collection of financial assessments on disloyal people living in Union-held occupied territory. The process of arresting, fining, or banishing was used by the Union army in the territories it conquered in order to control the people living there. The Union army continued these policies after the Lieber Code was issued. Thus, the army continued policies already in place. The Code merely gave them the authority to follow these practices.

The objectives the Union army had when they were operating in Missouri were to keep Missouri in the Union and to get control of the Confederate guerrilla or Bushwhacker problem. Martial law was established throughout the state, in an effort to achieve these goals.

¹ Frances Lieber, *General Orders No. 100*, Article 10.

The strategy of the Lieber Code, which was issued in the spring of 1863, was to give direction to the military on how to identify and treat the different types of enemy combatants and allies. The Lieber Code effectively defined foes they faced, and how to treat them. These foes included: Confederate soldiers, bushwhackers, and citizen supporters of these groups. The punishment for these enemy groups included: banishment, imprisonment, and execution.

The Union military developed a range of policies as they occupied the state. One such policy that was enacted early on was loyalty oaths. The provost marshal records indicated that in 1862 (prior to the Lieber Code) the Union army used loyalty oaths with the citizens. People were forced to sign loyalty oaths that were created by President Abraham Lincoln in 1861. There was a total of 145 signatures of Jackson County citizens on loyalty oaths during the year of 1862. In 1864 (after the Lieber Code) there were less than 12 loyalty oath signatures on record, and these were all from prisoners being paroled. The oaths protected civilians who signed onto them. It also gave a form of potential amnesty for people who had supported the Confederacy but now disavowed it so they could join the Union. The loyalty oaths were used throughout the South until 1881 when they were discarded after the end of the Reconstruction period.²

For the most part, the loyalty oaths were effective in differentiating between loyal Unionists and loyal Confederates. This ultimately led to the Union army's ability to rout out the Bushwhackers and their supporters from the Western Missouri border region. According to Article 26 of the Code, "Commanding generals may cause the magistrates and civil officers to take the oath of temporary allegiance or an oath of fidelity to their own victorious government or rulers and they may expel everyone who declines to do so. But whether they

² Witt, *Lincoln's Code*. See also Jackson County Provost Marshal Records.

do so or not, the people and their civil officers owe strict obedience to them as long as they hold sway over the district or country, at the peril of their lives.”³

People found loyal were allowed to take jobs in the federal government, practice their profession, move freely with a pass, engage in trade, and seek protection from the Bushwhackers. From early in the war, the Union army required loyalty oaths from civilians in Jackson County. The first recorded oaths in Jackson County was a public announcement of 108 people declaring their oath of allegiance to the Union in 1862. Loyalty oaths were required to practice professions and some trades, hold political office, or travel for business. Civilians had to fill out loyalty oaths in order to prove they were following the rules of the federal government. People who worked in government jobs prior to a takeover by the Union military had to sign an oath of allegiance in order for them to keep their jobs. For example, in 1864, Alanson S. Hall and Daniel Geary forwarded a batch of oaths, “In compliance with official orders 303 Office P.M. General Oaths of employees of this office. Are herewith transmitted.”⁴ People who required licenses to practice their professions--from priests and ministers to lawyers and judges--also were required to take the oath.⁵ People wanting to sell liquor had to fill out an oath as a part of the permit process.

The Union army, for the most part, applied the loyalty oath system of the permit process effectively. Out of 44 provost marshal records for Jackson County between the years of 1861-66, Union officers implemented the loyalty oath in 12 of the records.⁶ A little over a

³ Lieber, *General Orders No. 100*, Article 10, p 2.

⁴ Alanson S. Hall to Daniel Geary, “Oaths of Allegiance of Government employees,” 1864, Alanson S. Hall, file number 13750, Provost Marshal Records.

⁵ Christopher Phillips & Jason L. Pendleton, *The Union on Trial: The Political Journals of Judge William Barclay Napton, 1829-1883* (Columbia: University of Missouri Press, 2005), 1-15. Lieber, *Military Order No. 100*, Article 10, 185-291.

⁶ See Provost Marshal Records.

quarter of the provost marshal records from Jackson County were thus loyalty oaths. From those oaths, Union officers were able to figure out who supported the Confederacy and who supported the Union. The army also effectively used the loyalty oath system to hunt down, and find those individuals who were supplying Quantrill's guerrilla band.

Loyalty oaths were used as early as 1861 in the days after the battles of Wilson's Creek, Lexington, and Independence. The Union army was initially concerned with removing Claiborne Jackson's Confederate government, which they were able to successfully do, and achieving success on the battlefield against the pro-secession Missouri armed forces. The Union military used the loyalty oaths to identify pro-secessionist civilians in order to monitor them and eventually assess them for taxes.

Some people who did not fill out and sign a loyalty oath were expelled from the county. This part of the Lieber Code was applied effectively in Jackson County because those who did not fill out an oath were deemed disloyal and placed on a list. One example of these lists included James Porter, who was the first on a list of 97 names of Residents of the City of Independence, which included information about their occupations and suspected support of Bushwhackers.⁷

The Union military also used loyalty status to control the movements of people. An example of this is seen in the documented record, dated July 21, 1862, in which 72 travel passes were issued. Most of the passes were to Kansas and other parts of Missouri, although

⁷ James Porter to Thomas Young, "Two-page petition by the mayor and Councilmen of the city of Independence to Major General Rosecrans, previous petition sent to Rosecrans was intercepted by guerrillas on 11-10-1864 when mail was stolen and two men were killed," November 18, 1864, File number 12897, Provost Marshal Records.

some were to other parts of the country. These passes were issued before the Lieber Code was put in place.⁸

Failing to sign the oath of loyalty restricted disloyal people's means of making a living and movement as well as subject them to surveillance and fines. Many also faced punishment for their disloyal activities. Union authorities justified the following punishments for disloyal people: they were thrown in jail, their guns were taken away, they were watched and harassed, and they were assessed.⁹ Some were arrested for disloyal activities. Those who were contrite and paid their bonds and signed oaths of allegiance were given parole as a sign of forgiveness by federal authorities. An example of this is seen in the case of Hugh Brown, "Upon recommendation of Captain R.L. Ferguson District Provost Marshal of Central District of Missouri Charles Gerth and Richard D. Shackleford citizens of Saline County, Missouri claiming to be Rebel Conscripts now confined at Warrensburg, Missouri will be released from custody after taking the oath of allegiance and giving bond in the sum of five hundred dollars."¹⁰ This particular case drew my attention because these two rebels signed loyalty oaths to the Union so they could be released on parole; one-way or the other they lied, because they were either Rebel Conscripts or Loyal to the Union. Historians have documented cases of people falsely taking oaths of allegiance in order to avoid jail.¹¹

⁸ Peter Schwitzabel to Joachin A. Bachman, "Oath, bond, and Permit for the introduction and Sale of liquors within the limits of the Central Division of Missouri," July 21, 1862, Peter Schwitzgebel, File 1526, Provost Marshal Records.

⁹ JCW Hall to Peter View, "Two page list by assistant Provost Marshal Hall of eleven prisoners released at the Kansas City post during 11-1864; view charged with murder, remaining prisoners charged with aiding or abetting bushwhackers," 11-1864, JCW Hall, File 21263, Provost Marshal Records.

¹⁰ Ibid.

¹¹ Fellman, *Inside War*, 44-52.

Bond payments went along with the loyalty oaths. The Lieber Code is vague when it came to discussing bonds, taxation, assessment, and the banishment of people but it is clear that these practices were common in Missouri throughout the war. J.P.A. Wier reported, “I have the honor to report having taken the following bonds and oaths of allegiance at this office. Copies of which feel as fully enclosed: Wilhelmin A Sharpe, Joshua Bradden, J.J. Morris and A. Hier. I also enclose you a number of bonds and oaths of allegiance forward in this office who have taken possession by me.”¹² All four of these men made a bond payment and signed oaths. They ran the risk of arrest for not doing so. They also understood that they would lose the bond money should they fail to maintain their allegiance to the US government. There was only one record of assessment in Jackson County, but it consisted of 150 names and listed the value of their property and the charges that were made against them. The date of this record was January 24, 1865, two months and a few days prior to the end of the war.¹³ The United States government fined disloyal people living in Jackson County in order to pay for the Union military occupation or in the army’s estimation, their protection. If disloyalists refused to pay the assessment fees (and sign loyalty oaths), then they might be arrested or banished from the county. The money also went toward support for Unionist refugees.¹⁴

Missouri civilians were arrested for a variety of reasons, such as waving a rebel flag, speaking disloyal speech, or supporting the bushwhackers. The Provost Marshal records

¹² Willhelmina Sharpe to John Bradden, “List of bonds and oaths of allegiance taken,” May 9, 1864, Wihelmina Sharpe, File 9649, Provost Marshal Records.

¹³ James Harris to George Moore, “James Harris’s list of disloyal persons in the area, family members of noted bushwhackers, and those harboring bushwhackers,” January 24, 1865, James Harris File 1445, Provost Marshal Records.

¹⁴ Ibid.

reveal a pattern of women arrested for supporting family members who were Bushwhackers. People also were arrested for yelling hurrah for Jefferson Davis, returning to fight for the rebel army, desertion, “general disloyalty,” failing to sign an oath of allegiance, and “disorderly conduct, and carrying concealed weapons.” Examples of individuals arrested for these crimes include: “Kendall Nappen on charges of threatening to commit arson & murder” and C.H. Hyde who was “charged with general disloyalty & disorderly conduct.”¹⁵ These people were seen by Union authorities as enemies of the state. The last two examples were released from prison after serving two years.

The Provost Marshal records showed that there was a pattern of arrests before, during, and after the Code was enforced. There were eight Provost Marshal Records showing that people were imprisoned for aiding the Bushwhackers. The number of arrests went up as the war progressed and reached a peak between the years of 1863-65. Some were imprisoned in St. Louis, while others were imprisoned as far away as Indiana. After the war some of them worked at hard labor in state military prisons while others were released. They mistakenly arrested some Unionists who had ties to the Confederate guerrillas.¹⁶ This is why the Lieber Code was needed in order to stop these abuses from occurring.

The banishment of civilians mentioned in Article 26 of the Code occurred after arrests, imprisonments, and trials of some individuals who were found to be actively disloyal. After Union soldiers determined who bushwhacker supporters were, they surveilled them, and arrested them whenever they saw any evidence of disloyalty. Banishment was a common

¹⁵ JCW Hall to John M. Brady, “Two page list by Assistant Provost Marshal Hall of Eleven Prisoners released at the Kansas City Post during 11-1864; view charged with murder, remaining prisoners charged with aiding or being Bushwhackers,” JCW Hall, File 21263, Provost Marshal Records .

¹⁶ Ibid.

form of punishment during the war, such as the women who were banished for “aiding guerrillas, and receiving and concealing stolen goods.”¹⁷ The women of the Maddox, Sandstaff, Gibson, Basham, Maxwell, Hall, and the Vaughn families come to mind.¹⁸ Between August 10 and 18, 1863 the number of arrests slowly went up due to General Ewing’s Order No. 10, Section 2, which called for the banishment of women and children who supported Bushwhackers.¹⁹ Union military leaders were busy banishing Bushwhackers and their supporters from the District of the Border in order to curtail raids.

The Code makes a distinction between partisan rangers and guerrillas in how they would be treated if captured; they offered guerrillas no quarter, which is execution on site. Articles 81-85 of the Lieber Code defined what a partisan guerrilla is: “Partisans are soldiers armed and wearing the uniform of their army, but belonging to a corps which acts detached from the main body for the purpose of making inroads into the territory occupied by the enemy. If captured, they are entitled to all privileges of the prisoner of war.”²⁰ Basically, this means that Bushwhackers are not considered to be enemy combatants because they are “detached from the main body”²¹ of the army and were operating on their own accord. No quarter for guerrillas meant that the guerrillas were executed if captured. They would not be treated as prisoners of war and or as enemy combatants. The Code gave specific guidelines as

¹⁷ Mary Sandstaff to Mollie Anderson, “Copy of Special Order 16 calling for Anderson et al to be forced to the rebel lines. Notes the women were convicted by a military commission of aiding guerrillas,” November 21, 1864, Mary Sandstaff, File 7173, Provost Marshal Records.

¹⁸ Ibid.

¹⁹ “Order No. 10,” Cass County Public Library, last modified 2019, accessed May 31, 2019, <http://www.casscolibrary.org/casscountyhistory/panel12/>.

²⁰ Lieber, *General Orders No. 100*, Article 81, 7-8.

²¹ Ibid.

to how the Bushwhackers who disguised themselves in Union uniforms were to be treated. Articles 81-85 of the Code explains this treatment by stating the following, “Scouts, or single soldiers, if disguised in the dress of the country or in the uniform of the army hostile to their own, employed in obtaining their information, if found within or lurking about the lines of the captor, are treated as spies, and suffer death.”²²

The Lieber Code also called for the execution of deserters. According to Article 48, “Deserters from the American Army, having entered the service of the enemy, shall suffer death if they fall again into the hands of the United States.”²³ In other words, if a soldier deserted the Union army then joined the Confederate Army, he would be executed if captured.

The Lieber Code did not say soldiers should execute disloyal women and children on site—just male guerrillas and spies. They would arrest women and children, however. According to the Provost Marshal record file number 12789, “I have the honor to report that I have in confinement the following named female and children prisoners. All of whom were arrested August 31st in Jackson County Missouri by the military authorities of the Dept. of Kansas and sent here September 23-1864 charged with aiding and giving information to bushwhackers. Nancy Vaughn, Susan Vaughn, Richard Vaughn, Josiah Vaughn, Martha Lindsey, Susan Lindsey, Emma Lindsey, Mary L. Maxwell, Lucy E Maxwell, and Nancy Maxwell”— all women and children, were arrested, for helping the Bushwhackers.²⁴ There was only one execution of a woman for treason during the Civil War. This is the woman who

²² Ibid.

²³ Lieber, *General Orders No. 100*, Article 48, 5.

²⁴ JCW Hall to John M. Brady, “Two page list by Assistant Provost Marshal Hall of Eleven Prisoners released at the Kansas City Post during 11-1864; view charged with murder, remaining prisoners charged with aiding or being Bushwhackers,” JCW Hall, File 21263, Provost Marshal Records .

helped John Wilkes Booth after Lincoln's assassination. Men did not receive the same protections. Colonel Ridgeway Penick executed Moses Carr for guerrilla activity.²⁵

The Lieber Code called for the assistance of widows. Loyal women who had lost their husbands during the war received financial assistance from the United States army. This policy was based on Article 37 of the Code.²⁶ I found six cases of widows who received financial aid from the United States government as a result of their husband's service during the war. According to one case, "I certify that after careful investigation I am satisfied that Mrs. Jane Ann Lowe is worthy of and needs the assistance of the U.S. government. I would respectfully recommend that ration be placed to her. James Burrell."²⁷ Another example of this is seen in file 10905 by Dr. Palmer where it stated the following, "I certify that after careful investigation I am satisfied that Mrs. Harwood is worthy of and needs the assistance of the United States government."²⁸ The Code protected destitute loyal women. This policy served as the basic foundation for today's welfare state. According to Edward Palmer's letter, Mrs. Harwood was worthy of aid because, "she has been deprived of all means of support. Being herself in poor health and advanced in years renders her an object of charity."²⁹ Unionist widows and children were heavily supported by the Union army. According to a second Provost Marshal case that is filed in the same record as the Lowe case, "Misses

²⁵ Moses Carr to Colonel W.R. Penick, "Carr a Bushwhacker is shot by order of Colonel W.R. Penick, Independence, Jackson County," Moses Carr, File 2461, Provost Marshal Records.

²⁶ Lieber, *General Orders No. 100*, Article 37.

²⁷ Edward M.D. Palmer to Jane Ann Lowe, "Letter by Dr. Palmer of the Ladies Aid Society, to Lieutenant Burrell, stating Mrs. Lowe, widow of Thomas Lowe of the 9th Kansas Cavalry is in need of assistance," July 31, 1864, Edward M.D. Palmer, 10904, Provost Marshal Records.

²⁸ Ibid.

²⁹ Ibid.

Emmaline Demastus and three children are worthy of and need the assistance of the United States government.”³⁰ The United States army had the power to give Unionist women and children the basic necessities of life such as food in the form of rations and shelter. The Union military helped out loyal Unionist women who had lost their husbands during the war partly because it was the moral thing to do but also in an effort to boost morale on the home front.

The new policy of providing for widows also was a smart political maneuver. Progressive historians such as Arthur M. Schlesinger Jr. have argued that the welfare state started in 1932 under F.D.R.’s New Deal but they failed to recognize the significant support the United States army provided soldiers’ widows and orphans during the Lincoln’ administration’s wartime government. Due to the circumstances of war, the administration created the beginnings of a welfare state. Stephanie McCurry argues that the welfare state began with the Confederate government’s aid to southern soldiers’ wives during the last of 1864 towards the end of the war and Theda Skocpol claims the welfare state started with the Union military’s pension system, but the Missouri Provost Marshal Records suggest that the welfare state started with Article 37 of the Lieber Code’s application, which provided for the support of loyal destitute women and children.³¹

The policies of the Lieber Code made it possible for the Union military to successfully go after the people who were helping Bushwhackers. The evidence found in the Provost Marshal Records suggests that the Lieber Code was an effective tool for countering

³⁰Ibid.

³¹ Arthur Schlesinger Jr., *The Vital Center: The Politics of Freedom* (Boston: Houghton Mifflin Company, 1949), ix-269, Stephanie, McCurry, *Confederate Reckoning: Power and Politics in the Civil War South* (Cambridge: Harvard University Press, 2010), 133-178, and Theda Skocpol, *Protecting Soldiers, and Mothers: The Political Origins of Social Policy in the United States* (Cambridge: Harvard University Press, 1992), 1-321.

the guerrilla insurgency and managing the disloyal civilian population in Jackson County. The records contain lists of people who were rounded up by Union military and arrested due to their disloyalty. The Code was meant to keep the peace, and it did so to a point, by cutting back on Bushwhacker attacks, and providing for widows of Union soldiers. These parts of the Code were effective. That said, the least effective part of the Lieber Code was that the loyalty oath system paved the way for a blanket banishment of residents of the county through General Thomas Ewing's General Order No. 11.

The Union army created the District of the Border in the summer of 1863. It was comprised of counties straddling either side of the state line between Missouri and Kansas, including Jackson, Bates, Cass, and the northern part of Vernon County on the Missouri side. General Thomas Ewing, who was appointed commander of the district, focused on getting rid of the guerrillas and their supporters. During the spring and summer of 1863 General Ewing tried to follow the Lieber Code as he implemented policies directed at curtailing the Bushwhacker threat.³² He directed the Union army to remove Bushwhackers and their supporters from the area under the jurisdiction of the District of the Border.³³ The general also used 89-92 of the Lieber Code, which calls for the execution of Confederate guerrillas.³⁴ The executions served as a warning sign of no tolerance for Bushwhacker activities.

Following the Lieber Code was a slow but steady process of eradicating Bushwhackers from

³² Robert Scott, *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*. Series I, II, III, IV Washington D.C.: Government Printing Office 1880-1901, 584-585. *Making of America* website, (Accessed on October 15, 2018).

³³ Albert E. Castel, *Winning and Losing in the Civil War: Essays and Stories* (Columbia: University of South Carolina Press, 1996); Whites, "Forty Shirts and a Wagonload of Wheat"; and Charles R. Mink, "General Orders No. 11: The Forced Evacuation of Civilians During the Civil War," *Society for Military History* 34, no. 4 (1970), 132-136.

³⁴ Lieber, *Military Order No. 100*, Articles 89-92, 8.

the area. But by the end of the Summer of 1863, the war was still out of control with Bushwhackers and Jayhawkers launching raids into border counties.

To add to the problem the Bushwhackers received civilian support. As a result, Ewing first issued General Order No. 10, which followed articles 81-85. Order No. 10 dealt with the movement of loyal Unionists who desired to leave the area, along with the arrest of Bushwhacker supporters.³⁵ Women who were arrested for supporting the guerrillas were housed in a makeshift prison in Kansas City, Missouri. This prison was located on the second floor of a building owned by the Missouri artist Thomas Hart Benton.³⁶ While Union soldiers renovated the building into a prison, the building collapsed killing four women and injuring others, including the sisters of “Bloody” Bill Anderson. Quantrill and a band of nearly 400 guerrillas retaliated for the women’s deaths by launching a raid on Lawrence, in which they destroyed the town and massacred more than 160 unarmed men and boys. In response to the raid and due to concerns about a cross-border raid from Kansas into Missouri, General Ewing issued General Order No. 11.³⁷

General Order No. 11 was a blanket banishment upon all the citizens of Jackson, Cass, Bates, and the northern parts of Vernon, regardless of their loyalty. Loyal Unionists were required to hold a “certificate stating the fact of their loyalty,” which allowed them to relocate within a mile of a military station in their district.³⁸ The order went on to state, “All who receive such certificates will be permitted to remove to any military station in this

³⁵ “Order No. 10,” Cass County Public Library, last modified 2019, accessed May 31, 2019, <http://www.casscolibrary.org/casscountyhistory/panel12/>,

³⁶ Whites, “Forty Shirts and a Wagonload of Wheat,” 56-58.

³⁷ Ibid.

³⁸ Thomas Ewing, General Order No. 11, *Civil War on the Western Border*, <http://www.civilwaronthewesternborder.org/content.general-order-no-110>, (Accessed July 12, 2018).

district, or to any part of the State of Kansas, except the counties of the eastern border of the state.”³⁹ The loyal Unionists were able to move what possessions they wanted; however, any hay or grain that was not moved was destroyed by enforcing Union troops so they could keep it out of the hands of the guerrillas. Those who did not have certificates of loyalty were kicked out of the region. They either left on their own accord or they were arrested, and if found to be disloyal, escorted out. They were restricted from moving across the state line into Kansas. They had 15 days to vacate their property. The Union troops who enforced the order burned what they could not carry. As a result, most of the homes, barns, and out buildings in the countryside in Jackson, Cass, Bates, and northern Vernon counties were destroyed. Civilians’ property burned whether they were loyal or disloyal.⁴⁰

I argue that Ewing violated the Lieber Code by enforcing such a blanket banishment order. It violated Article 37 of the Code which stated, “The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; strictly private property; the persons and inhabitants, especially those of women: and the sacredness of domestic relations.”⁴¹ The violation of Article 37 of the Code through General Order No. 11 proves that the U.S. army ultimately did not protect the people that they were serving.

General Ewing argued that Order No. 11 was issued in order to protect the people in Missouri’s border counties from a counterraid from Kansans in retaliation for the raid on Lawrence. By 1863, many Unionists had already left the border region due to the fact that the guerrillas controlled the countryside outside of the major towns in the northern reaches of the

³⁹ Ibid.

⁴⁰Phillips, *The Rivers Ran Backwards*, 239-240, Neely, *The Fate of Liberty*, 46; Fellman, *Inside War* 23-73, 132-184; and Beilein, *Bushwhackers*,1.

⁴¹ Francis Lieber, *General Orders No. 100: The Lieber Code: Instructions for the Government Armies of the United States in the Field*, Article 37, *The Avalon Project Papers*, Yale Law School, New Haven CT. https://avalon.law.yale.edu/19th_century/lieber.asp. (Accessed on July 12, 2018)

district. Therefore, it is true that much of the civilian population that remained likely was disloyal. Indeed, the Provost Marshal records reveal the large number of Jackson County residents who supported the guerrillas. This high percentage of Bushwhacker support may have led to General Ewing to issue the blanket banishment. This does not mean, however, that all disloyal people in the district actively supported the guerrillas. In addition, many loyal people were forced out of their homes as well.

General Order No. 11 also may have been politically motivated. General Ewing may have believed that decisive action was necessary in order to ensure his future in military and political leadership. Issuing Order No. 11 showed him to be a strong leader, thus setting him up for a political career after the war's end. Historian Albert Castel argues that Ewing had a cozy relationship with James Lane during the year of 1863. He notes a speech in which Senator James Lane called for the destruction of Ewing's district for harboring Bushwhackers.⁴² Castel argued that after the raid on Lawrence, if Ewing had not responded fast enough to the raid, he would have lost the support of Lane, who likely would have commanded his troops into Missouri on a retaliatory raid.⁴³

In spite of the fact that Order No. 11 did not follow the Lieber Code, it was marginally successful. Order No. 11 cleared out much of the population of the District of the Border. Due to this fact, Quantrill's guerrilla band disappeared from the district and did not return until 1865 after the war had ended. Hence, Bushwhacker activity was suppressed in the area since they no longer could operate without their network of supporting households.

⁴² Castel, *Winning and Losing in the Civil War*; and Whites, "Forty Shirts and a Wagonload of Wheat," 56-78.

⁴³ Castel, *Winning and Losing in the Civil War*, IX-199.

While it is true that guerrilla activity declined along the border, the Order simply pushed the guerrillas into other parts of Missouri.

In the end, Ewing felt comfortable with the policies he had put in place, because his main objective was to win the war. He also believed that the banishment order was humane in that it protected from the loss of life due to counter raids. In the aftermath, Ewing defended himself by saying, “Though this measure may seem too severe, I believe it will prove not inhuman, but merciful, to the non-combatants affected by it.”⁴⁴

As far as General Ewing was concerned the ends justified the means when it came to Order No. 11. Ewing’s decision in ignoring Article 37 of the Lieber Code, which called for the protection of civilians, was evident with the banishment of disloyal and loyal Unionists alike through General Order No. 11. While he rationalized his decision, I argue that he in fact abused the citizens of Jackson County through this order. All along many Union commanders held most Missouri civilians under suspicion, treating them as suspected Confederate guerrillas. In other words the targeting of women and children supporting the Bushwhackers was always a factor but the situation became dire under Order No. 11.⁴⁵ There were five letters from the Jackson County Historical Society written by loyal Unionists stating that General Order No.11 created terrible living conditions for the civilians of Jackson County. They had endured two years of guerrilla warfare and the Union army response, and now the army forced them from their homes and typically burned them.⁴⁶ According to E.F. Slaughter

⁴⁴ Report of Brig. Gen. Thomas Ewing, Jr., U.S. Army, commanding District of the Border, August 31, 1863, *The War of the Rebellion*, Series I, Volume XXII (Washington: Government Printing Office, 1902), 584.

⁴⁵ Thomas Ewing, General Order No. 11, Article 1, page 1, *Civil War on the Western Border*, <http://www.civilwaronthewesternborder.org/content.general-order-no-11>, (Accessed July 12, 2018).

⁴⁶ E.F. Slaughter to Eliza Colgan, February 25, 1863, Hickman Mills, *Civil War on the Western Border*, <<http://www.civilwaronthewesternborder.org/content/ef-slaughter-eliza-colgan-1>> (Accessed Nov. 6, 2019), Mattie Jane Tate to Cousin Mary, December 14, 1864, Jackson County, *Civil War on the Western Border*,

to Eliza Colgan that after the Order, “they have not enough to make a piece of cloth.”⁴⁷ Order No. 11 enforced brutality upon civilians as an attempt to rout out the Bushwhackers. Also, this order burned crops that the people relied on in an attempt to starve the Bushwhackers of supplies. In doing so, they also deprived women, children, and the elderly of any means of support. Many citizens did not return to the area after the war ended in 1865 because of the harsh treatment by the Union army and the destruction of their property.⁴⁸ Even many of those who supported the Union, including George Caleb Bingham, thought the order was draconian. In the end, General Order No. 11 was the most egregious violation of the Lieber Code in this region.⁴⁹

Ewing always believed that his actions were justified under General Order No.11, because it followed Articles 81-85 of the Lieber Code. Those articles instruct Union officers to take drastic measures in going after enemy combatants, and in his mind, destroying Quantrill’s band made this necessary. His banishment policy in General Order No.11 worked effectively because it starved guerrillas of their support system and temporarily kept them from making further attacks upon loyal Unionists living in the region. Indeed, the Provost Marshal records provide some proof that there was a small minority of Unionists that were protected as a result of Ewing’s Order No.11. But the Order also deprived a vulnerable

<http://civilwaronthewesternborder.org/content/mattie-jane-tate-cousin-mary>, John C, Gage to Dear Friends, December 8,1862, Kansas City, Missouri, *Civil War on the Western Border*,
<https://civilwaronthewesternborder.org/islandora/object/civilwar%3A7561> , Susan A, Staples to Mary W, Mason, Independence, Missouri, *Civil War on the Western Border*,
<http://www.civilwaronthewesternborder.org/content/susan-staples-mary-w-mason>

⁴⁷ E.F. Slaughter to Eliza Colgan, February 25, 1863, Hickman Mills, *Civil War on the Western Border*, <<http://www.civilwaronthewesternborder.org/content/ef-slaughter-eliza-colgan-1>> (Accessed Nov. 6, 2019),

⁴⁸ Ibid.

⁴⁹ George Caleb Bingham Martial Law or Order No. 11,1868, Kansas City, Missouri, *Civil War on The Western Border*, < <https://civilwaronthewesternborder.org/islandora/object/civilwar%3A1472>>

population of support in the months leading into winter, thereby, defying the Code's direction to protect women and children.⁵⁰

⁵⁰ Castel, *Winning and Losing in the Civil War*, IX-199.

CHAPTER 5

CONCLUSION

In conclusion, the Lieber Code, a military manual created by Francis Lieber and Henry Wager Halleck, was the first of its kind. The main dilemma of determining the effectiveness of the implementation of the Code (was the code properly adhered to?) and the effectiveness the code's policies had on the outcome of the war (were the policies ones that brought a quick end to the war?) was the most challenging part of this research. Reading the records, which included loyalty oaths, bonds, letters, military records, petitions, pamphlets, and journal entries, made it clear that the code was implemented fairly effectively, although unevenly. The loyalty oath system was an excellent policy because they could tell who was loyal and who was not loyal, but the imprisonment of disloyal women before a suitable building to hold them a tragic series of events into motion. An example of this was the prison collapse that led to the Lawrence raid, which 160 to 190 men and teenage boys were killed.

The policies of the Code were no longer being adhered to when General Order No. 11 was issued. This was a blanket banishment upon the civilian population in Jackson County and the counties south of it. The order indiscriminately targeted both loyal Unionists and disloyal people living in Jackson County. While it evicted the bushwhackers' supporters from the county, in the end, it spread the insurgency into other parts of the state.

Standing in front of the Pacific Hotel in Kansas City brings about thoughts of what the Union military was actually doing, and imagining what life must have been like in Jackson County, Missouri in 1863. The Union military's attempts to determine who was a secessionist versus who was not a secessionist in a state that remained loyal to the Union

provokes the question of whether America was really a free country. Wars are not morally good but civil wars are the worst. Americans were at war with fellow Americans who held a different view point on what freedom meant to them (one side is for the freedom of men through the abolishment of slavery versus the other side which favors the freedom to own slaves and states' rights to protect this particular freedom). Although the Union's war aims were ultimately moral and right, the tactics the Union army employed to achieve victory were not always just or humane.

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