Emancipation Proclamation and Reconstruction

The Confederate States v. The United States: Were Emancipation and Military Reconstruction Lawful?

TEA Model United Nations

Written by: D'Nia Lewis· Nov 9, 2026

1 BACKGROUND

This paper neutrally and legally examines a dispute between the former Confederate states and the United States over two acts of the Union government: the Emancipation Proclamation of 1863 and the military rule imposed on the South during Reconstruction. The case is set after the Civil War ended in 1865. The South challenges whether President Abraham Lincoln had the constitutional power to free enslaved people in the rebel states, and whether Congress could place those states under army command from 1867. The Union defends both acts as lawful exercises of war and constitutional power.

There are three distinct issues within this case. First, **authority**: could a president, acting alone as Commander in Chief, free people held as property under state law? Second, **effect after the war**: was the Proclamation only a temporary war measure that expired with the fighting, and what became of the property and compensation claims of slaveholders? Third, **military Reconstruction**: could Congress govern ten states through army commanders in peacetime, and did this violate the Constitution?

The Supreme Court never ruled directly on the Proclamation, and it declined to block the Reconstruction Acts. The ICC also has no jurisdiction over this period, since the Rome Statute entered into force in 2002 and the United States is not a party. Delegates should therefore treat this committee as a hypothetical tribunal that applies the constitutional law, war powers and laws of war of the 1860s. Rome Statute ideas, such as enslavement as a crime against humanity, may be used for comparison but do not decide the case.

2 HISTORICAL CONTEXT

Eleven Southern states seceded between December 1860 and mid-1861, and the Union treated secession as void and the Confederacy as a rebellion. At first, Lincoln said he had no constitutional power over slavery in the states where it existed, and framed the war as a fight to preserve the Union. Congress moved first. The First Confiscation Act (1861) freed enslaved people used in support of the Confederate military, and the Second Confiscation Act (July 1862) freed the enslaved people of those who supported the rebellion.

Lincoln issued a preliminary Proclamation on 22 September 1862 and the final Proclamation on 1 January 1863. It declared people held as slaves in areas still in rebellion to be free, and justified this as a war measure under his powers as Commander in Chief. It exempted the border slave states, Tennessee, and certain Union-held areas of Virginia and Louisiana. It also opened the Union army and navy to Black soldiers, and roughly 180,000 served in the army by the war's end. Lincoln worried that a court might later find the measure lapsed with the war, which is one reason he pressed for a constitutional amendment.

The legal setting at the time supported both sides. In the *Prize Cases* (March 1863), the Supreme Court upheld Lincoln's blockade of Southern ports as a valid exercise of war powers, but only by a 5-4 vote. In April 1863 the Union issued the Lieber Code, which treated slavery as a creation of local law and not of the law of nations. Congress passed the Thirteenth Amendment in January 1865, and it was ratified in December 1865. Lee surrendered at Appomattox on 9 April 1865, and Lincoln was assassinated on 15 April.

Under President Andrew Johnson, Presidential Reconstruction (1865-1866) allowed Southern states to form new governments quickly. Several passed "Black Codes" restricting freed people, and Congress refused to seat their representatives. Congress passed the Civil Rights Act of 1866 over Johnson's veto and proposed the Fourteenth Amendment. In March 1867 it passed the first Reconstruction Act, also over a veto. It divided ten former Confederate states, all but Tennessee, into five military districts under army commanders. To return to the Union, each state had to adopt a new constitution allowing Black men to vote and ratify the Fourteenth Amendment. States were readmitted between 1868 and 1870, and federal troops left the last Southern states in 1877.

3 DEFINITION OF KEY TERMS

- **Emancipation Proclamation**
  - Executive proclamation of 1 January 1863 declaring people held as slaves in designated rebel areas to be free, issued as a war measure.
- **War Powers / Commander in Chief (Article II, Section 2)**
  - The president commands the army and navy. Congress holds the powers to declare war, raise armies and make rules for captures on land and water (Article I, Section 8).
- **Military Necessity**
  - The law-of-war idea that a belligerent may take measures needed to defeat the enemy, including seizing enemy resources. The Union said emancipation weakened the Confederacy's labour force and added soldiers to the Union army.
- **Confiscation Acts (1861 and 1862)**
  - Acts of Congress freeing enslaved people tied to the rebellion, passed before the Proclamation and resting on legislative power.
- **Takings and Due Process (Fifth Amendment)**
  - No person may be deprived of property without due process or have private property taken for public use without just compensation.
- **Thirteenth Amendment (1865)**
  - Abolished slavery and involuntary servitude, except as punishment for crime, and gave Congress power to enforce the ban.
- **Fourteenth Amendment (1868)**
  - Granted citizenship and equal protection. Section 4 declares void any claim for the loss or emancipation of a slave.
- **Guarantee Clause (Article IV, Section 4)**
  - The United States guarantees each state a republican form of government and protects it against invasion, and against domestic violence on request of its legislature or executive.
- **Reconstruction Acts (1867-1868)**
  - Acts that divided ten former Confederate states into five military districts and set conditions for readmission.
- **Martial Law**

    - Military rule that replaces ordinary civil authority. In *Ex parte Milligan* (1866), the Court held it cannot be applied where civilian courts are open and working.
- **Political Question**
    - A dispute the courts treat as belonging to the elected branches. The Court used this reasoning in *Mississippi v. Johnson* (1867) to refuse to block the Reconstruction Acts.
- **Texas v. White (1869)**
    - Held secession void and the states never left the Union, while also recognising that Congress could decide how to restore their governments.

4 KEY POINTS OF THE CASE

1. Authority to issue the Emancipation Proclamation

- **Issue:** Could the president, acting without a new act of Congress, free people held as property under state law?
- **Rule:** Article II, Section 2 makes the president Commander in Chief, while Article I, Section 8 gives Congress the powers to declare war and make rules on captures. The Fifth Amendment protects property from deprivation without due process. The *Prize Cases* (1863) recognised broad presidential war powers against the rebellion, and the Confiscation Acts gave statutory backing to freeing enslaved people tied to it.
- **Application:** The South may argue that only Congress could change property rights, that the Constitution recognised slavery, and that Lincoln had himself said he lacked power over slavery in the states in peacetime. It may be added that the Union cannot have it both ways: if the Confederacy was a rebellion and not a nation, ordinary criminal law and due process applied, and belligerent seizure rights did not. The Union may stress that the Commander in Chief may take measures needed to defeat an armed enemy, that the *Prize Cases* treated the conflict as a war with belligerent rights even though the Confederacy was not recognised as a state, and that Congress had already freed many enslaved people by statute. It may also point to the Lieber Code's view that the law of nations never accepted slavery.

2. Validity after the war and property claims

- **Issue:** Did the Proclamation lapse when fighting ended, and were former slaveholders owed compensation?

- **Rule:** War measures are generally tied to the conflict. The Fifth Amendment requires just compensation for property taken for public use. The Thirteenth Amendment abolished slavery in December 1865, and Section 4 of the Fourteenth Amendment declares void any claim for the loss or emancipation of a slave. In 1862, Congress had paid compensation to loyal slaveholders when it ended slavery in the District of Columbia.
- **Application:** The South may argue that Lincoln justified the Proclamation as a war measure, so its legal basis ended with the war and the legal status of freed people was unsettled until the Thirteenth Amendment. It may be added that the amendment was ratified under pressure, because Johnson's plan required Southern states to ratify it, and that the Union counted those states for ratification while denying them seats in Congress. It may also claim compensation under the Fifth Amendment, citing the District of Columbia precedent. The Union may stress that people freed were free from the moment of the Proclamation and many had served in the Union army, that the Thirteenth Amendment settled the question for the whole country with ratification by 27 of 36 states, and that Section 4 of the Fourteenth bars compensation claims. It may argue that rebels forfeited the protections they now invoke.

3. Military rule during Reconstruction

- **Issue:** Was it constitutional for Congress to place ten states under army commanders after the war had ended?
- **Rule:** Article I, Section 8 gives Congress power to raise and support armies, and Article IV, Section 4 guarantees each state a republican form of government. The Thirteenth and Fourteenth Amendments give Congress power to enforce them. *Ex parte Milligan* (1866) limits martial law where civilian courts are open. *Texas v. White* (1869) held that the states never left the Union and created power to restore their governments in Congress, without ruling on the military districts directly.
- **Application:** The South may argue that the Union cannot hold that the states never left the Union and also govern them as conquered territory. It may add that Article IV, Section 4 allows federal force against domestic violence only on a state's request, that Southern courts were open and working, so *Milligan* applied, that peacetime military government goes beyond the army power, and that setting voter qualifications and requiring ratification of the Fourteenth Amendment as a price of readmission was coercion. It may also say Congress removed the Supreme Court's jurisdiction in *Ex parte McCardle* to avoid

review. The Union may stress that Congress, not the president, controls restoration under the Guarantee Clause, that the Johnson governments excluded freed people and passed Black Codes and so were not republican, and that violence against freed people made order necessary. It may add that *Milligan* involved a civilian in a loyal state, not a defeated rebellion, that the Court refused to block the Acts in *Mississippi v. Johnson*, and that the Reconstruction Acts were temporary and ended as states were readmitted.

5 MAJOR PLAYERS

- **Former Confederate States**
  - Ten states were placed under military districts in 1867. Tennessee had already been readmitted. They challenge the Proclamation and military rule.
- **Jefferson Davis**
  - Confederate president. Held in federal custody after the war and indicted for treason, but never tried. His case is a reminder that no court ever ruled on the legality of secession in a criminal trial.
- **Andrew Johnson**
  - President from 1865 to 1869. He vetoed the Reconstruction Acts as unconstitutional, so his position is closest to the Southern argument, even though he led the Union government.
- **Abraham Lincoln**
  - President who issued the Proclamation as a war measure. He was assassinated in April 1865, so the Proclamation's defenders rely on his written justification.
- **Congress and the Radical Republicans**
  - Passed the Confiscation Acts, the Thirteenth and Fourteenth Amendments, and the Reconstruction Acts over Johnson's veto. Leading figures included Thaddeus Stevens and Charles Sumner.
- **Ulysses S. Grant and the District Commanders**
  - Grant led the army and later became president in 1869. Army officers in each district enforced the Acts and supervised elections.
- **Freed People and the Freedmen's Bureau**
  - Those directly affected by emancipation. The Freedmen's Bureau was created in March 1865 to help them with relief, labour contracts and education.

- **The Supreme Court (Chief Justice Salmon P. Chase)**
    - Decided *Ex parte Milligan*, *Mississippi v. Johnson*, *Ex parte McCardle* and *Texas v. White*, which shape the limits of both sides' arguments.

6 HISTORICAL TIMELINE

Date	Event	Significance
Dec 1860 - Jun 1861	Eleven Southern states secede	The Union treats secession as void and the Confederacy as a rebellion
Aug 1861	First Confiscation Act	Frees enslaved people used in support of the Confederate military
Apr 1862	Compensated emancipation in the District of Columbia	Congress pays loyal slaveholders; later cited as a precedent
Jul 1862	Second Confiscation Act	Frees enslaved people of those supporting the rebellion
22 Sep 1862	Preliminary Emancipation Proclamation	Warns that people in areas still in rebellion will be freed on 1 January
1 Jan 1863	Final Emancipation Proclamation	Frees people held as slaves in designated rebel areas as a war measure

Mar 1863	*Prize Cases*	Supreme Court upholds the blockade by 5-4 and recognises broad war powers
Apr 1863	Lieber Code	Union rules of war treat slavery as a creation of local law
Mar 1865	Freedmen's Bureau created	Federal agency to help freed people
9 Apr 1865	Lee surrenders at Appomattox	Fighting largely ends
15 Apr 1865	Lincoln dies	Andrew Johnson becomes president
Dec 1865	Thirteenth Amendment ratified	Abolishes slavery nationwide
1865-1866	Presidential Reconstruction and Black Codes	Southern states restrict freed people; Congress refuses to seat their representatives
1866	*Ex parte Milligan*	Martial law barred where civilian courts are open
2 Mar 1867	First Reconstruction Act	Passed over Johnson's veto; ten states placed in five military districts

1867	*Mississippi v. Johnson*	Court declines to block the Reconstruction Acts
Jul 1868	Fourteenth Amendment ratified	Section 4 voids claims for the loss of slaves
1868-1870	Southern states readmitted	Each adopts a new constitution and ratifies the Fourteenth Amendment
1869	*Texas v. White* and *Ex parte McCardle*	Secession held void; Court accepts Congress removing its jurisdiction
1877	Reconstruction ends	Federal troops leave the last Southern states

7 CLAIMS/STANCES

The Confederate States:

The South argues that the Emancipation Proclamation was beyond the president's power, because only Congress could alter property rights, and that it was a war measure that lapsed once the fighting ended. It maintains that the Union cannot treat the Confederacy as a rebellion for the purpose of due process and as a belligerent for the purpose of seizing property. It claims the Thirteenth Amendment was ratified under pressure, and that slaveholders are owed compensation under the Fifth Amendment. On Reconstruction, it argues that the Union cannot say the states never left the Union and also govern them as conquered territory, and that stationing the army in ten states in peacetime was unconstitutional. It claims the Guarantee Clause allows federal force only at a state's request, that *Ex parte Milligan* bars military rule where civilian courts are open, and that the Acts were designed to avoid review by the Supreme Court.

The Union:

The Union holds that the Proclamation was a valid exercise of the Commander in Chief's war powers, backed by the Confiscation Acts and the *Prize Cases*, and that freed people were free from the date it took effect. It maintains that the Thirteenth Amendment, ratified by 27 of 36 states, settled the question for the whole country, and that Section 4 of the Fourteenth Amendment bars claims for the loss of slaves. On Reconstruction, it argues that the Guarantee Clause gives Congress the power to restore republican governments, that *Texas v. White* places that power with Congress, and that the Johnson governments, with their Black Codes, were not republican. It claims the Acts were a lawful use of the power to raise armies and to enforce the new amendments, that *Milligan* does not apply to a defeated rebellion, and that the Supreme Court declined to block the Acts.

8 BIBLIOGRAPHY

Links below were opened or returned in search results while preparing this paper. Entries without a link are cited by their standard legal reference; check them against the original text before the conference.

- National Archives. Emancipation Proclamation (1863). Milestone Documents, U.S. National Archives and Records Administration.
- *Texas v. White*, 74 U.S. (7 Wall.) 700 (1869). Justia.
- *The Prize Cases*, 67 U.S. (2 Black) 635 (1863).
- *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866).
- *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475 (1867).
- *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1869).
- An Act to provide for the more efficient Government of the Rebel States (First Reconstruction Act), 14 Stat. 428 (2 March 1867). See also Britannica, Reconstruction Acts.
- Instructions for the Government of Armies of the United States in the Field (Lieber Code), General Orders No. 100 (24 April 1863).
- Constitution of the United States, Article I, Section 8; Article II, Section 2; Article IV, Section 4; Amendments V, XIII and XIV.
- Foner, Eric. *Reconstruction: America's Unfinished Revolution, 1863–1877*. Harper & Row, 1988.
- Guelzo, Allen C. *Lincoln's Emancipation Proclamation: The End of Slavery in America*. Simon & Schuster, 2004.