

The Emancipation Proclamation: A Close Reading by Matthew Pinsker
(Videotaped August 2012; produced by Lance Warren; transcribed by Russ Allen)

My name is Matthew Pinsker and I teach history at Dickinson College in Carlisle, Pennsylvania and I have been tasked with coming up with 10 minutes to describe the Emancipation Proclamation. And that is hard to do, but I think it is possible. The Emancipation Proclamation that Abraham Lincoln issued on January 1st, 1863 begins by highlighting something that all of us should notice right away. He begins by quoting an earlier proclamation. It begins: “Whereas, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and sixty-two, a proclamation was issued by the President of the United States,” and then he quotes from it. So the first and most important teaching point about the proclamation is that it is basically the third and final draft.

There were three major drafts of Lincoln’s Emancipation Proclamation. The first draft was read to his cabinet in private on July 22nd, 1862, about six months earlier. And then, after the summer’s battles, and in particular after the Confederate failure to invade Maryland, the setback at Antietam, the President issues a public proclamation on September 22nd, the one he begins by quoting here, and then he revises that public proclamation and consultation with his cabinet, and creates the official Emancipation Proclamation of January 1st.

That is well known, but what some people overlook in describing the evolution of these three drafts is really critical. From the very beginning of the process, Abraham Lincoln had always set January 1st as the effective date for the Emancipation Policy. Even though he read the first draft in private to his cabinet, and they agreed to wait until there was a military victory, the one in Antietam in September it turned out, even then Lincoln had specified that January 1st, 1863 would be the effective date of this policy. The timeline in other words, was not contingent on winning or losing on the battlefield even though this was a policy he said was grounded in military necessity.

Some of us think what’s driving the timeline is political necessity. The actions of the 37th Congress, its session calendar, and in particular back then, everyone needs to remember Congress left session at the end of July and then did not return to Washington until December. And what Lincoln was doing by setting the effective date as January 1st, 1863 is he was organizing his Emancipation Policy between the Congressional sessions. And I think that’s a revealing detail because people forget how much Congress contributed to this policy.

In the paragraph that Lincoln quotes from the September Proclamation he describes the conditions for which areas of the Confederacy would be declared in rebellion and subject to the policy of full emancipation. And then he describes that policy in the following sentences: “Now, therefore I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-in-Chief, of the Army and Navy of the United States in time of actual armed rebellion against the authority and government of the United States and as a fit and necessary

war measure for the suppressing said rebellion do, on the first day of January, in the year of our Lord eighteen sixty-three, and in accordance with my purpose so to do publicly proclaimed for the full period of one hundred days from the day first above mentioned, order and designate as the States and parts of States wherein the people thereof respectively, are this day in rebellion against the United States” and then he stops and proceeds to list a series of places that are in rebellion and the parts of those places that are exempt from this designation as in rebellion. But if you notice something about those previous sentences, they don’t sound like Abraham Lincoln, at least not the Abraham Lincoln we remember. They sound like an authoritative military Commander-in-Chief, a regal figure almost.

Now some historians have speculated that Lincoln is in effect cloaking himself in the armor of executive power in part because he’s worried. It’s a reflection of his perceived weakness, not because he thinks the Congress or the northern public will reject emancipation, although he is worried to a degree about that, but mostly because he fears the courts, in particular the Supreme court, which is still headed in 1863 by Chief Justice of the United States Roger Taney, who was the author of the Dred Scott decision and a bitter opponent of President Lincoln and his policies.

Now when we come to the list of places, there’s something very important here that everyone needs to notice. Lincoln lists these places in rebellion, “Arkansas, Texas, Louisiana,” and then he excepts certain parishes in Louisiana that are occupied by Union forces, “Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia, except” he writes, “the forty-eight counties designated as West Virginia,” and then also a series of counties along the peninsula that are occupied by Union forces. And he says all of these places “which excepted parts, are for the present, left precisely as if this proclamation were not issued.” And for some people, that’s a way to criticize the document. This is a man who’s emancipating slaves everywhere where he doesn’t control the fate of those slaves, and it seems empty as a promise. But for others what this recognizes, or what you need to understand about this exemption, is that Lincoln is using his authority as Commander-in-Chief in a broad sweeping way because he thinks the Constitutional and statutory obligations of property protection and of the ordinary workings of the civil courts don’t apply in those places in rebellion, and he can exercise what we call loosely the “war powers” to free slaves.

But those exempted parts which are left precisely as if the proclamation were not issued, it’s not fair to say that slavery is not attacked in those places. Those excepted parts are still subject to Congressional laws called Confiscation Statutes which free slaves. There are two Confiscation Statutes, one passed in August of ’61 and one passed in July of ’62. Both of them work to free slaves. In fact, during the first year and a half of the war, there were more slaves freed under the contraband policies and the confiscation policies of the North than had been freed by all the operations of the Underground Railroad in three decades prior to the Civil War. Tens of thousands of slaves ran away, found security in Union lines, and were freed as so called “contraband of war” or “confiscated” as punishment for the rebellion and the treason of their

masters. This is what's propelling Lincoln to take hold of this policy and transform it into something more sweeping.

Then he gives the full emancipation sentence, and this is kind of a stirring thing, and it also forces us to think about the full measure of this policy. "And by the virtue of the power," he writes, "and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free and that the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons." Now a couple of things to note here: what Abraham Lincoln is doing in that emancipation sentence is asserting his authority as the Executive of the nation, invoking his full war powers as Commander-in-Chief. And if you stop and look back at the document from this point, you realize that he has excluded Congress and the Courts entirely. They are not mentioned in this document. This is an Executive policy. I believe the best way to understand it, is to recognize that he is taking control of policies that have been emanating from the Congress and debated by the Courts and are subject to action by states, and he is trying very diligently to make the military emancipation an Executive war power that is not reviewable by the courts, that can't be challenged by Roger Taney and the other members of the Supreme Court.

And of course he's also doing something, which is worth noting as well. He doesn't talk about slaves. He talks about persons held as slaves. He talks about the freedom of said persons. Lincoln and most Republicans refused to acknowledge the principle of slavery. They did not believe that the principle was just. They often, before the Civil War, and even at the beginning of the war through the first year of the conflict, they acknowledged the existence of the institution. Slavery itself was a reality, and they understood that the compromises were required because of its existence. But they refused to concede the principle of slavery, and they never acknowledged that people could be morally or legitimately held as slaves. That's why they said the founders had left the word itself out of the Constitution.

And for those of you who think that because certain areas of the country were exempt from the decree, that they were willing to leave slavery intact forever, I think that's a mistake too. For example, those forty-eight counties in West Virginia that were exempt from the proclamation, they were not exempt from the attack against slavery. The statehood of West Virginia, a piece of legislation that Lincoln had literally signed into law the day before this military order, that West Virginia Statehood Bill had required the gradual abolition of slavery in those forty-eight counties. In fact, the Republicans and the President were working very hard to encourage abolition in the border states. They were trying to induce it with money. They were trying to press it with political pressure. They were confiscating and seizing slaves who were owned by rebel masters from those border states and freeing them. They were accepting contrabands from both loyal masters and rebel masters and refusing to return them by this point in the war. They were attacking slavery everywhere, even though they were only using a military decree to attack it in certain places.

And if you have any other doubts about Lincoln's commitment to the humanity of the slaves, I think the next sentence is perhaps the most important in the entire proclamation. He says, "I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defense; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages. And I further declare and make known, that such persons of suitable condition, will be received into the armed service of the United States to garrison forts, positions, and stations, and other places, and to man vessels of all sorts in said service." What Lincoln basically did right there, essentially, was to define what freedom meant. And what freedom meant for him was work. Work for yourself, work for your family, work for your country. It's a kind of profound moment: the President of the United States defining freedom in the 19th Century. Now today, many people, most students define freedom as leisure: do what you want, not go to school, not go to work, but in the 19th Century I think they were more responsible about defining freedom. They were less likely to take it for granted because they lived in a culture with legalized slavery.

And then Lincoln ends the Emancipation Proclamation with the only sentence that he did not write himself. It was drafted for him at the last minute by his Secretary of Treasury Salmon P. Chase, and it reads, "And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God." You can hear the echoes to the preamble of the Declaration of Independence, you'll notice the first reference to God here in the proclamation, and what Lincoln is doing by calling it an act of justice as a measure of freedom, is he's reminding everybody that the spirit of the Emancipation Proclamation was to recognize the humanity and the individuality of black people, and to deny that slavery had any legitimacy. With that final sentence, over three centuries of enslavement began their final destruction on the American Continent.