

### Extended Discussion On: The Scorpion's Sting

James Oakes

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## Feature Essay

Manning, Chandra and Oakes, James

Fall 2014

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### James Oakes:

I try to write as clearly as I can, to make my points as sharply as possible, but inevitably even the best writers—those far more adept with words than I—experience the frustration of having failed to make ourselves as clear as we ought. Having failed to make myself understood to a reader as astute as Chandra Manning, I can't help but feel a bit humbled. Consider her review of my recent book, *The Scorpion's Sting*. Manning rightly reads that little book in light of the bigger one that preceded it, *Freedom National*, which I published a year earlier. On several occasions in her brief review, Manning reads me as saying things that are quite different from the things I intended to say. Because there's a lot at stake in these misunderstanding, I'm compelled to take up more space in my reply than I have any right to claim.

Briefly, I argue that Republican policymakers came into the Civil War with two distinct approaches to attacking slavery—a “cordon of freedom” surrounding the South that would force the slave states to abolish slavery on their own, and military emancipation. I tried to say, in both books, that both policies “worked”—several hundred thousand slaves were emancipated and five of the fifteen slave states abolished slavery—but that these impressive achievements were not enough to complete the destruction of slavery. They were necessary but not sufficient. That is, they undermined slavery enough to make a Thirteenth Amendment possible, but that only by re-writing the Constitution was slavery finally and fully destroyed.

Manning reads me as saying something quite different: The “cordon of freedom” failed. It took military emancipation to “crush the beast.”

In *Scorpion's Sting* I set out to emphasize that the radical abolitionist policy was the "cordon," not military emancipation. Military emancipation, I argue, was a familiar and accepted policy among American statesmen from the Revolution to the Civil War. This is a very different interpretation from the one put forward recently by my friend, John Witt, in his book *Lincoln's Code*. At the risk of obscuring the subtlety of Witt's argument, it can be summarized this way. Before 1863 all American statesmen considered military emancipation a violation of the "civilized" usages of nations as defined by Enlightenment theorists of limited war. *Lincoln's Code* thus hinges on a tragic paradox. To justify the Emancipation Proclamation the Lincoln administration had to repudiate the Enlightenment rules of limited warfare whereas the confederates, in denouncing emancipation, upheld those Enlightenment principles.

Citing Witt against me, Manning claims that American's "typically *opposed*" military emancipation when, from all the evidence I've seen, they all but universally accepted it. Chapter four of *Scorpion's Sting* presents a very different history of the American understanding of military emancipation in wartime. The Treaty of Paris, the Jay Treaty, and the Treaty of Ghent *all* acknowledged the right of the British to emancipate slaves in wartime. The Americans themselves offered freedom to slaves in return for military service during the War of Independence, and they again freed hundreds of slaves during the Second Seminole War.

What provoked controversy beginning in the 1780s was the slaveholders' demand that the British return to their masters all those slaves still on the ground in the United States at the moment the war ended. The British claimed that those slaves had already been freed and could not be re-enslaved. The slaveholders wanted those people returned to their masters or, in lieu of re-enslavement, compensation. The British refused as a matter of principle to re-enslave anyone actually freed during the war and leading American statesmen—John Jay and Alexander Hamilton for example—denounced the demand for re-enslavement as "immoral," "odious," "infamous" and "perfidious." These denunciations of re-enslavement, grounded explicitly on the Enlightenment theorists of limited war, were repeated by a number of congressmen during the Jay Treaty debates.

Witt cites John Quincy Adams's attacks on military emancipation as representative of the views of American statesmen, but I argue Adams's remarks—whether he made them once, twice, or half a dozen times hardly matters—were extreme. Yet not even Adams went so far as to claim that the

slaves freed by the British and “carried away” *before the war ended* had been illegitimately emancipated. I therefore offer an interpretation that is fundamentally at odds with Witt’s. Where he sees the Lincoln administration reversing and the Confederacy upholding a longstanding “American” opposition to military emancipation, I posit a longstanding American acceptance of military emancipation alongside an equally longstanding conflict over *re-enslavement*, pitting antislavery northerners against proslavery southerners.

Here again I apparently failed to make my own position clear. Without realizing the depth of the disagreement Manning adopts Witt’s position as correct and on that basis characterizes my interpretation of Adams as “awkward.” But it’s only “awkward” if you accept Witt’s view that Adams was representative of an allegedly “universal” American understanding of military emancipation as violation of the civilized usages of war. I don’t think such a consensus existed, and I can’t find any American statesmen making claims as extreme as those made by Adams. To the extent that they were *not* extreme, it was because without quite saying so Adams did in fact accept the legitimacy of military emancipation.

One of the things I tried very hard to do, in both books, was to show that military emancipation was not designed to abolish slavery and rarely did. Before the American Revolution it was not uncommon for the British authorities or American colonists to arm slaves without freeing them, but after 1776 there was something close to a consensus that arming slaves meant freeing them. I didn’t highlight the distinction between arming and freeing slaves because, after 1776, there was no such distinction that I know of in the United States. But I did try to make it very clear that freeing slaves *never* meant abolishing slavery—not even in the Civil War—not even after Lincoln’s Emancipation Proclamation made military emancipation “universal.” Lincoln was always skeptical of military emancipation and as late as February, 1865, argued that a constitutional amendment was necessary because his own proclamation freed only those had “come within our lines.” Republicans in congress had been saying the same thing for a year or more.

Manning, by comparison, has the impression that I do not make the very distinctions I tried very hard to make. My chapter on military emancipation, she writes, “conflates three things—arming slaves, freeing slaves, and ending slavery—that were simply too distinct to be lumped together.” Oakes is correct, Manning notes, that armies throughout history freed slaves, “but prior wartime

liberations had often been temporary and reversible, and they had not ended the institution of slavery." Here my frustration with my own limitations as a writer is palpable: Manning chides for not saying the very thing I tried very to say—that military emancipation was neither designed to abolish slavery and rarely did.

Ironically, it is Manning who seems to believe that military emancipation did succeed in abolishing slavery during the Civil War. Here we may have a real disagreement rather than a misunderstanding. That military emancipation “would permanently end the institution was and is a much bigger surprise than chapter four of *The Scorpion’s Sting* quite credits.” The reason I don’t credit that interpretation is because I don’t agree with it. Which is fine. Historians disagree all the time.

My concern is that, once again, my own interpretation is not coming through as clearly as I had hoped. The “surprise” for me, in researching and writing about the destruction of slavery, is that military emancipation was *not* enough to destroy slavery. By early 1864, the Republican Party took this shortcoming for granted and for that reason adopted a constitutional amendment as the only sure way to destroy slavery completely. As I point out in *Freedom National*, Lincoln was convinced that if he was not re-elected in 1864—which would likely mean that Republicans would lose rather than gain the seats they needed in Congress—the Union would have won the war but slavery would not have been abolished. We can’t possibly know for sure, but I’m inclined to think Lincoln was right to worry.

Chandra Manning appears to have more faith than I do in the efficacy of military emancipation than I do. She posits an “undeniable truth that it took armies, not policies, to crush the beast.” But by her own account, armies almost never crush the beast. Usually they unleash it. Throughout history far more people have been enslaved by war than liberated by it. Armies free slaves when armies are told to free slaves, told by policymakers. War made that policy possible, but it did not make abolition inevitable. To get slavery abolished, it took another *policy*.

One final point. Manning points out that what was happening on the ground in the South was a lot messier than the policies dictated from Washington would suggest. She appears to believe that I would dispute this, when in fact I wholeheartedly endorse it. What I do insist upon is that we cannot possibly know that the relationship between policy and practice was until we know what the

policy was, and until now historians have all but universally denied that there were any meaningful antislavery policies implemented by the Republicans before the Emancipation Proclamation. As a result, what was going on down on the ground is consistently misinterpreted.

Consider the *policy*, demanded by antislavery radicals for decades, that the fugitive slave clause of the Constitution be enforced only by local civil and judicial officials—that the federal government should *not* be the enforcement agent. Republicans in Congress went on record endorsing this policy early in July of 1861, and the very beginning of the war. Very quickly—not consistently but quickly—we see Union soldiers and officers on the ground turning slaveholders away from their camps, telling the slave-catchers that if they want to recapture their fugitives they should go to local sheriffs and judges for help, that they Union Army would not do it. Unaware that this was a *policy* advocated for decades by antislavery radicals and affirmed by the House of Representatives early in the war, social historians dismiss the behavior of such troops. Mistakenly assuming that there was *no* federal policy, social historians declare that the Union soldiers were “sloughing off” the problem on local officials. No doubt the reality is messier than the policy, but we cannot begin to disentangle the mess from the policy until we know what the policy was.

An even more profound example of the problem appears in the policy, adopted by Lincoln throughout the war, of pressuring the states to abolish slavery on their own. State by state abolition had been the focus of abolitionism since the 1780s, but by the time Arkansas abolished slavery in early 1864, it was the first state to do so in sixty years. We know that Lincoln was frenetically urging state officials to abolish slavery, but only a fool would argue that Arkansas abolished slavery simply because Lincoln wrote a couple of letters to General Steele. Put differently, we know what the policy was, but we don't how it was related to what was going on in Arkansas. There, on the ground, the Confederate army had been defeated and expelled from the state. Slaves were running for their freedom to Union lines. Black soldiers were being recruited into the Union army in significant numbers, especially in the states that Lincoln was pressuring to abolish slavery. The slaveholders had obviously been weakened enough, as a political force, to make antislavery politics viable and successful by 1864.

On the one hand, we need this sort of account of what was happening on the ground—particularly, I suspect, with the recruitment of slaves into the Union

army—to account for the abolition of slavery in Arkansas. On the other hand, what was going on in Arkansas was the hardly the random byproduct of war. Were slaves being emancipated inadvertently? Were black soldiers enlisting by accident? Was it serendipity that slavery was being ripped up on the ground in Arkansas? Was it mere coincidence that after sixty long years five slave states suddenly abolished slavery? Is federal policy really that irrelevant?

And here's the point. Manning believes that the "cordon of freedom" designed to get states to abolish slavery was a hopeless failure. I believe it was necessary but not sufficient to get slavery abolished. Manning believes that military emancipation got slavery abolished. I believe that, like state abolition, it was necessary but not sufficient. Military emancipation certainly made state abolition more likely. But in the end, it took a constitutional amendment to destroy slavery completely and permanently—and *amendments have to be ratified by states*. Surely it matters that by the time Congress sent the Thirteenth Amendment to the states for ratification five of the fifteen slave states had abolished slavery and three more free states had been admitted to the Union. The policy of state by state abolition, the brainchild of the abolitionist movement, made the amendment—inconceivable in 1860--feasible by 1865.

Getting slavery abolished was a messy, complicated process. I have struggled, and am still struggling, to clarify it. That I have failed to make myself clear to a reader as knowledgeable and intelligent as Chandra Manning—whose own scholarship I deeply admire—tells me that I still have a lot of work to do.

### **Chandra Manning:**

I am fond of saying (because I believe it) that one of the virtues of studying history is that it ought to keep us humble. When I say that, I generally mean that study of the past invites us to realize that however important we might think ourselves, we are rarely the first to face, and even more rarely, the most skilled at solving, most problems and situations. Yet sometimes it keeps us humble in even more direct ways. As a case in point, I always read a book multiple times before I write a review of it, and when I do write a review, I try very hard for the review to situate a book within the historiographical conversations that I think it challenges us to think differently about, rather than take a side or even really to state my own position; the book and how it challenges us to think, and not the reviewer, are what are important about a review, in my opinion. Yet in this case, I did indeed miss a key point of the fourth chapter, and what is more, I seem to

have conveyed a position that is quite different from the one that I actually hold. And the irony of it all is that what most worries both James Oakes and I myself is that the other is missing or minimizing the exact same central point: that the destruction of slavery was far more difficult a task than anyone was ready for, and that neither policy nor military emancipation alone was enough to complete the job.

The one point on which we sometimes talk past each other, and for which I especially appreciate this opportunity for clarification, is on military emancipation. I agree completely with Oakes' position that neither the Lieber Code nor military emancipation somehow departed from Enlightenment ideas. I have my own doubts about whether there was ever a "nice" way of war from which to depart, as I suspect did Francis Lieber, who nearly bled to death on a battlefield of the Napoleonic War, but that is a somewhat different discussion. Yet I misread (for which *mea culpa*) Oakes as arguing that the adoption of military emancipation was so old hat that there was nothing to it in the Civil War. My concern was that in portraying its adoption as automatic, we miss some important things.

One thing I think we miss is that many observers at the time saw it as a departure, and therefore that there was division rather than consensus about it. I do not think that members of the northern voting public (whose opinions mattered to the prosecution of the war) knew the post-1812 Treaty debates nearly as well as Oakes does, but I do think that they knew the "Star Spangled Banner," whose third verse celebrates how "no refuge could save the hireling and slave" who tried to escape bondage. I also think they knew—because in the summer of 1862 northern newspapers reprinted—John Quincy Adams' public statements likening military emancipation to poisoning and assassination, statements that differed so completely from the personal views that Adams expressed in his diary at the same time that it's hard for me to see them as aberrations from rather than dutiful articulations of the position of the Monroe Cabinet on which he served. Similarly, Oakes' treatment of the Jay Treaty and the Seminole War are without peer. I have no doubt he knows more about those things than me or the rest of the profession. I also suspect that he knows a lot more about them than most of the northern public did. If northern newspapers are any guide, especially in the summer of 1862, the northern public was very divided about the adoption of military emancipation, not at all of a single mind that it was an obvious road to take.

In sum, I think that adoption of military emancipation was more of a fight, and the outcome of the fight surprises me a little more than it surprises Oakes, but not because I doubt Republicans' sincerity about eradicating slavery. I had hoped actually to make clear in the review that the first three chapters of *The Scorpion's Sting* establish that very sincerity beyond reasonable doubt. (I meant it when I said, "assign this book.") Still, while throwing the force (literally) of the U.S. government against rather than on the side of slavery did not mark a turnaround for Republicans, it *did* mark a change in direction for a U.S. government that had spent the nineteenth-century becoming more rather than less activist on behalf of slaveholders. Portraying the process as automatic risks minimizing the degree of change it represented, in my view.

I also think the outcome was surprising partly because of a concern that we don't think too much about today, but which was very serious at the time, and that we almost always underestimate when we talk about the Civil War. That concern was the genuine, legitimate concern about the right relationship between military and civil authority. Nearly always, that concern was at the heart of what some historians have seen as (to borrow James Oakes' phrasing) "sloughing off" the problem of slavery onto local officials. I think that right relationship was a very serious matter to nineteenth century Americans, quite different from a cop-out, and we miss how serious if we see the move to military emancipation as automatic.

In addition, I think Civil War military emancipation differed in some key ways from military emancipation as it had transpired in other times and places. In my review, I missed that Oakes, too, distinguishes between earlier incidences of military emancipation and post-Emancipation Proclamation military emancipation in the Civil War. The differences are worth emphasizing, especially the most important one: in other times and places, emancipation proved fragile and reversible—in fact, the institution of slavery often emerged stronger rather than weaker—whereas after the Civil War, the institution itself was abolished. So I would caution against eliding Civil War emancipation in with all other instances of military emancipation because I do not think they are all exactly alike.

But I would also clarify that military emancipation in the Civil War, on its own and independent of policy, did not destroy slavery; I don't think the "cordon of freedom" policy was a total failure, nor do I think that military emancipation was a cheery success (to be clear: it was usually mayhem), and I fully recognize

that it took military emancipation in conjunction with federal policies that culminated in the Thirteenth Amendment to legally eradicate the institution of slavery in the United States. By no means did I mean to dispute Oakes' work on any of these points. When I say it took armies to crush the beast, what I mean is that in 1860 the institution of slavery was so firmly entrenched that there was no way of uprooting it that did not involve brute force. I have no doubt that policy mattered and that a Union victory with slavery intact was entirely possible had different policies been enacted. But I also think that if the story becomes one solely of policy change, then slavery looks more anemic than it actually was, and we risk whitewashing the violence right out of the story.

And make no mistake: it was a violent story. The reason, I think, was that slavery turned out to be a much larger, more flexible, more adaptable, more resilient institution far more deeply ingrained within the very spinal cord of the nation than contemporaries (at least northern ones) fully grasped, or than we really entirely grasp if we see its eradication as a foregone conclusion. In fact, you might say that James Oakes and I are actually in "violent agreement" on most points. I am grateful to Oakes and to the *Civil War Book Review* for the opportunity to clarify those points, partly so we understand each other better, but also because I think the questions raised about policy, violence, civil and military authority, and non-inevitability are really important ones for the field to think about with clarity and precision.