

CAUGHT BETWEEN CONFISCATION IN BOTH THE NORTH AND THE SOUTH

By Carole Elizabeth Scott

The following article is the product of several decades of research by Dr. Scott, Professor of Economics University of West Georgia.

President Abraham Lincoln did not ask Congress to declare war on the Confederate States of America because that would, in effect, recognize it as a nation. When he ordered the Navy to blockade the Confederacy's ports, he created legal and international relations problems. Another nation's ships captured during wartime are prizes which can be kept; otherwise you are guilty of piracy. The nature of the undeclared war fought from 1861 to 1865 was determined in what was called the Prize Cases which arose out of the seizure of four ships by the Navy.

The owners of the four ships went to court in an attempt to recover the ships. These four cases were combined and in 1862 were appealed to the Supreme Court. In a 5-4 decision, the Court agreed with Lincoln's theory of the Civil War as a domestic insurrection with the attributes of a war between nations. The Court's decision meant that a civil war between the United States and the seceded states had such character and magnitude as to give the United States the same rights and powers which it might exercise in the case of a foreign war, and it had, therefore, the right *jure bello* to institute a blockade of any ports in possession of the rebellious states. The court also ruled that the property of those residing in the Confederate States that could be used in furtherance of the rebellion could be treated as enemy property.

Supreme Court Associate Justice Samuel Nelson, a possible presidential nominee at the 1860 Democratic convention, wrote a dissenting opinion in the Prize Cases in which he said that the blockade of the South's ports was unconstitutional. War had to be declared by Congress, he believed, in order to legally engage in such things as blockading ports and confiscating enemy property. Nelson was an opponent of expanding federal power and supported reunion with the Confederacy. Although his views were not popular, his support for the Union was not questioned. He did not believe the Union could be saved in any worthwhile state through the use of force, and he had worked tirelessly for a compromise that would prevent the war.

Justifying it by their disloyalty during the Revolutionary war, there had been widespread confiscation of the property of Tories, including their land. When most of the slave states seceded, some Republicans advocated that this disloyalty justified widespread confiscation and land redistribution. In a January 31, 1864 letter to Major R. M. Sawyer that is included in the *Official Records of the War of the Rebellion* Union General William T. Sherman wrote:

When men take arms to resist rightful authority we are compelled to use force, because all reason and argument cease when arms are resorted to. When the provisions, forage, horses, mules, wagons, etc. are used by our enemy it is clearly our duty and right to take them, because otherwise they might be used against us. In like manner all houses left vacant by an inimical people are clearly our right, or such as are needed as store-houses, hospitals, and quarters. But a question arises as to dwellings used by women, children, and non-combatants. So long as non-combatants remain in their houses and keep to their accustomed business their opinions and prejudices, can in nowise influence the war, and therefore should not be noticed; but if any one comes out into the public streets and creates disorder, he or she should be punished, restrained, or banished, either to the rear or front as the officer in command adjudges. If the people or any of them keep up a correspondence with parties in hostility they are spies, and can be punished with death or minor punishment.

These are well-established principles of war, and the people of the South having appealed to war are barred from appealing to our Constitution, which they have practically and publicly defied. They have appealed to war, and must abide its rules and laws. The United States as a belligerent party, claiming right in the soil as the ultimate sovereign, have a right to change the population, and it may be and is both politic and just we should do so in certain districts.

When the inhabitants persist too long in hostility it may be both politic and right we should banish them and appropriate their lands to a more loyal and useful population. No man will deny that the United States would be benefited by dispossessing a rich, prejudiced, hard-headed, and disloyal planter, and substituting in this place a dozen or more patient, industrious, good families, even if they be of foreign birth. I think it does good to present this view of the case to many Southern gentleman who grew rich and wealthy, not by virtue alone of their personal industry and skill, but by reason of the protection and impetus to prosperity given by our hitherto moderate and magnanimous Government.

After the Confederate States of America was founded, there was good reason for northerners owed money by southerners to be concerned about ever collecting it. A Confederate statute of May, 1861 forbade the payment of debts due to northern individuals or corporations and authorized their payment into the Confederate Treasury. It required Confederate citizens to pay in exchange for Confederate bonds the amount

of money they owed Union citizens. In response to the Confederate confiscation act, the U.S. Congress passed the Confiscation Act of 1861. Subsequent clamor for a harsher policy of confiscation resulted in the Confiscation Act of 1862.

Unlike the first act, which only deprived their owners of their use, the second act provided for the emancipation of slaves in rebellious states. It limited the seizure of estates to the lifetime of the Confederate offender. Slaves in loyal states were not affected by this act because Lincoln was unwilling to risk alienating the people in these states. Because slaves were utilized by the Confederate army, the Union army had advocated the confiscation of slaves. Nearly all the non-slave property confiscated was cotton.

Southerners were heavily in debt to New York businessmen, who feared southerners would default on the \$125 million they owed. Daniel Hamilton, Dean of the law school at the University of Nevada, Las Vegas, claims Confederate confiscation was a huge success. He says that though remarkably demanding, its citizens largely accepted it. There was a clear legal obligation for them to report to the government any enemy property they or their neighbors possessed. Because the war was lost, after it they had to pay off their northern creditors.

University of Georgia historian E. Merton Coulter (1890-1981), a defender of the Confederacy, presented a drastically different evaluation of confiscation in the Confederacy. "Practically no one who owed Northern debts," he wrote, "went to the trouble to pay them either to the Confederacy or to the states, but when the war was over, Southerners settled their accounts with their Northern creditors." In retaliation to the United States' first confiscation act, on August 30, 1861 the Confederate Congress required the seizing of all the property of enemy aliens and the indemnification of Confederate citizens whose property was confiscated by the United States. Nothing was overlooked Coulter said: "ships, slaves, houses, pianos, warehouses, city lots, plantations, stocks of banks, of railroads, and of other corporations, horses, buggies".

After the war, the U.S. Supreme Court reinforced the liberal theory of property rights not shared by the majority of the judges in the Prize Cases by thoroughly rejecting the older belief that property was held at the sufferance of the sovereign. It also ruled that in passing the second confiscation act Congress was exercising "an undoubted belligerent right". However, although it was decided to be Constitutional, its scope was narrowed to near irrelevance. One of the justices supporting the liberal theory was Samuel Nelson.

On the eve of the Civil War, the greatest concentration of millionaires outside New York City was Natchez, Mississippi. In 1860, Southern planters accounted for nearly two-thirds of all American men with wealth of \$100,000 or more. Among these was Leroy M. Wiley (1796-1868), who was one of the 3,000 planters owning more than 100 slaves. In an autobiographical 1855 book, former Georgia Governor George R. Gilmer said that Leroy, a New York City businessman who began his business career in Georgia, was one of the richest men in the world. In an 1842 list of the wealthy citizens of New York City his name was included.

Leroy had substantial assets that might be confiscated in both the North and the South; so he was caught financially between a rock and a hard place when the war began. Emotionally he had to deal with the fact that a son of his brother in Philadelphia was a Union soldier and at least three other nephews, one a surgeon, were in the Confederate army. In his wartime will Leroy noted that his brother in Pennsylvania might be unable to claim what Leroy had left him due to his United States citizenship.

On March 4, 1861, the day on which Abraham Lincoln was inaugurated, a judge assigned all the property and effects of Lane, Boyce & Co., an insolvent, southern-owned, New York City firm largely indebted to August Belmont & Co. to Leroy M. Wiley and Frederick N. Lawrence for the benefit of its creditors. (August Belmont was a German-born banker, diplomat, and political leader who got his start in New York City as the American agent of the Rothschilds.) It was claimed that the greatest part of the assets of Lane, Boyce & Co. were bills, receivables, and other securities of parties in the South that Leroy took with him when on June 14, 1861 he unexpectedly moved to his plantation in Barbour County, Alabama.

One of the other New York businessmen who went South was fellow Georgian Gazaway Bugg Lamar, the founder of a Wall Street bank who very actively supported the Confederate war effort. As the Union army approached, he took advantage of Lincoln's 1863 Proclamation of Amnesty and Reconstruction which promised a full pardon for and restoration of non-slave property for all but the highest Confederate officials and military officers. However, it took fighting in court until the year of his death, 1874, before he received a settlement.

When he was 15, Leroy Wiley, who lacked a formal education, had helped his widowed mother, who had six other children to support, by obtaining a job in a Milledgeville, Georgia dry goods store owned by Farish Carter, a very wealthy Georgia businessman. Mentioned in an account of Leroy's life in the *Georgia Weekly Telegraph* on July 10, 1868 is that Carter later became his business partner and friend. Later Leroy formed his own business, Wiley & Baxter, in Milledgeville, Georgia's capital at that time, and a second store in Macon, which had just begun to be developed.

Leroy began making buying trips for Carter to New York City in 1816. Being a lifelong bachelor may have caused Leroy to be the partner in his businesses in the South who made long trips to acquire merchandise. Fortunately, travel became vastly easier as he aged. Steamboats and then railroads drastically reduced how long merchants had to be away from home on buying trips. The South's merchants went to northern cities such as New York City and Philadelphia to stock their stores because there they could buy on credit a choice collection of merchandise. No city in the South—even New Orleans--could rival the wholesale merchants in Philadelphia and New York from whom they could buy the latest fashions from London and Paris

He moved to Charleston, South Carolina in 1832 after accepting a managing partnership in the Charleston house of Parish, Marshall & Company of New York City, which did business throughout the South. He moved to New York City when he was made a junior partner of its New York house. Subsequently he founded a New York wholesale dry goods business, Leroy Wiley & Company, at 162 Pearl Street.

In a January 2, 2008 article, “Mystery on Pearl Street,” in the *New Yorker*, Burkard Bilger wrote:

Pearl Street was the City’s wholesale district. Goods would arrive by horse and cart from the docks along Front Street, and get hoisted by pulley into the upper floors of “counting houses,” then sold in the stores downstairs. Merchants would come in from towns throughout the Territories... They would place their orders for the next twelve months—carpets and linens, corkscrews and thimbles, bone china, smelling salts, and teakettles—then head back up the river. Pearl Street was the nation’s storefront in those years, the first World Trade Center... gridlocked with wagons at every working hour: a microcosm of the city to come.

By the eighteen-thirties, New York had begun to feel like the center of the universe. Its population tripled between 1825 and 1850. The Erie Canal, completed in 1825, slashed the cost of shipping goods inland, and westerners shipped their products to New York City to ship to Europe and Asia. Southern planters sent their cotton to and ordered foreign goods from New York. In the 1850s, New York City merchants depended on the foreign slave trade more than ever because New Yorkers financed ships that picked up captives in West Africa that were sold in Cuba and Brazil.

Before the war, most New Yorkers appear to have supported slavery, and the City was segregated. Many of its merchants were from the South. Because of New Yorkers' heavy investment in the South and their dependence on the cotton trade, the nation's chief export, commercial and financial interests in New York City counseled compromise with the South. New York's governor urged moderation. Due to the enormous value to New York City of its business with the South, some influential New Yorkers feared that, due to the Confederacy’s low tariffs, the City would lose a lot of its business to southern ports. This led to New York City’s mayor, Fernando Wood, proposing turning New York into a sovereign city-state. In this radical position Wood was not without support. Among those supporting the idea were Congressmen James E. Kerrigan and Daniel Sickles, a future Union general, and U.S. Marshall Isaiah Rynders.

Advice from Leroy to Farish Carter reveal a personal reason why Leroy liked New York City. After he received a letter from Carter in which he complained about his health, Leroy advised Carter to take a northern trip and see new things and experience new surroundings. A decade later he begged Carter to visit him in New York, where he could attend Italian opera, which he wrote is of itself worth visiting New York for. He also mentioned Christie’s minstrels, the Olympic, Broadway, and the Bowery. He concluded by telling Carter that he would live ten years longer if he visited him in New York once a year.

In a day when most people relied on candles to light their homes, the Astor House where Leroy resided had a gas manufacturing plant that supplied gas lighting throughout the building. (Some guests were asphyxiated in their sleep because they blew out the light.) A steam engine in the Astor’s basement pumped water to a reservoir

on the roof from which water was made available on every floor. In a day when indoor plumbing was considered miraculous, each floor of the Astor House had hot and cold running water as well as water closets.

Over his years in Georgia, South Carolina, and New York, Leroy was a member of many partnerships. Individually, and as a partner, he invested in a lot of land. He owned stock in several railroads and banks and dealt in foreign exchange. Leroy sold on a credit basis to and was part owner of a business in northwest Georgia engaged in iron mining that operated an iron foundry, nail factory, rolling mill, flour mill, and a short line railroad.

Early in his business career he began engaging in factoring. Factors purchased promissory notes at a discount. (Those buying on a credit basis provided the seller with a promissory note. Sellers could sell these notes before they matured in order to get money sooner. European importers of cotton issued promissory notes.) In New York City Leroy was a dry goods jobber, buying imports and selling them to country merchants. Another of his activities was mortgage lending for land and slaves. "...On the 27th of February, 1847, upon a bill in equity, which charged in substance as follows: That Reddick Pierce mortgaged to Leroy M. Wiley certain negroes, to wit, Harriet and her two children Lucy and Adeline..."

Leroy used some of the fortune he earned as a merchant; factor; investor in banks, marine insurance, railroads, and other businesses; and speculation in land to become a planter. In his testimony in an 1856 case concerning the will of Henry Parish, Leroy's deceased business partner, he identified himself as a planter who had a plantation in Georgia and another one in Alabama. The much reported upon Parish will case was far from being Leroy's first brush with the courts. His businesses often led him to go to court or be taken there.

Both he and his brother, Jack, a physician in Macon, had plantations in Barbour County, Alabama on Georgia's border. The 1860 Barbour County slave census shows that Leroy had 190 slaves on his plantation; Jack had 187. Leroy told Farish Carter in a letter that because he visited his plantations so infrequently, "the Negroes at both my plantations seem hardly to know they belong to me". One of his sisters was married to a well to do man who served two terms as Macon's mayor.

In 1851, Leroy was one of nine New Yorkers and three Bostonians selected as directors of the newly chartered Illinois Central Railroad. In that year, too, the Hudson River Railroad Company that Leroy was a director of began operating between New York City and East Albany. The Illinois Central is given a lot of the credit for Illinois moving up from having the nation's eleventh largest population and ranking seventeenth in wealth in 1850 to being fourth both in population and wealth in 1860. He was also a director of Illinois' Great Western Railroad.

In *The New York Times* appeared a report that, "Unfortunately, the railroad engine president-elect Abraham Lincoln boarded in Springfield, Illinois in order to go to Washington for his inauguration was named after L.M. Wiley, a South Carolina slave owner." Elsewhere Leroy was described as "a slaveowner and secessionist who made a fortune growing cotton in South Carolina." The railroad engine bore Leroy's name

because he was a director of the railroad company that owned the engine, the Great Western Railroad Company.

It is not known if Lincoln ever met Leroy, but he must have heard of him because Leroy served on the Illinois Central's board of directors throughout the eight years during which Lincoln handled numerous legal cases for the Central. Leroy must have known about a huge, \$5,000 fee Lincoln sued to get from the Illinois Central for his work on a case in 1857 that enabled him to finance his political activities, including his debates with U.S. Senator Stephen A. Douglas. (At that time the purchasing power of a dollar vastly exceeded its value today.)

In 1863, a case, the "United States v. One Thousand Seven Hundred and Fifty-six Shares," was filed in the U.S. District Court for the Southern District of New York which was extensively reported on in *The New York Times*. The case called for the confiscation of Leroy's stock in the Great Western Railroad Company of 1859. (The inclusion of the date 1859 in the name of the railroad was the result of Leroy and another man having been assigned in 1859 as trustees to operate what had previously just been named the Great Western Railroad until it was sold.)

The proceedings in confiscation cases were "in rem" in nature, which means they were not directed at a person. In effect, the owners of confiscated property were declared disloyal when their property was taken from them. A confiscation case began with the bringing of a suit, a libel of information, that would be filed with a district attorney. Information concerning the property to be confiscated might be provided by a citizen informer, as took place in Leroy's case, who would share in the money from the sale of the confiscated property. In Leroy's case the libel was under the 1861 act, and the proof was under the 1862 act.

A man named Charles Gould, about whom nothing is known, was the informer in Leroy's case. Called for was the confiscation and forfeiture of 1,756 shares of Leroy's capital stock in the Great Western and for upward of \$50,000 due on coupons of bonds he owned. Alleged was that Leroy had used the property to aid the rebellion, and that he was guilty of treasonable acts. The estimated value of the stock was \$500,000.

The judge in this case, Samuel R. Betts, ruled that because Leroy lived in Alabama, he was an alien enemy, and this meant he and his lawyer had no right to appear to contest the confiscation of his property. The Great Western Railroad Company of 1859, acting as Leroy's trustee, was not allowed to represent him. Judge Betts directed the company to cancel the certificates of stock in Leroy's name and to issue new certificates to the clerk of the court. He ordered that the stock be sold and the proceeds after some costs were covered be distributed to the United States and Charles Gould, half going to each.

The New York district attorney who applied for a decree of condemnation and forfeiture against Leroy's Great Western stock presented to the court the testimony from witnesses who claimed he was a rebel. One witness testified he had known Wiley for seven or eight years; last seeing him at Eufaula, Alabama a little more than a year ago. He claimed Leroy was known as a zealous rebel throughout the community. Claimed in

articles appearing in *The New York Times* on April 7 and April 27, 1864 were the following accounts of Leroy's supposed support for the Confederacy.

Wiley has freely given his money in support of the rebellion, to my knowledge....And upon various important occasions has supported, by his presence and assistance, the rebel movement....He was looked up to as a leader... When Gen. Bragg was at Pensacola, Wiley took an active part in aiding and assisting the Alabama troops raised to reinforce Bragg against the Union armies -- helping to support the war -- furnishing rations and assistance freely from his plantation -- expending his money freely for the comfort of the troops. Afterward, at Montgomery, the rebel troops, remarked how handsomely they had been treated by Wiley.

Wiley, on various occasions, personally encouraged and aided the enlistments and recruiting the rebel army, and many young men in his neighborhood actually joined the rebel army through his instrumentality.... Wiley has received money from the North since the war broke out. He sent a man by the name of Heard to New York to attend to his business affairs, and Heard returned, bringing money with him, and having accomplished his mission. And Wiley paid and used money freely there in aid of the rebel cause. His sending Heard North was subsequent to August, 1861, and his receipt of money from the North was subsequent to that date.

On the 19th of April inst., Geo. H. Briggs...reaffirmed the statements made by him in his testimony given on the 1st of March last, and further deposed that in the year 1862, after Wiley returned from New York to the Southern States, he at the call of the Governor of Georgia, voluntarily sent negroes from his plantation in Alabama to work for the rebels on the fortifications at Savannah; witness knew the fact and saw the negroes at work, and knew the men so at work to belong to Wiley; had known one of them for years on Wiley's plantation as his slave.

It was notorious on the works at Savannah that Wiley's slaves were at work on the fortifications there; they were not conscripted or forced to work by the rebel States; witness and hundreds of other planters refused to send their negroes to the public works, and were not constrained to do it by the public authorities. Pay was received by the owners for their services. There was afterward public authority given to compel the services of negroes. Witness had personal knowledge that supplies were furnished to Gen. Bragg's army from Wiley's plantation, and took an interest in the matter from the fact that members of his own family were connected with that army.

[The]...witness is acquainted with Wiley and his former partner in Charleston, and his general associates: he was regarded by his friends, and generally, to be in his opinions and conduct a loyal man to the South and the rebellion; witness knew he owned a large plantation of negroes near Eufaula, Alabama, and was reputed to be a man of large wealth and standing in society,

and a rebel sympathizer and aider; witness knew of his voluntarily furnishing slave-labor to the fortifications, and that he was in correspondence with the Secretary of the Confederate Treasury, advising as to the rebel currency, and he was universally spoken of by his acquaintances and others, as of great importance to the rebel cause.

Leroy responded to Judge Betts' decision by filing an appeal. The railroad company also filed an appeal. The judge in this case, Samuel Nelson, sitting in as a district court judge, reversed Betts for want of jurisdiction because the property was the stock of an Illinois corporation, and the case was filed in a New York court. He also ruled that even if he was an alien enemy, Leroy should have been allowed to defend himself. Nelson said there is great difficulty in perceiving how the stock of an incorporated company is capable of being used or employed in aiding or abetting an insurrection.

In 1865, President Andrew Johnson ordered his Attorney General to immediately pardon Leroy after he received Leroy's request for a pardon endorsed by New York U.S. Senator Edwin D. Morgan. Leroy told President Johnson that in 1861 he had proceeded south for the purpose of protecting and preserving both his own property and that which he held as an assignee for several northern firms. He based his plea for a pardon on his age and losses in slaves and other property worth over \$450,000, including "forced contributions" to the Confederacy.

From 1851 to 1855, Edwin D. Morgan, a successful New York City wholesaler, broker, and banker, was president of the Hudson River Railroad that Leroy was a director of. Morgan served as a New York City alderman, member of the New York State Senate, and State Commissioner of Immigration. One of the founders of the Republican Party and chairman of the national and New York Republican Party, he was New York's governor when the South left the Union. (Late in the 1850s, Leroy was a member of a group of Democratic New York City businessmen.) Appointed a major general of volunteers, Morgan was praised for how many troops he recruited. In 1863 he was elected to the U.S. Senate. Morgan's support suggests Leroy was telling the truth when he told President Johnson he went South in order to protect himself and his northern associates.

Shortly after Leroy received his pardon from President Johnson, the New York district attorney appealed Judge Nelson's decision. The Supreme Court docketed this case, but because counsel accepted the circuit's decision, it was never reported along with other cases.

After the war, the U.S. Supreme Court reinforced the liberal theory of property rights and thoroughly rejected the older belief that property was held at the sufferance of the sovereign. It also ruled that in passing the second confiscation act Congress was exercising "an undoubted belligerent right". However, although it was decided to be constitutional, its scope was narrowed to near irrelevance. In *Miller v. United States* (1870) the Supreme Court upheld the confiscation of stock in a Michigan railroad. In the *Miller* case the Court ruled that because the two confiscation acts were passed in the exercise of the war powers of the government, they were unaffected by the limitations

contained in the Fifth and Sixth Amendments to the Constitution. In *McVeigh v. United States* (1871) the Supreme Court ruled that the owner of confiscated property had a right to defend himself.

In New York's Supreme Court after the war Leroy sought to obtain money from George W. Gooch, who shortly before the war he had authorized to collect in Texas money and assets due him. On November 17, 1865 *The New York Times* reported that Gooch responded by saying that when he received a letter countermanding his authority to collect the bills, he did what he had been instructed to do: turn over the bills and what he had collected to George Butler, a banking and collecting agent in Galveston. However, when Butler, who was suspected of being disloyal, left for the North, Butler's principal clerk, who anticipated the bills and assets Gooch had collected would be confiscated by the Confederacy, returned them to Gooch, who was conscripted into the Confederate army.

Orders by Confederate General Paul Octave Herbert, commander of the Military Department of Texas, Gooch claimed, forced him to accept Confederate money when he collected a bill and to sell goods and slaves turned over to him for Confederate money. He invested the money in Confederate bonds which, like Confederate money, were worthless after the war. The slaves, who by then had been freed, had not been sold. Gooch observed that when Leroy was residing during the war on his Barbour County, Alabama plantation, he had been compelled to accept receipts to the extent of \$100,000 for slave labor and corn and provender from Southern officers under military rule.

After the war ended, Gooch offered to turn over to Butler, who had returned to Texas with a power of attorney from Leroy, Confederate bonds, uncollected bills amounting to \$260,000, and deeds for land. Butler refused the Confederate bonds. Gooch's lawyer argued that debts paid off with Confederate money were either still outstanding because it was the equivalent of counterfeit money or that the court must accept that the Confederacy was "in fact a properly organized government with all the attributes of sovereign power," so the Confederate bonds must be accepted as repayment of debt. *The New York Times* reported that Leroy's motion was denied, and he was charged \$10.

Leroy was welcomed back to the Illinois Central's board and resumed his residence at New York City's Astor House to which an elevator had been added during the war. Although he had lost much of his wealth as a result of the war, he was still wealthy. He fell ill on a trip from Georgia to New York and was taken to a relative's home in Macon. He died after being moved to his home in Alabama, where he was attended by his widowed sisters and nieces he had supported. He was buried in Macon.

