AMERICA'S CAESAR

The Decline and Fall of
Republican Government in
the United States of America

by Greg Loren Durand

Volume One

Institute for Southern Historical Review
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America's Caesar:
The Decline and Fall of Republican Government
in the United States of America

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This book is dedicated to the brave Confederate soldiers who paid
the ultimate price to preserve Liberty for their posterity.
Their Cause is not lost. *Deo Vindice!*

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INTRODUCTION

> Americans have been surprised and confused about the growth of their government because *they have been watching the wrong facts*. They have been obsessed with the introverted view of government and did not see the exterior factors that stimulate government most powerfully.
>
> *The impact of war on government is evident throughout American history*. Each war enlarged the capacity of the government to do things. Thereafter the enlarged capacity of the government turned out to be too useful to be given up (emphasis in original).[1]

It is a given axiom of warfare, whether such warfare is prosecuted in the clash of physical weapons or merely in the clash of opposing worldviews, that one cannot be an effective soldier without fully understanding the mindset and strategies of his enemy. The main purpose of this book, therefore, is to unveil the so-called "war powers" of the President of the United States — the very heart and soul of the bureaucratic machinery operating today in Washington, D.C. — and explain how "an ignorant, boorish, third-rate, backwoods lawyer"[2] came to invoke these powers in the mid-Nineteenth Century to nearly single-handedly dismantle a Union of sovereign States which had endured for a mere seventy-two years. If the reader retains nothing else, let this one fact remain permanently impressed upon his mind — the "separation of powers," believed so necessary by the framers of the Constitution for the United States of America to "guarantee a Republican Form of Government,"[3] ended on

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1. E.E. Schattschneider, *Two Hundred Million Americans in Search of a Government* (New York: Holt, Rinehart and Winston, 1969), page 610.

2. New York *World*, 19 June 1864.

3. U.S. Constitution, Article IV, Section 4.

15 April 1861 when the sixteenth President, Abraham Lincoln, called forth 75,000 troops to make war on the seceded States of the South. At that time, the former confederated Union of sovereign States, which had been held together by mutual friendship and trust, gave way to a consolidated Nation wherein the States were subjugated to a centralized Government at the point of a bloody bayonet. Today, nearly one hundred and forty years later, the Union established by our forefathers in the Constitution has yet to be restored.

PART ONE
Northern Agitation and the Roots of Disunion

Of all the curses disgorged on mankind from Pandora's Box, there is hardly any worse in its consequence, than faction. It is the fruitful parent of legions of calamities. Civil war, with all its horrors, marches in its train, and is its lineal and legitimate descendant.

— Matthew Carey

CHAPTER ONE
The Evolution of the Federalist Faction

The Union as a Treaty Between Two Nations

In 1866, Edward A. Pollard, the editor of the Richmond *Examiner*, wrote these insightful words: "No one can read aright the history of America, unless in light of a North and a South: two political aliens existing in a Union imperfectly defined as a confederation of States. If insensible or forgetful of this theory, he is at once involved in an otherwise inexplicable mass of facts, and will in vain attempt an analysis of controversies, apparently the most various and confused."[1] Pollard was absolutely correct. Understanding the nature of the American Union as "a treaty between two nations of opposite civilizations"[2] is indeed the key to properly assembling the complex puzzle of American history, especially the period of 1861-1865 which saw both sections locked in deadly combat with one another.

Though the signing of the Treaty of Paris in 1783 brought an end to open war between England and the American States, the hostility of the former against the latter was by no means abated. According to John Scott, "[H]ostilities were not yet over; they had only assumed another and scarcely less harassing and dangerous form. Baffled in field operations, King George resorted to a subtle expedient to regain, or if that should prove impracticable, to destroy, his former subjects."[3] Thus began what George Washington described as the "war

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1. Edward A. Pollard, *The Lost Cause* (New York: E.B. Treat and Company, 1866), page 46.

2. Pollard, *ibid*., page 47.

3. John Scott, *The Lost Principle: The Sectional Equilibrium, How It Was Created, How It Was Destroyed, and How It May Be Restored* (Richmond, Virginia: James Woodhouse and Company,

of imposts."[4] Pollard further explained the effects of this commercial assault on America:

> The close of the Revolution was followed by a distress of trade that involved all of the American States. Indeed, they found that their independence, commercially, had been very dearly purchased: that the British Government was disposed to revenge itself for the ill-success of its arms by the most severe restrictions on the trade of the States, and to affect all Europe against any commercial negotiations with them. The tobacco of Virginia and Maryland was loaded down with duties and prohibitions; the rice and indigo of the Carolinas suffered similarly; but in New England the distress was out of all proportion to what was experienced in the more fortunate regions of the South, where the fertility of the soil was always a ready and considerable compensation for the oppression of taxes and commercial imposts. Before the Revolution, Great Britain had furnished markets for more than three-fourths of the exports of the eight Northern States. These were now almost actually closed to them. Massachusetts complained of the boon of independence, when she could no longer find a market for her fish and oil of fish, which at this time constituted almost wholly the exports of that region, which has since reached to such insolence of prosperity, and now abounds with the seats of opulence. The most important branch of New England industry — the whale fisheries — had almost perished; and driven out of employment, and distressed by an unkind soil, there were large masses of the descendants of the Puritans ready to move wherever better fortune invited them, and the charity of equal laws would tolerate them.[5]

Compounding the financial devastation caused by being cut off from trade with Great Britain, the New England States also found themselves saddled with enormous public debts. Massachusetts in 1784, for example, had a debt of $5 million.[6] Such was the economic condition of the country following the struggle for independence from British rule. Right from the beginning, the two sections had different interests; the warm climate and long planting season of the South created an agricultural economy which was mainly self-sufficient, while the harsher climate and shorter planting season of the North created a manufacturing economy which relied heavily on commercial trade. The differing economies naturally engendered differing political worldviews — the agricultural South inclined towards decentralization of power and finance, private enterprise, and free trade while the manufacturing North inclined towards centralization of power and finance, government

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1860), page 68.

4. George Washington, letter to James McHenry, 22 August 1785; in W.W. Abbot, *The Papers of George Washington: Confederation Series* (Charlottesville, Virginia: University Press of Virginia, 1994), Volume III, page 199.

5. Pollard, *Lost Cause*, page 55.

6. Forrest McDonald, *E Pluribus Unum: The Formation of the American Republic, 1776-1790* (Indianapolis, Indiana: Liberty Fund, Inc., 1979), page 225.

subsidies and internal improvement, and protectionism in the way of a high import tariff system. These differences were the root cause of the bitter animosities which have existed between the two sections right from the beginning. As noted by one historian, "[O]utcroppings of sectional differences based upon occupations left their imprint upon the compromises of the Constitution itself, and upon the objections north and south to its ratification."[7] Pierce Butler of South Carolina considered the interests of the North and South to be "as different as the interests of Russia and Turkey."[8] Patrick Henry of Virginia would argue for his State's rejection of the Constitution for the same reason: "There is a striking difference, and great contrariety of interests, between the states. They are naturally divided into carrying and productive states. This is an actual, existing distinction, which cannot be altered."[9] Henry's colleague, John Tyler, agreed: "So long as climate will have effect on men, so long will the different climates of the United States render us different."[10]

The Illegal Proceedings of the Philadelphia Convention

The theory which has dominated the history books for the last two hundred years is that, in the years immediately following the War for Independence, the country was in chaos and close to collapse due to the weaknesses inherent in the Articles of Confederation:

> In the early spring of 1787, after the most violent winter but one in almost a decade, ominous calm descended upon the land. The very life of the Republic was on trial. (No external enemy threatened its shores, and no enemy agents conspired to destroy it from within, but it was in mortal danger nonetheless, for the freest people in the world had ceased to care whether the Republic lived or died.)
>
> Or so it had seemed for four years and more, and especially for the last two. During those four years, and especially for the last two, everywhere one looked closely the Union seemed to be coming apart.[11]

There are, however, good reasons to question the veracity of this claim. In a letter to

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7. Jesse T. Carpenter, *The South as a Conscious Minority, 1789-1861* (New York: New York University Press, 1930), page 8.

8. Pierce Butler, in Max Farrand (editor), *The Records of the Federal Convention of 1787* (New Haven, Connecticut: Yale University Press, 1913), Volume II, page 449.

9. Patrick Henry, speech delivered on 12 June 1788; in Jonathan Elliott (editor), *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (Washington, D.C.: Self-published, 1837), Volume III, page 328.

10. John Tyler, speech delivered on 25 June 1788; Elliott, *ibid.*, page 600.

11. McDonald, *E Pluribus Unum*, page 227.

the Marquis de Lafayette, George Washington wrote, "I expect that many blessings will be attributed to our new government, which are now taking their rise from that industry and frugality, into the practice of which the people have been forced from necessity. I really believe that there never was so much labor and economy to be found before in the country, as at the present moment."[12] These words were penned while the States were still united under the Articles. Speaking of the Articles, Thomas Jefferson said, "With all the imperfections of our present government, it is, without exception, the best existing or the best that ever did exist."[13] Early in 1787, Benjamin Franklin declared that the country as a whole was "so prosperous" that there was "every reason for profound thanksgiving." Farmers were "paid better prices than ever for their products" and the value of their lands were rising in value. Nowhere in Europe were the laboring classes "so well paid, fed, or clothed."[14] Historian Charles A. Beard wrote:

> It may very well be that Franklin's view of the general social conditions just previous to the formation of the Constitution is essentially correct and that the defects in the Articles of Confederation were not the serious menace to the social fabric which the loud complaints of advocates of change implied. It may be that "the critical period" was not such a critical period after all; but a phantom of the imagination produced by some undoubted evils which could have been remedied without a political revolution.... It does not appear that any one has really inquired just what precise facts must be established to prove that "the bonds of the social order were dissolving".... When it is remembered that most of our history has been written by Federalists, it will become apparent that great care should be taken in accepting, without reserve, the gloomy pictures of the social conditions prevailing under the Articles of Confederation.[15]

As noted above, independence was hard on both the North and the South, but the latter, due to its self-sufficiency, was able to revive its prosperity. Virginia at that time was far and above the most prosperous of all the thirteen States. In New England, however, things were far different: "Massachusetts had long since reached the point of being unable to support itself except by shrewd trading."[16]

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12. Washington, quoted by Scott, *Lost Principle*, page 168.

13. Thomas Jefferson, letter to Edward Carrington, 4 August 1787; in Julian P. Boyd (editor), *The Papers of Thomas Jefferson* (Princeton, New Jersey: Princeton University Press, 1955), Volume XI, page 678.

14. Benjamin Franklin, quoted by Matthew Carey, *The American Museum*, January 1787, Volume I, page 5.

15. Charles Austin Beard, *An Economic Interpretation of the Constitution of the United States* (New York: The Macmillan Company, 1935), pages 47-48.

16. McDonald, *E Pluribus Unum*, page 218.

The Articles contained the following provision at Article XIII: "Every State shall abide by the determination of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State." In accordance with this provision, delegates from twelve of the thirteen States were sent to the Constitutional Convention in Philadelphia in May of 1787 "for the sole and express purpose of revising the Articles of Confederation" and making such "alterations and provisions therein as shall render the Federal Constitution adequate to the exigencies of the Government and the preservation of the Union,"[17] However, the drafting of the Constitution and its ratification two years later altered the very nature of the American civil structure:

> The general Federal Convention that framed the Constitution at Philadelphia was a secret body; and the greatest pains were taken that no part of its proceedings should get to the public until the Constitution itself was reported to Congress. The Journals were confided to the care of Washington and were not made public until many years after our present Government was established. The framers of the Constitution ignored the purposes for which they were delegated; they acted without any authority whatever; and the document, which the warring factions finally evolved from their quarrels and dissensions, was revolutionary. This capital fact requires iteration, for it is essential to an understanding of the desperate struggle to secure the ratification of that then unpopular instrument.
>
> "Not one legislature in the United States had the most distant idea when they first appointed members for a convention, entirely commercial... that they would without any warrant from their constituents, presume on so bold and daring a stride," truthfully writes the excitable Gerry of Massachusetts in his bombastic denunciation of "the fraudulent usurpation at Philadelphia." The more reliable Melancton Smith of New York testifies that "previous to the meeting of the Convention the subject of a new form of government had been little thought of and scarcely written upon at all.... The idea of a government similar to" the Constitution "never entered the minds of the legislatures who appointed the Convention and of but very few of the members who composed it, until they had assembled and heard it proposed in that body."
>
> "Had the idea of a total change been stated," asserts the trustworthy Richard Henry Lee of Virginia, "probably no state would have appointed members to the Convention.... Probably not one man in ten thousand in the United States... had an idea that the old ship was to be destroyed."[18]

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17. Resolution of the United States in Congress Assembled, 21 February 1787; quoted by George McHenry, *The Cotton Trade: Negro Slavery in the Confederate States* (London: Saunders, Otley, and Company, 1863), page 145.

18. Albert J. Beveridge, *The Life of John Marshall* (Boston: Houghton Mifflin Company, 1916), Volume I, pages 323-325.

According to George McHenry, a Southern historian writing in 1863, "[T]he members of the Convention who voted for the Constitution became nothing less than a body of secessionists; they created what might be called a peaceable revolution, for they disregarded their instructions from the respective States...."[19] More recently, John W. Burgess referred to the actions of the Convention as a *coup d'etat*: "What they actually did, stripped of all fiction and verbiage, was to assume constituent powers, ordain a constitution of government and of liberty, and demand a plebiscite over the heads of all existing legally ordained powers. Had Julius or Napoleon committed these acts they would have been pronounced *coups d'etat*."[20] The members certainly exceeded their delegated powers to merely revise the Articles and their subsequent appeal directly to the people of the States, rather than to the legislatures of the States, as required by that document, was revolutionary to the core. James Madison admitted as much when, in justifying the actions of the Convention, he appealed to the "transcendent and precious right of the people 'to abolish or alter their governments as to them shall seem most likely to effect their safety and happiness.'"[21] Even George Washington himself admitted that "in strict propriety a Convention so holden may not be legal."[22] It is therefore not surprising that an oath of absolute secrecy bound everyone present at the Convention, and that the journals were not released to the public until Madison's death several decades later.

It is rare to find any mention of the illegal nature of the Convention in modern history textbooks. However, this subject was foremost in the minds of many of the Anti-Federalist opponents of the Constitution, particularly Patrick Henry, who said:

> I have the highest respect for those gentlemen who formed the Convention, and, were some of them not here, I would express some testimonial of esteem for them. America had, on a former occasion, put the utmost confidence in them — a confidence which was well placed; and I am sure, sir, I would give up any thing to them; I would cheerfully confide in them as my representatives. But, sir, on this occasion, I would demand the cause of their conduct. Even from that illustrious man who saved us by his valor, I would have a reason for his conduct: that liberty which he has given us by his valor, tells me to ask this reason; and sure I am, were he here, he would give us that reason. But there are other gentlemen here, who can give us this information. The people gave them no power to use their name. That they exceeded their power is perfectly clear. It is not mere curiosity that actuates me: I wish to hear the real, actual, existing danger, which should lead us to take these steps, so

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19. McHenry, *Cotton Trade*, page 147.

20. John W. Burgess, *Political Science and Comparative Constitutional Law* (Boston: Ginn and Company, 1896), Volume I, page 105.

21. James Madison, *The Federalist*, Number XL.

22. Washington, letter to John Jay, 10 March 1787; quoted by Garry Willis, *Cincinnatis: George Washington and the Enlightenment* (Garden City, New York: Doubleday and Company, 1984), page 154.

> dangerous in my conception. Disorders have arisen in other parts of America; but here [in Virginia], sir, no dangers, no insurrection or tumult have happened; every thing has been calm and tranquil. But, notwithstanding this, we are wandering on the great ocean of human affairs. I see no landmark to guide us. We are running we know not whither. Difference of opinion has gone to a degree of inflammatory resentment in different parts of the country which has been occasioned by this perilous innovation. The federal Convention ought to have amended the old system; for this purpose they were solely delegated; the object of their mission extended to no other consideration. You must, therefore, forgive the solicitation of one unworthy member to know what danger could have arisen under the present Confederation, and what are the causes of this proposal to change our government.[23]

Henry spoke these words during the Virginia convention which assembled at Richmond on 2 June 1788. His audience did not take his wisdom to heart, however, and, choosing to ignore the illegality of the Philadelphia proceedings, the State convention finally ratified the Constitution three weeks later on the twenty-fifth of June. It was generally believed that without Virginia's assent, the Constitution would never have gone into effect.[24] Thus, the "Old Dominion" placed her seal of approval upon a revolution, the outworking of which would seven decades later saturate her soil with the blood of her own sons.

"Anti-Federalist" Distrust of the Constitution

In his Farewell Address, published in 1796, George Washington warned:

> The unity of government which constitutes you one people is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real independence, the support of your tranquility at home; your peace abroad; of your safety; of your prosperity; of that very liberty which you so highly prize. But as it is easy to foresee, that from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment, that you should properly estimate the immense value of your national Union to your collective and individual happiness; that you should cherish a cordial, habitual and immoveable attachment to it; accustoming yourselves to think and speak of it as the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned, and indignantly frowning

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23. Patrick Henry, in Elliott, *Debates in the Several State Conventions*, Volume III, pages 22-23.

24. Scott, *Lost Principle*, pages 55-56. The ninth State — New Hampshire — had, unbeknownst to the Virginia convention delegates, ratified the Constitution in June of 1788, and the Union was thereby already established according to Article VII. However, it is certainly true that without the influence and wealth of Virginia, the Union could not have long survived.

> upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.
>
> In contemplating the causes which may disturb our union, it occurs as a matter of serious concern, that any ground should have been furnished for characterizing parties by geographical discriminations: Northern and Southern; Atlantic and Western; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence, within particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart burnings which spring from these misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection....
>
> Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party generally. This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but in those of the popular form it is seen in its greatest rankness and is truly their worst enemy.
>
> It serves always to distract the public councils and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms; kindles the animosity of one part against another; foments occasional riot and insurrection. It opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the channels of party passion. Thus the policy and the will of one country are subjected to the policy and will of another.[25]

Washington's warning came too late, for the "spirit of party" (faction), which would eventually bring the country to ruin in less than two generations, had already begun to sprout in the soil of American liberty. Ironically, its roots went deep into the very system of government which Washington called upon his countrymen to cherish and defend. James Madison, often credited as the "father of the Constitution," wrote, "A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principle task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government." He stressed the economic origin of this political diversity: "From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of society into different interests and parties."[26] Since these diverse interests, which, according to Madison, would be constantly vying with one another for control over the government, would come into the

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25. Washington, Farewell Address; published in the Boston (Massachusetts) *Independent Chronicle*, 26 September 1796.

26. Madison, *The Federalist*, Number X.

public arena with antagonistic political views and contradictory economic agendas, it was therefore necessary that a system be set up whereby they would be effectively checked and balanced: "The only remedy is to enlarge the sphere and thereby divide the community into so great a number of interests and parties that, in the first place, a majority will not be likely, at the same moment, to have a common interest separate from that of the whole, or of the minority; and, in the second place, that, in case they should have such an interest, they may not be so apt to unite in the pursuit of it."[27] Such was the theory behind the United States Constitution — a theory which the unfolding of American history over the next several decades proved to have been in error.

These factions were present and active right from the start:

> ...[T]here were three classes in the National Convention that formed our Constitution — the purely Democratic, who had a constant dread of Federal encroachments, and were for gauging the power of the General Government to the lowest scale; a Democratic Republican party, that desired to invest the Federal Government with just enough power to make it efficient, and no more; and the Monarchists, "a small but active division," who utterly repudiated a Republican form of government. This faction ultimately attached themselves to the Federal party.[28]

Prior to the ratification and implementation of the Constitution in 1789, the men who became known as "Anti-Federalists"[29] voiced their fears that there were serious flaws in the proposed system of government which would eventually move it in the direction of consolidation, thereby usurping the sovereignty of the several States. The majority of the opponents of ratification were from the South, and Virginia in particular, and were men who recognized the danger posed to the liberties of the people of both sections by special commercial interests in the Northeast. As William Grayson pointed out, "With respect to the citizens of the Eastern and Middle States, perhaps the best and surest means of discovering their general dispositions, may be by having recourse to their interests."[30] Northern delegate to the Philadelphia

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27. Madison, in Elliott, *Debates in the Several State Conventions*, Volume V, page 163.

28. Stephen D. Carpenter, *The Logic of History: Five Hundred Political Texts Being Concentrated Extracts of Abolitionism* (Madison, Wisconsin: self-published, 1864), page 24.

29. "Anti-Federalist" was a deliberate misnomer attached by those who favored a more centralized form of government to those who favored a federal union of sovereign States. Hence, the "Anti-Federalists" were actually the true federalists, while those who pirated the name "Federalists" were the real *anti*-federalists. As is too often the case, misleading labels are applied to the opposing party in a debate for the purpose of diverting the public's attention from the real issues at hand. This same tactic would be used with great success just two generations later when the so-called Republican party rose to power by denouncing the supporters of the Constitution as "traitors."

30. William Grayson, quoted by Scott, *Lost Principle*, page 124.

Constitutional Convention, Nathaniel Gorham, had already candidly admitted that "the Eastern States had no motive to Union but a commercial one."[31] Virginian delegates Edmund Randolph and George Mason objected throughout the Convention that the "energetic government" outlined by the delegates would prove to be a Northern-dominated oligarchy. Mason, who "would rather chop off his right hand than put it to the Constitution" as it was written,[32] believed that the document would "produce a monarchy or a corrupt, oppressive aristocracy," and that the new Government would "most probably vibrate some years between the two, and then terminate in one or the other."[33] He also predicted that, in ratifying the Constitution, the "Southern States... will deliver themselves bound hand & foot to the Eastern States...."[34] This prediction was echoed by Benjamin Harrison when he stated, "If the Constitution is carried into effect, the States south of the Potomac will be little more than appendages to those to the northward of it."[35]

Luther Martin of Maryland believed that the hidden agenda of the advocates of the Constitution was "the total abolition and destruction of all state governments." It was his suspicion that the compact was made to seem "federal" enough on the surface for the benefit of the unsuspecting public, but that once ratified, all such appearances would be dropped "to render it wholly and entirely a national government."[36] An equally suspicious William Grayson predicted that Northern delegates would demand "a very strong government, & wish to prostrate all the state legislatures," and then added, "[B]ut I don't learn that the people are with them."[37] In a letter to Massachusetts Governor James Bowdoin, Elbridge Gerry, Rufus King, and Samuel Holten warned that the proposed revision of the Articles of Confederation was premature, and that the country's republican institutions were in danger from "plans artfully laid, & vigorously pursued, which had they been successful, we think, would inevitably have changed our republican

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31. Nathaniel Gorham, quoted by Robert Allen Rutland, *The Ordeal of the Constitution* (Boston: Northern University Press, 1983), page 13.

32. George Mason, in James Madison (editor), *Notes of Debate in the Federal Convention of 1787* (New York: W.W. Norton and Company, 1966), page 566.

33. Mason, in Robert Allen Rutland (editor), *The Papers of George Mason* (Chapel Hill, North Carolina: The University of North Carolina Press, 1970), Volume III, pages 991, 993.

34. Mason, in Madison, *Debate in the Federal Convention*, pages 549-550.

35. Benjamin Harrison, letter to George Washington, 4 October 1787; quoted by Bernard Janin Sage, *The Republic of Republics: A Retrospect of Our Century of Federal Liberty* (Philadelphia, Pennsylvania: William W. Harding, 1878), page 246.

36. Luther Martin, in Elliott, *Debates in the Several State Conventions*, Volume I, pages 344, 389.

37. Grayson, letter to James Madison, 29 May 1787; in Farrand, *Records of the Federal Convention*, Volume II, page 414.

Governments, into baleful Aristocracies."[38] One anonymous Anti-Federalist in South Carolina expressed his apprehension in verse:

> When thirteen states are moulded into one
> Your rights are vanish'd and your honors gone;
> The form of Freedom shall alone remain,
> As Rome had Senators when she hugg'd the chain.
>
> In Five short years of Freedom weary grown
> We quit our plain republics for a throne;
> Congress and President full proof shall bring
> A mere disguise for Parliament and King.[39]

In a letter which was uncannily prognostic of events to come, another anonymous Anti-Federalist from Virginia warned that the proposed system of government would lead directly to a destructive civil war between the States which would terminate in a centralized tyranny:

> The new constitution in its present form is calculated to produce despotism, thraldom and confusion, and if the United States do swallow it, they will find it a bolus, that will create convulsions to their utmost extremities. Were they mine enemies, the worst imprecation I could devise would be, may they adopt it. For tyranny, where it has been chained (as for a few years past) is always more cursed, and sticks its teeth in deeper than before.... Our present constitution, with a few additional powers to Congress, seems better calculated to preserve the rights and defend the liberties of our citizens, than the one proposed, without proper amendments. Let us therefore, for once, show our judgment and solidity by continuing it, and prove the opinion to be erroneous, that levity and fickleness are not only the foibles of our tempers, but the reigning principles in these states. There are men amongst us, of such dissatisfied tempers, that place them in Heaven, they would find something to blame; and so restless and self-sufficient, that they must be eternally reforming the state. But the misfortune is, they always leave affairs worse than they find them. A change of government is at all times dangerous, but at present may be fatal, without the utmost caution, just after emerging out of a tedious and expensive war....
>
> Beware my countrymen! Our enemies — uncontrolled as they are in their ambitious schemes, fretted with losses, and perplexed with disappointments — will exert their whole power and policy to increase and continue our confusion. And while we are destroying one another, they will be repairing their losses, and ruining our trade. Of all the plagues that

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38. Elbridge Gerry, Rufus King, and Samuel Holten, letter to James Bowdoin, 3 September 1785; quoted by Robert Allen Rutland, *The Ordeal of the Constitution* (Boston: Northern University Press, 1983), page 7.

39. Charleston (South Carolina) *State Gazette*, 28 January 1788; quoted by Louie M. Miner, *Our Rude Forefathers American Political Verse 1783-1788* (Cedar Rapids, Iowa: Torch Press, 1937), page 204.

> infest a nation, a civil war is the worst. ...[W]hen a civil war is kindled, there is then forth no security of property nor protection from any law. Life and fortune become precarious. And all that is dear to men is at the discretion of profligate soldiery, doubly licentious on such an occasion. Cities are exhausted by heavy contributions, or sacked because they cannot answer exorbitant demand. Countries are eaten up by the parties they favor, and ravaged by the one they oppose. Fathers and sons sheath their swords in one another's bowels in the field, and their wives and daughters are exposed to the rudeness and lust of ruffians at home. And when the sword has decided quarrel, the scene is closed with banishments, forfeitures, and barbarous executions that entail distress on children then unborn. May Heaven avert the dreadful catastrophe!
>
> In the most limited governments, what wranglings, animosities, factions, partiality, and all other evils that tend to embroil a nation and weaken a state, are constantly practised by legislators. What then may we expect if the new constitution be adopted as it now stands? The great will struggle for power, honor and wealth; the poor will become a prey to avarice, insolence and oppression. And while some are studying to supplant their neighbors, and others striving to keep their stations, one villain will wink at the oppression of another, the people be fleeced, and the public business neglected. From despotism and tyranny good Lord deliver us.[40]

Another man, writing under the *nom de plume* "A Federal Republican," enumerated the inherent dangers of investing Congress "with the formidable powers of raising armies, and lending money, totally independent of the different states," and pointed out that "they will moreover, have the power of leading troops among you in order to suppress those struggles which may sometimes happen among a free people, and which tyranny will impiously brand with the name of sedition." He also warned that, working hand-in-hand with these standing armies would be the "Continental collector" of taxes, against whose abuses there would be scant remedy available to the Citizen of one of the States. He concluded with these words:

> Thus will you be necessarily compelled either to make a bold effort to extricate yourselves from these grievous and oppressive extortions, or you will be fatigued by fruitless attempts into the quiet and peaceable surrender of those rights, for which the blood of your fellow citizens has been shed in vain. But the latter will, no doubt, be the melancholy fate of a people once inspired with the love of liberty, as the power vested in congress of sending troops for suppressing insurrections will always enable them to stifle the first struggles of freedom.[41]

Thomas Jefferson, who had venerated the Government under the Articles of Confederation as "the best existing or the best that ever did exist," said of the new Constitution, "I confess there are things in it which stagger all my dispositions to subscribe to what such an

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40. "Philanthropos," Alexandria (Virginia) *Advertiser*, 6 December 1787.

41. "A Federal Republican," Portsmouth (Virginia) *Register*, 5 March 1788.

assembly has proposed. Their President seems a bad edition of a Polish king.... Indeed, I think, all the good of this new Constitution might have been couched in three or four articles to be added to the old and venerable fabric."[42] On another occasion, he went on, "Our [State] Convention has been too much impressed by the [Shays] insurrection in Massachusetts, and on the spur of the moment they are setting up a kite to keep the hen yard in order."[43]

It was the opinion of leading Virginians, such as George Mason and Patrick Henry, that the South would be much better off forming its own confederacy and would be more likely to prosper without political connection with the Northern States.[44] It was Henry's fear that the Constitution was a device to consolidate all the monetary and military powers of the country into the hands of the Executive branch:

> ...[W]here and when did freedom exist when the purse and the sword were given up from the people? Unless a miracle in human affairs interposed, no nation ever retained its liberty after the loss of the purse and the sword. Can you prove, by any argumentative deduction, that it is possible to be safe without one of them? If you give them up, you are gone.[45]

Henry, who had refused to even attend the Convention at Philadelphia because he "smelt a rat,"[46] enjoyed such a prominent reputation as a statesman that he represented a formidable obstacle to the ratification of the Constitution by the Old Dominion State. Viewed as "the great adversary who will render the event [ratification] precarious," he was routinely denounced by Federalists, both publicly and privately, as the "nefarious and highly Criminal P. Henry"[47] and "a very Guilty man."[48] One New Hampshire Federalist confidently stated that the ratification process would have been smooth if God had confined both Henry and Mason

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42. Jefferson, letter to John Adams, 13 November 1787; quoted by Scott, *Lost Principle*, page 223.

43. Jefferson, quoted by Scott, *ibid*.

44. Cyrus Griffin, letter to Thomas Fitzsimons, 18 February 1788; in Edmund C. Burnett (editor), *Letters and Correspondence of Members of the Continental Congress* (Washington, D.C.: Carnegie Institution of Washington, 1921), Volume VIII, page 700.

45. Henry, response to Madison on 9 June 1787; in Elliot, *Debates in the Several State Conventions*, Volume V, page 169.

46. Henry, quoted by Edmund Randolph, letter to James Madison, 1 March 1787; in Moncure Daniel Conway, *Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph* (New York: G.P. Putnam's Sons, 1888), page 65.

47. Edward Carrington, letter to William Short, 21 October 1787; quoted by Rutland, *Ordeal of the Constitution*, page 169.

48. St. John Crevecour, letter to William Short, 20 February 1788; quoted by Rutland, *ibid*., page 191.

"to the regions of darkness."[49]

The "Anti-Federalists" Are Condemned as "Rebels"

According to Charles Beard, not more than five percent of the population of the entire country, or about 160,000 voters, took part in the election of delegates to the several State conventions.[50] The vast majority of the people were either completely ignorant of the new system or were opposed to it. In general, those who were in favor of the Constitution lived in the cities and commercial centers, while those opposed to it lived in the interior agricultural districts of the States. In the end, the friends of the Constitution won the day, not because of the inherent qualities of the instrument itself, but because they were better funded and better organized than the opposition:

> Talent, wealth, and professional abilities were, generally speaking, on the side of the Constitutionalists. The money to be spent on the campaign of education was on their side also; and it was spent in considerable sums for pamphleteering, organizing parades and demonstrations, and engaging the interest of the press....
>
> The opposition on the other hand suffered from the difficulties connected with getting a backwoods vote out to the town and county elections. This involved sometimes long journeys in bad weather, for it will be remembered that the elections were held in the late fall and winter.... [T]hey had no money to carry on their campaign; they were poor and uninfluential — the strongest battalions were not on their side. The wonder is that they came so near to defeating the Constitution at the polls.[51]

Though the Anti-Federalists were certainly varied in their political backgrounds, they all seemed to have one thing in common: nearly to a man, they foresaw "a great variety of impending woes to the good people of the southern States"[52] should the Constitution go into effect between the several States. In the words of George Mason, "the Constitution as it stood was swollen with dangerous doctrine"[53] — doctrine which would be taken advantage of by, as Richard Henry Lee characterized the Federalists, a faction "of monarchy men, military

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49. Nicholas Gilman, letter to John Sullivan, 23 March 1788; in Burnett, *Letters and Correspondence*, Volume VIII, page 709.

50. Beard, *Economic Interpretation of the Constitution*, page 250.

51. Beard, *ibid*., pages 251-252.

52. Patrick Dollard, Providence (Rhode Island) *United States Chronicle*, 3 July 1788; in Elliott, *Debates in the Several State Conventions*, Volume IV, page 337.

53. Mason, in Farrand, *Records of the Federal Convention*, Volume II, page 631.

men, aristocrats and drones whose noise, impudence and zeal exceeds all belief."[54]

The "noise" generated by the Federalists was certainly loud, and for good reason: The Anti-Federalists had been amazingly accurate in their assessment of the opposing party, some of whose members privately were planning to "overset our state dung cart with all its dirty contents,"[55] and who spoke amongst themselves of "the Revolution" to destroy "the monstrous system of State governments."[56] Alexander Hamilton, the arch-Federalist who "hated Republican Government, and never failed on every occasion to advocate the excellence of and avow his attachment to a Monarchic form of Government,"[57] was so enamored with the British system of government that he called for the virtual annihilation of the several State governments.[58] He advocated the appointment of a Senate and Executive for life as well as the creation of a subservient House of Commons in order to "check the imprudence of democracy,"[59] and suggested that the "rich and well born" should have "a distinct, permanent share in the government"[60] because "the mass of the people... seldom judge or determine right."[61] During a speech delivered in New York in 1792, he exclaimed, "The People! Gentlemen, I tell you the people are a great Beast!"[62] Gouverneur Morris of Pennsylvania, the man responsible for writing the final draft of the Constitution, shared the views of Hamilton, believing that the Congress "ought to be composed of men of great and established property — aristocracy; men who, from pride, will support consistency and permanency; and to make them completely independent, they must be chosen for life, or they will be a useless body. Such an aristocratic body will keep down the turbulence of democracy."[63]

Since it was essential to Federalist plans that the people of the States — the very

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54. Richard Henry Lee, letter to George Mason, 1 October 1787; in Burnett, *Letters and Correspondence*, Volume VIII, pages 652-653.

55. Benjamin Rush, quoted by Rutland, *Ordeal of the Constitution*, page 27.

56. David Humphreys, letter to Alexander Hamilton, 1 September 1787; in U.S. Government, *Documentary History of the Constitution of the United States* (Washington, D.C.: 1904), Volume IV, page 269.

57. George Edmonds, *Facts and Falsehoods Concerning the War on the South 1861-1865* (Memphis, Tennessee: A.R. Taylor and Company, 1904), page 92.

58. *House Documents* (Fifteenth Congress, First Session), Volume III, pages 22, 129; Elliott, *Debates in the Several State Conventions*, Volume V, page 202.

59. Hamilton, in Elliott, *ibid.*, Volume I, pages 421-422.

60. Hamilton, in Elliott, *ibid.*, pages 450.

61. Hamilton, in Elliott, *ibid.*, page 422.

62. Hamilton, quoted by Edmonds, *Facts and Falsehoods*, page 92.

63. Morris, in Elliott, *Debates in the Several State Conventions*, page 475.

people whom the Federalists held in such contempt — be led to willingly accept the new system of government, the Anti-Federalists had to either be silenced or discredited. As would become their trademark, Federalist writers chose to avoid direct debate as much as possible and began instead to unleash a volley of vicious epithets against their dissenters: "So soon as the banner of Federalism was unfurled, and the inclination of leading characters had become known, every avenue to the popular mind was choked with slander. The very atmosphere was impregnated by its foul breath.... He who would indulge in the luxury of defamation, may gratify that horrid appetite by consulting the memorials of that period."[64] Opponents of ratification were caricaturized by the press as "spirits of discord," "selfish patriots," and "pettifogging antifederal scribblers" who were conspiring against the country as "the confirmed tools and pensioners of foreign courts" and were "fabricating the most traitorous productions" designed to discredit the new Constitution. For their "treason," the Anti-Federalists deserved "the most opprobrious gibbet of popular execration odium and infamy."[65] One New Jersey newspaper suggested that Federalists adopt the name of "Washingtonians," while the label of "Shayites" (rebels) should be applied to the Anti-Federalists.[66] Another Federalist from Hartford, Connecticut wrote, "Shun, my countrymen, the sham patriot, however dignified, who bids you *distrust the Convention*. Mark him as a dangerous member of society.... Fix your eyes on those who love you... on those whose views are not bounded by the town or county which they may represent, nor by the state in which they reside, nor even by the union — their philanthropy embraces the interest of all nations" (emphasis in original).[67] The Anti-Federalist response to this type of journalism was equally as passionate: "It is an excellent method when you cannot bring reason for what you assert, to fall to ribaldry and satire... instead of arguments, spit out a dozen mouthfuls of names, epithets, and interjections in a breath, cry Tory! Rebel! Tyranny! Centinel! Anarchy! Sidney! Monarchy! Misery! George the Third! Destruction! Arnold! Shays! Confusion! & c. & c."[68] This tension between the "Federalists" and the "Anti-Federalists," though carried on under different names throughout the decades subsequent to the adoption of the Constitution in 1789, eventually culminated, just as the latter feared, in a sectional clash of arms in 1861 and the subjugation of one party to the other.

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64. Scott, *Lost Principle*, page 111.

65. "Cato," Philadelphia *Independent Gazetteer*, 17 November 1787; "A Federal Centinel," *New-Hampshire Spy*, 23 November 1787; quoted by Rutland, *Ordeal of the Constitution*, page 27.

66. Rutland, *ibid.*, page 32.

67. An anonymous Federalist, quoted by Rutland, *ibid.*, page 27.

68. *Poughkeepsie County Journal*, 22 April 1788; quoted by Rutland, *ibid.*, page 203.

SUPPORTING DOCUMENT

George Washington's Farewell Address

26 September 1796

Friends and Fellow Citizens: The period for a new election of a citizen, to administer the executive government of the United States, being not far distant, and the time actually arrived, when your thoughts must be employed in designating the person who is to be clothed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed to decline being considered among the number of those out of whom a choice is to be made. I rejoice that the state of your concerns, external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiment of duty or propriety; and am persuaded, whatever partiality may be retained for my services, that, in the present circumstances of our country, you will not disapprove my determination to retire.

The impressions, with which I first undertook the arduous trust, were explained on the proper occasion. In the discharge of this trust, I will only say, that I have, with good intentions, contributed toward the organization and administration of the Government, the best exertions of which a very fallible judgment was capable. Not unconscious, in the outset, of the inferiority of my qualifications, experience in my own eyes, perhaps still more in the eyes of others, has strengthened the motives to diffidence of myself; and every day the increasing weight of years admonishes me more and more, that the shade of retirement is as necessary to me as it will be welcome. Satisfied that if any circumstances have given peculiar value to my services, they were temporary, I have the consolation to believe, that while choice and prudence invite me to quit the political scene, patriotism does not forbid it.

Here, perhaps, I ought to stop. But a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger, natural to that solicitude urge me on an occasion like the present, to offer to your solemn contemplation, and to recommend to your

frequent review, some sentiments; which are the result of much reflection, of no inconsiderable observation, and which appear to me all important to the permanency of your felicity as a people. These will be offered to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive as his counsel. Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

The unity of government which constitutes you one people is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real independence, the support of your tranquility at home; your peace abroad; of your safety; of your prosperity; of that very liberty which you so highly prize. But as it is easy to foresee, that from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment, that you should properly estimate the immense value of your national Union to your collective and individual happiness; that you should cherish a cordial, habitual and immoveable attachment to it; accustoming yourselves to think and speak of it as the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned, and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest. Citizens by birth or choice, of a common country, that country has a right to concentrate your affections. The name of "American," which belongs to you, in your national capacity, must always exalt the just pride of patriotism, more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits and political principles. You have in a common cause fought and triumphed together. The independence and liberty you possess are the work of joint councils, and joint efforts; of common dangers, sufferings and successes.

But these considerations, however powerfully they address themselves to your sensibility, are greatly outweighed by those which apply more immediately to your interest. Here every portion of our country finds the most commanding motives for carefully guarding and preserving the union of the whole.

The North, in an unrestrained intercourse with the South, protected by the equal laws of a common Government, finds in the production of the latter, great additional resources of maritime and commercial enterprise and precious materials of manufacturing industry. The South in the same intercourse, benefitting by the agency of the North, sees its agriculture grow and its commerce expand. Turning partly into its own channels the seamen of the North, it finds its particular navigation invigorated; and while it contributes, in different ways, to nourish and increase the general mass of the national navigation, it looks forward to the protection of a maritime strength, to which itself is unequally adapted. The East, in a

like intercourse with the West, already finds, and in the progressive improvement of interior communications, by land and water, will more and more find a valuable vent for the commodities which it brings from abroad, or manufactures at home. The West derives from the East supplies requisite to its growth and comfort, and what is perhaps of still greater consequence, it must of necessity owe the secure enjoyment of indispensable outlets for its own productions to the weight, influence, and the future maritime strength of the Atlantic side of the Union, directed by an indissoluble community of interest as one nation. Any other tenure by which the West can hold this essential advantage, whether derived from its own separate strength, or from an apostate and unnatural connection with any foreign power, must be intrinsically precarious.

While then every part of our country thus feels an immediate and particular interest in union, all the parts combined cannot fail to find in the united mass of means and efforts greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their peace by foreign nations; and, what is of inestimable value, they must derive from union an exemption from those broils and wars between themselves, which so frequently afflict neighboring countries, not tied together by the same government; which their own rivalships alone would be sufficient to produce, but which opposite foreign alliances, attachments and intrigues would stimulate and embitter. Hence, likewise, they will avoid the necessity of those overgrown military establishments which, under any form of government, are inauspicious to liberty and which are to be regarded as particularly hostile to republican liberty. In this sense it is that your union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear you to the preservation of the other.

Is there a doubt whether a common government can embrace so large a sphere? Let experience solve it. To listen to mere speculation in such a case were criminal. It is well worth a fair and full experiment. With such powerful and obvious motives to union affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those who in any quarter may endeavor to weaken its bands.

In contemplating the causes which may disturb our union, it occurs as a matter of serious concern, that any ground should have been furnished for characterizing parties by geographical discriminations: Northern and Southern; Atlantic and Western; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence, within particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart burnings which spring from these misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection.

To the efficacy and permanency of your union, a Government for the whole is indispensable. No alliances however strict between the parts can be an adequate substitute. They must inevitably experience the infractions and interruptions which all alliances in all times have experienced. Sensible of this momentous truth, you have improved upon your first

essay, by the adoption of a constitution of Government, better calculated than your former for an intimate union, and for the efficacious management of your common concerns. This Government, the offspring of your own choice uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the constitution which at any time exists till changed by an explicit and authentic act of the whole people is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government presupposes the duty of every individual to obey the established government.

Toward the preservation of your government and the permanency of your present happy state, it is requisite not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect in the forms of the Constitution alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited remember that time and habit are at least as necessary to fix the true character of governments as of other human institutions; that experience is the surest standard by which to test the real tendency of the existing constitution of a country; that facility in changes upon the credit of mere hypothesis and opinion exposes to perpetual change, from the endless variety of hypothesis and opinion; and remember especially that for the efficient management of your common interests in a country so extensive as ours a government of as much vigor as is consistent with the perfect security of liberty is indispensable. Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

I have already intimated to you the danger of parties in the State, with particular reference to the founding of them on geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party generally. This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but in those of the popular form it is seen in its greatest rankness and is truly their worst enemy.

It serves always to distract the public councils and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms; kindles the animosity of one part against another; foments occasionally riot and insurrection. It opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the channels of party passion. Thus the policy and the will of one country are sub-

jected to the policy and will of another.

There is an opinion that parties in free countries are useful checks upon the administration of government, and serve to keep alive the spirit of liberty. This within certain limits is probably true; and in governments of a monarchial cast patriotism may look with indulgence, if not with favor, upon the spirit of party. But in those of the popular character, in governments purely elective, it is a spirit not to be encouraged. From their natural tendency it is certain there will always be enough of that spirit for every salutary purpose; and there being constant danger of excess, the effort ought to be by force of public opinion to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warming, it should consume.

It is important, likewise, that the habits of thinking in a free country should inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism.

A just estimate of that love of power and proneness to abuse it which predominate in the human heart is sufficient to satisfy us of the truth of this position.

The necessity of reciprocal checks in the exercise of political power by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions of the others, has been evinced by experiments, ancient and modern; some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them.

If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness — these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked, Where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

It is substantially true that virtue or morality is a necessary spring of popular government. The rule indeed extends with more or less force to every species of free government.

Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric? Promote, then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.

As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible, avoiding occasions of expense by cultivating peace, but remembering also that timely disbursements to prepare for danger frequently prevent much greater disbursements to repel it; avoiding likewise the accumulation of debt, not only by shunning occasions of expense, but by exertions in time of peace to discharge the debts which unavoidable wars have occasioned, not ungenerously throwing upon posterity the burthen which we ourselves ought to bear.

Observe good faith and justice toward all nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct. And can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and at no distant period a great nation to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt that in the course of time and things the fruits of such a plan would richly repay any temporary advantage which might be lost by a steady adherence to it? Can it be that Providence has not connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! is it rendered impossible by its vices?

In the execution of such a plan nothing is more essential than that permanent, inveterate antipathies against particular nations and passionate attachments for others should be excluded, and that in place of them just and amicable feelings toward all should be cultivated. The nation which indulges toward another an habitual hatred or an habitual fondness is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable when accidental or trifling occasions of dispute occur.

So, likewise, a passionate attachment of one nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter without adequate inducement or justification. It leads also to concessions to the favorite nation of privileges denied to others, which is apt doubly to injure the nation making the concessions by unnecessarily parting with what ought to have been retained, and by exciting jealousy, ill will, and a disposition to retaliate in the parties from whom equal privileges are withheld; and it gives to ambitious, corrupted, or deluded citizens (who devote themselves to the favorite nation) facility to betray or sacrifice the interests of their own country without odium, sometimes even with popularity, gilding with the appearances of a virtuous sense of obligation, a commendable deference for public opinion, or a laudable zeal for public good

the base or foolish compliances of ambition, corruption, or infatuation.

Against the insidious wiles of foreign influence (I conjure you to believe me, fellow citizens) the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government. But that jealousy, to be useful, must be impartial, else it becomes the instrument of the very influence to be avoided, instead of a defense against it. Excessive partiality for one foreign nation and excessive dislike of another cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real patriots who may resist the intrigues of the favorite are liable to become suspected and odious, while its tools and dupes usurp the applause and confidence of the people to surrender their interests.

The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations to have with them as little political connection as possible. So far as we have already formed engagements let them be fulfilled with perfect good faith. Here let us stop. Europe has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics or the ordinary combinations and collisions of her friendships or enmities.

Our detached and distant situation invites and enables us to pursue a different course. If we remain one people, under an efficient government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war, as our interest, guided by justice, shall counsel. Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?

It is our true policy to steer clear of permanent alliances with any portion of the foreign world, so far, I mean, as we are now at liberty to do it; for let me not be understood as capable of patronizing infidelity to existing engagements. I hold the maxim no less applicable to public than to private affairs that honesty is always the best policy. I repeat, therefore, let those engagements be observed in their genuine sense. But in my opinion it is unnecessary and would be unwise to extend them. Taking care always to keep ourselves by suitable establishments on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies. Harmony, liberal intercourse with all nations are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand, neither seeking nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying by gentle means the streams of commerce, but forcing nothing; establishing with powers so disposed, in order to

give trade a stable course, to define the rights of our merchants, and to enable the Government to support them, conventional rules of intercourse, the best that present circumstances and mutual opinion will permit, but temporary and liable to be from time to time abandoned or varied as experience and circumstances shall dictate; constantly keeping in view that it is folly in one nation to look for disinterested favors from another; that it must pay with a portion of its independence for whatever it may accept under that character; that by such acceptance it may place itself in the condition of having given equivalents for nominal favors, and yet being reproached with ingratitude for not giving more. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard.

Though in reviewing the incidents of my Administration I am unconscious of intentional error, I am nevertheless too sensible of my defects not to think it probable that I may have committed many errors. Whatever they may be, I fervently beseech the Almighty to avert or mitigate the evils to which they may tend. I shall also carry with me the hope that my country will never cease to view them with indulgence, and that, after forty-five years of my life dedicated to its service with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the mansions of rest.

Relying on its kindness in this as in other things, and actuated by that fervent love toward it which is so natural to a man who views in it the native soil of himself and his progenitors for several generations, I anticipate with pleasing expectation that retreat in which I promise myself to realize without alloy the sweet enjoyment of partaking in the midst of my fellow-citizens the benign influence of good laws under a free government — the ever-favorite object of my heart, and the happy reward, as I trust, of our mutual cares, labors and dangers.

Geo. Washington.

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SUPPLEMENTARY ESSAY

An Iconoclastic View of the Constitution

by Edward A. Pollard

An effect of great civil commotions in the history of a people is to liberate reason, and to give to intelligence the opportunity to assert itself against the traditions and political idolatries of the past. Such a period is essentially one of political iconoclasm — the breaking of idols which we find we have heretofore unduly cherished, and with it the recovery from the delusions of an unworthy and traditional worship. When there is little in the present to interest men, and their lives are passed in an established routine, it is natural for them to exaggerate and to adorn the past. But when the present has its own historical convulsions, it is then that men find new standards with which to judge the past, and a period in which right to estimate it — destroying or dwarfing, it is true, much that before claimed their admiration or enchained their worship; but, on the other hand, ofttimes exalting what before had had an obscure and degraded place in popular estimation. It is in such periods that the native historian of his country finds the justest time for determining the correct value of the past, and distinguishing between what were its mere idols, and what should have been its true aspirations.

It is thus, from the stand-point of the recent great war in America, that one may justly contemplate the true value of its past history, measure correctly its great men of a former period, and master the delusions of an old political idolatry. The world knows how before this war the people of North America had, for nearly three-quarters of a century, worshipped, as its two political idols, the Federal Constitution and the Union of States formed under it. Looking back at these from the present period in American history, which has freed us from the restraints of mere sentiment and tradition, he who thus makes the calm and intelligent retrospect is astonished to find what extravagance and delusion were in the minds of these worshippers, and what acts of devotion were made to what were ofttimes but gilded images

of clay.

For two generations of men, the almost miraculous wisdom of the Federal Constitution of America has been preached and exclaimed, until it was thought to be political blasphemy to impugn it. Its praises were hymned by poets. The public orator was listened to with impatience who had not some exaggerated tribute to pay to the sacred virtues of what Daniel Webster called the "consti-*tew*-tion," and the almost angelic excellence of "the forefathers" who had framed it. It was seriously asserted, that in this instrument had been combined the political wisdom of all ages, and that it was the epitome of the human science of government. The insolent heights to which this extravagance arose were astonishing. The world's last hopes of good government were said to be contained in these dozen pages of printed matter.

Unhappily for such hopes, or for such boasts, we are now at a period when we may estimate the right value of this wonderful Constitution, and take the severe judgment of history upon it. We may now dare to state that judgment briefly: it is, that never did a political instrument contain, from the necessity of its circumstances, a nobler principle, or present the folly and ignorance of men in more glaring defects, than did the Federal Constitution of the United States.

It is no longer required, by the political fashion of the times, for an American to say, that the men who formed this Constitution were either intellectual giants or wonderful scholars. Beyond a few names — such as Randolph and Patrick Henry, "the forest-born Demosthenes" of Virginia, Pinckney and Luther Martin, of Maryland, Hamilton, of New York, and Franklin, of Pennsylvania — the Convention which formed this instrument may be described as a company of very plain men, but little instructed in political science, who, in their debates, showed sometimes the crudities and chimeras of ignorant reform, and exhibited more frequently a loose ransacking of history for precedents and lessons, such as rather might have been expected in a club of college sophomores than in a council of statesmen.

The two last names mentioned on the list of distinction in the Convention — Hamilton and Franklin — may be taken as examples of American exaggeration of their public men, which, indeed, more peculiarly belonged to the people of the Northern States — that division of the American people which after-events have classified as *Yankees*. Hamilton, who had a school of his own in the Convention, was readily exalted as an idol by the party which he so early begot in the history of his country. The man who was honored by pageants and processions in the streets of New York, at the close of the Convention, must be declared, by the just and unimpassioned historian, to have been superficial as a statesman, and defective as a scholar. He had, indeed, neither the intuition of genius, nor the power of analysis. He was a man of little mind. But he had studied a peculiar style of writing, which Washington was weak enough to take for a model, and, it is said, sometimes appropriated. There was no point or sharp edges in the style either of Alexander Hamilton or George Washington. Both wrote and spoke in those long sentences in which common places are pompously dressed up, and in which the sense is so overlaid with qualifications that it is almost impossible to probe it. But Washington made no pretensions to literature and scholarship, while Hamilton had

no titles to fame other than these. And in these it must be confessed that he had scarcely any other merit than that of a smooth constructor of words, a character which with the vulgar often passes for both orator and statesman.

Benjamin Franklin was thoroughly a representative Yankee, the first clear-cut type we recognize in history of that materialism, course selfishness, pelf, low cunning, and commercial smartness, which passes with the contemporary Yankee as the truest philosophy and highest aim of life. It is alike curious and amusing to examine the grounds of estimation in the minds of his countrymen, which conferred the high-sounding title of *philosopher* on an old gentleman in blue stockings, who, in France, was the butt of the Parisian wits, and who left a legacy of wisdom to posterity in the *Maxims of Poor Richard.* How many modern Yankees have been educated in the school of "maxims" of Franklin it would be difficult to over-estimate. If a gross and materialistic value of things is to pass as "philosophy"; if the hard maxims of selfishness, and the parings of penuriousness, such as *Poor Richard* dins to American youth, do really contain the true lessons and meaning of life, then we may declare, in the phrases of Yankee admiration, that Benjamin Franklin was a philosopher and a sage, who eclipsed all other lights in the world, and "whipped the universe." But really, after all, may we not doubt the value of this cookery-book philosophy of smart things; think it doubtful whether the mighty problem of how pence make pounds, be the largest or best part of human wisdom; and conclude that Benjamin Franklin, though not the greatest celebrity America has ever produced, was neither worse nor better than a representative Yankee.

We are almost inclined to laugh at the part which this queer figure acted in the Convention which formed the Constitution of the United States. No member had more clap-traps in the way of political inventions. His ignorance of political science and of popular motives was alike profound; and we find him proposing to govern the country after a fashion scarcely less beautiful and less practicable than the Republic of Plato and the Arcadia of Sydney. He thought that magistrates might serve the public from patriarchal affection or for the honor of titles. He quoted in the Convention a maxim that sounds curiously enough to American ears: that "in all cases of public service, the less profit, the greater honor." He was in favor of the nonsense of a plural executive. He insisted in the Convention on the practicability of "finding three or four men in all the United States with public spirit enough to bear sitting in peaceful council, for perhaps an equal term, merely to preside over our civil concerns, and see that our laws were duly executed." Such was the political sagacity of this person, who, it must be confessed, made what reputation he had rather in the handbooks of Yankee economy than in monuments of statesmanship.

But we shall find a better key to the real value of the Constitution in a summary review of its debates, than in a portraiture, however interesting, of the men who composed it. The Convention of delegates assembled from the different States at Philadelphia, on the second Monday in May, 1787, had met on a blind errand. They had been called by Congress, "for the sole and express purpose of *revising* the Articles of Confederation, and reporting to Congress and the several legislatures such *alterations* and provisions therein, as shall, when agreed to in Congress and confirmed by the States, render the Federal constitution adequate

to the exigencies of government and the preservation of the Union."

This singularly confused language, in the call of the Convention, naturally gave rise to differences of opinion. One party in the Convention — representing what was known as the New Jersey proposition — took the ground that its power was limited to a mere revision and amendment of the existing Articles of Confederation: that it was, therefore, necessary to take the present federal system as the basis of action, to proceed upon terms of the federal equality of the States; in short, to remedy the defects of the existing government, not to supplant it. Hamilton and his party were for a new and violent system of reform. They were said to favor the establishment of a monarchy. The extent to which this was true is, that they were in favor of the annihilation of the State governments and the permanent tenure of public offices. A third party in the Convention avoided both extremes, insisted upon a change of the federal principle, and proposed a "national" government, in the sense of a supreme power with respect to certain objects common between the States, and committed to it, and which would have some kind of direct compulsory action upon *individuals*. The word "national" was used only in this limited sense. The great defect of the existing Confederation was, that it had no power to reach individuals, and thus enforce its decrees. The proposed Union, or "national" government, was to be a league of States, but with power to reach individuals; and yet these only in certain severely defined respects, and through powers expressly delegated by the States. In the nature of things, this power could not act upon the States collectively; that is, not in the usual and peaceful mode in which governments are conducted. All that was claimed for it, and all that could be claimed for it, was to reach individuals in those specifications of authority that the States should make to it.

The plan of this party was no sooner developed in the Convention than it met the furious opposition of the smaller States. It was declared by Luther Martin, that those who advocated it "wished to establish such a system as could give their own States undue power and influence in the government over the other States." Both Mr. Randolph, of Virginia, and Mr. Pinckney, of Maryland, who had brought before the Convention drafts of the plan referred to, agreed that the members of the Senate should be elected by the House of Representatives; thus, in effect, giving to the larger States power to construct the Senate as they chose. Mr. Randolph had given additional offence to the smaller States. He proposed that, instead of an equal vote by States, "the right of suffrage in the National Legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants."

There was thus excited in the Convention a jealousy between the larger and smaller States; the former insisting upon a preponderating influence in both houses of the National Legislature, and the latter insisting on an equality of representation in each house. This jealous controversy is tracked through the debates of the Convention. It proceeded to a degree of warmth and anger in which the Convention was on the point of dissolution. When the vote was taken, five States were for an equality of representation and five against it. At this critical period, a conference committee was appointed. It resulted in a compromise; the opponents of an unequal representation agreeing to yield their objections to it in the lower House, provided its advocates would pledge themselves to support an equal representation

in the Senate: and on this basis of agreement was reared the Constitution of the United States of America.

The reader must observe here, that the great distinguishing feature of this Constitution, the peculiar virtue of the American system — namely, the mixed representation of *the people* and *the States* — was purely the result of a jealousy between the larger and the smaller States, the fruit of an accident. It contained the true virtue of a political instrument, which, as we shall see, was otherwise full of faults and glaring with defects. It was that in which it was original. But it was not an *a priori* discovery. It was not the result of the wisdom of our ancestors. History abounds in instances where accidental or empirical settlements have afterwards been discovered to contain great elements of wisdom and virtue; and it has been natural and pleasing for succeeding generations to account these rather as the result of human reason and prescience, than as the product of blind circumstances. But we are forced to confess, that in that great political novelty of the American system — in which the world was to see, for the first time combine and harmonized, the principle of geographical sovereignties with that of a confederate unity, which, for certain purposes, was to stand for national identity — the "wisdom" of our forefathers had no part, but acted unconsciously under the pressure of circumstances, or the direction of divine Providence.

This statement is not pleasant to American vanity. But it is due to the truth of history. It is highly probable that the framers of the Constitution did not fully comprehend the importance of the principles of the combination of State sovereignty with that of the simple republic on which they had stumbled. If they had, it might be supposed that they would have defined with a much severer accuracy the political relations of the States and the General Government; for it has been for the want of such accuracy that room has been found, at least for disputation, and the creation of two political parties, which have run through the whole of American history.

And here it is we must turn from the consideration of that principle in the Constitution which was its distinctive feature and its saving virtue, to view briefly the enormous defects and omissions of an instrument that has shared so much of the undue admiration of the world.

It is impossible to resist the thought, that the framers of the Constitution were so much occupied with the controversy of jealousy between the large and the small States that they overlooked many great and obvious questions of government, which have since been fearfully developed in the political history of America. Beyond the results and compromises of that jealousy, the debates and the work of the Convention show one of the most wonderful blanks that has, perhaps, ever occurred in the political inventions of civilized mankind. They left behind them a list of imperfections in political prescience, a want of provision for the exigencies of their country, such as has seldom been known in the history of mankind.

A system of negro servitude existed in some of the States. It was an object of no solicitude in the Convention. The only references in the Constitution to it are to be found in a provision in relation to the rendition of fugitives "held to service or labor," and in a mixed and empirical rule of popular representation. However these provisions may imply the true

status of slavery, how much is it to be regretted that the Convention did not make (what might have been made so easily) an explicit declaration on the subject, that would have put it beyond the possibility of dispute, and removed it from even the plausibilities of party controversy!

For many years the very obvious question of the power of the General Government to make "internal improvements" has agitated the councils of America; and yet there is no text in the Constitution to regulate the matter which should have stared its authors in the face, but what may be derived, by the most forced and distant construction, from the powers of Congress "to regulate commerce," and to "declare war," and "raise and support armies."

For a longer period, and with a fierceness once almost fatal to the Union, has figured in the politics of America, "the tariff question," a contest between a party for revenue and a party for protective prohibitions. Both parties have fought over that vague platitude of the Constitution, the power of Congress "to regulate commerce"; and in the want of a more distinct language on a subject of such vast concern, there has been engendered a controversy which has progressed from the threshold of the history of the Union up to the period of its dissolution.

With the territorial possessions of America, even at the date of the Convention, and with all that the future promised in the expansion of a system that yet scarcely occupied more than the water-slopes of a continent, it might be supposed that the men who formed the Constitution would have prepared a full and explicit article for the government of the territories. That vast and intricate subject — the power of the General Government over the territories, the true nature of these establishments, the status and political privileges of their inhabitants — is absolutely dismissed with this bald provision in the Constitution of the United States: "New States may be admitted by Congress into this Union" — Art. IV, Sec. 3.

But however flagrant these omissions of the Constitution, and however through them sprung up much that was serious and deplorable in party controversy, we must lose neither sight nor appreciation of the one conspicuous and characteristic virtue of this instrument. That was the combination of State rights with an authority which should administer the common concerns of the States. This principle was involved in the construction of the Senate. It was again more fully and perfectly developed in the amendments of the Constitution; these amendments having a peculiarity and significance as parts of the instrument, since they were, in a certain sense, conditions precedent made by the States to their ratification of it. They provide: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

It may be said, that whereas the element of the States was recognized in the construction of the Senate, that element was precisely adjusted and admeasured in the amendments which we have just quoted. In the debates in the legislatures of the different States on the ratification of the Constitution, it was never doubted that their original existence was already recognized in it; not only in the text of the instrument, but in the composition *by States* of the

Convention that framed it, and in the ratification *by States* which was necessary to promulgate it, and give it force and existence. The design of the amendments referred to, was simply to adjust in the more precise language a vital and important element in the new system, and to declare formally what sense the States had of it, and with what understanding they approved it.

But even if these official texts are — as a party in America has long contended — insufficient to establish the political element of the States, and to measure it as the depository of sovereignty by the rule of reserved rights, we are left a rule of construction as to the true nature of the American Union, which is completely out of the reach of any ingenious torture of language, and far above any art of quibble on words. That rule is found in the historical circumstances and exigencies in which the Constitution of the United States was formed. It is decisive. For surely there is no juster measure of a grant of political power than the necessity which originated it, if that necessity be at once intelligible and precise.

Such was the necessity which originated the Constitution of the United States. It was a necessity for purely economical purposes. It could not have been intended as a revolution in the sense of a proclamation of new civil polity; for the civil institutions of the States, as derived from the common law of England, were already perfect and satisfactory, and have remained without material change for nearly a century. The Constitution of the United States was thus not a political revolution. It was a convenience of the States, growing out of their wants of a system by which they might have a common agent and a uniform code on concerns common between themselves. Is it too much to conclude, therefore, that the new Union had no mission apart from the States; that it was the government of the States; that, in short, it could not have been intended to destroy the very bodies which invoked it as a benefactor to each as well as to all?

It is in this sense that the moral grandeur of the American Union is interpreted: in this sense that its great political virtue was contained. There was put before the eye of mankind, not a consolidated nationality; not a simple republic, with an anomalous and indefinable appendage of "States," which were not provinces, or cantons, or territories, and yet subordinate; but a spectacle such as it had never seen — an association of coequal and sovereign States, with a common authority, the subjects of which were yet sufficient enough to give it the effect of an American and national identity: "a republic of republics"; a government which derived its entire life from the good-will, the mutual interests, and the unconstrained devotion of the States which at once originated and composed it.

It may be said that the admission of the sovereignty of the States breaks at once the bond of their association. Yet, this can be said only in a low and narrow sense. The wants and hopes of men operate with the same effect in political bodies as in the social community. Men will scarcely withdraw from a society in which they are alike happy and fortunate. Nor was it to be supposed that any of the American States would be so mad as to withdraw from a Union through which they were to be profited and to ascend, as long as it fulfilled its designs of affording them protection against foreign powers, commercial interchanges, justice and welcome among themselves, the charms and benefits of social intercourse; or that

after these, its essential designs might have, within the exigencies of history or the possibilities of human depravity, ceased to be fulfilled, any State could be held in it without violating quite as well the spirit of republican institutions, and the obligations of public morals, as the written text of a compact.

Such undoubtedly were the designs and the law of the American Union. It was a compact which covered only the interests which it specified; yet quite large enough to stand as an American nationality for all practical purposes. It had no dynastic element; it had no mission separate from the States; it had no independent authority over *individuals*, except within the scope of the powers delegated to it by the States. The States retained the power to control their own soil, their own domestic institutions, and their own morals. In respect to the powers which they *prohibited* to the General Government, they retained, of *necessity*, the right of exclusive judgment. That Government was not a mere league; it did have the power to reach *individuals* within the scope of powers delegated by the States; and as to *these* powers, its own courts — the Federal judiciary — were made the exclusive judge. In this sense — only in this sense — it had the qualities of a government; but a government founded exclusively on the good of the States, resting in their consent, and to which the law of force was as foreign in respect of its maintenance, as it had been in respect of its ordination.

The Union was beautiful in theory. It might have been beautiful in practice. If it did prove in the history of America rather a rough companionship, scarcely ever a national identity in the common concerns intrusted to it, such was not the result of inherent defects, but of that party abuse and usurpation, in which have been wrecked so many of the political fabrics of mankind.

The preceding essay was extracted from Edward A. Pollard, A Southern History of the War *(New York: Charles B. Richardson, Publisher, 1866).*

CHAPTER TWO
Early Tensions Between North and South

The New England States Threaten to Secede

Most modern Americans will automatically associate the subject of secession with the South in the mid-Nineteenth Century, but what is not widely known is that the threat of secession was first heard from angry Federalists when the ratification of the Constitution apparently stalled in Virginia, New York, and Rhode Island. The ink on the parchment of the Constitution was scarcely dry before the radicals in the New England States again sought to rid themselves of their union with the South. For example, the Hartford *Courant* published the following statement in 1796:

> We have reached a critical period in our political existence. The question must soon be decided, whether we shall continue a nation, at the expense even of our union, or sink with the present mass of difficulty into confusion and slavery.
>
> Many advantages were supposed to be secured, and many evils avoided, by an union of the states. I shall not deny that the supposition was well founded. But at that time those advantages and those evils were magnified to a far greater size, than either would be if the question was at this moment to be settled.
>
> The northern states can subsist as a nation, a republic, without any connection with the southern. It cannot be contested, that if the southern states were possessed of the same political ideas, an union would be still more desirable than a separation. But when it becomes a serious question, whether we shall give up our government, or part with the states south of the Potomac, no man north of that river, whose heart is not thoroughly democratic, can hesitate what decision to make.
>
> I shall in the future papers consider some of the great events which will lead to a separation of the United States; show the importance of retaining their present constitution

[as sovereign States], even at the expense of a separation; endeavour to prove the impossibility of an union for any long period in future, both from the moral and political habits of the citizens of the southern states; and finally examine carefully to see whether we have not already approached to the era when they must be divided.[1]

In December of 1803, Colonel Timothy Pickering, who had served as Postmaster-General, Secretary of War, and Secretary of State in the cabinet of George Washington, and as a Senator from the State of Massachusetts, was very vocal in his denunciation of the Louisiana Purchase because of the disruption of the balance of power between the two sections of the country which he and many of his fellow New Englanders imagined would result. Pickering suggested as the remedy the establishment of *"a new confederacy*, exempt from the corrupt and corrupting influence and oppression of the aristocratic democrats of the South" (emphasis in original),[2] and it was his prediction that this separation between North and South would occur within the next generation. A month later, he further elaborated on his proposal with these words:

> The principles of our Revolution point to the remedy — *a separation*. That this can be accomplished, and without spilling one drop of blood, I have little doubt....
>
> I do not believe in the practicability of a long-continued Union. A *Northern Confederacy* would unite congenial characters and present a fairer prospect of public happiness; while the Southern States, having a similarity of habits, might be left to "manage their own affairs in their own way." If a separation were to take place, our mutual wants would render a friendly and commercial intercourse inevitable. The Southern States would require the naval protection of the *Northern Union*, and the products of the former would be important to the navigation and commerce of the latter....
>
> It must begin in Massachusetts. The proposition would be welcomed in Connecticut; and could we doubt of New Hampshire? But New York must be associated; and how is her concurrence to be obtained? She must be made the center of the Confederacy. Vermont and New Jersey would follow of course, and Rhode Island of necessity (emphasis in original).[3]

In the years 1808 and 1809, the hue and cry of separation from the South was again raised in Massachusetts. In response to the embargo against England during the Jefferson Administration, the editors of the Boston *Gazette* declared, "It is better to suffer the *amputa-*

1. Hartford (Connecticut) *Courant*, quoted by Matthew Carey, *The Olive Branch* (Philadelphia, Pennsylvania: M. Carey and Son, 1818), pages 255-256.

2. Timothy Pickering, letter to Higginson, 24 December 1803; quoted by Jefferson Davis, *The Rise and Fall of the Confederate Government* (New York: D. Appleton and Company, 1881), Volume I, page 71.

3. Pickering, letter to Cabot, 29 January 1804; quoted by Davis, *ibid*., page 72.

tion of a Limb, than to lose the whole body. *We must prepare for the operation*. Wherefore then is *New England* asleep? wherefore does she submit to the oppression of *enemies* in the South?" (emphasis in original)[4] Likewise, the Boston *Centinel* advised its readers with the following words: "This perpetual embargo being unconstitutional, every man will perceive that he is not bound to regard it, but may send his produce or merchandise to a foreign market in the same manner as if the government had never undertaken to prohibit it!... *The government of Massachusetts* has also a *duty* to perform. The state is still sovereign and independent" (emphasis in original).[5] These public statements appeared in print under the heading of "Patriotic Proceedings."[6] When the Enforcement Act was passed to strengthen the embargo in 1809, the New England secessionists issued a proclamation which described the Constitution as "a Treaty of Alliance and Confederation" between the States, declaring that "whenever its provisions are violated, or its original principles departed from by a majority of the states or their people, it is no longer an effective instrument... [and] any state is at liberty by the spirit of that contract to withdraw itself from the Union."[7]

The bill for the admission of the State of Louisiana into the Union generated still more noise from Massachusetts in 1811. Complaining that the creation of additional States from the Territory of Orleans would upset the sectional balance, Josiah Quincy boldly declared in the House of Representatives on the fourteenth of January, "If this bill passes, it is my deliberate opinion that it is virtually a dissolution of the Union; that it will free the States from their moral obligation; and as it will be the right of all, so it will be the duty of some, definitely to prepare for a separation — amicably if they can, violently if they must."[8] When George Poindexter from Mississippi objected that it was "radically wrong for any member [of the House] to use arguments going to dissolve the Government, and tumble this body itself to dust and ashes," Quincy responded:

> When I spoke of a separation of the States as resulting from the violation of the Constitution, contemplated in this bill, I spoke of it as of a necessity, deeply to be deprecated; but as resulting from causes so certain and obvious, as to be absolutely inevitable when the effect of the principle is practically experienced....

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4. Boston *Gazette*, quoted by Carey, *Olive Branch*, page 143.

5. Boston *Centinel*, 10 September 1808; quoted by Carey, *ibid*.

6. Carey, *ibid*., page 141.

7. New England resolutions, quoted by James Banner, *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts* (New York: Alfred A. Knopf, Inc., 1970), page 301.

8. Josiah Quincy, speech delivered in the House of Representatives, 14 January 1811; in Thomas Hart Benton (editor), *Abridgement of the Debates of Congress 1789 to 1856* (New York: D. Appleton and Company, 1860), Volume IV, page 327.

> Touching the general nature of the instrument called the Constitution of the United States, there is no obscurity.... There can be no doubt about its nature. It is a political compact....
>
> This is not so much a question concerning the exercise of sovereignty, as it is who shall be sovereign. Whether the proprietors of the good old United States shall manage their own affairs in their own way; or whether they, and their Constitution, and their political rights, shall be trampled under foot by foreigners introduced through a breach of the Constitution. The proportion of the political weight of each sovereign State, constituting this Union, depends upon the number of the States which have a voice under the compact. This number the Constitution permits us to multiply at pleasure, within the limits of the original United States; observing only the expressed limitations in the Constitution. But when in order to increase your power of augmenting this number you pass the old limits, you are guilty of a violation of the Constitution in a fundamental point; and in one, also, which is totally inconsistent with the intent of the contract, and the safety of the States which established the association....
>
> I will add only a few words in relation to the moral and political consequence of usurping this power. I have said, that it would be a virtual dissolution of the Union; and gentlemen express great sensibility at the expression. But the true source of terror is not the declaration I have made, but the deed you propose. Is there a moral principle of public law better settled, or more conformable to the plainest suggestions of reason, than that the violation of a contract by one of the parties may be considered as exempting the other from its obligations? Suppose, in private life, thirteen form a partnership, and ten of them undertake to admit a new partner without the concurrence of the other three, would it not be at their option to abandon the partnership, after so palpable an infringement of their rights? How much more in the political partnership, where the admission of new associates, without previous authority, is so pregnant with obvious dangers and evils?[9]

New England Protests Against War With England

The clamoring of the North for revolution and dissolution of the Union reached a feverish pitch during the second war with England from 1812-1814. Dissatisfied with the war because it interfered with commercial intercourse with Great Britain, the New England States, with Massachusetts at the head, repeatedly threatened to separate from the South by violent revolution. On 2 June 1812, a resolution of the Massachusetts House of Representatives was presented to Congress which referred to the war as "in the highest degree impolitic, unnecessary, and ruinous" to the "trade and navigation, which are indispensable to the

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9. Quincy, in Benton, *ibid*., pages 327, 328, 331, 332. Quincy's arguments were soundly rebutted the following day by Robert Wright of Maryland, when he pointed out that Vermont, which had not been within the limits of the original States, was admitted without complaint to the Union in 1791 and that the framers of the Constitution even looked forward to a day when the provinces of Canada might be admitted (Benton, *ibid*., pages 334-335).

prosperity and comfort of the people of this Commonwealth."[10] On 14 February 1814, a committee of the Massachusetts legislature issued a report denouncing the war as "so fertile in calamities and so threatening in consequences, and carried on in the worst possible manner: forming a union of wickedness and weakness which defies, for a parallel, the annals of the world." It was feared that it was being conducted for the end "of destroying even the forms of liberty," and for the purpose of installing a President for life. The report continued:

> We tremble for the liberties of our country. We think it the duty of the present generation to stand between the next and despotism. The power to regulate commerce is abused when employed to destroy it, and a voluntary abuse of power sanctions the right of resistance as much as a direct and palpable usurpation. The sovereignty of the States was reserved to protect the citizens from acts of violence by the United States, as well as for purposes of domestic regulation. We spurn the idea that the free, sovereign, and independent State of Massachusetts is reduced to a mere municipal corporation, without power to protect its people or to defend them from oppression, from whatever quarter it comes. Whenever the national compact is violated, and the citizens of this State oppressed by cruel and unauthorised enactments, this Legislature is bound to interpose its power, and to wrest from the oppressor his victim. This is the spirit of our Union, and thus has it been explained by the very man who now sets at defiance all the principles of his early political life. The question, then, is not a question of power or right, but of time and expediency.[11]

This same committee then called for a convention of the New England States to discuss the formation of the Northern Confederacy dreamed of by Timothy Pickering. The result was the Hartford Convention, which met on 15 December 1814 to make plans for the secession of the New England States upon the stated principle that "in cases of deliberate, dangerous, and palpable infractions of the Constitution, affecting the sovereignty of a State and the liberties of the people, it is not only the *right*, but the *duty* also, of each State to interpose its authority for protection in the manner best calculated to secure that end" (emphasis in original). In determining whether such infractions of the Constitution had occurred, "States which have no common umpire must be their own judges, and execute their own decisions." It was further declared:

> If the Union be destined to dissolution by reason of the multiplied abuses of bad administration, it should, if possible, be the work of peaceable times and deliberate consent. Some new form of confederacy should be substituted among those States which shall intend to maintain a federal relation to each other. Events may prove that the causes of our calamities are deep and permanent. They may be found to proceed, not merely from the

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10. Resolution of the Massachusetts House of Representatives, 2 June 1812; in Benton, *ibid*., page 415.

11. Report of the committee of the Massachusetts Legislature resolution, 14 February 1814; quoted by McHenry, *Cotton Trade*, pages xxxv-xxxvi.

> blindness of prejudice, pride of opinion, violence of party spirit, or the confusion of the times; but they may be traced to implacable combinations of individuals or of States to monopolize power and office, and to trample without remorse upon the rights and interests of commercial sections of the Union. Whenever it shall appear that the causes are radical and permanent, a separation by equitable arrangement will be preferable to an alliance by constraint among nominal friends, but real enemies.[12]

A constitution for this proposed New England confederacy was actually drawn up and was "to go into operation as soon as two or three States shall have adopted it."[13]

These proceedings were not conducted in secret, but were openly reported, and their affirmation of the doctrines of State sovereignty and the right of secession was applauded by the New England press. For example, on 13 January 1813, the editor of the Boston *Centinel* wrote:

> The sentiment is hourly extending, and, in these northern states, will soon be universal, that we are in no better condition with respect to the south, than that of a *conquered people....*
>
> Either the southern states must drag us further into the war — or we must drag them out of it — *or the chain will break....*
>
> We must be no longer deafened by senseless clamours about *a separation of the states....*
>
> Should the present administration, with their adherents in the southern states, still persist in the prosecution of this wicked and ruinous war — in unconstitutionally creating new states *in the mud of Louisiana* (the inhabitants of which country are as ignorant of republicanism as the alligators of their swamps) and in opposition to the commercial rights and privileges of New England, *much as we deprecate a separation of the union, we deem it an evil much less to be dreaded than a co-operation with them in these nefarious projects* (emphasis in original).[14]

On 10 September 1814, the same organ declared:

> What shall we do to be saved? One thing only. *The people must rise in their majesty* — protect themselves — and compel their unworthy servants to obey their will....
>
> *The union is already dissolved practically....*
>
> You ask my opinion on a subject which is much talked of — *a Dissolution of the Union*. On this subject I differ from my fellow-citizens generally, and therefore I ought to

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12. Hartford Convention resolutions, in Henry Adams (editor), *Documents Relating to New-England Federalism* (Boston: Little, Brown and Company, 1877), page 297; McHenry, *Cotton Trade*, page xxxvi.

13. *The Federal Republican* (1814), quoted by Carey, *Olive Branch*, page 425.

14. Boston *Centinel*, 13 January 1813; quoted by Carey, *ibid.*, page 423.

speak and write with diffidence. I have, for many years, *considered the union of the northern and southern states as not essential to the safety, and very much opposed to the interest, of both sections*. The extent of territory is too large to be harmoniously governed by the same representative body.... The commercial and non-commercial states have views and interests so different, that I conceive it to be impossible that they ever can be satisfied with the same laws and the same system of measures. I firmly believe, that each section would be better satisfied to *govern* itself: and each is large and populous enough *for its own protection*, especially as we have no powerful nations in our neighbourhood.... And I believe the public welfare would be better consulted, and more promoted, in a separate than in a federal condition. The mountains form a natural line of division: and moral and commercial habits would unite the western people. In like manner, the moral and commercial habits of the northern and middle states would link them together; as would the like habits of the slave-holding states. Indeed, *the attempt to unite this vast territory under one head has long appeared to me absurd. I believe a peaceable separation would be for the happiness of all sections* (emphasis in original).[15]

Again, on the seventeenth of December:

It is said, that to make a treaty or commerce with the enemy is to violate the Constitution, and to sever the union. *Are they not both already virtually destroyed?* Or in what stage of existence would they be, should we declare a neutrality, or even withhold taxes or men?...

By a *commercial treaty with England*, which shall provide for the admission [into the proposed New England confederacy] of such states as may wish to come into it, and which shall prohibit England from making a treaty with the south and west, which does not grant us at least equal privileges with herself, our commerce will be secured to us; our standing in the nation raised to its proper level; and New England's feelings will no longer be sported with or her interests violated....

If we submit quietly, our destruction is certain. If we oppose them with a high-minded and steady conduct, who will say that *we shall not beat them back?* No one can suppose that a *conflict with a tyranny at home*, would be as easy as with an enemy from abroad. But firmness will anticipate and prevent it. Cowardice dreads it — and will surely bring it on at last. *Why then delay?* Why leave that to chance which firmness should command? Will our wavering frighten government into compliance? (emphasis in original).[16]

In light of New England's reaction to what was perceived as the usurpations of the general Government in the early years of the Nineteenth Century, what wretched hypocrisy it was for these same States to send their troops to invade and devastate the South only a generation later for acting upon the very same principles of State sovereignty and rights

15. Boston *Centinel*, 10 September 1814; quoted by Carey, *ibid.*, pages 423-424.

16. Boston *Centinel*, 15 December 1814; quoted by Carey, *ibid.*, page 422.

which they so tenaciously claimed for themselves. When they felt themselves to be oppressed by the South, the New England States, with Massachusetts in the lead, were eager to assert the right to depart from the Union "amicably if they can, violently if they must." However, when the South would later complain of Northern oppression, and attempt to depart from the Union *in peace*, the North's repeated assertions of State sovereignty were inexplicably and conveniently forgotten.

The Treasonous Activity of the North

It also should be noted that, while Southerners were spilling their blood in defense of their country during the war of 1812, many New Englanders continued to carry on commercial intercourse with English merchant ships which hovered off the Atlantic coast and around the Boston harbor in particular.[17] This behavior was nothing new; New England farmers had done the very same thing during the Revolution by carrying on such a "brisk, lucrative and systematic traffic... with the British lines" that George Washington feared the very cause of American independence would be put in jeopardy.[18] John Lowell described the shameless activities of his fellow Bostonians with these words: "Encouraged and protected from infamy by the just odium against the war, they engage in lawless speculations; sneer at the restraints of conscience; laugh at perjury; mock at legal restraints; and acquire an ill-gotten wealth at the expense of public morals, and of the more sober, conscientious part of the community."[19]

It was openly declared by leading political figures in the Northeastern States that they intended to "withhold [their] money and make a separate peace with England."[20] This proposed treaty would have involved a military union of Old and New England against the Southern States to "humble the pride and ambition of Virginia... and chastise the insolence of those madmen of Kentucky and Tennessee, who aspire to the government of these states, and threaten to involve the country in all the horrors of war."[21] In an open letter to President James Madison entitled "Northern Grievances," the Northern Federalist faction declared that, should negotiations with Great Britain be defeated by those in the seats of Government in Washington, *"the injured States* [of New England] *will be compelled, by every motive of duty, interest and honour... to dash into atoms the bonds of tyranny"* (emphasis in original) by waging war against the South. Arrogant and self-righteous in their hatred of the South,

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17. Edmonds, *Facts and Falsehoods*, page 112.

18. Scott, *Lost Principle*, page 58.

19. John Lowell, quoted by Carey, *Olive Branch*, page 293.

20. Boston *Advertiser* (1814); quoted by Carey, *ibid.*, page 424.

21. New York *Commercial Advertiser* (1814); quoted by Carey, *ibid.*, page 42.

these men went on to write the following:

> While posterity will admire the independent spirit of the Eastern section of our country, and with sentiments of gratitude, enjoy the fruits of their firmness and wisdom, the descendants of the South and the West will have reason to curse the folly of your councils....
>
> *Bold and resolute, when they step forth in the sacred cause of freedom and independence, the northern people will secure their object. No obstacle can impede them. No force can withstand their powerful arm. The most numerous armies will melt before their manly strength.* Does not the page of history instruct you, that the feeble debility of the South never could face the vigorous activity of the North?...
>
> *The aggregate strength of the South and West, if brought against the North, would be driven into the ocean, or back to their own sultry wilds; and they might think themselves fortunate if they escaped other punishment than a defeat, which their temerity would merit....*
>
> You have carried your oppressions to the utmost stretch. *We will no longer submit.* Restore the Constitution to its purity. Give us security for the future, indemnity for the past. Abolish every tyrannical law. Make an immediate and honourable peace. Revive our commerce. Increase our navy. Protect our seamen. *Unless you comply with these just demands, without delay, we will withdraw from the Union, scatter to the winds the bonds of tyranny, and transmit to posterity that Liberty purchased by the Revolution* (emphasis in original).[22]

A few months later, the following implied death threat against Madison appeared in the Boston *Gazette*: "If James Madison is to command the force destined to subjugate the eastern states, we would suggest to his excellency a most salutary caution — it is, that he should provide himself with a horse swifter footed by far, than that which carried him so gallantly from the invaders of Washington. He must be able to escape at a greater rate than forty miles a day, or the swift vengeance of New England will overtake the wretched miscreant in his flight!"[23] Similar threats appeared in the *Federal Republican*, which called for Madison to be "hissed out of office, if not *pelted with stones"* (emphasis in original),[24] and Senator James Lloyd of Boston urged his constituents to *"coerce Mr. Madison and his immediate dependants to retire from office*, and to elect Mr. King or Judge Marshall in his stead" (emphasis in original).[25]

As Matthew Carey observed in *The Olive Branch*:

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22. "Northern Grievances" (an open letter to President James Madison, May 1814), pages 12, 13, 15; quoted by Carey, *ibid*., page 42.

23. Boston *Gazette*, 5 January 1815; quoted by Carey, *ibid*., page 428.

24. *Federal Republican*, quoted by Carey, *ibid*., page 429.

25. James Lloyd, quoted by Carey, *ibid*.

> Massachusetts was energetic, firm, bold, daring, and decisive in the contest with the general government. She would not abate an inch. She dared it to conflict. She seized it by the throat, determined to strangle it! She was untameable as a lion, or a tiger, or a panther, or a leopard. But she was long-suffering, and mild, and patient, and harmless, and inoffensive, and gentle, and meek, as a lamb or a turtle-dove, when she came in contact with the enemy.[26]

What better illustration of actual treason — "levying war against the United States and giving aid and comfort to their enemies"[27] — could have been supplied than by the actions of the leading politicians and journalists of the North from 1813 to 1815? In a letter to the Marquis de Lafayette, Thomas Jefferson pointed out, "During that war four of the Eastern States were only attached to the Union, like so many inanimate bodies to living men."[28] A new national flag, consisting of only five stripes, was even designed for the Hartford Convention,[29] and yet, this threatened, and practically accomplished, secession from the Union was answered by the Southern people neither with epithets of "rebel" and "traitor," nor by the Southern-dominated general Government with preparations for military coercion.

Evidence of a British-New England Conspiracy

Coinciding with the aforementioned events, evidence of a conspiracy between agents of the British Government in Canada and certain individuals holding positions of authority in the State government of Massachusetts had been brought to the attention of James Madison in 1810. In his address to Congress on the matter, Madison said:

> I lay before Congress copies of certain documents, which remain in the department of State. They prove that, at a recent period, on the part of the British Government, through its public minister here, a secret agent of that government was employed, in certain States, more especially at the seat of government in Massachusetts, in fomenting disaffection to the constituted authorities of the country; and intrigued with the disaffected, for the purpose of bringing about resistance to the laws, and eventually, in concert with a British force, of destroying the Union, and forming the eastern part thereof into a political con-

26. Carey, *ibid.*, pages 302-303.

27. U.S. Constitution, Article III, Section 3, Clause 1.

28. Thomas Jefferson, letter to Lafayette, quoted by James Spence, *The American Union* (London: Richard Bentley and Son, 1862), page 208.

29. Spence, *ibid.*, page 209.

nexion with Great Britain.[30]

Among the documents laid before Congress was the intercepted letter of Sir James H. Craig, Governor-General of the British provinces in Canada to an English spy named John Henry. In this letter, the Governor instructed Henry to travel to Boston "with your earliest convenience" and there "to obtain the most accurate information of the true state of affairs in that part of the union, which, from its wealth, the number of its inhabitants, and the known intelligence and ability of several of its leading men, must naturally possess a very considerable influence over, and will indeed probably lead, the other eastern states of America in the part they may take at this important crisis." The remainder of Craig's instructions reveal that the "considerable influence" that Boston would have over the other States of New England was toward their withdrawal from the Union:

> The federalists, as I understand, have at all times discovered a leaning to this disposition; and their being under its particular influence at this moment, is the more to be expected, from their having no ill-founded ground for their hopes of being nearer the attainment of their object than they have been for some years past....
>
> It has been supposed that if the federalists of the eastern states should be successful in obtaining that decided influence, which may enable them to direct the public opinion, it is not improbable, that rather than submit to a continuance of the difficulties and distress to which they are now subject, they will exert that influence to bring about a separation from the general union. The earliest information on this subject may be of great consequence to our government; as it may also be, that it should be informed how far, in such an event, they would look to England for assistance, or be disposed to enter into a connection with us.
>
> Although it would be highly inexpedient that you should in any manner appear as an avowed agent; yet if you could contrive to obtain an intimacy with any of the leading party, it may not be improper that you should insinuate, though with great caution, that if they should wish to enter into any communication with our government through me, you are authorized to receive any such, and will safely transmit it to me....[31]

In one of Henry's dispatches to Craig, he wrote, "The truth is, the common people [of New England] have so long regarded the Constitution of the United States with complacency, that they are now only disposed in this quarter to treat it like a truant mistress, whom they would for a time put away on a separate maintenance, but, without farther and greater

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30. Madison, quoted by R.G. Horton, *A Youth's History of the Great Civil War of the United States From 1861 to 1865* (New York: Van Evrie, Horton and Company, 1868), page 37.

31. Sir James H. Craig, letter to John Henry , 6 February 1809; quoted by Carey, *Olive Branch*, page 145.

provocation, would not necessarily repudiate."[32] In another dispatch, he suggested that the best way to "bring about a separation of the states, under distinct and independent governments" was through "a series of acts and long continued policy, tending to irritate the southern, and conciliate the northern people...." He went on:

> This, I am aware, is an object of much interest in Great Britain; as it would forever secure the integrity of his majesty's possessions on the continent, and make the two governments, or whatever number the present confederacy might form into, as useful and as much subject to the influence of Great Britain, as her colonies can be rendered. But it is an object only to be attained by slow and circumspect progression; and requires for its consummation more attention to the affairs which agitate and excite parties in this country, than Great Britain has yet bestowed upon it. An unpopular war; that is, a war produced by the hatred and prejudices of one party, but against the consent of the other party, can alone produce a sudden separation of any section of this country from the common head.[33]

Again, he wrote, "It should, therefore, be the peculiar care of Great Britain to foster divisions between the north and south; and by succeeding in this, she may carry into effect her own projects in Europe, with a total disregard of the resentment of the democrats of this country."[34] Finally, two years later, in a letter addressed to the Earl of Liverpool, Henry described his mission as follows:

> Soon after the affair of the Chesapeake frigate, when his majesty's governor general of British America had reason to believe that the two countries would be involved in a war, and had submitted to his majesty's ministers the arrangements of the English party in the United States for an efficient resistance to the general government, which would probably terminate in a separation of the northern states from the general confederacy, he applied to the undersigned, to undertake a mission to Boston, where the whole concerns of the opposition were managed. The object of the mission was to promote and encourage the federal party to resist the measures of the general government; to offer assurances of aid and support from his majesty's government of Canada; and to open communication between the leading men engaged in that opposition and the governor general, upon such a footing as circumstances might suggest; and finally to render the plans then in contemplation subservient to the views of his majesty's government.[35]

It should be noted that six weeks after General Cornwallis had surrendered to George Washington at Yorktown, Virginia, King George III stated in an address to the Parliament

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32. Henry, letter to Craig, 7 March 1809; quoted by Carey, *ibid*., page 149.

33. Henry, letter to Craig, 13 March 1809; quoted by Carey, *ibid*., page 150.

34. Henry, letter to Craig, 20 March 1809; quoted by Carey, *ibid*., page 151.

35. Henry, memorial to the Earl of Liverpool, 13 June 1811; quoted by Carey, *ibid*., page 155.

that "he should not answer the trust committed to the sovereign of a free people, if he consented to sacrifice either to his own desire of peace, or to their temporary ease and relief, those essential rights and permanent interests, upon the maintenance and preservation of which the future strength and security of the country must forever depend."[36] In other words, the King was not about to acquiesce to the Americans' demand for independence. Oddly enough, only two weeks later, it was resolved in the House of Commons that "all further attempts to reduce the Americans to obedience *by force* would be ineffectual, and injurious to the true interests of Great Britain.... [H]is Majesty's ministers ought immediately to take every possible measure for concluding peace with our American colonies" (emphasis added).[37] Were these statements contradictory, as they seem to be on the surface, or did they reveal a mere change of policy on the part of Great Britain — an abandonment of *flagrant* war in favor of *non-flagrant* war against the Americans? Were the Tories, who later took the name of Federalists, and finally resurfaced in 1854 as the Republican party, the instruments through which the English Crown sought to destroy the independence of the American States, dissolve their political union, and force them back into subservience to British rule? The historical data seems to support this hypothesis. The reader should carefully review the above Henry letter of 13 March 1809, in which the American States are referred to as "his majesty's possessions" and the "colonies" of Great Britain twenty-six years after George III signed the Treaty of Paris, acknowledging the sovereignty and independence of these self-same States.

In his book, *Facts and Falsehoods Concerning the War on the South*, George Edmonds wrote:

> The Northeastern States early sought to create prejudice and disunion sentiment, not on account of any existing fact, but to array section against section, to stimulate hate and discord for the purpose of accelerating their darling object, the dissolution of the Union and the formation of a Northeastern Confederacy. Press, politicians and preachers were continually harping on causes which made disunion desirable. The motives which actuated New England disunionists was the desire to have what Hamilton called a strong government, understood to mean an autocracy similar to that of England, a large standing army, a heavy public debt, owned by the favored few, to whom the common masses should pay tribute, under the guise of interest. The main public offices were to be held by the rich and noble for long periods, or for life. It was argued that a national debt would be a national blessing, and a prohibitive tariff, under the guise of protection, would be a blessing. These were the motives which led the early Federalists to want disunion.[38]

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36. George III, address to Parliament on 27 November 1781; quoted by David Ramsay, *The History of the American Revolution* (Trenton, New Jersey: James J. Wilson, 1811), Volume II, page 617.

37. Resolution in the House of Commons of 12 December 1781; quoted by Ramsay, *ibid*., page 619.

38. Edmonds, *Facts and Falsehoods*, page 99.

The events and actions of the leading politicians of the Northeast from the ratification of the Constitution on through the second war with England should be carefully studied, for they reveal the true cause of the later war between the States which has, for over a century and a half, been obscured under layers of "politically correct" propaganda. As we will see, anti-slavery was merely the issue seized upon by a Northern faction already bent upon the dissolution of the Union and war against the South — a party which favored not only a monarchical form of government patterned after the Government of Great Britain, but even a re-establishment of political ties with the mother country.

SUPPORTING DOCUMENT

Josiah Quincy's Speech in Opposition to the Bill for the Admission of Louisiana to the Union

Congressional Globe — 14 January 1811

Mr. Speaker, I address you, sir, with an anxiety and distress of mind with me wholly unprecedented. The friends of this bill seem to consider it as the exercise of a common power; as an ordinary affair; a mere municipal regulation which they expect to see pass without other questions than those concerning details. But, sir, the principle of this bill materially affects the liberties and rights of the whole people of the United States. To me, it appears that it would justify a revolution in this country; and that, in no great length of time, may produce it. When I see the zeal and perseverance with which this bill has been urged along its Parliamentary path, when I know the local interests and associated projects, which combine to promote its success, all opposition to it seems manifestly unavailing. I am almost tempted to leave, without a struggle, my country to its fate. But, sir, while there is life, there is hope. So long as the fatal shaft has not yet sped, if Heaven so will it, the bow may be broken, and the vigor of the mischief-mediating arm withered. If there be a man in this house, or nation, who cherishes the Constitution under which we are assembled, as the chief stay of his hope, as the light which is destined to gladden his own day, and to soften even the gloom of the grave, by the prospect it sheds over his children, I fall not behind him in such sentiments. I will yield to no man in attachment to this Constitution, in veneration for the sages who laid its foundations, in devotion to these principles which form its cement and constitute its proportions. What, then, must be my feelings; what ought to be the feelings of a man cherishing such sentiments, when he sees an act contemplated which lays ruin at the root of all these hopes? When he sees a principle of action about to be usurped, before the

operation of which the bands of this Constitution are no more than flax before the fire, or stubble before the whirlwind? When this bill passes, such an act is done, and such a principle usurped.

Mr. Speaker, there is a great rule of human conduct, which he who honestly observes cannot err widely from the path of his sought duty. It is, to be very scrupulous concerning the principles you select as the test of your rights and obligations; to be very faithful in noticing the result of their application; and to be very fearless in tracing and exposing their immediate effects and distant consequences. Under the sanction of this rule of conduct, I am compelled to declare it as my deliberate opinion, that, if this bill passes, the bonds of this Union are virtually dissolved; that the States which compose it are free from their moral obligations, and that, as it will be the right of all, so it will be the duty of some, to prepare definitely for a separation — amicably if they can, violently if they must.

> [Mr. Quincy called to order by George Poindexter of the Mississippi Territory. Quincy reaffirms his statement and has it committed to writing. Confusion ensues. Poindexter demands of the Speaker whether such a statement is consistent with the propriety of debate. Speaker decides in the negative, but is then overruled by House vote. Quincy continues.]

I rejoice, Mr. Speaker, at the result of this appeal. Not from any personal consideration, but from the respect paid to the essential rights of the people, in one of their representatives. When I spoke of a separation of the States as resulting from the violation of the Constitution, contemplated in this bill, I spoke of it as of a necessity, deeply to be deprecated; but as resulting from causes so certain and obvious, as to be absolutely inevitable when the effect of the principle is practically experienced. It is to preserve, to guard the Constitution of my country, that I denounce this attempt. I would rouse the attention of gentlemen from the apathy with which they seem beset. These observations are not made in a corner; there is no low intrigue; no secret machinations. I am on the people's own ground — to them I appeal, concerning their own rights, their own liberties, their own intent in adopting this Constitution. The voice I have uttered, at which gentlemen startle with such agitation, is no unfriendly voice. I intended it as a voice of warning. By this people, and by the event, if this bill passes, I am willing to be judged, whether it be not a voice of wisdom.

The bill, which is now proposed to be passed, has this assumed principle for its basis — that the three branches of this National Government, without recurrence to conventions of the people, in the States, or to the Legislatures of the States, are authorized to admit new partners to a share of the political power, in countries out of the original limits of the United States. Now, this assumed principle I maintain to be altogether without any sanction in the Constitution. I declare it to be a manifest and atrocious usurpation of power; of a nature, dissolving, according to undeniable principles of moral law, the obligations of our national compact; and leading to all the awful consequences which flow from such a state of things.

Concerning this assumed principle, which is the basis of this bill, this is the general position on which I rest my argument — that if the authority, now proposed to be exercised,

be delegated to the three branches of the Government, by virtue of the Constitution, it results either from its general nature, or from its particular provisions. I shall consider distinctly both these sources, in relation to this pretended power.

Touching the general nature of the instrument called the Constitution of the United States, there is no obscurity — it has no fabled descent, like the palladium of ancient Troy, from the heavens. Its origin is not confused by the mists of time, or hidden by the darkness of past, unexplored ages; it is the fabric of our day. Some now living, had a share in its construction — all of us stood by, and saw the rising of the edifice. There can be no doubt about its nature. It is a political compact. By whom? And about what? The preamble to the instrument will answer these questions: "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution, for the United States of America."

It is, "we, the people of the United States, for ourselves and our posterity"; not for the people of Louisiana; nor for the people of New Orleans, or of Canada. None of these enter into the scope of the instrument; it embraces only "the United States of America." Who those are, it may seem strange, in this place, to inquire. But truly, sir, our imaginations have, of late, been so accustomed to wander after new settlements to the very end of the earth, that it will not be time ill-spent to inquire what this phrase means, and what it includes. These are not terms adopted at hazard; they have reference to a state of things existing anterior to the Constitution. When the people of the present United States began to contemplate a severance from their parent State, it was a long time before they fixed definitely the name by which they would be designated. In 1774, they called themselves "the Colonies and Provinces of North America." In 1775, "the Representatives of the United Colonies of North America." In the Declaration of Independence, "the Representatives of the United States of America." And finally, in the Articles of Confederation, the style of the confederacy is declared to be "the United States of America." It was with reference to the old Articles of Confederation, and to preserve the identity and established individuality of their character, that the preamble to this Constitution, not content, simply, with declaring that it is "we, the people of the United States," who enter into this compact, adds that it is for "the United States of America." Concerning the territory contemplated by the people of the United States, in these general terms, there can be no dispute; it is settled by the treaty of peace, and included within the Atlantic Ocean, and St. Croix, the lakes, and more precisely, so far as relates to the frontier, having relation to the present argument; within "a line to be drawn through the middle of the river Mississippi, until it intersect the northernmost part of the thirty-first degree of north latitude to the river Apalachicola, thence along the middle of this river to its junction with the Flint River, thence straight to the head of the St. Mary's River, and thence down the St. Mary's to the Atlantic Ocean."

I have been thus particular to draw the minds of gentlemen, distinctly, to the meaning of the terms used in the preamble; to the extent which "the United States" then included; and

to the fact that neither New Orleans nor Louisiana were within the comprehension of the terms of this instrument. It is sufficient for the present branch of my argument to say, that there is nothing in the general nature of this compact from which the power contemplated to be exercised in this bill results. On the contrary, as the introduction of a new associate in political power implies, necessarily, a new division of power, and consequent diminution of the relative proportion of the former proprietors of it; there can, certainly, be nothing more obvious, than that from the general nature of the instrument no power can result to diminish and give away to strangers any proportion of the rights of the original partners. If such a power exists, it must be found, then, in the particular provisions in the Constitution. The question now arising is, in which of these provisions is given the power to admit new States, to be created in territories, beyond the limits of the old United States. If it exists anywhere, it is either in the third section of the fourth article of the Constitution, or in the treaty-making power. If it result from neither of these, it is not pretended to be found anywhere else.

That part of the third section of the fourth article, on which the advocates of this bill rely, is the following: "New States may be admitted, by the Congress, into this Union; but no new States shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the States concerned, as well as of the Congress." I know, Mr. Speaker, that the first clause of this paragraph has been read, with all the superciliousness of a grammarian's triumph. "New States may be admitted, by the Congress, into this Union." Accompanied with this consequential inquiry: "Is not this a new State to be admitted? And is not here an express authority?" I have no doubt this is a full and satisfactory argument to every one, who is content with the mere colors and superficies of things. And if we were now at the bar of some stall-fed justice, the inquiry would insure victory to the maker of it, to the manifest delight of the constables and suitors of his court. But, sir, we are now before the tribunal of the whole American people, the proprietors of the old United States, when they agreed to this article. Dictionaries and spelling-books are, here, of no authority. Neither Johnson, nor Walker, nor Webster nor Dilworth, has any voice in this matter. Sir, the question concerns the proportion of power, reserved by this Constitution, to every State in the Union. Have the three branches of this Government a right, at will, to weaken and outweigh the influence, respectively secured to each State, in this compact, by introducing, at pleasure, new partners, situate beyond the old limits of the United States? The question has no relation merely to New Orleans. The great objection is to the principle of this bill. If this bill be admitted, the whole space of Louisiana, greater, it is said, than the entire extent of the old United States, will be a mighty theatre, in which this Government assumes the right of exercising this unparalleled power. And it will be; there is no concealment, it is intended to be exercised. Nor will it stop, until the very name and nature of the old partners be overwhelmed by new comers into the Confederacy. Sir, the question goes to the very root of the power and influence of the present members of this Union. The real intent of this article is, therefore, an inquiry of most serious import; and is to be settled only by a recurrence to the known history and known relations of this people and their Constitution. These, I maintain, support this

position: that the terms "new States," in this article, do intend new political sovereignties, to be formed within the original limits of the United States; and do not intend new political sovereignties with territorial annexations, to be erected without the original limits of the United States. I undertake to support both branches of this position to the satisfaction of the people of these United States. As to any expectation of conviction on this floor, I know the nature of the ground, and how hopeless any arguments are, which thwart a concerted course of measures.

I recur, in the first place, to the evidence of history. This furnishes the following leading fact: that before, and at the time of the adoption of this Constitution, the creation of new political sovereignties within the limits of the old United States were contemplated. Among the records of the old Congress will be found a resolution, passed as long ago as the 10th day of October, 1780, contemplating the cession of unappropriated lands to the United States, accompanied by a provision that "they shall be disposed of for the common benefit of the United States, and be settled and formed into distinct Republican States, which shall become members of the Federal Union, and have the same rights of sovereignty, freedom, and independence, as the other States." Afterward, on the 7th of July, 1786, the subject of "laying out and forming into States," the country lying northwest of the river Ohio, came under the consideration of the same body; and another resolution was passed recommending to the Legislature of Virginia to revise their act of cession, so as to permit a more eligible division of that portion of territory derived from her; "which States," it proceeds to declare, "shall hereafter become members of the Federal Union, and have the same rights of sovereignty, freedom, and independence, as the original States, in conformity with the resolution of Congress of the 10th of October, 1780." All the Territories to which these resolutions had reference, were undeniably within the ancient limits of the United States.

Here, then, is a leading fact, that the article in the Constitution had a condition of things, notorious at the time when it was adopted, upon which it was to act, and to meet the exigency resulting from which, such an article was requisite. That is to say: new States, within the limits of the United States, were contemplated at the time when the foundations of the Constitution were laid. But we have another authority upon this point, which is, in truth, a contemporaneous exposition of this article of the Constitution. I allude to the resolution, passed on the 3d of July, 1789, in the words following: [reading of resolution]

In this resolution of the old Congress, it is expressly declared, that the Constitution of the United States having been adopted by nine States, an act of the old Congress could have no effect to make Kentucky a separate member of the Union, and that, although they thought it expedient that it should be so admitted, yet that this could only be done under the provisions made in the new Constitution. It is impossible to have a more direct contemporaneous evidence that the case contemplated in this article was that of the Territories within the limits of the United States; yet the gentleman from North Carolina [Mr. Macon], for whose integrity and independence I have very great respect, told us the other day, that "if this article had not territories within the limits of the old United States to act upon, it would be wholly without meaning. Because the ordinance of the old Congress had secured the right to the

States within the old United States, and a provision for that object, in the new Constitution, was wholly unnecessary." Now, I will appeal to the gentleman's own candor, if the very reverse of the conclusion he draws is not the true one, after he has considered the following fact: That, by this ordinance of the old Congress, it was declared, that the boundaries of the contemplated States, and the terms of their admission, should be, in certain particulars, specified in the ordinance, subject to the control of Congress. Now, as by the new Constitution the old Congress was about to be annihilated, it was absolutely necessary for the very fulfillment of this ordinance, that the new Constitution should have this power for the admission of new States within the ancient limits, so that the ordinance of the old Congress, far from showing the inutility of such a provision for the Territories within the ancient limits, expressly proves the reverse, and is an evidence of its necessity to effect the object of the ordinance itself.

I think there can be no more satisfactory evidence adduced or required of the first part of the position, that the terms "new States" did intend new political sovereignties within the limits of the old United States. For it is here shown, that the creation of such States, within the territorial limits fixed by the treaty of 1783, had been contemplated; that the old Congress itself expressly asserts that the new Constitution gave the power for that object; that the nature of the old ordinance required such a power, for the purpose of carrying its provisions into effect, and that it has been from the time of adoption of the Federal Constitution, unto this hour, applied exclusively to the admission of States, within the limits of the old United States, and was never attempted to be extended to any other object.

Now, having shown a purpose, at the time of the adoption of the Constitution of the United States, sufficient to occupy the whole scope of the terms of the article, ought not the evidence be very strong to satisfy the mind, that the terms really intended something else, besides this obvious purpose; that it may be fairly extended to the entire circle of the globe, wherever title can be obtained by purchase, or conquest, and the new partners in the political power may be admitted at the mere discretion of this Legislature, any where that it wills. A principle thus monstrous is asserted in this bill.

But I think it may be made satisfactorily to appear not only that the terms "new States" in this article did man political sovereignties to be formed within the original limits of the United States, as has just been shown, but, also, negatively, that it did not intend new political sovereignties, with territorial annexations, to be created without these original limits. This appears first from the very tenor of the article. All its limitations have respect to the creation of States within the original limits. Two States shall not be joined; no new State shall be erected within the jurisdiction of any other State, without the consent of the Legislatures of the States concerned as well as of Congress. Now, had foreign territories been contemplated, had the new habits, customs, manners, and language of other nations been in the idea of the framers of this Constitution, would not some limitation have been devised, to guard against the abuse of a power, in its nature so enormous, and so obviously, when it occurred, calculated to excite just jealousy among the States, whose relative weight would be so essentially affected, by such an infusion at once of a mass of foreigners into their

Councils, and into all the rights of the country? The want of all limitation of such power would be a strong evidence, were others wanting, that the powers, now about to be exercised, never entered into the imagination of those thoughtful and prescient men, who constructed the fabric. But there is another most powerful argument against the extension of this article to embrace the right to create States without the original limits of the United States, deducible from the utter silence of all debates at the period of the adoption of the Federal Constitution, touching the power here proposed to be usurped. If ever there was a time in which the ingenuity of the greatest men of an age was taxed to find arguments in favor of and against any political measure, it was at the time of the adoption of this Constitution. All the faculties of the human mind were, on the one side and the other, put upon their utmost stretch, to find the real and imaginary blessings or evils, likely to result from the proposed measure. Now I call upon the advocates of this bill to point out, in all the debates of that period in any one publication, in any one newspaper of those times, a single intimation, by friend or foe to the Constitution, approving or censuring it for containing the power here proposed to be usurped, or a single suggestion that it might be extended to such an object as is now proposed. I do not say that no such suggestion was ever made. But this I will say that I do not believe there is such a one any where to be found. Certain I am, I have never been able to meet the shadow of such a suggestion, and I have made no inconsiderable research upon the point. Such may exist — but until it be produced, we have a right to reason as though it had no existence. No, sir. The people of this country at that day had no idea of the territorial avidity of their successors. It was, on the contrary, an argument, urged against the success of the project, that the territory was too extensive for a republican form of government. But, now there is no limit to our ambitious hopes. We are about to cross the Mississippi. The Missouri and Red River are but roads, on which our imagination travels to new lands and new States to be raised and admitted (under the power, now first usurped) into this Union, among undiscovered lands in the west. But it has been suggested that the Convention had Canada in view, in this article, and the gentleman from North Carolina told this House, that a member of the Convention, as I understood him, either now, or lately a member of the Senate, informed him that the article had that reference. Sir, I have no doubt the gentleman from North Carolina has had a communication such as he intimates. But, for myself, I have no sort of faith in these convenient recollections, suited to serve a turn, to furnish an apology for a party, or give color to a project. I do not deny, on the contrary I believe it very probable, that among the coursings of some discursive and craving fancy, such thoughts might be started; but that is not the question. Was this an avowed object in the Convention when it formed this article? Did it enter into the conception of the people when its principles were discussed? Sir, it did not, it could not. The very intention would have been a disgrace both to this people and the Convention. What, sir! Shall it be intimated; shall it for a moment be admitted, that the noblest and purest band of patriots this or any other country ever could boast, were engaged in machinating means for the dismemberment of the territories of a power to which they had pledged friendship, and the observance of all the obligations which grow out of a strict and perfect amity? The honor of our country forbids and disdains such a suggestion.

But there is an argument stronger, even, than all those which have been produced, to be drawn from the nature of the power here proposed to be exercised. Is it possible that such a power, if it had been intended to be given by the people, should be left dependent upon the effect of general expressions; and such too, as were obviously applicable to another subject; to a particular exigency contemplated at the time? Sir, what is this power we propose now to usurp? Nothing less than a power, changing all the proportion of the weight and influence possessed by the potent sovereignties composing this Union. A stranger is to be introduced to an equal share, without their consent. Upon a principle, pretended to be deduced from the Constitution — this Government, after this bill passes, may and will multiply foreign partners in power, at its own mere motion; at its irresponsible pleasure; in other words, as local interests, party passions, or ambitious views may suggest. It is a power that, from its nature, never could be delegated; never was delegated; and as it breaks down all the proportions of power guarantied by the Constitution to the States, upon which their essential security depends, utterly annihilates the moral force of this political contract. Would this people, so wisely vigilant concerning their rights, have transferred to Congress a power to balance, at its will, the political weight of any one State, much more of all the States, by authorizing it to create new States at its pleasure, in foreign countries, not pretended to be within the scope of the Constitution or the conception of the people, at the time of passing it?

This is not so much a question concerning the exercise of sovereignty, as it is who shall be sovereign. Whether the proprietors of the good old United States shall manage their own affairs in their own way; or whether they, and their Constitution, and their political rights, shall be trampled under foot by foreigners introduced through a breach of the Constitution. The proportion of the political weight of each sovereign State, constituting this Union, depends upon the number of States which have a voice under the compact. This number the Constitution permits us to multiply at pleasure, within the limits of the original United States; observing only the expressed limitations in the Constitution. But when in order to increase your power of augmenting this number you pass the old limits, you are guilty of a violation of the Constitution in a fundamental point; and in one, also, which is totally inconsistent with the intent of the contract, and the safety of the States which established the association. What is the practical difference to the old partners, whether they hold their liberties at the will of a master, or whether, by admitting exterior States on an equal footing with the original States, arbiters are constituted, who by availing themselves of the contrariety of interests and views which in such a confederacy necessarily will arise, hold the balance among the parties which exist and govern us, by throwing themselves into the scale most conformable to their purposes? In both cases there is an effective despotism. But the last is the more galling, as we carry the chain in the name and gait of freemen.

I have thus shown, and whether fairly, I am willing to be judged by the sound discretion of the American people, that the power, proposed to be usurped, in this bill, results neither from the general nature, nor the particular provisions, of the Federal Constitution; and that it is a palpable violation of it in a fundamental point; whence flow all the consequences I have intimated.

The present President of the United States, when a member of the Virginia Convention for adopting the Constitution, expressly declares that the treaty-making power has limitations; and he states this as one, "that it cannot alienate any essential right." Now, is not here an essential right to be alienated? The right to that proportion of political power which the Constitution has secured to every State, modified only by such internal increase of States as the existing limits of the Territories at the time of the adoption of the Constitution permitted. The debates of that period chiefly turned upon the competency of this power to bargain away any of the old States. It was agreed, at that time, that by this power old States within the ancient limits could not be sold from us. And I maintain that, by it, new States without the ancient limits cannot be saddled upon us. It was agreed, at that time, that the treaty-making power "could not cut off a limb." And I maintain, that neither has it the competency to clap a hump upon our shoulders. The fair proportion devised by the Constitution are in both cases marred, and the fate and felicity of the political being, in material particulars, related to the essence of his constitution, affected. It was never pretended, by the most enthusiastic advocates for the extent of the treaty-making power, that it exceeded that of the King of Great Britain. Yet, I ask, suppose that monarch should make a treaty, stipulating that Hanover or Hindostan should have a right of representation on the floor of Parliament, would such a treaty be binding? No, sir; not, as I believe, if a House of Commons and of Lords could be found venal enough to agree to it. But although in that country the three branches of its legislature are called omnipotent, and the people might not deem themselves justified in resistance, yet here there is no apology of this kind; the limits of our power are distinctly marked; and when the three branches of this Government usurp upon this Constitution in particulars vital to the liberties of this people, the deed is at their peril.

I have done with the constitutional argument. Whether I have been able to convince any member of this House, I am ignorant — I had almost said indifferent. But this I will not say, because I am, indeed, deeply anxious to prevent the passage of this bill. Of this I am certain, however, that when the dissension of this day is passed away, when party spirit shall no longer prevent the people of the United States from looking at the principle assumed in it, independent of gross and deceptive attachments and antipathies, that the ground here defended will be acknowledged as a high constitutional bulwark, and that the principles here advanced will be appreciated.

I will add one more word, touching this situation of New Orleans. The provision of the treaty of 1808, which stipulates that it shall be "admitted as soon as possible," does not therefore imply a violation of the Constitution. There are ways in which this may constitutionally be effected — by an amendment of the Constitution, or by reference to conventions of the people in the States. And I do suppose, that, in relation to the objects of the present bill (with the people of New Orleans), no great difficulty would arise. Considered as an important accommodation to the Western States, there would be no violent objection to the measure. But this would not answer all the projects to which the principle of this bill, when once admitted, leads, and is intended to be applied. The whole extent of Louisiana is to be cut up into independent States, to counterbalance and to paralyze whatever there is of

influence in other quarters of the Union. Such a power, I am well aware that the people of the States would never grant you. And therefore, if you get it, the only way is by the mode adopted in this bill — by usurpation.

The objection here urged is not a new one. I refer with great delicacy to the course pursued by any member of the other branch of the Legislature; yet I have it from such authority that I have an entire belief of the fact, that our present Minister in Russia, then a member of that body, when the Louisiana treaty was under the consideration of the Senate, although he was in favor of the treaty, yet expressed great doubts on the ground of constitutionality, in relation to our control over the destinies of that people, and the manner and the principles on which they could be admitted into the Union. And it does appear that he made two several motions in that body, having for their object, as avowed, and as gathered from their nature, an alteration in the Constitution, to enable us to comply with the stipulations of that convention.

I will add only a few words in relation to the moral and political consequences of usurping this power. I have said, that it would be a virtual dissolution of the Union; and gentlemen express great sensibility at the expression. But the true source of terror is not the declaration I have made, but the deed you propose. Is there a moral principle of public law better settled, or more conformable to the plainest suggestions of reason, than that the violation of a contract by one of the parties may be considered as exempting the other from its obligations? Suppose, in private life, thirteen form a partnership, and ten of them undertake to admit a new partner without the concurrence of the other three, would it not be their option to abandon the partnership, after so palpable an infringement of their rights? How much more, in the political partnership, where the admission of new associates, without previous authority, is so pregnant with obvious dangers and evils! Again: it is settled as a principle of morality, among writers on public law, that no person can be obliged, beyond his intent at the time of the contract. Now, who believes, who dare assert, that it was the intention of the people, when they adopted this Constitution, to assign, eventually, to New Orleans and Louisiana, a portion of their political power, and to invest all the people those extensive regions might hereafter contain with an authority over themselves and their descendants? When you throw the weight of Louisiana into the scale, you destroy the political equipoise contemplated at the time of forming the contract. Can any man venture to affirm that the people did intend such a comprehension as you now, by construction, give it; or can it be concealed that, beyond its fair and acknowledged intent, such a compact has no moral force? If gentlemen are so alarmed at the bare mention of the consequences, let them abandon a measure which sooner or later will produce them. How long before the seeds of discontent will ripen, no man can foretell; but it is the part of wisdom not to multiply or scatter them. Do you suppose the people of the Northern and Atlantic States will, or ought to, look on with patience and see Representatives and Senators from the Red River and Missouri pouring themselves upon this and the other floor, managing the concerns of a seaboard fifteen hundred miles at least from their residence, and having a preponderance in councils, into which, constitutionally, they could never have been admitted? I have no hesitation upon this point.

They neither will see it, nor ought to see it, with content. It is the part of a wise man to foresee danger, and to hide himself. This great usurpation, which creeps into this House under the plausible appearance of giving consent to that important point, New Orleans, starts up a gigantic power to control the nation. Upon the actual condition of things, there is, there can be, no need of concealment. It is apparent to the blindest vision. By the course of nature, and conformable to the acknowledged principles of the Constitution, the sceptre of power in this country is passing towards the North-west. Sir, there is to this no objection. The right belongs to that quarter of the country; enjoy it; it is yours. Use the powers granted as you please; but take care, in your haste after effectual dominion, not to overload the scales by heaping it with these new acquisitions. Grasp not too eagerly at your purpose. In your speed after uncontrolled sway, trample not down this Constitution. Already the old States sink in the estimation of members, when brought into comparison with these new countries. We have been told that "New Orleans was the most important point in the Union." A place out of the Union the most important place within it! We have been asked, "What are some small States when compared with the Mississippi Territory?" The gentleman from that Territory (Mr. Poindexter) spoke the other day of the Mississippi as "of a high road between —" Good heavens, between what, Mr. Speaker? Why, "the Eastern and Western States." So that all the North-western Territories, all the countries once the extreme western boundary of our Union, are hereafter to be denominated Eastern States.

> [Mr. Poindexter denied having said that the Mississippi was to be the boundary between the Eastern and Western States, but that the suggestion had been made that, in erecting new States, it might be a good highroad between the States situated on its waters]

I make no great point of this matter. The gentleman will find, in the *National Intelligencer*, the terms to which I refer. There will be seen, I presume, what he has said, and what he has not said. The argument is not affected by the explanation. New States are intended to be formed beyond the Mississippi. There is no limit to men's imaginations, on this subject, short of California and Columbia River. When I said that the bill would justify a revolution, and would produce it, I spoke of its principle and its practical consequences. To this principle and those consequences, I would call the attention of this House and nation. If it be about to introduce a condition of things absolutely insupportable, it becomes wise and honest men to anticipate the evil, and to warn and prepare the people against the event. I have no hesitation on the subject. The extension of this principle to the States, contemplated beyond the Mississippi, cannot, will not, and ought not to be borne. And the sooner the people contemplate the unavoidable result, the better; the more likely that convulsions may be prevented; the more hope that the evils may be palliated or removed.

Mr. Speaker, what is this liberty of which so much is said? Is it to walk about this earth, to breathe this air, and to partake the common blessings of God's providence? The beasts of the field and the birds of the air unite with us in such privileges as these. But man boasts a purer and more ethereal temperature. His mind grasps in its view the past and the

future, as well as the present. We live not for ourselves alone. That which we call liberty, is that principle on which the essential security of our political condition depends. It results from the limitations of our political system, prescribed in the Constitution. These limitations, so long as they are faithfully observed, maintain order, peace, and safety. When they are violated in essential particulars, all the concurrent spheres of authority rush against each other, and disorder, derangement, and convulsion are, sooner or later, the necessary consequences.

With respect to this love of our Union, concerning which so much sensibility is expressed, I have no fear about analyzing its nature. There is in it nothing of mystery. It depends upon the qualities of that Union, and it results from its effects upon our and our country's happiness. It is valued for "that sober certainty of waking bliss" which it enables us to realize. It grows out of the affections, and has not, and cannot be made to have, any thing universal in its nature. Sir, I confess it, the first public love of my heart is the commonwealth of Massachusetts. There is my fireside; there are the tombs of my ancestors — "Low lies that land, yet blest with fruitful stores, strong are her sons, though rocky are her shores; and none, ah! none, so lovely to my sight, of all the lands which heaven o'erspreads with light."

The love of this Union grows out of this attachment to my native soil, and is rooted in it. I cherish it, because if affords the best external hope of her peace, her prosperity, her independence. I oppose this bill from no animosity to the people of New Orleans, but from the deep conviction that it contains a principle incompatible with the liberties and safety of my country. I have no concealment of my opinion. The bill, if it passes, is a death-blow to the Constitution. It may, afterwards, linger; but lingering, its fate will, at no very distant period, be consummated.

SUPPLEMENTARY ESSAY

The Turbulence of Boston and Its Effect on New England

by Matthew Carey

Boston, the metropolis of Massachusetts, has been for a long period, and more particularly since the close of the reign of federalism, the seat of discontent, complaint, and turbulence. She has been herself restless and uneasy — and has spread restlessness and uneasiness throughout the union. She has thwarted, harassed, and embarrassed the general government, incomparably more than all the other states together.

Whatever difficulty or distress arose from the extraordinary circumstances of the times — and great difficulty and distress were inevitable — was aggravated and magnified to the highest degree, for the purpose of inflaming the public passions. The leaders in this business were clamorous when we were at peace in 1793, and in 1806, for war against England, on account of her depredations on their commerce, and in 1807, on account of the attack on the *Chesapeake*. They were equally clamorous, as we have seen, in 1803, for war against Spain, on account of the interruption of the right of deposit at New Orleans, and denounced, in the most virulent style, the imbecility and cowardice of the government. Yet from the moment when war was declared, they clamoured for peace, and reprobated the war as wicked, unjust, and unnecessary, although the causes of the war were incomparably greater in 1812, than in 1793, or 1806, or 1807. They made every possible effort to raise obstructions and difficulties in the prosecution of the war; and *yet reprobated the administration for their imbecility in carrying it on.* They reduced the government to bankruptcy, as I trust I shall prove; and *reproached it for its necessities and embarrassments*. In a word, all their movements have had but one object, to enfeeble and distract the government for the purpose of regaining their lost authority. This object has been too successfully attained.

With a population of only 33,000 inhabitants, and a commerce quite insignificant compared with that of New York, Philadelphia, Baltimore, or Charleston, Boston has, by management and address, acquired a degree of influence beyond all proportion greater than

her due share — greater in fact than the above four cities combined — a degree of influence which has been exercised in such a manner as to become dangerous to public and private property and happiness, and to the peace and permanence of the union. It brought us to the very verge of its dissolution, and nearly to the awful consequence — a civil war.

The movers of this mighty piece of machinery — this lever that puts into convulsive motion the whole of our political fabric, are few in number. But several of them are possessed of inordinate wealth — considerable talents — great energy — and overgrown influence. They afford a signal proof how much a few men may effect by energy and concert, more especially when they are not very scrupulous about the means of accomplishing their ends. A northern confederacy has been the object for a number of years. They have repeatedly advocated in the public prints a separation of the states, on account of a pretended discordance of views and interests of the different sections.

This project of separation was formed shortly after the adoption of the federal Constitution. Whether it was ventured before the public earlier than 1796, I know not. But of its promulgation in that year, there is the most indubitable evidence. A most elaborate set of papers, under the signature of Pelham, was then published in the city of Hartford, in Connecticut, the joint production of an association of men of the first talents and influence in the state. They appeared in the Connecticut *Courant*, published by Hudson and Goodwin, two eminent printers of, I believe, considerable revolutionary standing. There were then none of the long catalogue of grievances, which, since that period, have been fabricated to justify the recent attempts to dissolve the union. General Washington was president; John Adams, an eastern citizen, vice-president. There was no French influence — no Virginia dynasty — no embargo — no non-intercourse — no terrapin policy — no democratic madness — no war. In fine, every feature in the affairs of the country was precisely according to their fondest wishes.

To sow discord, jealousy, and hostility between the different sections of the union, was the first and grand step in their career, in order to accomplish the favourite object of a separation of the states.

In fact, without this efficient instrument, all their efforts would have been utterly unavailing. It would have been impossible, had the honest yeomanry of the eastern states continued to regard their southern fellow citizens as friends and brethren, having one common interest in the promotion of the general welfare, to make them instruments in the hands of those who intended to employ them to operate the unholy work of destroying the noble, the August, the splendid fabric of our union and unparalleled form of government.

For eighteen years, therefore, the most unceasing endeavours have been used to poison the minds of the people of the eastern states towards, and to alienate them from, their fellow citizens of the southern. The people of the latter section have been portrayed as demons incarnate, destitute of all the good qualities that dignify or adorn human nature — that acquire esteem or regard — that entitle to respect and veneration. Nothing can exceed the virulence of these caricatures, some of which would have suited the ferocious inhabitants of New-Zealand, rather than a civilized or polished nation.

To illustrate, and remove all doubt on this subject, I subjoin an extract from Pelham's essays, No. 1:

> Negroes are, in all respects, except in regard to life and death, the cattle of the citizens of the southern states. *If they were good for food, the probability is, that even the power of destroying their lives would be enjoyed by their owners, as full as it is over the lives of their cattle. It cannot be, but their laws prohibit the owners from killing their slaves, because those slaves are human beings, or because it is a moral evil to destroy them*. If that were the case, how can they justify their being treated, in all other respects, *like brutes*? For it is in this point of view alone, that negroes in the southern states are considered in fact *as different from cattle*. They are bought and sold; they are fed or kept hungry; they are clothed, or reduced to nakedness; they are beaten, turned out to the fury of the elements, and torn from their dearest connections, *with as little remorse as if they were beasts of the field.*

Never was there a more infamous or unfounded caricature than this — never one more disgraceful to its author. It may not be amiss to state, and it enhances ten-fold the turpitude of the writer, that at the period when it was written, there were many slaves in Connecticut, who were subject to every one of the disadvantages that attended the southern slaves.

Its vile character is further greatly aggravated by the consideration that a large portion of these very negroes, and their ancestors, had been purchased, and rent from their homes and families, by citizens of the eastern states, who were actually at that moment, and long afterwards, engaged in the Slave Trade.

I add a few more extracts from Pelham:

> We have reached a critical period in our political existence. The question must soon be decided, *whether we shall continue a nation, at the expense even of our union*, or sink with the present mass of difficulty into confusion and slavery.
>
> Many advantages were supposed to be secured, and many evils avoided, by a union of the states. I shall not deny that the supposition was well founded. But at that time those advantages and those evils were magnified to a far greater size, than either would be if the question were at this moment to be settled.
>
> The northern states can subsist as a nation, a republic, *without any connection with the southern*. It cannot be contested, that if the southern states were possessed of the same political ideas, a union would be still more desirable than a separation. But when it becomes a serious question, whether we shall give up our government, or part with the states south of the Potomac, no man north of that river, whose heart is not thoroughly democratic, can hesitate what decision to make.
>
> I shall in the future papers consider some of the great events which *will lead to a separation of the United States*; show the importance of retaining their present constitution, even at the expense of a separation; *endeavour to prove the impossibility of a union for any long period in future, both from the moral and political habits of the citizens of the southern states*; and finally examine carefully to see whether *we have not already ap-*

proached to the era when they must be divided.

It is impossible for a man of intelligence and candour to read these extracts without feeling a decided conviction that the writer and his friends were determined to use all their endeavours to dissolve the union, and endanger civil war and all its horrors, in order to promote their personal views. This affords a complete clue to all the seditious proceedings that have occurred since that period — the unceasing efforts to excite the public mind to that feverish state of discord, jealousy, and exasperation, which was necessary to prepare it for convulsion. The parties interested would, on the stage of a separate confederacy, perform the brilliant parts of kings and princes, generals, and generalissimos — whereas on the grand stage of a general union, embracing all the states, they are obliged to sustain characters of perhaps a second or third rate. *"Better to rule in hell, than obey in heaven."*

The unholy spirit that inspired the writer of the above extracts has been, from that hour to the present, incessantly employed to excite hostility between the different sections of the union. To such horrible lengths has this spirit been carried, that many paragraphs have occasionally appeared in the Boston papers, intended, and well calculated to excite the negroes of the southern states to rise and massacre their masters. This will undoubtedly appear incredible to the reader. It is nevertheless sacredly true. It is a species of turpitude and baseness, of which the world has produced few examples.

Boston having acted upon and inflamed Massachusetts, that state acted upon and put in movement the rest of the eastern states, more particularly Connecticut and Rhode Island. New Hampshire and Vermont are but partially infected with the turbulent and jacobinical spirit that predominates in Massachusetts.

It thus happens, that a people proverbially orderly, quiet, sober, and rational, were actually so highly excited as to be ripe for revolution, and ready to overturn the whole system of social order. A conspiracy was formed, which, as I have stated, and as cannot be too often repeated, promised fair to produce a convulsion — *a dissolution of the union — and a civil war*, unless the seduced people of that section of the union could be recovered from the fatal delusion they laboured under, and restored to their reason.

I shall very briefly, and without much attention to order or regularity, consider these positions. They are not entitled to a serious refutation, but merely as they have been made the instruments of producing so much mischief.

Before I touch upon the commercial points, I shall offer a few observations on the high and exalted pretensions of the people of the eastern states, to superior morality and religion over the rest of the union. There has not been, it is true, quite so much parade with these exclusive claims as on the subject of commerce. Perhaps the reason is that there was no political purpose to be answered by them. But that the people of that section of the union are in general thoroughly persuaded that they very far excel the rest of the nation in both religion and morals, no man who has been conversant with them can deny. This folly of self-righteousness, of exalting ourselves above others, is to general all over the world; but no-where more prevalent, or to greater extent, than in the eastern states. To pretend to institute

a comparison between the religion and morals of the people of Boston and those of Philadelphia, New York, or Baltimore, would be considered as extravagant and absurd as a comparison of the most licentious votary of Venus with a spotless vestal.

The character of the eastern states for morality has been various at various times. Not long since, it was at a very low ebb indeed. It is within the memory of those over whose chin no razor has ever mowed a harvest, that Yankee and sharper were regarded as nearly synonymous. And this was not among the low and liberal, the base and vulgar. It pervaded all ranks of society. In the middle and southern states, traders were universally very much on their guard against "Yankee tricks," when dealing with those of the eastern.

They now arrogate to themselves (and, for party purposes, their claims are sometimes admitted by their political friends here) to be, as I have stated, a superior order to their fellow-citizens. They look down upon the people of the southern states with as much contempt, and with the same foundation, as did the Pharisee of old on the despised Publican.

Both of those views are grossly erroneous. They never, as a people, merited the opprobrium under which they formerly laboured. There were, it is true, many worthless miscreants among them, who, on their migration to the other states, were guilty of base tricks, which, by an illiberality disgraceful to our species, but nevertheless very common, were charged to the account of the entire people of the eastern states, and brought them under a most undeserved odium.

I feel a pride and pleasure in doing justice to the yeomanry of the eastern states. They will not suffer on a comparison with the same class of men in any part of the world. They are upright, sober, orderly and regular — shrewd, intelligent, and well informed — and I believe there is not a greater degree of genuine native urbanity among the yeomanry of any country under the canopy of Heaven. And it is lamentable and unaccountable how they have allowed themselves to be so egregiously duped as they have been. I have known them long; and my respect for them has gradually increased in proportion as my knowledge of them has extended. But I shall never admit any exclusive or supereminent claim to the virtues which I know they possess. And I have no hesitation in averring, that although Boston, or Hartford, or Newhaven, may exhibit rather more *appearance* of religion and piety than New York, or Philadelphia, or Baltimore, yet the latter cities possess as much of the *reality*. It would astonish and frighten many of the pious people in New York or Philadelphia to be informed — but they may nevertheless rely upon the information as indubitably true — that a large portion of the clergy in the town of Boston are absolute Unitarians; and scout the idea of the divinity of Jesus Christ as completely and explicitly as ever Dr. Priestly did. This is a digression. I did not intend to introduce it. But since it is here, let it remain. And let me add, that the present principal of Harvard College was known to be a Unitarian when he was elected. This fact establishes the very great extent and prevalence of the doctrine.

The preceding essay was excerpted from Matthew Carey, The Olive Branch *(Philadelphia, Pennsylvania: M. Carey and Son, 1818).*

CHAPTER THREE
A Brief History of the African Slave Trade

Southern Opposition to the Slave Trade

It has been the prevailing belief that the South seceded from the Union in order to extend slavery into the territories, and that the war which followed was fought by the Northern armies both to preserve the Union and to secure freedom for the Southern slaves. This is, of course, nothing short of revisionist history, written by the triumphant party of the contest of 1861-1865 in an effort to conceal the true nature of its origin and agenda and to fasten its rule upon future generations.

It would be counterproductive to the purpose of this book to distract the reader with a protracted philosophical or theological discussion of the morality of Southern slavery. Such a task has already been performed by able writers of the past who devoted entire volumes to that particular subject.[1] Suffice it to say that, since the institution in and of itself is never

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1. Robert Lewis Dabney, *A Defense of Virginia and the South* (New York: E.J. Hale and Son, 1867); Albert Taylor Bledsoe, *Liberty and Slavery* (Philadelphia, Pennsylvania: J.B. Lippincott and Company, 1856); William A. Smith, *The Philosophy and Practice of Slavery in the United States* (Nashville, Tennessee: Stevensen and Evans, 1856); John Henry Hopkins, *A Scriptural, Ecclesiastical, and Historical View of Slavery* (New York: W.I. Pooley and Company, 1864). The reader is also directed to Beverley Munford's work *Virginia's Attitude Toward Slavery and Secession* (New York: Longmans, Green and Company, 1909), in which is documented the steady rise of emancipation sentiments and concerted efforts among Southerners, and Virginians in particular, to bring about an end to slavery up until the birth of radical Abolitionism in the North. In his book, *The Origin of the Late War*, George Lunt observed, "After the years of 1820-21, during which that great struggle which resulted in what is called the Missouri Compromise was most active

condemned, but is instead merely regulated, in the Bible,[2] its antagonists have been left to draw their arguments from either theological heresy or outright atheism.[3] Indeed, no Chris-

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and came to its conclusion, the States of Virginia, Kentucky and Tennessee were earnestly engaged in practical movements for the gradual emancipation of their slaves" ([New York: D. Appleton and Company, 1866], pages 33-34). The violent rhetoric of the Northern Abolitionists which will be henceforth documented, coupled with such events as the August 1831 Southampton Insurrection, in which fifty-seven Whites, most of whom were women and children, were murdered by a group of Blacks led by Nat Turner, a slave preacher, and a free Black, had the effect of provoking the alarm and indignation of Southern slaveholders and quelling the manumission movements. Thus, rather than deserving the laurels of the champions of freedom, "Abolitionists had done more to rivet the chains of the slave and to fasten the curse of slavery upon the country than all the pro-slavery men in the world had done or could do in half a century" (William Henry Smith, *A Political History of Slavery* [New York: G.P. Putnam's Sons, 1903], Volume I, pages 40-41).

2. The consistent message of the New Testament is that of obedient submission of slaves to their masters (Ephesians 6:5-6; Colossians 3:22), setting forth the preferability of freedom to slavery only when it may be obtained lawfully (1 Corinthians 7:20-21). Furthermore, Scripture explicitly condemns servile insurrection at Romans 13:1-7 and 1 Peter 2:13-16.

3. According to Robert Lewis Dabney:

> It will in the end become apparent to the world, not only that the conviction of the wickedness of slaveholding was drawn wholly from sources foreign to the Bible, but that it is a legitimate corollary from that fantastic, atheistic, and radical theory of human rights, which made the Reign of Terror in France, which has threatened that country, and which now threatens the United States, with the horrors of Red-Republicanism. Because we believe that God intends to vindicate His Divine Word, and to make all nations honour it; because we confidently rely in the force of truth to explode all dangerous error; therefore we confidently expect that the world will yet do justice to Southern slaveholders (*Defense of Virginia*, pages 21-22).

Dabney was certainly not alone in viewing Abolitionism as an attack upon the authority of the Scriptures. Nehemiah Adams, a Christian minister in Boston, had many of the same things to say:

> The apostolic spirit with regard to slavery, surely, is not of the same tone with the spirit which encourages slaves every where to flee from their masters, and teaches them that his swiftest horse, his boat, his purse, are theirs, if they wish to escape. Philemon, traveling with Onesimus, was not annoyed by a vigilance committee of Paul's Christian friends with a *habeas corpus* to rescue the servant from his master; nor did these friends watch the arrival of ships to receive a fugitive consigned by "the saints and faithful brethren which were at Colosse" to the "friends of the slave" at Corinth. True, these disciples had not enjoyed the light which the Declaration of American Independence sheds on the subject of human rights. Moses, Paul, and Christ were their authorities on moral subjects; but our infidels tell us that we should have a far different New Testament could it be written for us now; but since we can not have a new Bible now and then, this proves that "God can not make a revelation to us in a book." Every man, they say, must decide as to his duty by the light of present circumstances, not by a book written eighteen hundred years ago. Zeal against American slavery has thus been one of the chief modern foes to the Bible. Let him who would not

tian who takes the doctrine of plenary inspiration seriously can afford to denounce slavery as an institution when the stamp of divine approbation is found upon it in both Testaments of Holy Writ:

> Both thy bondmen, and thy bondmaids, which thou shalt have, shall be of the heathen that are round about you; of them shall ye buy bondmen and bondmaids. Moreover of the children of the strangers that do sojourn among you, of them shall ye buy, and of their families that are with you, which they beget in your land: and they shall be your possession. And ye shall take them as an inheritance for your children after you, to inherit them for a possession; they shall be your bondmen for ever: but over your brethren the children of Israel, ye shall not rule one over another with rigour (Leviticus 25:44-46).

> Let as many servants as are under the yoke count their own masters worthy of all honour, that the name of God and his doctrine be not blasphemed. And they that have believing masters, let them not despise them, because they are brethren; but rather do them service, because they are faithful and beloved, partakers of the benefit. These things teach and exhort. If any man teach otherwise, and consent not to wholesome words, even the words of our Lord Jesus Christ, and to the doctrine which is according to godliness; he is proud, knowing nothing, but doting about questions and strifes of words, whereof cometh envy, strife, railings, evil surmisings, perverse disputings of men of corrupt minds, and destitute of the truth, supposing that gain is godliness: from such withdraw thyself (1 Timothy 6:1-5).

Though not generally understood today, the African slave trade is a separate issue from the institution of slavery itself. It should be noted that, with the short-lived exception of Georgia and South Carolina, no Southern colony or State was ever a willing participant in the slave trade, which traffic most Southerners viewed with abhorrence. The English Crown was the leader in the trade throughout the Eighteenth Century, it having been declared by Parliament in 1749 "to be very advantageous to Great Britain, and necessary for supplying the plantations and colonies thereunto belonging with a sufficient number of negroes at reasonable rates."[4] On the other hand, the colonial legislature of Virginia attempted on several occasions to stem the importation of Africans only to be consistently overruled by King George III, who refused to assent to any law "by which the importation of slaves should

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> become an infidel and atheist beware and not follow his sensibilities, as affected by cases of distress, in preference to the word of God, which the unhappy fate of some who have made shipwreck of their faith in their zeal against slavery shows to be the best guide (*A Southside View of Slavery* [Boston: T.R. Marvin and B.B. Mussey and Company, 1854], pages 199-200).

4. 23 George II (1749); quoted by McHenry, *Cotton Trade*, page 192.

be in any respect prohibited or obstructed."[5] On 20 March 1772, the following petition was forwarded to the King by the Virginia House of Burgesses:

> We implore your Majesty's paternal assistance in averting a calamity of a most alarming nature. The importation of slaves into the colonies from the coast of Africa hath long been considered as a trade of great inhumanity, and under its present encouragement we have too much reason to fear will endanger the very existence of your Majesty's American dominions. We are sensible that some of your Majesty's subjects may reap emoluments from this sort of traffic, but when we consider that it greatly retards the settlement of the colonies with more useful inhabitants and may in time have the most destructive influence, we presume to hope that the interests of a few will be disregarded when placed in competition with the security and happiness of such numbers of your Majesty's dutiful and loyal subjects. We, therefore, beseech your Majesty to remove all these restraints on your Majesty's Governor in this colony which inhibits their assenting to such laws as might check so pernicious a consequence.[6]

One of the charges leveled against George III by Thomas Jefferson in the original draft of the Declaration of Independence was that he had "prostituted his negative [veto] for suppressing every legislative attempt to prohibit, or to restrain, this execrable commerce" and that he, during Great Britain's war with the American colonies, was attempting to incite the slaves "to rise in arms against us, and to purchase that liberty of which he has deprived them, by murdering the people on whom he obtruded them; thus paying off former crimes committed against the liberties of one people with crimes which he urges them to commit against the lives of another."[7] Not long after declaring her independence, the fledgling State of Virginia, under the governorship of Patrick Henry, became "the first political community in the civilized modern world" to legislate against the slave trade.[8] In the Act For Preventing the Farther Importation of Slaves of 5 October 1778, it was declared that "no slave or slaves shall hereafter be imported into this Commonwealth by sea or land, nor shall any slaves so imported be bought or sold by any person whatsoever." The penalty provided for violation of this law was the forfeiture of "one thousand pounds for every slave so imported," and "five hundred pounds for every slave so bought or sold." It was further provided that "every

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5. Instructions of King George III to the Royal Governor of Virginia, 10 December 1770; quoted by George Bancroft, *A History of the United States* (Boston: Little, Brown and Company, 1846), Volume III, page 410.

6. Virginia House of Burgesses, petition to George III, 20 March 1772; quoted by Munford, *Slavery and Secession*, page 18.

7. Thomas Jefferson, clause in the original draft of the Declaration of Independence; quoted by Bancroft, *History of the United States*, Volume IV, page 445.

8. James Curtis Ballagh, *History of Slavery in Virginia* (Baltimore, Maryland: Johns Hopkins Press, 1902), page 23.

slave imported into this Commonwealth, contrary to the true intent and meaning of this act, shall, upon such importation, become free."[9]

The colonial history of South Carolina is a consistent protest against the slave trade. Due to the fact that White settlement of the colony was being hindered by the alarming increase of the African population, the earliest legislation which tended toward discouragement of the importation of Negroes was passed in 1698, requiring planters to employ one White laborer for every six Blacks. This was followed by another act in 1714 which imposed a duty of two pounds sterling upon every slave imported from Africa over the age of twelve, another in 1716 offering a bounty to White settlers, and still another in 1717 imposing an additional duty of forty pounds upon any imported Negro "of any age or condition whatsoever, and from any part of the world."[10] In 1760, the colonial legislature passed an act absolutely prohibiting the further importation of slaves, which was overruled by the Crown. Not only was the royal Governor reprimanded, but a warning was sent to the Governors of the other colonies against allowing similar legislation.[11] The South Carolina legislature responded in 1764 by imposing an additional duty of one hundred pounds upon each imported slave.[12]

Shortly after achieving independence from Great Britain and one year before ratifying the Constitution, the South Carolina legislature forbade the further importation of slaves, either from Africa or from other American States, unless accompanied by their master. Any person found in violation of this law was penalized one hundred pounds in addition to forfeiture of the Negroes found in his possession.[13] This was followed by a series of laws which extended the prohibition until it was finally repealed in 1803. The stated reason for this repeal was that New England slavers were so flagrant in their violation of this law that, without the aid of the federal Government (which had been denied to her), it had become impossible to enforce the law. According to William Lowndes, a member of the U.S. House of Representatives from South Carolina:

> The geographical situation of our country [South Carolina] is not unknown. With navigable rivers running into the heart of it, it was impossible, with our means, to prevent our Eastern brethren... engaged in this trade, from introducing them [Negroes] into the country. The law was completely evaded.... Under these circumstances, sir, it appears to

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9. William Waller Hening (editor), *The Statutes at Large: A Collection of All the Laws of Virginia From the First Session of the Legislature in the Year 1619* (New York: W.G. Bartow, 1823), Volume IX, page 471.

10. McHenry, *Cotton Trade*, pages 214-215.

11. McHenry, *ibid.*, page 192.

12. McHenry, *ibid.*, page 215.

13. McHenry, *ibid.*, pages 216-217.

me to have been the duty of the Legislature to repeal the law, and remove from the eyes of the people the spectacle of its authority being daily violated.[14]

The port of Charleston was thereafter opened to the importation of slaves from 1803 until 1 January 1808 when the slave trade was declared unlawful by the U.S. Congress. During these four years, 202 vessels arrived at Charleston carrying a total of 39,075 slaves, most of which were reshipped to the West Indies.[15] According to the records, the consignees for this human cargo were as follows: "88 were natives of Rhode Island, 13 of Charleston, 10 of France, and 91 of Great Britain."[16]

In 1795, the North Carolina legislature declared it illegal "to land any negro or negroes, or people of colour, over the age of fifteen years, under the penalty of 100 [dollars]... for each and every slave or person of colour...."[17] Not satisfied with mere legislation against the slave trade, the State of Georgia inserted the following clause into its constitution of 1798: "There shall be no future importation of slaves into this State from Africa, or any foreign place, after the first day of October next."[18] Kentucky, which was formed out of the western territory of Virginia, continued the laws of the parent State against the importation of Negroes for the purpose of sale, imposing a $300 fine on violaters. Tennessee, formerly a district of North Carolina, also re-enacted the laws of the parent State.[19] Alabama likewise forbade the importation of slaves unless accompanied by their masters having the intent to settle in the State, and imposed the death penalty in 1807 upon any "person... guilty of stealing or selling any free person for a slave, knowing the said person so sold to be free...."[20] The legislature of Mississippi enacted the following law in 1822: "It shall not be lawful for any person whatsoever to bring into this State, or to hold therein, any slave or slaves born or resident out of the limits of the United States. Every such offender shall forfeit and pay to the State, for the use of the Literacy Fund, for each slave so brought in, sold, purchased, or hired, a fine of $1,000."[21] The law of 1839 further stipulated:

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14. William Lowndes, speech in the House of Representatives on 14 February 1804; quoted by Davis, *Rise and Fall of the Confederate Government*, Volume I, page 4 (footnote).

15. McHenry, *Cotton Trade*, page 217; John Randolph Spears, *The American Slave Trade: An Account of Its Origin, Growth and Suppression* (New York: Charles Scribner's Sons, 1900), page 118.

16. Spears, *ibid.*

17. North Carolina statute of 1795; quoted by McHenry, *Cotton Trade*, page 214.

18. Constitution of the State of Georgia, 1798; quoted by McHenry, *ibid.*, page 218.

19. McHenry, *ibid.*, page 219.

20. Alabama statute of 1843; quoted by McHenry, *ibid.*, page 220.

21. Mississippi statute of 1822; quoted by McHenry, *ibid.*

> That if any person shall hereafter bring or import any slave or slaves into this State, as merchandise, or for the purpose of selling or hiring such slave or slaves, or shall be accessory thereto, the person or persons so offending shall be deemed guilty of a misdemeanour, and on conviction thereof shall be fined in the sum of $500, and be imprisoned for a term of not less than one nor more than six months, at the discretion of the Court, for each and every slave by him brought into this State as merchandise, or for sale, or for hire.[22]

The laws of the other Southern States were equally restrictive regarding the slave trade. Thus is proven false the charge of slave-breeding and clandestine importation of slaves which is commonly brought against the South.

New England's Complicity in the Slave Trade

It is a great injustice to the Southern people that they have borne the blame for what, for the most part, they did not condone and did not practice. Instead, the importation of slaves from Africa was nearly an exclusive New England enterprise; both Boston and New York harbors were thriving slave ports and the economic prominence of those two cities was almost entirely founded on the slave trade.[23] A slave market was established in 1711 near Wall Street in New York City, from whence Negroes were hurried into the South before they fell sick or died from the harsh Northern climate. Connecticut, New Hampshire, and Rhode Island were also leading hosts to the trade. According to the Hartford *Courant* of July, 1916, "Many people in this state as well as in Boston, made snug fortunes for themselves by sending rum to Africa to be exchanged for slaves and then selling the slaves to the planters of Southern states."[24] The colonial government of Rhode Island benefitted directly from a three-pound tax on imported slaves, using the proceeds in 1708 to pave the streets of Newport.[25] By 1713, Newport was the chief slave port in America and by 1770, Rhode Island had one hundred and fifty vessels engaged in the slave trade. In the words of Samuel Hopkins, "Rhode Island has been more deeply interested in the slave trade, and has enslaved more Africans than any other colony in New England.... This trade in human species has been the first wheel of commerce in Newport, on which every other movement in business has de-

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22. Mississippi statute of 1839; quoted by McHenry, *ibid*.

23. Cecil Chesterton, *History of the United States* (London: Chatto and Windus, 1919), page 49.

24. Hartford (Connecticut) *Courant*, July 1916; quoted by Arthur H. Jennings, "The South Not Responsible For Slavery," *The Gray Book* (Columbia, Tennessee: The Gray Book Committee, 1935), page 14.

25. Spears, *American Slave Trade*, page 50.

pended. That town has built up, and flourished in times past on the slave trade, and by it the citizens have gotten most of their wealth and riches."[26] As late as 1800, the slave trade was still viewed in a positive light by Rhode Island legislators as exemplified by the following statement in the U.S. House of Representatives: "We want money; we want money; we ought, therefore, to use the means to obtain it. Why should we see Great Britain getting all the slave trade to themselves — why not our country be enriched by that lucrative traffic?"[27]

As already noted, Thomas Jefferson had included a clause in his original draft of the Declaration of Independence which condemned George III for forcing the slave trade upon the American colonies. This clause was stricken out at the request of delegates from South Carolina, Georgia, and the New England States. Jefferson wrote, "Our Northern brethren also, I believe, felt a little tender under these censures; for though their people had very few slaves themselves, yet they had been pretty considerable carriers of them to others."[28] The slave trade continued to be a lucrative enterprise for New Englanders long after it had been outlawed by the U.S. Congress in 1808. In his address to Congress on 1 June 1841, President John Tyler said, "There is reason to believe that the traffic is on the increase.... The highest consideration of public honor as well as the strongest promptings of humanity require a resort to the most vigorous efforts to suppress the trade."[29] The U.S. Deputy Marshall for the New York district reported in 1856 that "the business of fitting out slavers was never presented with greater energy than at present."[30] In 1860, a report was presented to Congress which stated, "Almost all the slave expeditions for some time past have been fitted out in the United States, chiefly at New York."[31] In his book, *The Suppression of the Slave Trade*, W.E. Burghardt DuBois showed that "from 1850 to 1860 the fitting out of slavers became a flourishing business in the United States and centered in New York City" and that eighty-five New England vessels were involved in the transportation of between 30,000 and 60,000 slaves annually.[32] As late as 21 April 1861, nearly a week after Abraham Lincoln had declared war on the South, the slave ship *Nightingale* — owned, manned, and equipped at

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26. Samuel Hopkins, quoted by Spears, *ibid*., pages 19, 20.

27. John Brown, quoted by Spears, *ibid*., page 116.

28. Thomas Jefferson, *Memoir, Correspondence, and Miscellanies From the Papers of Thomas Jefferson* (Charlottesville, Virginia: F. Carr and Company, 1829), Volume I, page 15.

29. John Tyler, address to Congress on 1 June 1841; quoted by Munford, *Slavery and Secession*, page 38.

30. Henry Wilson, *History of the Rise and Fall of the Slave Power in America* (Boston: James R. Osgood and Company, 1874), Volume II, page 619.

31. *House Executive Document Number 7* (Thirty-Sixth Congress, Second Session), page 15.

32. W.E. Burghardt DuBois, *The Suppression of the American Slave Trade to the United States of America 1638-1870* (New York: Longmans, Green and Company, 1896), page 178.

Boston — was captured by the *Saratoga* — commanded by Captain John Julius Guthrie, a Southerner — off the west coast of Africa with 900 slaves on board. Guthrie later resigned his command in the United States Navy and went into the Confederate service.[33] Furthermore, while the United States Constitution officially sanctioned the slave trade for twenty years following ratification, leaving it to Congress' discretion to end it after 1808,[34] the Confederate States Constitution of 1861 outlawed it completely.[35] Thus, in the former country, the slave trade was only suspended by a statute which any future Congress could have repealed; in the latter, its abolition was part of the law of the land which could not have been changed except through the amendment process.

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33. Jennings, "South Not Responsible," pages 16-17. See also Dabney, *Defense of Virginia*, Chapter Two.

34. U.S. Constitution, Article I, Section 9, Clause 1.

35. C.S. Constitution, Article I, Section 9, Clause 1.

SUPPLEMENTARY ESSAY

The Bible View of Slavery

by John Henry Hopkins

The word "slave" occurs but twice in our English Bible, but the term "servant," commonly employed by our translators, has the meaning of slave in the Hebrew and the Greek originals, as a general rule, where it stands alone. We read, however, in many places, of "hired servants," and of "bondmen and bondmaids." The first were not slaves, but the others were; the distinction being precisely the same which exists in our own day. Slavery, therefore, may be defined as servitude for life, descending to the offspring. And this kind of bondage appears to have existed as an established institution in all the ages of our world, by the universal evidence of history, whether sacred or profane.

Thus understood, I shall not oppose the prevalent idea that slavery is an evil in itself. A physical evil it may be, but this does not satisfy the judgment of its more zealous adversaries, since they contend that it is a moral evil— a positive sin to hold a human being in bondage, under any circumstances whatever, unless as a punishment inflicted on crimes, for the safety of the community.

Here, therefore, lies the true aspect of the controversy, and it is evident that it can only be settled by the Bible. For every Christian is bound to assent to the rule of the inspired Apostle, that "sin is the transgression of the law," namely, the law laid down in the Scriptures by the authority of God — the supreme "Lawgiver, who is able to save and to destroy." From his Word there can be no appeal. No rebellion can be so atrocious in his sight as that which dares to rise against his government. No blasphemy can be more unpardonable than that which imputes sin or moral evil to the decrees of the eternal Judge, who is alone perfect in wisdom, in knowledge, and in love.

With entire correctness, therefore, your letter refers the question to the only infallible criterion — the Word of God. If it were a matter to be determined by my personal sympathies, tastes, or feelings, I should be as ready as any man to condemn the institution of slavery; for all my prejudices of education, habit, and social position stand entirely opposed to it. But as a Christian, I am compelled to submit my weak and erring intellect to the authority of the Almighty. For then only can I be safe in my conclusions, when I know that they are in accordance with the will of him, before whose tribunal I must render a strict account of the last great day.

I proceed, accordingly, to the evidence of the sacred Scriptures, which, long ago, produced complete conviction in my own mind, and must, as I regard it, be equally conclusive to every candid and sincere inquirer. When the array of positive proof is exhibited, I shall consider the objections, and examine their validity with all the fairness in my power.

The first appearance of slavery in the Bible is the wonderful prediction of the patriarch Noah: "Cursed be Canaan, a servant of servants shall he be to his brethren. Blessed be the Lord God of Shem, and Canaan shall be his servant" (Gen. 9:25).

The heartless irreverence which Ham, the father of Canaan, displayed toward his eminent parent, whose piety had just saved him from the deluge, presented the immediate occasion for this remarkable prophesy; but the actual fulfillment was reserved for his posterity, after they had lost the knowledge of God, and become utterly polluted by the abominations of heathen idolatry. The Almighty, foreseeing this total degradation of the race, ordained them to servitude or slavery under the descendants of Shem and Japheth, doubtless because he judged it to be their fittest condition. And all history proves how accurately the prediction has been accomplished, even to the present day.

We come next to the proof that slavery was sanctioned by the Deity in the case of Abraham, whose three hundred and eighteen bond-servants, born in his own house (Gen. 14:14), are mentioned along with those who were bought with his money, as proper subjects for circumcision (Gen. 17:12). His wife Sarah had also an Egyptian slave, named Hagar, who fled from her severity. And "the angel of the Lord" commanded the fugitive to return to her mistress and submit herself (Gen. 16:9). If the philanthropists of our age, who profess to believe in the Bible, had been willing to take the counsel of that angel for their guide, it would have preserved the peace and welfare of the Union.

The third proof that slavery was authorized by the Almighty occurs in the last of the Ten Commandments, delivered from Mount Sinai, and universally acknowledged by Jews and Christians as the moral law: "Thou shalt not covet thy neighbor's house, thou shalt not covet thy neighbor's wife, nor his man-servant, nor his maid-servant, nor his ox, nor his ass, nor any thing that is thy neighbor's" (Exod. 20:17). Here it is evident that the principle of property — "any thing that is thy neighbor's" — runs through the whole. I am quite aware, indeed, of the prejudice which many good people entertain against the idea of property in a human being, and shall consider it, in due time, amongst the objections. I am equally aware that the wives of our day may take umbrage at the law which places them in the same sentence with the slave, and even with the house and the cattle. But the truth is none the less

certain.

The wife has a real property in her husband, because he is bound, for life, to cherish and maintain her. The character of property is doubtless modified by its design. But whatever, whether person or thing, the law appropriates to an individual, becomes of necessity his property.

The fourth proof, however, is yet more express, as it is derived from the direct rule established by the wisdom of God for his chosen people, Israel, on the very point in question, viz.: "If thou buy a Hebrew servant, six years shall he serve, and in the seventh year he shall go out free for nothing. If he came in by himself, he shall go out by himself. If he were married, then his wife shall go out with him. If his master have given him a wife, and she have borne him sons or daughters, the wife and the children shall be their master's and he shall go out by himself" (Exod. 21:2-4). Here we see that the separation of husband and wife is positively directed by the divine command, in order to secure the property of the master in his bond-maid and her offspring. But the husband had an alternative, if he preferred slavery to separation. For thus the law of God proceeds: "If the servant shall plainly say, I love my master, my wife, and my children; I will not go out free; then his master shall bore his ear through with an awl, and he shall serve him forever" (Exod. 21:5, 6). With this law before his eyes, what Christian can believe that the Almighty attached immorality or sin to the condition of slavery?

The treatment of slaves, especially as it regarded the degree of correction which the master might administer, occurs in the same chapter as follows: "If a man smite his servant or his maid with a rod, and he die under his hand, he shall be surely punished. Notwithstanding if he continue a day or two, he shall not be punished; for he is his money" (Exod. 21:20, 21). And again: "If a man smite the eye of this servant or the eye of his maid, that it perish, he shall let him go free for his eye's sake. And if he smite our his man-servant's tooth, or his maid-servant's tooth, he shall let him go free for his tooth's sake" (Exod. 21:26, 27). Here we see that the master was authorized to use corporal correction toward his slaves, within certain limits. When immediate death ensued, he was to be punished as the judges might determine. But for all that came short of this, the loss of his property was held to be a sufficient penalty.

The next evidence furnished by the divine law appears in the peculiar and admirable appointment of the Jubilee. "Ye shall hallow the fiftieth year, and proclaim liberty throughout all the land to all the inhabitants thereof: it shall be a Jubilee unto you, and ye shall return every man unto his possession, and ye shall return every man to his family" (Lev. 25:10). This enactment, however, did not affect the slaves, because it only extended to the Israelites who had "a possession and a family," according to the original distribution of the land among the tribes. The distinction is plainly set forth in the same chapter, viz.:

> If thy brother that dwelleth by thee be waxen poor, and be sold unto thee, thou shalt not compel him to serve as a bond servant, but as a hired servant and as a sojourner he shall be with thee, and shall serve thee unto the year of Jubilee, and then shall he depart

> from thee, both he and his children with him, and shall return unto his own family, and unto the possession of his fathers shall he return. For they are my servants which I brought forth out of the land of Egypt, they shall not be sold as bondmen. Both thy bondmen and bondmaids, which thou shalt have, shall be of the heathen that are round about you; of them shall ye buy bondmen and bondmaids. Moreover, of the children of the strangers that do sojourn among you, of them shall ye buy, and of their families that are with you, which they begat in your land, and they shall be your possession. And ye shall take them as an inheritance for your children after you, to inherit them for a possession; they shall be your bondmen forever; but over your brethren, the children of Israel, ye shall not rule over another with rigor. For unto me the children of Israel are servants; they are my servants whom I brought forth out of the land of Egypt: I am the Lord your God (Lev. 39:40-46, with v. 55).

The distinction here made, between the temporary servitude of the Israelite and the perpetual bondage of the heathen race, is too plain for controversy. And this express and positive law furnishes the true meaning of another passage which the ultra-abolitionist is very fond of repeating: "Thou shalt not deliver unto his master the servant which is escaped from his master unto thee: he shall dwell with thee, even among you, in that place which he shall choose, in one of thy gates where it liketh him best: thou shall not oppress him" (Deut. 23:15, 16). This evidently must be referred to the case of a slave who had escaped from a foreign heathen master, and can not, with any sound reason, be applied to the slaves of the Israelites themselves. For it is manifest that if it were so applied, it would nullify the other enactments of the divine Lawgiver, and it would have been an absurdity to tell the people that they should "buy bondmen and bondmaids of the heathen and the stranger, to be their possession and the inheritance of their children forever," while, nevertheless, the slaves should be at liberty to run away and become freemen when they pleased. It is the well-known maxim, in the interpretation of all laws, that each sentence shall be so construed as to give a consistent meaning to the whole. And assuredly, if we are bound to follow this rule in the legislation of earth, we can not be less bound to follow it in the legislation of the Almighty. The meaning that I have adopted is the only one which agrees with the established principle of legal construction, and it has invariable been sanctioned by the doctors of the Jewish law, and every respectable Christian commentator.

Such, then, is the institution of slavery, laid down by the Lord God of Israel for his chosen people, and continued for fifteen centuries, until the new dispensation of the Gospel. What change did this produce? I grant, of course, that we, as Christians, are bound by the precepts and example of the Saviour and his apostles. Let us now, therefore, proceed to the all-important inquiry, whether we are authorized by these to presume that the Mosaic system was done away.

First, then, we ask what the divine Redeemer said in reference to slavery. And the answer is perfectly undeniable: *he did not allude to it at all*. Not one word of censure upon the subject is recorded by the Evangelists who gave his life and doctrines to the world. Yet slavery was in full existence at the time, throughout Judea; and the Roman empire, according

to the historian Gibbon, contained sixty millions of slaves, on the lowest probable computation! How prosperous and united would our glorious republic be at this hour, if the eloquent and pertinacious declaimers against slavery had been willing to follow their Saviour's example!

But did not our Lord substantially repeal the old law, by the mere fact that he established a new dispensation? Certainly not, unless they were incompatible. And that he did not consider them incompatible is clearly proved by his own express declaration. *"Think not,"* saith he, "that I am come to destroy the law or the prophets. I am not come to destroy, but to fulfil" (Matt. 5:17). On the point, therefore, this single passage is perfectly conclusive.

It is said by some, however, that the great principle of the Gospel, love to God and love to man, necessarily involved the condemnation of slavery. Yet how should it have any such result, when we remember that this was no new principle, but, on the contrary, was laid down by the Deity to his own chosen people, and was quoted from the Old Testament by the Saviour himself? And why should slavery be thought inconsistent with it? In the relation of master and slave, we are assured by our Southern brethren that there is incomparably more mutual love than can ever be found between the employer and the hireling. And I can readily believe it, for the very reason that it is a relation for life; and the parties, when rightly disposed, must therefore feel a far stronger and deeper interest in each other.

The next evidence, which proves that the Mosaic law was not held to be inconsistent with the Gospel, occurs in the statement of the apostles to St. Paul, made some twenty years, at least, after the establishment of the first Christian church of Jerusalem. *"Thou seest, brother,"* said they, "how many thousands of Jews there are who believe, and they are all zealous of the law" (Acts 21:20). How could this have been possible, if the law was supposed to be abolished by the new dispensation?

But the precepts, and the conduct of St. Paul himself, the great apostle of the Gentiles, are all-sufficient, because he meets the very point, and settles the whole question. Thus he saith to the Ephesians: "Servants," (in the original Greek, bond servants or slaves) "be obedient to them that are your masters, according to the flesh, with fear and trembling, in singleness of your hearts, as unto Christ. Not with eye-service, as men-pleasers, but as the servants of Christ, doing the will of God from the heart, with good will doing service, as to the Lord, and not unto men, knowing that whatsoever good thing any man doeth, the same shall he receive of the Lord, whether he be bond or free. And ye masters, do the same things unto them, forbearing threatening, knowing that your Master also is in heaven, neither is there any respect of persons with him" (Eph. 6: 5-9).

Again, to the Colossians, St. Paul repeats the same commandments. "Servants," (that is, bond servant or slaves) "obey in all things your masters according to the flesh, not with eye-service, as men-pleasers, but in singleness of heart, fearing God" (Col. 3:22). "Masters, give unto your servants that which is just and equal, knowing that ye also have a master in heaven" (Col. 4:1).

Again, the same inspired teacher lays down the law in very strong terms, to Timothy, the first Bishop of Ephesus:

> Let as many servants as are under the yoke [that is, the yoke of bondage] count their own masters worthy of all honor, that the name of God and his doctrine be not blasphemed. And they that have believing masters, let them not despise them because they are brethren, but rather do them service because they are faithful and beloved, partakers of the benefit. These things teach and exhort. If any man teach otherwise, and consent not to wholesome words, even the words of our Lord Jesus Christ, and to the doctrine which is according to godliness, he is proud, knowing nothing, but doting about questions and strifes of words, whereof cometh envy, strife, railings, evil surmisings, perverse disputings of men of corrupt minds and destitute of the truth, supposing that gain is godliness. From such withdraw thyself. But godliness with contentment is great gain. For we brought nothing into this world, and it is certain we can carry nothing out. And having food and raiment, let us be therewith content (1 Tim, 6:1-8).

Lastly, St. Paul, in his Epistle to Philemon, informs him that he had sent back his fugitive slave, whom the Apostle had converted to the Christian faith during his imprisonment, asking the master to forgive and receive his penitent disciple:

> I beseech thee for my son Onesimus whom I have begotten in my bonds, which in time past was to thee unprofitable, but now profitable to thee and to me, whom I have sent again: thou therefore receive him that is mine own bowels, whom I would have retained with me, that in thy stead he might have ministered unto me in the bonds of the gospel. But without thy mind would I do nothing, that thy benefit should not be as it were of necessity, but willingly. For perhaps he therefore departed for a season, that thou shouldst receive him forever, not now as a servant, but above a servant. A brother beloved, specially to me, but how much more to thee, both in the flesh and in the Lord? If thou countest me therefore a partner receive him as myself. If he hath wronged thee or oweth thee aught, put that on mine account. I Paul have written it with mine own hand, I will repay it; albeit I do not say to thee how thou owest unto me thine own soul besides (Ep. to Philemon 5, 10 19).

The evidence of the New Testament is thus complete, plainly proving that the institution of slavery was not abolished by the Gospel. Compare now the course of the ultra-abolitionist, with that of Christ and his inspired apostle. The divine Redeemer openly rebukes the sanctimonious Pharisees, "who made void the law of God" by their traditions. He spares not the wealthy, infidel Sadducees. He denounces the hypocritical Scribes, who "loved the uppermost rooms at feasts and to be called of men, Rabbi, Rabbi." He calls the royal Herod "that fox," entirely regardless of the king's displeasure. He censures severely the Jewish practice of divorcing their wives for the slightest cause, and vindicates the original sanctity of marriage. He tells the deluded crowd of his enemies that they are "the children of the devil, and that the lusts of their fathers they would do." He makes a scourge of small cords, and drives the buyers and sellers out of the temple. And while he thus rebukes the sins of all around him, and speaks with divine authority, he proclaims himself the special friend and patron of the poor — preaches to them his blessed doctrine, on the mountain, by the sea-side, or in the public streets, under the open canopy of heaven — heals their diseases, partakes of

their humble fare, and, passing by the rich and the great, chooses his apostles from the ranks of the publicans and the fishermen of Galilee. Yet he lived in the midst of slavery, maintained over the old heathen races, in accordance with the Mosaic law, and uttered not one word against it! What proof can be stronger than this, that he did not regard it as a sin or a mortal evil? And what contrast can be more manifest than this example of Christ on the one hand, and the loud and bitter denunciations of our anti-slavery preachers and politicians, calling themselves Christians, on the other? For they not only set themselves against the Word of God in this matter, condemning slavery as the "monster sin," the "sum of all villainies," but — strange to say — they do it in the very name of that Saviour whose whole line of conduct was the very opposite of their own!

Look next at the contrast afforded by the inspired Apostles of the Gentiles. He preaches to the slave, and tells him to be obedient to his master for Christ's sake, faithful and submissive, as a main branch of religious duty. He preaches to the master, and tells him to be just and equal to his slave, knowing that his Master is in heaven. He finds a fugitive slave, and converts him to the Gospel, and then sends him back again to his old home with a letter of kind recommendation. Why does St. Paul act thus? Why does he not counsel the fugitive to claim his right to freedom, and defend that right, if necessary, by the strong hand of violence, even unto death? Why does he not write to his disciple, Philemon, and rebuke him for the awful sin of holding a fellow-man in bondage, and charge it upon him, as a solemn duty, to emancipate his slaves, at the peril of his soul?

The answer is very plain. St. Paul was inspired, and knew the will of the Lord Jesus Christ, and was only intent on obeying it. And who are we, that in our modern wisdom presume to set aside the Word of God, and scorn the example of the divine Redeemer, and spurn the preaching and the conduct of the apostles, and invent for ourselves a "higher law" than those holy Scriptures which are given to us as "a light to our feet and a lamp to our paths," in the darkness of a sinful and a polluted world? Who are we that virtually blot out the language of the sacred record, and dictate to the majesty of heaven what *he* shall regard as sin and reward as duty? Who are we that are ready to trample on the doctrine of the Bible, and tear to shreds the Constitution of our country, and even plunge the land into the untold horrors of civil war, and yet boldly pray to the God of Israel to bless our very acts of rebellion against his own sovereign authority? Woe to our Union when the blind become the leaders of the blind! Woe to the man who dares to "strive against his Maker!"

Yet I do not mean to charge the numerous and respectable friends of this popular delusion with a willful or conscious opposition to the truth. They are seduced, doubtless, in the great majority of cases, by the feelings of a false philanthropy, which palliates, if it can not excuse, their dangerous error. Living far away from the Southern States, with no practical experience of the institution, and accustomed from their childhood to attach an inordinate value to their personal liberty, they are naturally disposed to compassionate the negro race, and to believe that the slave must be supremely wretched in his bondage. They are under no special inducement to "search the Scriptures" on this particular subject, nor are they in general, I am sorry to say, accustomed to study of the Bible half as much as they read the

newspapers, the novel, and the magazine. There they find many revolting pictures of slavery, and they do not pause to ask the question whether they are just and faithful. Perhaps a fugitive comes along, who has fled from his master, and who, in justification of himself, will usually give a very distorted statement of the facts, even if he does not invent them altogether. And these good and kind-hearted people believe it all implicitly, without ever remembering the rule about hearing both sides before we form our opinion. Of course, they sympathize warmly with the poor oppressed African, and are generously excited to hate the system of slavery with all their heart. Then the eloquent preacher chooses it for the favorite topic of his oratory. The theme is well adapted to rouse the feelings, and it is usually by no means difficult to interest and gratify the audience, when the supposed sins of others, which they are under no temptation to commit, are made the object of censure. In due time, when the public mind is sufficiently heated, the politician lays hold of the subject, and makes the anti-slavery movement the watchword of party. And finally the Press follows in the wake of the leaders, and the fire is industriously fanned until it becomes a perfect blaze; while the admiring throng surround it with exultation, and fancy its lurid light to be from heaven, until the flames begin to threaten their own security.

Such has been the perilous course of our Northern sentiment on the subject of slavery. The great majority, in every community, are the creatures of habit, of association, and of impulse; and every allowance should be made for those errors which are committed in ignorance, under a generous sympathy for what they suppose to be the rights of man. I can not, however, make the same apology for those who are professionally pledged to understand and inculcate the doctrines of the Bible. On that class of our public instructors, the present perilous crisis of the nation casts a fearful responsibility. Solemnly bound by their sacred office, to preach the Word of God, and to follow Christ and his apostles, as the heralds of "peace and good will to men," they seem to me strangely regardless, on this important subject, of their highest obligations. But it is not for me to judge them. To their own Master, let them stand or fall.

I have promised, however, to notice the various objections which have been raised in the popular mind to the institution of Southern slavery, and to these I shall now proceed.

First on this list stand the propositions of the far-famed Declaration of Independence, "that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." These statements are here called "self-evident truths." But with due respect to the celebrated names which are appended to this document, I have never been able to comprehend that they are "truths" at all. In what respect are men "created equal," when every thoughtful person must be sensible that they are brought into the world with all imaginable difference in body, in mind, and in every characteristic of their social position? Notwithstanding mankind have all descended from one common parent, yet we see them divided into distinct races, so strongly marked, that infidel philosophers insist on the impossibility of their having the same ancestry. Where is the equality in body between the child born with the hereditary taint of scrofula or consumption, and the infant filled with health and vigor? Where is the equality in mind between

one who is endowed with talent and genius, and another whose intellect borders on idiocy? Where is the equality in social position between the son of the Esquimaux or Hottentot, and the heir of the American statesman or British peer?

Neither am I able to admit that all men are endowed with the unalienable right to life, liberty, and the pursuit of happiness, because it is manifest that since "sin entered into the world, and death by sin," they are all alienated not only by the sentence of the law, but by innumerable forms of violence and accident. Liberty is alienated not only be imprisonment, but by the irresistible restraints of social bondage to the will, the temper, the prejudices, the customs, or the interests of others, so that there is hardly an individual to be found, even in the most favored community, who has really the liberty of word and action so confidently asserted as the unalienable right of all men. And as regards the "pursuit of happiness," alas! what multitudes of men alienate their right to it, beyond recovery, not only in the cells of the penitentiary, but in the reckless indulgence of their appetites and passions, in the disgust arising from ill-chosen conjugal relations, in their associations with the profligate and the vile, in the pain and suffering of sickness and poverty as the results of vice, in the ruin of the gambler, the delirium of the drunkard, the despair of the suicide, and in every other form of moral contamination!

If it be said, however, that the equality and unalienable rights of all men, so strongly asserted by this famous Declaration, are only to be taken in a political sense, I am willing to concede that this may be the proper interpretation of its intended meaning, but I can not see how it removes the difficulty. The statement is that "all men are created equal," and that "the *Creator* has endowed them with these unalienable rights." Certainly if the authors of this celebrated document designed to speak only of political rights and political equality they should not have thus referred them to the act of creation; because it is perfectly obvious that since the beginning of human government, men have been created with all imaginable inequality, under slavery, under despotism, under aristocracy, under limited monarchy, under every imaginable form of political strife and political oppression. In no respect whatever, that I can discover, has the Almighty sent our race into the world with these imaginary rights and this fanciful equality. In his sight the whole world is sinful, rebellious, and lying under the just condemnation of his violated laws. Our whole dependence is on his mercy and compassion. And he dispenses these according to his sovereign will and pleasure, on no system of equality that any human eye can discover, and yet, as every Christian must believe, on the eternal principles of perfect benevolence, in union with impartial justice, and boundless knowledge, and wisdom that can not err.

Where, then, I ask, did the authors of the Declaration of Independence find their warrant for such a statement? It was probably judicious enough to call these propositions "self-evident truths," because it seems manifest that no man can prove them. To estimate aright the vast diversity among the races of mankind, we may begin with our own, the highly privileged Anglo-Saxon, which now stands at the head, although our ancestors were heathen barbarians only two thousand years ago. From this we may go down the descending scale through the Turks, Chinese, Tartars, the Japanese, the Egyptians, the Hindoos, the Indian

tribes, the Laplanders, the Abyssinians, the Africans, and how is it possible to imagine that God has made them all equal! As truly might it be said that all the trees of the forests are equal — that all the mountains, and seas, and rivers, are equal — that all the beasts in the field are equal — that all the birds of the air are equal. The facts rather establish the very contrary. The Deity seems to take pleasure in exhibiting a marvelous wealth of power through the rich variety of all his works, so that no two individuals of any species can be found in all respects alike. And hence we behold a grand system of *order* and *gradation*, from the thrones, dominions, principalities, and powers in heavenly places, rank below rank, to man. And then we see the same system throughout our earth displayed in the variety of races, some higher, some lower in the scale — in the variety of governments, from pure despotism to pure democracy — in the variety of privilege and power among the subjects of each government, some being born to commanding authority and influence, while others are destined to submit and obey. Again, we behold the system continued in the animal creation, from the lordly lion down to the timid mile, from the eagle to the humming bird, from the monsters of the deep to the sea-star in its shell. The same plan meets us in the insect tribes. Some swift and powerful, others slow and weak, some marshaled into a regular government-monarchy in the bee-hive, aristocracy in the ant-hill, while others, like the flies, have no government at all. And in perfect harmony with this divine arrangement, the inanimate creation presents us with the same vast variety. The canopy of heaven is studded with orbs of light, all differing in magnitude, all differing in radiance, and all yielding to the sovereign splendor of the sun. The earth is clothed with the most profuse diversity of vegetation, from the lofty palm down to the humble moss. The mineral kingdom shines with gold, silver, iron, copper, and precious stones, in all conceivable forms and colors. From the mammoth cave down to the minutest crystal — from the mountains of granite down to the sand upon the shore, — all is varied, multiform, unequal: yet each element has its specific use and beauty, and the grand aggregate unites in the sublime hymn of praise to the wisdom, the goodness, and the stupendous resources of that ineffable power which produced the whole.

This brief and most inadequate sketch of the order of creation may serve at least to show that the manifest inequality in the condition of mankind is no exception to the rule, but is sustained by all analogy. It is the will of God that it should be so, and no human sagacity or effort can prevent it. And the same principle exists in our political relations. We may talk as we please of our equality on political rights and privileges, but in point of fact, there is no such thing. Amongst the other civilized nations it is not even pretended. None of the great galaxy of European governments can have a better title to it than England, yet who would be so absurd as to claim political equality in a land of monarchy, of hereditary nobles, of time-honored aristocracy? The best approach to political equality is confessedly here, and here only. Yet even here, amidst the glories of our universal suffrage, where is it to be found? Political equality, if it means any thing, must mean that every man enjoys the same right to political office and honor; because the polity of any government consists in its system of administration, and hence it results, of necessity, that those who can not possibly be admitted to share in this administration, have no political equality with those who can. We do, indeed,

say that the people are sovereign. But every one knows full well that the comparative few who are qualified to take the lead, by talent, by education, by natural tact, and by a conjunction of favoring circumstances, are practically sovereigns over the people. The man who carried a hod gives his vote for the candidate. The candidate himself can do no more, so far as it concerns the mere form of election. Are they therefore politically equal? Who formed the party to which the candidate belongs? Who ruled the convention by which his name was put upon the list? Who arranged the orators for the occasion? Who subsidized the Press? Had the poor hodman any share in the operation, any influence, any voice whatever? No more than the hod which he carries. Can any human power ever manufacture a candidate out of him? The notion would be preposterous. Where, then, is his political equality? Even here, in our happy land of universal suffrage, how does it appear that "all men are born equal"? The proposition is a sheer absurdity. All men are born unequal, in body, in mind, and in social privileges. Their intellectual faculties are unequal. Their opportunities are unequal. And their freedom is as unreal as their equality. The poor are compelled to serve the rich, and the rich are compelled to serve the poor by paying for their services. The political party is compelled to serve the leaders, and the leaders are compelled to scheme and toil in order to serve the party. The multitude are dependent on the few who are endowed with talents to govern. And the few are dependent on the multitude for the power, without which all government is impossible. From the top to the bottom of the social fabric, the whole is thus seen to be inequality and mutual dependence. And hence, although they are free from that special kind of slavery which the Southern States maintain over the posterity of Ham, yet they are all, from the highest to the lowest, in bondage quite as real, from which they can not escape — the slavery of circumstances, called, in the ordinary language of the world, *necessity*.

I have been, I fear, unreasonably tedious in thus endeavoring to show why I utterly discard these famous propositions of the Declaration of Independence. It is because I am aware of the strong hold which they have gained over the ordinary mind of the nation. They are assumed by thousands upon thousands, as if they were the very doctrines of divine truth. And they are made the basis of the hostile feeling against the slavery of the South, notwithstanding their total want of rationality. Yet I do not wonder that such maxims should be popular. They are admirable calculated to gratify the pride and ambition so natural to the human heart, and are therefore powerful incentives in the work of political revolution. It was for this purpose, I presume, that they were introduced in that famous document, which publicly cast off the allegiance of the colonies to the British crown. And the same doctrines were proclaimed a few years later, in a similar service, by the French Directory, in the midst of a far more terrible revolution. Liberty, equality, and fraternity — *the rights of man* — were then the watchwords of the excited populace, while their insane leaders published the decree of Atheism, and a notorious courtesan was enthroned as the goddess of reason, and the guillotine daily massacred the victims of democratic fury, till the streets of Paris ran with blood.

I do not state this fact because I desire to place the revolutions in the Colonies and in France on the same foundation, with respect to the spirit or the mode in which they were

conducted. God forbid that I should forget the marked features of contrast between them! On the one side there was religious reverence, strong piety, and pure disinterested patriotism. On the other, there was the madness of Atheism, the brutality of ruffianism, and the "reign of terror" to all that was good and true. In no one mark or character, indeed, could I deem that there was any comparison between them, save in this: that the same false assumption of human equality and human rights was adopted in both. Yet how widely different was their result on the question of negro slavery! The American revolution produced no effect whatever on that institution; while the French revolution roused the slaves of their colony in St. Domingo to a general insurrection, and a scene of barbarous and cruel butchery succeeded, to which the history of the world contains no parallel.

This brings me to the last remarks which I have to present on the famous Declaration. And I respectfully ask my reader to consider them maturely.

First, then, it seems manifest, that when the signers of this document assumed that "all men were born equal," they did not take the negro race into account at all. It is unquestionable that the author Mr. Jefferson, was a slaveholder at the time, and continued so to his life's end. It is certain that the great majority of the other signers of the Declaration were slaveholders likewise. No man can be ignorant of the fact that slavery had been introduced into all of the colonies long before, and continued to exist long after, in every State save one. Surely, then, it can not be presumed that these able and sagacious men intended to stultify themselves by declaring that the negro race had rights, which nevertheless they were not ready to give them. And yet it was evident that we must either impute this crying injustice to our revolutionary patriots, or suppose that the case of the slaves was not contemplated.

Nor is this a solitary example, for we have a complete parallel to it in the preamble to the Constitution, where the important phrase, "We the people of the United States," must be understood with the very same limitation. Who were the people? Undoubtedly the free citizens who voted for the Constitution. Were the slaves counted as part of that people? By no means. The negro race had no voice, no vote, no influence whatever in the matter. Thus, therefore, it seems perfectly plain that both these instruments must be understood according to the same rule of interpretation. The slaves were not included in the Declaration of Independence, for the same reason precisely that they were not included in the "people" who adopted the Constitution of the United States.

Now it is the established maxim of the law, that every written document must be understood according to the true intent of the parties when it was executed. The language employed may be such that it admits of a different sense; but there can be only one just interpretation, and that is fixed unalterably by the apparent meaning of its authors at the time. On this ground alone, therefore I respectfully contend that the Declaration of Independence has no claim whatever to be considered in the controversy of our day. I have stated, at some length, my reasons for rejecting its famous propositions, as being totally fallacious and untenable. But even if they were ever so "self-evident," or capable of the most rigid demonstration, the rule of law utterly forbids us to appeal to them in a sense which they were not designed to bear.

In the second place, however, it should be remembered that the Declaration of Independence, whether true or false, whether it be interpreted legally or illegally, forms no part of our present system. As a great historical document, it stands, and must ever stand, prominent before the nations of the world. But it was put forth more than seven years anterior to the Constitution, and it has no place whatever in the obligatory law of the United States. When our orators, our preachers, and our politicians, therefore, take its propositions about human rights and human equality, and set them up as the supreme law, overruling the Constitution and acts of Congress, which are the real law of the land, I can not wonder enough at the absurdity of the proceeding. And I doubt whether the annals of civilized mankind can furnish a stronger instance of unmitigated perversity.

Thirdly, and lastly, I am utterly opposed to those popular propositions, not only because I hold them to be altogether fallacious and untrue, for the reasons already given, but further because their tendency is in direct contrariety to the precepts of the Gospel, and the highest interests of the individual man. For what is the unavoidable effect of this doctrine of human equality? to set the servant against the master, the poor against the rich, the weak against the strong, the ignorant against the educated? to loosen all the bonds and relations of society, and reduce the whole duty of subordination to the selfish cupidity of pecuniary interest, without an atom of respect for age, for office, for law, for government, for Providence, or for Word of God?

I do not deny, indeed, that this doctrine of equality is a doctrine of immense power to urge men forward in a constant struggle for advancement. Its natural operation is to force the vast majority into a ceaseless contest with their circumstances, each discontented with his lot, so long as he sees any one else above him, and toiling with unceasing effort to rise upon the social scale of wealth and importance, as fast and as far as he can. There is no principle of stronger impulse to stimulate ambition in every department. And hence arises its manifold influence on the business, the enterprise, the commerce, the manufactures, the agriculture, the amusements, the fashions, and the political strifes of our Northern people, making them all restless, all aspiring and all determined, if possible, to pass their rivals in the race of selfish emulation.

But how does it operate on the order, the stability, and the ultimate prosperity of the nation? How does it work on the steadfast administration of justice, the honor and purity of our public officers, the quiet subordination of the various classes in the community, the fidelity and submission of domestics, the obedience of children, and the relations of family and home? Above all, how does it harmonize with the great doctrines of the Bible, that the Almighty Ruler appoints to every man his lot on earth, and commands him to be satisfied and thankful for his portion — that we must submit ourselves to those who have rule over us — that we should obey the laws and honor the magistrates — that the powers that be are ordained of God, and he that resisteth the power shall receive condemnation — that we may not covet the property of others — that having food and raiment, we should be therewith content — that we must avoid strife, contention, and railing accusations, and follow peace, charity, and good will, remembering that the service of Christ depends not on the measure

of our earthly wealth, on social equality, on honor, or on our relative position in the community, but on the fulfillment of our personal duty according to our lot, in reliance on his blessing?

I have no more to add with respect to this most popular dogma of human equality, and shall therefore dismiss it, as fallacious in itself, and only mischievous in its tendency. As it is a stronghold of the ultra-abolitionist, I have devoted a large space to its examination, and trust that the conclusion is sufficiently plain. Happily it forms no part of our Constitution or our laws. It never was intended to apply to the question of negro slavery. And it never can be so applied without a total perversion of its historical meaning, and an absolute contrariety to all the facts of humanity, and the clear instruction of the Word of God.

The next objection to the slavery of the Southern States is its presumed cruelty, because the refractory slave is punished with corporal correction. But our Northern law allows the same in the case of children and apprentices. Such was the established system in the army and the navy until very lately. The whipping-post was a fixed institution in England and Massachusetts, and its discipline was administered even to free citizens during the last century. Stripes, not exceeding forty, were appointed to offenders in Israel by divine authority. The Saviour himself used a scourge of small cords when he drove the money-changers from the temple. Are our modern philanthropists more merciful than Christ, and wiser than the Almighty?

But it is said that the poor slaves are treated with barbarity, and doubtless it may sometimes be true, just as soldiers and sailors, and even wives and children, are shamefully abused amongst ourselves, in many instances. It is evident, however, that the system of slavery can not be specially liable to reproach on this score, because every motive of interest as well as moral duty must be opposed to it. The owner of the horse and the ox rarely treats his brutes with severity. Why should he? The animals are his property, and he knows that they must be kindly and carefully used if he would derive advantage from their labor. Much more must the master of the slave be expected to treat him with all fairness and affection, because here there are human feelings to be influenced, and if the servant be not contented and attached, not only will he work unwillingly, but he may be converted into an enemy and an avenger. When the master is a Christian, the principles of the Gospel, as laid down by St. Paul, will operate, of course, in favor of the slave. But even when these are wanting, the motives of interest and prudence remain. And hence I can not doubt that the examples of barbarity must be exceedingly few, and ought to be regarded, not as the general rule, but as the rare exceptions. On the whole, indeed, I see no reason to deny the statement of our Southern friends, that their slaves are the happiest laborers in the world. Their wants are all provided for by their master, their families are sure of a home and maintenance for life. In sickness they are kindly nursed. In old age they are affectionately supported. They are relieved from all anxiety for the future. Their religious privileges are generously accorded to them. Their work is light. Their holidays are numerous. And hence the strong affection which they usually manifest toward their master, and the earnest longing which many, who were persuaded to become fugitives, have been known to express, that they might be able to

return.

The third objection is, that slavery must be a *sin* because it leads to *immorality*. But where is the evidence of this? I dispute not against the probability and even the certainty that there are instances of licentiousness enough among slaveholders, just as there are amongst those who vilify them. It would be a difficult, if not an impossible task, however, to prove that there is more immorality amongst the slaves themselves, then exists amongst the lower class of freemen. In Sabbath-breaking, profane cursing and swearing, gambling, drunkenness, and quarreling-in brutal abuse of wives and children, in rowdyism and obscenity, in the vilest of excesses of shameless prostitution-to say nothing of organized bands of counterfeiters, thieves and burglars — I doubt whether there are not more offenses against Christian morality committed in the single city of New York than can be found amongst the slave population of all the fifteen Slave States together. The fact would rather seem to be that the wholesome restraints of slavery, as a general rule, must be, to a great extent, an effectual check upon the worst kinds of immorality. And therefore this charge, so often brought against it, stands entirely unsupported either by positive proof or by rational probability.

The fourth objection is advanced by a multitude of excellent people, who are shocked at the institution of slavery because it involves the principle of property in man. Yet I have never been able to understand what it is that so disgusts them. No slaveholder pretends that this property extends any further then the right to the labor of the slave. It is obvious to the slightest reflection that slavery can not bind the intellect or the soul. These, which properly constitute the *man*, are free, in their own nature, from all human restraint. But to have property in human labor, under some form is an essential element in all the work of civilized society. The toil of one is pledged for the service of another in every rank of life; and to the extent thus pledged, both parties have a property in each other. The parent especially has an established property in the labor of his child to the age of twenty-one, and has the further power of transferring this property to another by articles of apprenticeship. But this, it may be said, ends when the child is of age. True; because the law presumes him to be then fitted for freedom. Suppose, however, that he belonged to an inferior race which the law did not presume to be fitted for freedom at any age, what good reason could be assigned against the continuance of the property? Such, under the rule of the Scriptures and the Constitution of the United States, is the case of the negro. God, in his wisdom and providence, caused the patriarch Noah to predict that he should be the servant of servants to the posterity of Japheth. And the same almighty Ruler, who alone possesses the power, has wonderfully adapted the race to their condition. For every candid observer agrees that the negro is happier and better as a slave than as a free man, and no individual belonging to the Anglo-Saxon stock would acknowledge that the intellect of the negro is equal to his own.

There have been philosophers and physiologists who contended that the African race were not strictly entitled to be called men at all, but were a sort of intermediate link between the baboon and the human being. And this notion is maintained by some at the present day. For myself, however, I can only say that I repudiate the doctrine with my whole heart. The Scriptures show me that the negro, like all other races, descends from Noah, and I hold him

to be *a man and a brother*. But though he be my brother, it does not follow that he is my equal. Equality can not be found on earth between the brothers even in one little family. In the same house, one brother usually obtains a mastery over the rest, and sometimes rules them with a perfect despotism. In England, the elder brother inherits the estate, and the younger brothers take a lower rank by the slavery of circumstances. The eldest son of the royal family is in due time the king, and his brothers forthwith become his subjects. Why should not the same principle obtain in the races of mankind, if the Almighty has so willed it? The Anglo-Saxon race is king; why should not the African race be subject, and subject in that way for which it is best adapted, and in which it may be more safe, more useful, and more happy than in any other which has yet been opened to it, in the annals of the world?

I know that there may be exceptions, now and again, to this intellectual inferiority of the negro race, though I believe it would be very difficult to find one, unless the intermixture of superior blood has operated to change the mental constitution of the individual. For all such cases the master may provide by voluntary emancipation, and it is notorious that this emancipation has been cheerfully given in thousands upon thousands of instances, in the majority of which the gift of liberty has failed to benefit the negro, and has, on the contrary sunk him far lower in his social position. But no reflecting man can believe that the great mass of the slaves, amounting to nearly four millions, are qualified for freedom. And therefore it is incomparably better for them to remain under the government of their masters, who are likely to provide for them so much more beneficially than they could provide for themselves.

The difference then, between the power of the Northern parent and the Southern slaveholder, is reduced to this, namely, that the master has a property in the labor of his slave for life, instead of having it only to the age of twenty-one, because the law regards the negro as being always a child in understanding, requiring a superior mind to govern and direct him. But, on the other hand, the slave has just as real a property for life in his master's support and protection, and this property is secured to him by the same law, in sickness and in health, in the helplessness of old age, as well as in the days of youthful vigor, including, besides, a comfortable maintenance for his wife and family. Can any rational judgment devise a fairer equivalent?

The fifth objection which often meets the Northern ear, proceeds from the overwhelming value attached, in our age and country, to the name of liberty, since it is common to call it the dearest right of man, and to esteem its loss as the greatest possible calamity. Hence we frequently find persons who imagine that the whole argument is triumphantly settled by the question: "How would you like to be a slave?"

In answer to this very puerile interrogatory, I should say that whether any condition in life is to be regarded as a loss or an advantage, depends entirely on circumstances. Suppose, for example, that the Mayor of New York should ask one of its merchant-princes, "How would you like to be a policeman?" I doubt whether the question might not be taken for an insult, and some words of indignation would probably be uttered in reply. But suppose that the same question were addressed to an Irish laborer, with what feelings would he

receive it? Assuredly with those of gratitude and pleasure. The reason of the difference is obvious, because the employment which would be a degradation to the one, offers promotion and dignity to the other. In like manner, slavery, to an individual of the Anglo-Saxon race, which occupies so high a rank in human estimation, would be a debasement not to be thought of with patience for a moment. And yet, to the Guinea negro, sunk in heathen barbarism, it would be a happy change to place him in the hands of a Southern master. Even now, though the slaves have no idea of the pagan abominations from which their forefathers were taken, it is said that they usually value their privileges as being far superior to the condition of the free negroes around them, and prefer the certainty of protection and support for life, to the hazard of the liberty on which the abolitionist advises them to venture. How much more would they prize their present lot, if they understood that, were it not for this very institution of slavery, they would be existing in the darkest idolatry and licentiousness among the savages of Africa, under the despotic King of Dahomy, destitute of every security for earthly comfort, and deprived of all religious hope for the world to come!

If men would reflect maturely on the subject, they would soon be convinced that liberty is a blessing to those, and only those, who are able to use it wisely. There are thousands in our land, free according to law, but so enslaved to vice and the misery consequent on vice, that it would be a mercy to place them, supposing it were possible, under the rule of some other will, stronger and better than their own. As it is, they are in bondage to Satan, notwithstanding their imaginary freedom; and they do his bidding, not merely in the work of the body, but in the far worse slavery of the soul. Strictly speaking, however, the freest man on earth has no absolute liberty, for this belongs alone to God, and is not given to any creature. And hence it is the glory of the Christian to be the bond servant of the divine Redeemer who "bought us to himself with his own precious blood." The service of *Christ*, as saith the Apostle, is "the only perfect freedom." All who refuse that service, are slaves of necessity to other masters; slaves to Mammon; slaves to ambition; slaves to lust; slaves to intemperance; slaves to a thousand forms of anxious care and perplexity; slaves to circumstances over which they have no control. And they are compelled to labor without ceasing under some or all of these despotic rulers, at the secret will of that spiritual taskmaster whose bondage does not end at death, but continues to eternity.

The sixth objection arises from the fact that slavery separates the husband from the wife and the parents from the children. Undoubtedly it sometimes does so from necessity. Before we adopt this fact, however, as an argument against slavery, it is only fair to inquire whether the same separation does not take place, perhaps quite as frequently, amongst those who call themselves free. The laboring man who has a large family is always obliged to separate from his children, because it is impossible to support them in his humble home. They are sent to service, therefore, one to this master and another to that, or bound as apprentices, as the case may be, and thus the domestic relations are superseded by strangers, for the most part beyond recovery. So among the lower orders, the husbands are separated from their wives by the same necessity. How many, even of the better classes, have left their homes to seek their fortune in the gold regions! How many in Europe have abandoned their families

for Australia, or the United States, or the Canadas! How many desert them from pure wickedness — a crime which can hardly happen under the Southern system! But above all, how constantly does this separation take place amongst our soldiers and sailors, so that neither war nor foreign commerce could be carried on at all without it! All these are borne by freemen, under the slavery of circumstances. Is it wise to declaim against this necessity in one form, when we are forced to submit to it in so many other kinds of the same infliction?

There is only one other argument which occurs to me, requiring notice, and that is based upon the erroneous notion that the laws of God under the Mosaic dispensation allowed polygamy as well as slavery; and, therefore it is inferred that the legislation of the Old Testament is of no authority upon the subject, but as the Gospel did away the first, so also it should do away the other.

The facts here are misunderstood, and the inference is without any real foundation. Let us look at the matter as it is explained by the Saviour himself:

> The Pharisees came to him, tempting him, and saying unto him: Is it lawful for a man to put away his wife for every cause? And he answered and said unto them: Have ye not read that he which made them at the beginning made them male and female; and said, For this cause shall a man leave father and mother, and shall cleave to his wife, and they twain shall be one flesh? Wherefore they are no more twain, but one flesh. What, therefore, God hath joined together let no man put asunder. They say unto him: Why did Moses then command to give a writing of divorcement, and put her away? He saith unto them: Moses, because of the hardness of your hearts, suffered you to put away your wives, but from the beginning it was not so. And I say unto you, Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery, and whoso marrieth her that is put away doth commit adultery (Matt. 19:3-9).

Now here our Lord plainly lays down the original law of marriage, referring expressly to Adam and Eve, one man and one woman, declared to be one flesh, and adding the command, "What God hath joined together, let no man put asunder." But it is evident that polygamy must, of necessity, interfere with this divine union. The twain can no longer be one flesh, when another wife is brought between them, because the new wife must deprive the former one of her exclusive rights and privileges, and the husband destroys the very unity which God designed in joining them together. The doctrine of our Saviour, therefore, restores the law of marriage to its original sanctity; and the apostles, accordingly, always speak of the wife in the singular number, in no instance appearing to contemplate the possibility of the Christian having more wives than one, while, in the case of a bishop, St. Paul specifies it as an essential condition that he shall be "the husband of one wife" (1 Tim. 3:2).

But how has the chosen people been allowed for so many centuries to practice polygamy, and divorce their wives for the slightest cause? Our Lord explains it by saying the Moses suffered them to put away their wives "because of the hardness of their hearts." The special questions addressed to him by the Pharisees did not, indeed, refer to polygamy, but only to the liberty of divorce, for at that time it should seem that the practice of polygamy

had well-nigh ceased in Judea, and it is certainly not countenanced by the Jewish laws at this day. The principle, however, is precisely the same in the two cases. Dissatisfaction with the present wife and desire for another were the cause of action in both; and when the husband did not wish to be burdened by the murmurs or the support of his old companion, he would naturally prefer to send her away, in order to make room for her successor. We see, then, how readily this facility of divorce became the mode in which the Jews of that day sought for the gratification of the capricious attachments, instead of the more expensive and troublesome system of polygamy. And hence our Lord applied the remedy, where it was specially required, by forbidding divorces unless for the weightiest cause, such as adultery. Yet this was no change in the divine arrangement, which had been the same from the beginning. He expressly declares, on the contrary, that the latitude assumed by the Israelites was an indulgence granted by Moses, on account of "the hardness of their hearts." And this is a very different thing from an authoritative decree of the Almighty.

It is surely therefore manifest, from this language of our Saviour, that God had never given any direct sanction to polygamy. Doubtless, as we must infer from many parts of the Old Testament, it had become common among the Israelites, who, supposing themselves justified by the case of Jacob, had probably adopted it in so many instances that Moses did not think it safe or prudent to put it down, lest worse evils might follow, unless he was constrained to do so by the positive command of the Almighty. All that can be truly stated, therefore, is that no such positive command was given, and the Deity left the human lawgiver to use his own discretion in the matter.

Such is the aspect of this question, according to the statement of our Lord, which must be conclusive to every Christian. And hence we may perceive, at once, that the case is in no respect parallel to that of slavery. For here the Almighty caused his favored servant Noah to predict that the posterity of Ham should be the servants of servants, under the descendants of Shem and Japheth. He recognized the bondman and the bondmaid in the Ten Commandments. He laid down the positive law to Israel, that they should buy the children of the heathen that were round about them, and of the strangers who dwelt in their land, to serve them and their families forever. The Saviour, when he appeared, made no allusion to the subject, but plainly declared that he had not come to destroy the law. The first church of believers in Jerusalem were all "zealous" for the law. And St. Paul preached obedience to the slaves among the Gentile churches, and sent a converted slave back to his Christian master.

Where, then, is the resemblance between these cases? In the matter of divorce and polygamy, the Deity is silent, leaving them to the discretion of Moses, until the Messiah should come. But in regard to the slavery of Ham's posterity, he issues his commands distinctly. And the Saviour disclaims the intention to repeal the laws of his heavenly Father, while he asserts the original design of marriage, and his inspired Apostle gives express sanction to slavery, and speaks of the one husband and the one wife, in direct accordance with the word of his divine Master. Here, therefore, it is plain that the cases are altogether unlike, and present a contrast, rather then a comparison.

We know that the doctrine of the primitive church was in harmony with this, for polygamy was never permitted, nor divorces for trifling causes; while slavery was allowed, as being perfectly lawful, so long as the slave was treated with justice and kindness. The ancient canons sometimes advert to the mode in which slaves might be corrected. Bishops and clergy held slaves. In later times, bondmen and bondmaids were in the service of convents and monasteries. And no scruple was entertained upon the subject until the close of the last century, when the new light burst forth which now dazzles the eyes of so many worthy people, and blinds them not only to the plain statements of Scriptures, but to the interests of national unity and peace.

Thus, then, I have examined the various topics embraced in your inquiry, and the conclusion which I have been compelled to adopt must be sufficiently manifest. The slavery of the negro race, as maintained in the Southern States, appears to me fully authorized, both in the Old and the New Testament, which, as the written Word of God, afford the only infallible standard of moral rights and obligations. That very slavery, in my humble judgment, has raised the negro incomparably higher in the scale of humanity, and seems, in fact, to be the only instrumentality through which the heathen posterity of Ham have been raised at all. Out of that slavery has arisen the interesting colony of Liberia, planted by slaveholders, to be a place of refuge for their emancipated bondmen, and destined, as I hope, to be a rich benefit, in its future growth and influence, to Africa and to the world. I do not forget, and I trust that I do not undervalue, the missionary work of England and our own land, in that benighted continent. But I believe that the number of negroes Christianized and civilized at the South, through the system of slavery, exceeds the product of those missionary labors, in a proportion of thousands to one. And thus the wisdom and goodness of God are vindicated in the sanction which his Word has given, and the sentence originally pronounced on Canaan as a curse has been converted into a blessing.

I have now gone over the whole ground covered by your kind application, and would only here repeat that, on the question of slavery, which lies at the root of all our present difficulties, I have obeyed the rule of conscience and of duty, in opposition to my habits, my prejudices, and my sympathies, all of which would tend strongly to the other side. I need hardly say that I am no politician. More than forty years have elapsed since I ceased even to attend the polls. But as a Christian, I am bound to accept the doctrine of the apostles for my guide. And as a citizen, I am bound to sustain the Constitution of the United States, and defend those principles of law, and order, and friendly comity, which every State should faithfully regard in its relations to the rest. Nor is this the first time that I have expressed my opinions. In a lecture at Buffalo, published in 1850, and again in a volume entitled *The American Citizen*, printed by Pudney and Russel, in 1857, I set forth the same views on the subject of slavery; adding, however, a plan for its gradual abolition, whenever the South should consent, and the whole strength of the Government could aid in its accomplishment. Sooner or later, I believe that some measure of that character must be adopted. But it belongs to the Slave States themselves to take the lead in such a movement. And meanwhile their legal rights and their natural feelings must be respected, if we would hope for unity and

peace.

In conclusion, I would only say, that I am perfectly aware how distasteful my sentiments must be, on this very serious question, to the great majority of my respected fellow-citizens, in the region where divine Providence has cast my lot. It would assuredly be far more agreeable if I could conscientiously conform to the opinions of my friends, to whose ability, sincerity, and zeal, I am ready to give all just commendation. But it would be mere moral cowardice in me to suppress what I believe to be the truth, for the sake of popularity. It can not be long before I shall stand at the tribunal of that Almighty and unerring Judge, who has given us the inspired Scriptures to be our supreme directory in every moral and religious duty. My gray hairs admonish me that I may soon be called to give an account of my stewardship. And I have no fear of the sentence which He will pronounce upon an honest though humble effort to sustain the authority of His Word, in just alliance with the Constitution, the peace, and the public welfare of my country.

The preceding essay was extracted from John Henry Hopkins, A Scriptural, Ecclesiastical, and Historical View of Slavery *(New York: W.I. Pooley and Company, 1864).*

SUPPLEMENTARY ESSAY

The African Slave Trade

by Robert Lewis Dabney

This iniquitous traffick, beginning with the importation of negroes into Hispaniola in 1503, was first pursued by the English in 1562, under Sir John Hawkins, who sold a cargo at the same island that year. The colony of Virginia was planted in 1607. The first cargo of negroes, only twenty in number, arrived there in a Dutch vessel in 1620, and was bought by the colonists. All the commercial nations of Europe were soon implicated in the trade, but England became, on the whole, the leader in this trade, and was unrivaled by any, save her daughter, New England.

Reynal estimates the whole number of negroes stolen from Africa before 1776 at nine millions; Bancroft at something more than six millions. Of these, British subjects carried at least half: and to the above numbers must be added a quarter of a million thrown by Englishmen into the Atlantic on the voyage. As the traffick continued in full activity until 1808, it is a safe estimate that the number of victims to British cupidity taken from Africa was increased to five millions. The profit made by Englishmen upon the three millions carried to America before 1776, could not have been less than four hundred millions of dollars. The negroes cost the traders nothing but worthless trinkets, damaged fire-arms, and New England rum: they were usually paid for in hard money at the place of sale. This lucrative trade laid the foundation, to a great degree, for the commercial wealth of London, Bristol, and Liverpool. The capital which now makes England the workshop and emporium of the world, was in large part born of the African slave trade.

But after the nineteenth century had arrived, the prospective impolicy of the trade, the prevalence of democratic and Jacobin opinions imported from France, the shame inspired by the example of Virginia, with (we would fain hope) some influences of the Christian

religion upon the better spirits, began to create a powerful party against the trade. First, Clarkston published in Latin, and then in English, his work against the slave trade, exposing its unutterable barbarities, as practised by Englishmen, and arguing its intrinsic unrighteousness. The powerful parliamentary influence of Wilberforce was added, and afterwards that of the younger Pitt. Since that time, the British Government, with a tardy zeal, but without disgorging any of the gross spoils with which it is so plethoric, wrung from the tears and blood of Africa, has arrogated to itself the special task of the catchpole of the seas, to "police" the world against the continuance of its once profitable sin. Its present attitude is in curious contrast with its recent position, as greedy monopolist, and queen of slave traders; and especially when the observer adverts to her activity in the Coolie traffick, that new and more frightful form, under which the Phariseeism of this age has restored the trade, he will have little difficulty in deciding, whether the meddlesome activity of England is prompted by a virtuous repentance, or by a desire to replace the advantages of the African commerce with other fruits of commercial supremacy.

The share of the Colony of Virginia in the African slave trade was that of an unwilling recipient; never that of an active party. She had no ships engaged in any foreign trade; for the strict obedience of her governors and citizens to the colonial laws of the mother country prevented her trading to foreign ports and all the carrying trade to British ports and colonies was in the hands of New Englanders and Englishmen. No vessel ever went from her ports, or was ever manned by her citizens, to engage in the slave trade; and while her government can claim the high and peculiar honour of having ever opposed the cruel traffick, her citizens have been precluded by Providence from the least participation in it.

The planting of the commercial States of North America began with the colony of Puritan Independents at Plymouth, in 1620, which was subsequently enlarged into the State of Massachusetts. The other trading colonies, Rhode Island and Connecticut, as well as New Hampshire (which never had an extensive shipping interest), were offshoots of Massachusetts. They partook of the same characteristics and pursuits; and hence, the example of the parent colony is taken here as a fair representation of them. The first ship from America, which embarked in the African slave trade, was the *Desire*, Captain Pierce, of Salem; and this was among the first vessels ever built in the colony. The promptitude with which the "Puritan Fathers" embarked in this business may be comprehended, when it is stated that the *Desire* sailed upon her voyage in June, 1637. The first feeble and dubious foothold was gained by the white man at Plymouth less than seventeen years before; and as is well known, many years were expended by the struggle of the handful of settlers for existence. So that it may be correctly said, that the commerce of New England was born of the slave trade; as its subsequent prosperity was largely founded upon it. The *Desire*, proceeding to the Bahamas, with a cargo of "dry fish and strong liquors, the only commodities for those parts," obtained the negroes from two British men-of-war, which had captured them from a Spanish slaver.

Thus, the trade of which the good ship *Desire*, of Salem, was the harbinger, grew into grand proportions; and for nearly two centuries poured a flood of wealth into New England, as well as no inconsiderable number of slaves. Meanwhile, the other maritime colonies of

Rhode Island and Providence Plantations, and Connecticut, followed the example of their elder sister emulously; and their commercial history is but a repetition of that of Massachusetts. The towns of Providence, Newport, and New Haven became famous slave trading ports. The magnificent harbour of the second, especially, was the favourite starting-place of the slave ships; and its commerce rivalled, or even exceeded, that of the present commercial metropolis, New York. All the four original States, of course, became slaveholding.

The present commercial and manufacturing wealth of New England is to be traced, even more than that of Old England, to the proceeds of the slave trade, and slave labour. The capital of the former was derived mainly from the profits of the Guinea trade. The shipping which first earned wealth for its owners in carrying the bodies of the slaves, was next employed in transporting the cotton, tobacco, and rice which they reared, and the imports purchased therewith. And when the unjust tariff policy of the United States allured the next generation of New Englanders to invest the swollen accumulations of their slave trading fathers in factories, it was still slave grown cotton which kept their spindles busy. The structure of New England wealth is cemented with the sweat and blood of Africans.

In bright contrast with its guilty cupidity, stands the consistent action of Virginia, which, from its very foundation as a colony, always denounced and endeavoured to resist the trade. It is one of the strange freaks of history, that this commonwealth, which was guiltless in this thing, and which always presented a steady protest against the enormity, should become, in spite of herself, the home of the largest number of African slaves found within any of the States, and thus, should be held up by Abolitionists as the representative of the "sin of slaveholding"; while Massachusetts, which was, next to England, the pioneer and patroness of the slave trade, and chief criminal, having gained for her share the wages of iniquity instead of the persons of the victims, has arrogated to herself the post of chief accuser of Virginia. It is because the latter colony was made, in this affair, the helpless victim of the tyranny of Great Britain and the relentless avarice of New England. The sober evidence of history which will be presented, will cause the breast of the most deliberate reader to burn with indignation for the injustice suffered by Virginia, and the profound hypocrisy of her detractors.

The preamble to the State Constitution of Virginia, drawn up by George Mason, and adopted by the Convention June 29th, 1776, was written by Thomas Jefferson. In the recital of grievances against Great Britain, which had prompted the commonwealth to assume its independence, this preamble contains the following words: By prompting our negroes to rise in arms among us; those very negroes whom, by an inhuman use of his negative, he had refused us permission to exclude by law. Mr. Jefferson, long a leading member of the House of Burgesses, and most learned of all his contemporaries in the legislation of his country, certainly knew whereof he affirmed. His witness is more than confirmed by that of Mr. Madison, who says: The British government constantly checked the attempts of Virginia to put a stop to this infernal traffic. Mr. Jefferson, in a passage which was expunged from the Declaration of Independence by New England votes in the Congress, strongly stated the same charge. And George Mason, perhaps the greatest and most influential of Virginians, next to

Washington, reiterated the accusation with equal strength, in the speech in the Federal Convention, 1787, in which he urged the immediate prohibition of the slave trade by the United States. A learned Virginian antiquary has found no less than twenty-eight several attempts made by the Burgesses to arrest the evil by their legislation, all of which were either suppressed or negatived by the proprietary or royal authority.

But in 1778, the State of Virginia, determined to provide in good time against the resumption of the traffic when commerce should be reopened, gave final expression to her will against it. At the General Assembly, Patrick Henry being Governor of the Commonwealth, the following law was the first passed:

> ...Be it enacted by the General Assembly, That from and after the passing of this act, no slave or slaves shall hereafter be imported into this Commonwealth by sea or land, nor shall any slave so imported be bought or sold by any person whatsoever.... Every person hereafter importing slaves into this Commonwealth contrary to this act, shall forfeit and pay the sum of one thousand pounds for every slave so imported.... And be it further enacted, That every slave imported into this Commonwealth, contrary to the true intent and meaning of this act, shall, upon such importation, become free.

Thus Virginia has the honour of being the first Commonwealth on earth to declare against the African slave trade, and to make it a penal offence. Her action antedates by thirty years the much bepraised legislation of the British Parliament, and by ten years the earliest movement of Massachusetts on the subject. Almost before the Clarkstons and Wilberforces were born, Virginia did that very work for which her slanderers now pretend so much to laud those philanthropists.

But it may be said, that if the government of Virginia was opposed to the African slave trade, her people purchased more of its victims than those of any other colony; and the aphorism may be quoted against them, that the receiver is as guilty as the thief. This is rarely true in the case of individuals, and when applied to communities, it is notoriously false. All States contain a large number of irresponsible persons. The character of a free people as a whole should be estimated by that of its corporate acts, in which the common will is expressed. The individuals who purchased slaves of the traders were doubtless actuated by various motives. Many persuaded themselves that, as they were already enslaved, and without their agency, and as their refusal to purchase them would have no effect whatever to procure their restoration to their own country and to liberty, they might become their owners, without partaking in the wrong of which they were the victims. Many were prompted by genuine compassion, because they saw that to buy the miserable creatures was the only practicable way in their reach to rescue them from their pitiful condition; for tradition testifies that often when the captives were exposed in long ranks upon the shore, near their floating prisons, for the inspection of purchasers, they besought the planters and their wives to buy them, and testified an extravagant joy and gratitude at the event.

The proper rulers were forbidden by the mother country to employ that prohibitory legislation which is, in all States, the necessary guardian of the public virtue; and it is there-

fore that we place the guilt of the sale where that of the importation justly belongs. The government of Virginia was unquestionably actuated in prohibiting the slave trade, by a sincere sense of its intrinsic injustice and cruelty. But one more fact remains: When the late Confederate Government adopted a constitution, although it was composed exclusively of slaveholding States, it voluntarily did what the United States has never done: it placed an absolute prohibition of the foreign slave trade in its organic law.

The preceding essay was extracted from Robert Lewis Dabney, A Defense of Virginia and the South *(New York: E.J. Hale and Son, 1867).*

CHAPTER FOUR
The "Higher Law" of Abolitionism

The British Nest of Anti-Slavery Agitation

As discussed in a previous chapter, the second war with Great Britain nearly drove the New England States to secede from the Union and ally themselves again with the English government. However, since the war ended in 1815 with the Union between North and South still intact, a new "series of acts and long continued policy, tending to irritate the southern, and conciliate the northern people" was begun to drive the two sections apart and bring about a conflict "produced by the hatred and prejudices of one party, but against the consent of the other party." According to J.A. Roebuck of Sheffield, England, it was necessary "for the safety of Europe" that "the arrogant, the overbearing, and great Republic of America" be "split in two."[1] It is apparent that the contrived tension over the institution of slavery was the very rock upon which the Union was intended to be split. In fact, during an interview with Aaron Legget, a prominent New York merchant and Abolitionist, Deputy General Wilson of the British army admitted that the abolition of slavery in the British West Indies was done, not with the welfare of the Negroes in mind, but to spark an Abolitionist movement in the Northeastern States and thereby precipitate the long-sought dissolution of the Union:

> [T]he abolition of slavery in the British colonies would naturally create an enthusiastic anti-slavery sentiment in England and America, and that in America this would, in process of time, excite a hostility between the free States and the slave States, which

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1. J.A. Roebuck, quoted by the London *Times*, 10 June 1865; cited in Lunt, *Origin of the Late War,* page 87.

> would end in the dissolution of the American Union, and the consequent failure of the grand experiment of democratic government; and the ruin of democracy in America would be the perpetuation of aristocracy in England.[2]

John C. Calhoun of South Carolina, who served as Vice President under both John Quincy Adams and Andrew Jackson, and later in the Senate, saw Great Britain's agitation on the slavery issue as grounded firmly in the motive to remove the United States as an economic rival. In a letter to William R. King dated 12 August 1844, he wrote, "The question is, by what means can Great Britain regain and keep a superiority in tropical cultivation, commerce, and influence?... Her main reliance is... to cripple or destroy the productions of her successful rivals. There is but one way by which it can be done, and that is, by abolishing African slavery throughout this continent." This would "give her a monopoly in the production of the great tropical staples, and the command of the commerce, navigation, and manufactures of the world, with an established naval ascendancy and political preponderance." [3] Clement Laird Vallandigham expressed similar views at a Democratic meeting held in Dayton, Ohio on 29 October 1855. In response to the election of the anti-slavery candidate Salmon P. Chase and the defeat of the Democratic party in that State, Vallandigham traced the origins and growing strength of American Abolitionism to the "insolent intermeddling of the British government and British emissaries":

> Three hundred years ago, [England] began to traffic in negro slaves. Queen Elizabeth was a sharer in its gains. A hundred and fifty years later, at the peace of Utrecht, England undertook, by compact with Spain, to import into the West Indies, within the space of thirty years, one hundred and forty-four thousand negroes, demanding, and with exactest care securing, a monopoly of the traffic. Queen Anne reserved one-quarter of the stock of the slave-trading company to herself, and one half to her subjects; to the king of Spain, the other quarter being conceded. Even so late as 1750, Parliament busied itself in devising plans to make the slave-trade still more effectual, while in 1775, the very year of the Revolution, a noble earl wrote to a colonial agent these memorable words: "We can not allow the Colonies to check or discourage, in any degree, a traffic so beneficial to the nation." Between that date, and the period of first importation, England had stolen from the coast of Africa, and imported into the new world, or buried in the sea on the passage thither, not less than three and a quarter millions of negroes — more, by half a million, than the entire population of the Colonies. In April, 1776, the American Congress resolved

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2. Testimony of Sidney E. Morse, Esq. of New York regarding a conversation between himself and Aaron Legget on the subject of the motives behind British abolition of slavery in the West Indies; quoted by Horton, *History of the Great Civil War*, page 39; also cited by Lunt, *Origin of the Late War*, page 80.

3. John C. Calhoun, letter to William R. King, 12 August 1844; in Robert L. Meriwether (editor), *The Papers of John C. Calhoun* (Columbia, South Carolina: University of South Carolina Press, 1959), Volume XIX, pages 574-576.

against the importation of any more slaves. But England continued the traffic, with all its accumulated horrors, till 1808; for so deeply had it struck its roots into the commercial interests of that country, that not all the efforts of an organized and powerful society, not the influence of her ministers, not the eloquence of all her most renowned orators, availed to strike it down for more than forty years after this, its earliest interdiction in any country, by a rebel congress. But the loss of her American Colonies, and the prohibition of the slave-trade, had left small interest to Great Britain in negro slavery. Her philanthropy found room now to develop and expand in all its wonderful proportions. And accordingly, in 1834, England... robbed, by act of Parliament, one hundred millions of dollars from the wronged and beggared peasantry of Ireland, from the enslaved and oppressed millions of India, from the starving, overwrought, mendicant carcasses of the white slaves of her own soil, to pay to her impoverished colonists, plundered without voice and without vote in her legislature, the stipulated price of human rights; and with these, the wages of iniquity, in the outraged name of God and humanity, mocked the handful of her black bondsmen in the West Indies with the false and deluding shadow of liberty....

...England became now the great apostle of African liberty. Ignoring, sir, or putting under, at the point of the bayonet, the political rights of millions of her own white subjects, she yet prepared to convict the world of the sinfulness of negro slavery. Exeter Hall sent out its emissaries, full of zeal, and greedy for martyrdom. The British government took up the crusade — not from the motives of religion or philanthropy. Let no man be deceived.... [T]he American experiment of free government had not failed. America had grown great — had grown populous and powerful. Her proud example, towering up every day higher, and illuminating every land, was penetrating the hearts of the people, and threatening to shake the thrones of every monarchy in Europe. Force against such a nation would be the wildest of follies. But to be odious is to be weak, and internal dissension had wasted Greece, and opened even Thermopylae to the Barbarian of Macedon....

The machinery which had effected emancipation in the British West India Islands, of use no longer in England, was transferred to America. Aided by British gold, encouraged by British sympathy, the agitation began here, in 1835; and so complete was it in all its appointments, so thorough the organization and discipline, so perfect the electric current, that, within six months, the whole Union was convulsed. Affiliated societies were established in every northern State, and in almost every county; lecturers were paid, and sent forth into every city and village; a powerful and well supported press, fed from the treasuries, and working up the cast-off rags of the British societies, poured forth a multitude of incendiary prints and publications, which were distributed by mail throughout the Union, but chiefly in the southern States, and among the slaves.[4]

In a letter to Governor John Langdon of Massachusetts, Thomas Jefferson had warned that "the Toryism with which we struggled in 1777, differed but in name from the Federalism of 1799, with which we struggled also; and the Anglocism of 1808, against which

4. Clement Laird Vallandigham, speech delivered Dayton, Ohio, 29 October 1855; in Clement Laird Vallandigham, *Abolition, the Union, and the Civil War* (Columbus, Ohio: J. Walter & Co., 1863), pages 19, 20-21.

we are now struggling, is but the same thing in another form. It is longing for a king, and an English king rather than any other."[5] The resolutions passed by the Ohio Democratic Convention of 8 January 1840 brought the history of the Federalist faction up to date: "Resolved, That political Abolitionism is but ancient Federalism, under a new guise, and that the political action of anti-slavery societies is only a device for the overthrow of Democracy [the Democratic party]."[6] These agitators were relatively few in number — their two thousand organizations in 1840 claimed a membership of only 200,000 out of a Northern population of about twenty million, or about two percent of the population[7] — and they were greatly despised throughout the country. They "met in obscure apartments, and attracted scarcely any public attention; or, if brought to notice by accident, were the objects of only popular ridicule and contempt."[8] For example, William Lloyd Garrison, the anarchist publisher of the small weekly Abolitionist newspaper in Boston styled *The Liberator*[9] who refused to "think, or speak, or write with moderation,"[10] and who made frequent trips to London to consult with leading English Abolitionists, was seized by a mob on 1 October 1835, beaten severely, and then dragged through the streets of Boston with a rope around his neck after delivering an inflammatory speech on Negro equality. On 9 March 1836, when he attempted to address a committee in the House of Representatives on the subject of slavery, Garrison was denounced as a "traitor and an outlaw" and denied the floor.[11] It should be noted that this denial was rendered on just grounds, for upon rising, he had uttered these words: "They tell us, sir, that if we proceed in our course we shall dissolve the Union. But what is the Union to me? I am a citizen of the world."[12] Furthermore, the motto emblazoned across each issue of his periodical read, "No Union With Slaveholders," and his favorite shibboleth was, "The

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5. Jefferson, letter to John Langdon, 5 March 1810; quoted by Theodore Dwight, *The Character of Thomas Jefferson as Exhibited in His Own Writings* (Boston: Weeks, Jordan and Company, 1839), page 275.

6. Resolutions of the Ohio Democratic Convention, 8 January 1840; quoted by Vallandigham, *Abolition, the Union, and the Civil War*, page 23.

7. Jeffrey Rogers Hummel, *Emancipating Slaves, Enslaving Free Men* (Chicago, Illinois: Open Court Publishing Company, 1996), page 21.

8. Lunt, *Origin of the Late War*, page 70.

9. Circulation of *The Liberator* never exceeded 3,000 (William C. Davis, *Brother Against Brother: The War Begins* (Alexandria, Virginia: Time-Life Books, 1983), page 62.

10. William Lloyd Garrison, *The Liberator*, 1 January 1831, page 1.

11. Lunt, *Origin of the Late War*, page 109.

12. Garrison, statement made in the House of Representatives on 9 March 1836; quoted by Lunt, *ibid.*, page 108.

Constitution — a covenant with death, an agreement with hell."[13] Elijah Lovejoy, another Abolitionist who published out of Alton, Illinois, had his presses destroyed four times before he was finally murdered by angry citizens in 1837. The reader who is tempted to sympathize with the rough treatment endured by these men would do well to withhold his judgment in the matter until he has become acquainted with the true character and goal of Abolitionism in the course of the present chapter.

As Joseph Moore noted, "The abolition movement was vigorously prosecuted by means of newspapers, pamphlets, books, lectures, *etc*., and was continued without cessation."[14] According to its financial report of 1837, the New York office of the American Anti-Slavery Society alone published and distributed well over half a million pieces of literature annually, including 7,877 books, 47,250 tracts and pamphlets, and 537,626 copies of the *Anti-Slavery*, *Slaves' Friend*, *Human Rights*, and *Emancipator* periodicals.[15] Filled with stories of the alleged horrors of slavery and of daring escapes from bondage, many of these publications were ostensibly written for young White readers in the North. However, that they actually targeted a different audience entirely is proven by the fact that they were often found tucked away in parcels of clothing and in the toes of shoes destined for distribution among the Southern slaves.[16] When a sackful of this material was discovered and destroyed at Charleston, South Carolina by an angry mob, and postmasters across the South began to follow suit, Postmaster General Amos Kendall was forced to bring the matter before Congress for a solution:

> A new question has arisen in the administration of this Department. A number of individuals have established an association in the Northern and Eastern States and raised a large sum of money, for the purpose of effecting the immediate abolition of Slavery in the Southern States. One of the means reported has been the printing of a large mass of newspapers, pamphlets, tracts, and almanacs, containing exaggerated, and in some instances, false accounts of the treatment of slaves, illustrated with cuts calculated to operate on the passions of the colored men, and produce discontent, assassination, and servile war. These they attempted to disseminate throughout the slaveholding States, by the agency of the public mails....
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> The Constitution makes it the duty of the United States "to protect each of the

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13. Abraham Lincoln was reportedly a subscriber to *The Liberator* during his tenure as President, and yet Garrison was never arrested as an enemy to the Union nor even reprimanded for his treasonous sentiments.

14. John West Moore, *The American Congress: A History of National Legislation and Political Events, 1774-1895* (New York: Harper and Brothers, 1895), page 336.

15. Ewing, *Northern Rebellion*, pages 261-262.

16. Lunt, *Origin of the Late War*, page 97. Not coincidentally, this was when laws began to appear on the statute books of some Southern States forbidding slaves to be taught to read.

> States against invasion; and, on application of the Legislature, or of the Executive, (when the Legislature cannot be convened) against domestic violence." There is no quarter whence domestic violence is so much to be apprehended, in some of the States, as from the servile population, operated upon by mistaken or designing men. It is to obviate danger from this quarter, that many of the State laws, in relation to the circulation of incendiary papers, have been enacted. Without claiming for the General Government the power to pass laws prohibiting discussions of any sort, as a means of protecting States from domestic violence, it may safely be assumed, that the United States have no right, through their officers or departments, knowingly to be instrumental in producing within the several States, the very mischief which the Constitution commands them to repress. It would be an extraordinary construction of the powers of the general Government, to maintain that they are bound to afford the agency of their mails and post offices, to counteract the laws of the States, in the circulation of papers calculated to produce domestic violence; when it would, at the same time, be one of their most important constitutional duties to protect the States against the natural, if not necessary consequences produced by that very agency.
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> The position assumed by this Department, is believed to have produced the effect of withholding its agency, generally, in giving circulation to the obnoxious papers in the Southern States. Whether it be necessary more effectually to prevent, by legislative enactments, the use of the mails, as a means of evading or violating the constitutional laws of the States in reference to this portion of their reserved rights, is a question which, it appears to the undersigned, may be submitted to Congress, upon a statement of the facts, and their own knowledge of the public necessities.[17]

The sudden and astounding volume of this propaganda which flooded the country and found its way into every State in the South, coupled with the unpopularity of Abolitionism in the North, led many to the conclusion that the perpetrators must have been receiving funds from a source outside of the United States. As George Lunt pointed out, "Those who reflected upon the subject naturally looked over the water, where means were abundant and interests were engaged, to account for the supply of funds."[18] That Abolitionism did not reflect the sentiments of the majority of the American people and that its rise in this country must have therefore been attributed, at least in part, to the influence and patronage of "emissaries from foreign parts," was suggested by President Andrew Jackson in his 7 December 1835 address to the Twenty-Fourth Congress:

> I must also invite your attention to the painful excitements in the South by the attempts to circulate through the mails inflammatory appeals addressed to the passions of slaves, in prints and in various sorts of publications, calculated to stimulate them to insurrection, and to produce all the horrors of civil war.... It is fortunate for the country that the

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17. Amos Kendall, *Report on the Delivery of Abolition Materials in the Southern States* (1835), *House Documents* (Twenty-Fourth Congress, First Session), Appendix, page 9.

18. Lunt, *Origin of the Late War*, page 92.

good sense, the generous feeling, and the deep-rooted attachment of the people of the non-slaveholding States to the Union and their fellow-citizens of the same blood in the South, have given so strong and impressive a tone to the sentiments entertained against the proceedings of the misguided persons who have engaged in these unconstitutional and wicked attempts, and especially against the emissaries from foreign parts, who have dared to interfere in this matter, as to authorize the hope that these attempts will no longer be persisted in.... I would, therefore, call the special attention of Congress to the subject, and respectfully suggest the propriety of passing such a law as will prohibit, under severe penalties, the circulation in the Southern States, through the mail, of incendiary publications, intended to instigate the slaves to insurrection.[19]

Not only did the Abolitionists incur the wrath of their fellow countrymen and rebuke from the President of the United States, their agitation was also condemned by many Northern political leaders, including some who themselves had no personal affinity for slavery. William L. Marcy, the Governor of New York from 1833 to 1839, made the following appeal to the State Legislature:

A few individuals in the Middle and Eastern States, acting on mistaken notions of moral and religious duty, or some less justifiable principle, and disregarding the obligations which they owe to the respective governments, have embarked in an enterprise for abolishing domestic slavery in the Southern and Southwestern States. Their proceedings have caused much mischief in those States, and have not been entirely harmless in our own. They have acquired too much importance by the evils which have already resulted from them, and by the magnitude and number of those which are likely to follow, if they are further persisted in, to justify me in passing them without notice. These proceedings have not only found no favor with the vast majority of our constituents, but they have been generally reprobated. The public indignation which they have awakened has broken over the restraints of law, and led to dangerous tumults and commotions, which, I regret to say, were not, in all instances, repressed without the interposition of military power. If we consider the excitement which already exists among our fellow-citizens on this subject, and their increasing repugnance to the abolition cause, we have great reason to fear that further efforts to sustain it will be attended, even in our own State, with still more dangerous disturbances of the public peace.

In our commercial metropolis, the abolitionists have established one of their principal magazines, from which they have sent their missiles of annoyance into the slaveholding States. The impression produced in those States, that this proceeding was encouraged by a portion of the business men of New York, or at least not sufficiently discouraged by them, threatened injurious consequences to our commerce. A proposition was made for an extensive voluntary association in the South, to suspend business inter-

19. Andrew Jackson, 7 December 1835 address to Congress; in James D. Richardson, *Messages and Papers of the Presidents* (Washington, D.C.: Government Printing Office, 1897), Volume III, page 175.

> course with our citizens. A regard for the character of our State, for the public interest, for the preservation of peace among our citizens, as well as a due respect for the obligations created by our political institutions, call upon us to do what may be done, consistently with the great principles of civil liberty, to put an end to the evils which the abolitionists are bringing upon us and the whole country. With whatever disfavor we may view the institution of domestic slavery, we ought not to overlook the very formidable difficulties of abolishing it, or give countenance to any scheme for accomplishing this object, in violation of the solemn guarantees we are under, not to interfere with the institution as it exists in the States....
>
> Slavery was not finally abolished here until 1827. We were left to come to this result in our own time and manner, without any molestation or interference from any other State. I am very sure that any intermeddling with us in this matter by the citizens of other States would not have accelerated our measures, and might have proved mischievous. Such services, if they had been tendered, would have been rejected as useless, and regarded as an invasion of our rights....
>
> If the abolitionists design to enlist our passions in this cause, such a course would be worse than useless, unless it had reference to some subsequent action. If it is expected in this manner to influence the action of Congress, then they are aiming at a usurpation of power. Legislation by Congress would be a violation of the Constitution, by which that body exists, and to support which every member of it is bound by the solemn sanction of an oath. The powers of Congress cannot be enlarged so as to bring the subject of slavery within its cognizance, without the consent of the slaveholding States.... If their operations here are to inflame the fanatical zeal of emissaries, and instigate them to go on missions to the slaveholding States, there to distribute abolition publications and to promulgate abolition doctrines, their success in this enterprise is foretold by the fate of the deluded men who have preached them. The moment they pass the borders of those States, and begin their labors, they violate the laws of the jurisdiction they have invaded, and incur the penalty of death, or other ignominious punishment. I can conceive no other object that the abolitionists can have in view, so far as they propose to operate here, but to embark the people of this State, under the sanction of the civil authority, or with its connivance, in a crusade against the slaveholding States, for the purpose of forcing abolition upon them by violence and bloodshed. If such a mad project as this could be contemplated for a single moment, as a possible thing, every one must see that the first step toward its accomplishment would be the end of our Confederacy and the beginning of civil war. So far, then, as respects the people of this State, or any action that can emanate from them, I can discover no good that has resulted, or that can be reasonably expected to result from the proceedings of the abolitionists; but the train of evils that must necessarily attend their onward movement is in number and magnitude most appalling.[20]

Edward Everett, Governor of Massachusetts from 1836 to 1840, likewise addressed his State's Legislature as follows:

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20. William L. Marcy, speech delivered to the New York Legislature in January, 1836; quoted by Lunt, *Origin of the Late War*, pages 99-100.

The country has been greatly agitated during the past year in relation to slavery, and acts of illegal violence and outrage have grown out of the excitement kindled on this subject in different parts of the Union, which cannot be too strongly deplored, or too severely condemned. In this State, and several of our sister States, slavery has long been held in public estimation as an evil of the first magnitude. It was fully abolished in this Commonwealth in the year 1783, by decisions of the courts of justice, and by the interpretation placed on the declaration of equality in the bill of rights. But it existed in several of the States at the time of the adoption of the Constitution, and in a greater ratio to the free population of the country than at the present time. It was, however, deemed a point of the highest public policy by the non-slaveholding States, notwithstanding the existence of slavery in their sister States, to enter with them into the present Union on the basis of the constitutional compact. That no Union could have been formed on any other basis, is a fact of historical notoriety; and is asserted in terms by General Hamilton, in the reported debates of the New York Convention for adopting the Constitution. This compact expressly recognizes the existence of slavery, and concedes to the States where it prevails the most important rights and privileges connected with it. Every thing that tends to disturb the relations created by this compact is at war with its spirit; and whatever, by direct and necessary operation, is calculated to excite an insurrection among the slaves, has been held, by highly respectable legal authority, an offense against the peace of this Commonwealth, which may be prosecuted as a misdemeanor at common law. Although opinions may differ on this point, it would seem the safer course, under the peculiar circumstances of the case, to imitate the example of our fathers — the Adamses, the Hancocks, and other eminent patriots of the Revolution, who, although fresh from the battles of liberty, and approaching the question as essentially an open one, deemed it nevertheless expedient to enter into a union with our brothers of the slaveholding States, on the principles of forbearance and toleration on this subject. As the genius of our institutions and the character of our people are entirely repugnant to laws impairing the liberty of speech and of the press, even for the sake of repressing its abuses, the patriotism of all classes of citizens must be invoked to abstain from a discussion which, by exasperating the master, can have no other effect than to render more oppressive the condition of the slave, and which, if not abandoned, there is great reason to fear will prove the rock on which the Union will split. Such a disastrous consummation, in addition to all its remediless political evils for every State in the Union, could scarcely fail, sooner or later, to bring on a war of extermination in the slaveholding States. On the contrary, a conciliatory forbearance with regard to this subject in the non-slaveholding States, would strengthen the hands of a numerous class of citizens of the South, who desire the removal of the evil; whose voice has often been heard for its abolition in legislative assemblies, but who are struck down and silenced by the agitation of the question abroad; and it would leave the whole painful subject where the Constitution leaves it, with the States where it exists, and in the hands of an all-wise Providence, who, in His own good time, is able to cause it to disappear, like the slavery of the ancient world, under the gradual operation of

the gentle spirit of Christianity.[21]

On the floor of the United States Senate, John M. Niles of Connecticut said:

> Abolitionism consists of two kinds: abolitionism of the old school, and abolitionism of the new school. The former amounts to nothing more than a rational wish and desire for the emancipation of all persons held in bondage, and a disposition to advance that object by the diffusion of knowledge and the progress of society. Of this kind of Abolitionists were Franklin and Jefferson; and there are many such at the North, and I presume at the South....
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> Very different from these are the abolitionists of the new school. What are their principles? I judge of them from their own publications, which I have examined. They propose an *immediate* abolition of slavery, and against the will of those interested in it. They, therefore, propose to abolish slavery by violence. And this they design to effect in communities where they do not reside, and have no interests or sympathies with the inhabitants. Whatever may be their intentions, no rational person can have a doubt that the scheme has a tendency to insurrection, massacre, and a servile war.
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> They regard slavery as a theological question. They say it is a sin and a moral evil in the sight of God and man, and ought to be eradicated from the earth; and that it cannot be wrong to remove an evil. They aver that they have nothing to do with the consequences.
>
> Can men be sane who avow principles like these, who are pursuing an object having the most important bearing on the vital interests of society, which expose it to all the horrors of insurrection, massacre, and servile war, and yet declare that they have nothing to do with the consequences of their own acts? To call such men fanatics is too mild a term. I have no concern with their motives, but like all other moral agents, they must be held responsible for the natural and obvious consequences of their own *acts*. This principle, true in morals, is no less so in politics. Is it to be wondered at that a scheme, based on a total recklessness of consequences, should have excited the almost universal indignation of an intelligent and moral people? (emphasis in original)[22]

Niles then presented the following resolutions which had the approval of the Governor of Connecticut:

> Resolved, That in view of these obvious principles, it is a violation of the spirit of the Constitution for citizens of one State to enter into combinations (to give more energy to their efforts) for the avowed object of effecting a change in the institutions, laws, or

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21. Edward Everett, address to the Massachusetts State Legislature on 15 January 1836; in *Address of His Excellency Edward Everett to the Two Branches of the Legislature on the Organization of the Government for the Political Year Commencing January 6, 1836* (Boston: Dutton and Wentworth, 1837), pages 29-31.

22. John M. Niles, speech delivered in the Senate on 15 February 1836; in *Congressional Globe* (Twenty-Fourth Congress, First Session), pages 115-124.

social relations of the people of other States, who, as regards all such matters, are as independent communities as they would have been had they not entered into the Confederacy.

Resolved, That the conduct of the Abolition societies, in publishing and distributing in the slave-holding States in violation of their laws, newspapers, and pamphlets, the natural and obvious tendency of which is to excite insubordination and insurrection among the slaves, and expose the country to all the horrors of a servile war, is highly censurable, and cannot fail of meeting the reprobation of every friend of his country.[23]

In a similar address before the Senate the following month, Thomas Ewing of Ohio, who, while voicing his opposition to slavery as "a great evil in any community," nevertheless denounced "those mad and reckless fanatics who attempt, by various devices, to excite insurrection among the slaves, and bring on all the horrors of a servile war."[24] Even the eminent Whig Henry Clay saw the dangers of Abolitionism to the peace of the country and warned with amazing accuracy of the national woes to come:

Abolition should no longer be regarded as an imaginary danger. The abolitionists, let me suppose, succeed in their present aim of uniting the inhabitants of the free states as one man, against the inhabitants of the slave states. Union on one side will beget union on the other. And this process of reciprocal consolidation will be attended with all the violent prejudices, embittered passions, and implacable animosities which ever degraded or deformed human nature. A virtual dissolution of the Union will have taken place, whilst the form of its existence will remain. The most valuable element of union, mutual kindness, the feelings of sympathy, the fraternal bonds, which now happily unite us, will have been extinguished forever. One section will stand in menacing and hostile array against the other. The collisions of opinion will be quickly followed by the clash of arms. I will not attempt to describe scenes which now happily lie concealed from our view. Abolitionists themselves would shrink back in dismay and horror at the contemplation of desolated fields, conflagrated cities, murdered inhabitants, and the overthrow of the fairest fabric of human government that ever rose to animate the hopes of civilized man.[25]

Abolitionist Agitation Inflames Sectional Strife

Whether one chooses to view the institution of slavery, as it existed at one time in every American State, and as it continued to exist in the Southern and Border States up to the close of the war, as inherently righteous or wicked, or a mixture of both, is really irrele-

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23. Niles, *ibid*., page 125.

24. Thomas Ewing, speech delivered in the Senate on 8 March 1836; *ibid*., page 220.

25. Henry Clay, in Richard Chambers (editor), *Speeches of the Honorable Henry Clay of the Congress of the United States* (Cincinnati, Ohio: Shepard and Stearns, 1842), page 381.

vant to the present discussion. That the Constitution both recognized and protected property in slaves was openly acknowledged by all, with the exception of a handful of misinformed fanatics and incompetent legal dabblers.[26] For example, Benjamin F. Butler, a Massachusetts attorney who later served as a Major-General in the Northern army during the War Between

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26. Lysander Spooner, *The Unconstitutionality of Slavery* (Boston: Bela Marsh, Publisher, 1846). In this attempted legal brief, Spooner, an obscure and ill-trained lawyer from Boston, attempted to prove that the Declaration of Independence abolished slavery in the original thirteen States, that the "persons held to labor" under the Constitution were not slaves, but indentured servants or apprentices, and that the framers by their refusal to use the word "slave" in the document evidenced that they did not intend the federal Government to protect that species of property. It was Spooner's hope to have slavery abolished by judicial action, and in this goal, he was strongly opposed by other prominent Abolitionists, such as Wendell Phillips, who saw it rather as a subject requiring political agitation for new legislation, or, should such agitation fail to produce the desired result, the dissolution of the Union (*The Constitution a Pro-Slavery Compact: Extracts From the Madison Papers* [New York: American Anti-Slavery Society, 1856]).

Spooner's work on slavery was just another in a string of failed literary endeavors, and might never have been completed at all had he not solicited and obtained the financial aid of Gerrit Smith, a wealthy upstate New York Abolitionist to whom the reader will be introduced shortly. Once published, the pamphlet attracted the praise of only the most fanatical within the anti-slavery movement, of which William Lloyd Garrison was the most notable, but was largely ignored when it was not being soundly refuted. In his response to *The Unconstitutionality of Slavery*, Wendell Phillips criticized Spooner for advocating "practical no-governmentism" and for encouraging "every one to do what is right in his own eyes" (*Review of Lysander Spooner's Essay on the Unconstitutionality of Slavery* [Boston: Andrews and Prentiss, 1847], page 10). Indeed, Spooner insisted in his pamphlet that "the whole object of legislation is to overturn natural law, and substitute for it the arbitrary will of power; to destroy men's rights" (page 142), and he criticized the notions that "first, that government must be sustained whether it administers justice or injustice; and, second, that its commands must be called law, whether they really are law or not" (page 144). Spooner's entire career as a writer consisted of one denunciation of governmental authority after another. The unsoundness of his thinking was aptly demonstrated by his appeal to the Constitution in order to attack slavery in his 1846 pamphlet and his later attack on the Constitution itself as having "no authority or obligation at all" in his pamphlet entitled, *No Treason: The Constitution of No Authority* (Boston: Self-Published, 1870).

It should be noted that Spooner was also openly anti-religion, and specifically anti-Christian, in his sentiments, basing his attacks upon slavery entirely upon humanistic rationalism and egalitarianism. On this point, he was much more consistent than most other Abolitionists, who chose to retain a veneer of religious rhetoric in their agitation against the institution. Spooner's claim that the phrase "We the People" in the preamble to the Constitution identified the ordaining power behind the "nation" as all those who were born and living within the United States, regardless of race, color, or gender, was later used as the foundation of the Fourteenth Amendment of 1868 and eventually the women's suffrage movement. His arguments in favor of the sovereignty of the individual and the supremacy of his "natural rights" over all forms of legislative restraint were also very similar, if not identical, to the anarchistic ideals advanced by many today in the so-called "Patriot" movement.

the States and as the military-governor of Virginia during Reconstruction, enumerated the clauses in the Constitution which covered the institution with the protective shield of the Union, and noted:

> Without these recognitions of the institution of slavery, as established by the laws of the various States, the Constitution could not have been adopted. These provisions convinced me as a lawyer that the right of the people of any State to hold slaves, where the institution was established by law, was clearly a Constitutional right, and that nothing could be done by any State to interfere with that right in any other State without a violation of the Constitution; and, of course, anything done to take away that class of property by State or nation, from the owner, was in violation of the Constitution.[27]

Every office-holder in the country, whether State or federal, was thus duty-bound to uphold and defend the Constitution in its entirety upon the commencement of his duties. He could not disregard or fail to execute any provision of that document without violating his oath of office and perjuring himself, nor could he attempt to use his office to change any provision thereof without incurring the just opprobrium of usurper.

From the standpoint of honorable statesmanship, a lawful method had been provided by the framers in Article Five for alteration in the Government's charter should it be found defective at any point. In his farewell address, George Washington had explicitly warned his fellow countrymen not to depart from this lawful amendment process, and to stand ever vigilant against usurpations of the powers of government by factious and self-serving parties:

> If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

The Abolitionists of New England had at their disposal a free press through which to engage in a calm and reasoned debate with their slave-holding brethren on the merits or demerits of the "peculiar institution." Instead, they abused this vehicle and used it to stir up the indignation and suspicion of the Southern people, thereby removing the debate from its lawful and intellectual moorings, and setting it adrift in the turbulent sea of lawlessness and fanaticism. Few in the North had ever witnessed slavery first-hand,[28] and many merely

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27. Benjamin F. Butler, *Butler's Book: Autobiography and Personal Reminiscences of Major-General Benjamin F. Butler* (Boston: A.M. Thayer and Company, 1892), Volume I, page 129.

28. Boston Abolitionist Nehemiah Adams was one of the few exceptions. His three-month sojourn among the slaveholders in South Carolina in 1854 resulted in the writing of his book, *Southside View*

concluded on its barbarity from Theodore Dwight Weld's 1839 book *American Slavery As It Is*, [29] which was itself based entirely on random newspaper clippings culled from Southern newspapers over a six month period.[30] Harriet Beecher Stowe's fictional novel *Uncle Tom's Cabin*,[31] which was acclaimed in advertisements throughout the North as "the Greatest Book of the Age" and is still required reading in many public schools today, relied heavily on *American Slavery As It Is*[32] to spin a "florid romance"[33] of a Kentucky slave who is separated from his family and sold to and finally murdered by an abusive master. Despite her heavy

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of Slavery, in which he, though remaining anti-slavery in principle, concluded that, far from being his oppressor, the ante-bellum South was the only true benefactor the Negro ever had. He also warned his Northern brethren that a continued assault upon the South's "peculiar institution" would lead to a destruction of the Union and the ultimate ruin of the Black population in America. Needless to say, Adams' book was vigorously attacked by the Abolitionists of that day, and is completely ignored today by modern American historians.

29. Theodore Dwight Weld, *American Slavery As It Is: Testimony of a Thousand Witnesses* (New York: American Anti-Slavery Society, 1839).

30. Otto Scott, *The Secret Six* (Murphys, California: Uncommon Books, 1979), page 133. A parallel illustration of the dishonesty of this sort of "research" would be if a Southern author had likewise collected random newspaper clippings relating to crimes committed in Northern cities and thereafter released a book entitled, *The American Yankee As He Is.* The majority of good people in the North would have been justly indignant at such a slanderous publication.

31. Harriet Beecher Stowe, *Uncle Tom's Cabin, or Life Among the Lowly* (Boston: John P. Jewitt and Company, 1853).

32. According to James G. Randall, "Mrs. Stowe had the pamphlet in her work basket by day, and under her pillow by night" (*The Civil War and Reconstruction* [Boston: D.C. Heath and Company, 1937], page 169).

33. Confederate veteran John Cussons described Stowe's novel with these words:

> ...[I]t must be borne in mind that the masses reason through their feelings, judging a cause by their opinion of its supporters, and that that opinion is absorbed from prevailing sanctions.... [C]ountless millions of our women and children still weep and moan and pray over the morbid monstrosities of *Uncle Tom's Cabin*. They still find in that peculiar compound of fanaticism and cant nothing but a generous outburst against Southern cruelty and wrong; nothing but an inspired cry for the deliverance of the oppressed. They never dream that the moving story over which they agonize is but a florid romance, sanctioned to their use on account of what is called its "divine morality." They cannot conceive of it as a mere commercial venture — a novel of the lurid sort, devised to inflame the passions and make the flesh creep — the joint product of a trio of habitual sensation-mongers — an emotional authoress, a drunken apostle of temperance, and a libidinous priest (*United States "History" As the Yankee Makes and Takes It* [Glen Allen, Virginia: Cussons, May and Company, 1900], pages 85-86).

dependence on the "research" of Theodore Weld, Mrs. Stowe was nevertheless convinced that the text of her own book had been dictated to her by God Himself.

Perhaps the crowning achievement of the Abolitionists' literary assault upon the peace of the Southern States, and that of the country as a whole, was Hinton Helper's 1857 book entitled, *The Impending Crisis of the South*. The following is but a sample of the defamatory and antagonistic nature of this book which will show why it was banned in many parts of the South:

> It is against slavery on the whole, and against slaveholders as a body, that we wage an exterminating war. Those persons who, under the infamous slave-laws of the South — laws which have been correctly spoken of as a "disgrace to civilization," and which must be annulled simultaneously with the abolition of slavery — have had the vile institution entailed on them contrary to their wills, are virtually on our side; we may, therefore, very properly strike them off from the black list of three hundred and forty-seven thousand slaveholders, who, as a body, have shocked the civilized world with their barbarous conduct, and from whose conceited and presumptuous ranks are selected the officers who do all the legislation, town, county, state and national, for (against) five millions of poor outraged whites, and three millions of enslaved negroes.
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> Non-slaveholders of the South! farmers, mechanics and workingmen, we take this occasion to assure you that the slaveholders, the arrogant demagogues whom you have elected to offices of honor and profit, have hoodwinked you, trifled with you, and used you as mere tools for the consummation of their wicked designs. They have purposely kept you in ignorance, and have, by moulding your passions and prejudices to suit themselves, induced you to act in direct opposition to your dearest rights and interests. By a system of the grossest subterfuge and misrepresentation, and in order to avert, for a season, the vengeance that will most assuredly overtake them ere long, they have taught you to hate the abolitionists, who are your best and only true friends. Now, as one of your own number, we appeal to you to join us in our patriotic endeavors to rescue the generous soil of the South from the usurped and desolating control of these political vampires. Once and forever, at least so far as this country is concerned, the infernal question of slavery must be disposed of; a speedy and perfect abolishment of the whole institution is the true policy of the South — and this is the policy which we propose to pursue. Will you aid us, will you assist us, will you be freemen, or will you be slaves? These are questions of vital importance; weigh them well in your minds; come to a prudent and firm decision, and hold yourselves in readiness to act in accordance therewith. You must either be for us or against us — anti-slavery or pro-slavery; it is impossible for you to occupy a neutral ground; it is as certain as fate itself, that if you do not voluntarily oppose the usurpations and outrages of the slavocrats, they will force you into involuntary compliance with their infamous measures. Consider well the aggressive, fraudulent and despotic power which they have exercised in the affairs of Kansas; and remember that, if, by adhering to erroneous principles of neutrality or non-resistance, you allow them to force the curse of slavery on that vast and fertile field, the broad area of all the surrounding States and Territories — the whole nation, in fact — will soon fall a prey to their diabolical intrigues and machinations. Thus, if you are not vigilant, will they take advantage of your neutrality, and make you and

others the victims of their inhuman despotism....

As a striking illustration of the selfish and debasing influences which slavery exercises over the hearts and minds of slaveholders themselves, we will here state the fact that, when we, the non-slaveholders, remonstrate against the continuance of such a manifest wrong and inhumanity — a system of usurpation and outrage so obviously detrimental to *our* interests — they fly into a terrible passion, exclaiming, among all sorts of horrible threats, which are not unfrequently executed, "It's none of your business!" — meaning to say thereby that their slaves do not annoy us, that slavery affects no one except the masters and their chattels personal, and that *we* should give ourselves no concern about it, whatever! To every man of common sense and honesty of purpose the preposterousness of this assumption is so evident, that any studied attempt to refute it would be a positive insult. Would it be none of our business, if they were to bring the small-pox into the neighborhood, and, with premeditated design, let "foul contagion spread?" Or, if they were to throw a pound of strychnine into a public spring, would that be none of our business? Were they to turn a pack of mad dogs loose on the community, would we be performing the part of good citizens by closing ourselves within doors for the space of nine days, saying nothing to anybody? Small-pox is a nuisance; strychnine is a nuisance; mad dogs are a nuisance; slavery is a nuisance; slaveholders are a nuisance, and so are slave-breeders; it is our business, nay, it is our imperative duty, to abate nuisances; we propose, therefore, with the exception of strychnine, which is the least of all these nuisances, to exterminate this catalogue from beginning to end....

We contend that slaveholders are more criminal than common murderers.... Against this army for the defense and propagation of slavery, we think it will be an easy matter — independent of the negroes, who, in nine cases out of ten, would be delighted with an opportunity to cut their masters' throats, and without accepting of a single recruit from either of the free States, England, France or Germany — to muster one at least three times as large, and far more respectable for its utter extinction. We hope, however, and believe, that the matter in dispute may be adjusted without arraying these armies against each other in hostile attitude. We desire peace, not war — justice, not blood. Give us fair-play, secure to us the right of discussion, the freedom of speech, and we will settle the difficulty at the ballot-box, not on the battle-ground — by force of reason, not by force of arms. But we are wedded to one purpose from which no earthly power can ever divorce us. We are determined to abolish slavery at all hazards — in defiance of all the opposition, of whatever nature, which it is possible for the slavocrats to bring against us. Of this they may take due notice, and govern themselves accordingly....

Henceforth, Sirs, we are demandants, not supplicants. We demand our rights, nothing more, nothing less. It is for you to decide whether we are to have justice peaceably or by violence, for whatever consequences may follow, we are determined to have it one way or the other. Do you aspire to become the victims of white non-slaveholding vengeance by day, and of barbarous massacre by the negroes at night? Would you be instrumental in bringing upon yourselves, your wives, and your children, a fate too horrible to contemplate? Shall history cease to cite, as an instance of unexampled cruelty, the Massacre of St. Bartholomew, because the world — the South — shall have furnished a more direful scene of atrocity and carnage? Sirs, we would not wantonly pluck a single hair from your heads; but we have endured long, we have endured much; slaves only of the

> most despicable class would endure more. An enumeration or classification of all the abuses, insults, wrongs, injuries, usurpations, and oppressions, to which you have subjected us, would fill a larger volume than this; it is our purpose, therefore, to speak only of those that affect us most deeply. Out of our effects you have long since overpaid yourselves for your negroes; and now, Sirs, you *must* emancipate them — speedily emancipate them, or we will emancipate them for you! Every non-slaveholder in the South is, or ought to be, and will be, against you. You yourselves ought to join us at once in our laudable crusade against "the mother of harlots" (emphasis in original).[34]

The Republicans in Congress, who, in the election of 1858, had nearly doubled in number from the previous election, not only endorsed a later abridged edition of this book, but also paid for the free circulation of one hundred thousand copies throughout the Northern States.[35] Of course, Helper's views were not unique, but had become standard Republican doctrine. For example, Joshua Giddings of Ohio had openly advocated servile insurrection in the House of Representatives three years before the publication of *The Impending Crisis*:

> ...I see the destiny of this nation wielded by that "higher law".... Sir, it is that higher law that is rolling on the North... which is manifested in ten thousand public meetings throughout the land of the free... which is manifested in the pulpit and on the stump... which must and will shape the destiny of this nation: before that we must bow for it is the voice of God uttered through his people. Sir, we are a people who pray before we fight, and when we have said our prayers and put on our armor, then our enemies had better stand aside than meet us....
>
> When the contest shall come; when the thunder shall roll and the lightning flash; when the slaves shall rise in the South; when, in imitation of the Cuban bondmen, the

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34. Hinton Rowan Helper, *The Impending Crisis of the South: How To Meet It* (New York: A.B. Burdick, Publishers, 1857), pages 129, 147. Helper first attempted to publish this book in Baltimore, but the State of Maryland prohibited the publication of any work that might "excite discontent amongst the people of color of this state." Thus, the New York publishing firm of A.B. Burdick was chosen. Stephen D. Carpenter claimed that Helper, a native North Carolinian who had relocated to New York, was not the true author of this book, but that it was actually written by a Northern Abolitionist (Carpenter, *Logic of History*, page 62). James Dabney McCabe, on the other hand, believed that Helper was a man of little conviction and would advocate any subject in print that would turn a profit (McCabe, *Fanaticism and Its Results*, page 22).

Helper was certainly no friend of the Black man, as he demonstrated in his 1868 book entitled, *Black Negroes in Negroland* (New York: Carleton, 1868). In this latter work, he described the Black man as "an inferior fellow," his skin color as "a thing of ugliness, disease, and death... [and] a most hateable thing," and asserted that White men were the "predestined supplanters of the Black races." Helper was appointed by Abraham Lincoln as United States Consul to Buenos Aires in November of 1861, but found himself shunned by both North and South after the war for his "wild ravings" and finally committed suicide in 1909.

35. Horton, *History of the Great Civil War*, page 59.

> southern slaves of the South shall feel they are men; when they feel the stirring emotion of immortality, and recognize the stirring truth that they are men, and entitled to the rights which God has bestowed upon them; when the slaves shall feel that, and when masters shall turn pale and tremble when their dwellings shall smoke, and dismay sit on each countenance, then, sir, I do not say "we will laugh at your calamity, and mock when your fear cometh," but I do say, when that time shall come, the lovers of our race will stand forth, and exert the legitimate powers of this Government for freedom. We shall then have constitutional power to act for the good of our country, and do justice to the slave. Then shall we strike off the shackles from the limbs of the slaves. That will be a period when this Government will have the power to act between slavery and freedom.... And let me tell you, Mr. Speaker, that that time hastens. It is rolling forward.... I hail it as I do the approaching dawn of that political and moral millennium which I am well assured will come upon the world.[36]

William O. Duvall had these words to say when he was invited to address a Republican convention in New York: "I sincerely hope that a civil war may soon burst upon the country. I want to see American Slavery abolished in my day — it is a legacy I have no wish to leave my children.... and when the time arrives for the streets and cities of this 'land of the free and home of the brave' to run with blood to the horses' bridles, if the writer of this be living, there will be one heart to rejoice at the retributive justice of heaven."[37] At an Abolitionist meeting in Natick, Massachusetts, this resolution was passed: *"Whereas*, Resistance to tyrants is obedience to GOD; *Resolved*, That it is the right and duty of slaves to resist their masters, and the *right and duty of the people of the North to incite them to resistance, and to aid them in it!"* (emphasis in original)[38] In a similar vein, Theodore Parker, an influential Abolitionist of Boston, contributed the following five postulates to the New York *Tribune*:

> 1st. A man held against his will, as a slave, has a natural right to kill any one who seeks to prevent his enjoyment of liberty....
>
> 2d. It may be a natural duty of a slave to develop this natural right in a practical manner, and actually kill those who seek to prevent his enjoyment of liberty....
>
> 3d. The freeman has a natural right to help the slaves to recover their liberty, and in that enterprise to do for them all which they have a right to do for themselves....
>
> 4th. It may be a natural charity for the freeman to help the slaves to the enjoyment of their liberty, and as a means to that end, to aid them in killing all such as oppose their natural freedom....
>
> 5th. The performance of this duty is to be controlled by the freeman's power to

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36. Joshua Giddings, in *Congressional Globe* (Thirty-Third Congress, First Session), page 648.

37. William O. Duvall, quoted by Carpenter, *Logic of History*, page 94; McCabe, *Fanaticism and Its Results*, page 14.

38. Abolitionist resolution (Natick, Massachusetts), quoted by Carpenter, *ibid.*, page 66.

help....[39]

William H. Seward, who would later receive appointment as Secretary of State in Abraham Lincoln's Cabinet, declared *The Impending Crisis* to be "a work of great merit; rich, yet accurate in statistical information, and logical in analogies," and predicted that "it will exert a great influence on the public mind, in favor of truth and justice."[40] In his famous speech, delivered at Rochester, New York on 25 October 1858, Seward announced, "It is an irrepressible conflict between opposing and enduring forces, and it means that the United States must and will, sooner or later, become either entirely a slave-holding nation, or entirely a free-labor nation.... I know, and you know, that a revolution has begun. I know, and all the world knows, that revolutions never go backward."[41] Referring to this revolution in another speech in the Senate, he threatened the Southern people with these words: "Free labor has at last apprehended its rights, its interests, its power, its destiny, and is organizing itself to assume the government of the Republic. It will meet you everywhere, in the Territories and out of them, wherever you may go to extend slavery. It has driven you back in California and in Kansas. It will invade you soon in Delaware, Maryland, Virginia, Missouri, and Texas.... The invasion will be not merely harmless, but beneficial if you yield seasonably to its just and moderate demands...."[42] In other words, this leading Northern spokesman was giving Southerners a choice between submission without complaint to a flagrant violation of the Constitution and humiliating subordination to a revolutionary faction or standing firmly on their constitutional rights as sovereign States and facing armed invasion and promised genocide. Nothing less than the personal honor of the Southern people was the sacrifice demanded of them by their Northern confederates in exchange for peace.

John Brown, the Abolitionists' Angel of Death

> The grim figure of the political assassin has haunted the lives and deranged the plans of governments throughout history. Although often described as a person of uncertain mental balance, the assassin in real life has, more often, been a person of at least

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39. Theodore Parker, in John Weiss (editor), *The Life and Correspondence of Theodore Parker* (D. Appleton and Company, 1864), Volume II, pages 170-171.

40. William H. Seward, letter of endorsement, 28 June 1857; quoted by Carpenter, *Logic of History*, page 63; McCabe, *Fanaticism and Its Results*, page 18.

41. Seward, speech delivered at Rochester, New York on 25 October 1858; in George E. Baker (editor), *The Works of William Seward* (Boston: Houghton, Mifflin and Company, 1884), Volume IV, pages 289-302.

42. Seward, speech delivered in the Senate on 3 March 1858; in *Congressional Globe* (Thirty-Fifth Congress, First Session), page 553.

> ordinary intelligence who believes that the trend of events can only be changed by the death of an important figure.... Political assassins desire not simply to murder, but also to attract attention — to incite and terrify as many people as possible.
>
> In the late 1850s a new type of political assassin appeared in the United States. He did not murder the mighty — but the obscure. He did not pursue officials, or leaders, or persons in the public eye; he murdered at random — among the innocent. Yet his purposes were the same as those of his classic predecessors: to force the nation into a new political pattern by creating terror.[43]

With the bombing of the Alfred P. Murrah Federal Building in Oklahoma City in 1995, the destruction of the World Trade Center in New York in 2001, and the serial sniper attacks in and around Washington, D.C. in late 2002, modern Americans have become well-acquainted with the stark reality of religious terrorism. However, this kind of terrorism is nothing new to American soil, and one such killer in particular, though the equal of any Muslim extremist in his fanaticism and savagery, is nevertheless lauded by many ignorant souls today as a hero and a champion of human rights. In May of 1856, the infamous John Brown, with the financial backing of six notable Republican leaders — Theodore Parker, Samuel Gridley Howe, George Luther Stearns, Franklin B. Sanborn, Gerrit Smith, and Thomas Wentworth Higgins[44] — embarked on a killing spree, beginning in the Kansas Territory[45] and terminating in his capture at Harper's Ferry, Virginia and his subsequent

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43. Scott, *The Secret Six*, page 3.

44. Scott, *ibid*. In his book, *The Civil War and the Constitution*, John W. Burgess stated that "a committee of Massachusetts citizens furnished two hundred of the famous Sharp's rifled carbines" (*The Civil War and the Constitution* [New York: Charles Scribner's Sons, 1901], Volume I, page 40). This committee was the Secret Six, made up of the men already mentioned.

45. Otto Scott gave the following details of the horrific commencement of Brown's activities near Pottawatomie Creek in the Kansas Territory:

> The night was hot and humid; the river was not far away. The Doyle family was asleep as the men approached their cabin. Two bulldogs rushed out, barking. Two of the men stopped and slashed one to death with their sabers. The other dog fled, howling, and the family awoke.
>
> The men knocked heavily on the door and James Doyle swung out of bed. "What is it?" he called.
>
> "What way to the Wilkinson place?" a man's voice answered.
>
> Doyle opened the door, saying he would tell them, and was almost knocked off his feet when several men rushed in, shouting, "We're the Northern Army! Surrender!"
>
> Mahala Doyle clutched her youngest, a girl, and began to stammer. "Hush, Mother, hush," said James Doyle. His three boys moved beside him: William, twenty-two, Drury, twenty, and John, fourteen. The men pushed Doyle, and then the two eldest sons, out the door. Mahala Doyle began to weep, but when they reached for the fourteen-year-old she sprang out of bed and clutched him. "Not him; Oh, God, not him."
>
> The old man [Brown] in the light jacket, leather tie, and farmer's straw hat, his face as thin

execution for treason against the State at Charles Town on 2 December 1859. The purpose of Brown's campaign was to serve as "a Free State warning to the pro-slavery forces that it was to be a tooth for a tooth, an eye for an eye... so far as one wing of the Free State party was concerned."[46] Brown believed that it was "better that a whole generation should pass off the earth, men, women, and children — by a violent death"[47] than that slavery should continue to exist, and he hoped to provoke the massive slave uprising throughout the South threatened, not only in the Helper book, but by numerous political and religious leaders in the North, whereby hundreds of thousands would be sacrificed upon the altar of Abolitionism.[48] According to Stephen Douglas, Brown's crime was the "logical, inevitable result of the doctrines... of the Republican party."[49] Brown biographer, Richard J. Hinton wrote:

> All over the North, especially in the more active centres of Republican political activity, John Brown found friendly sympathizers, a good deal of verbal encouragement, and a small degree of pecuniary assistance. Yet no one who came in close contact with him could doubt that he held firmly to a grim purpose, and that at some day, not far distant, he would probably be heard from by way of a direct attack on slavery.[50]

> and stern as an ax, pushed the boy back and the men left, slamming the door.
>
> Mahala Doyle clutched John and listened, her eyes wide.
>
> The men stopped their prisoners about two hundred yards from the Doyle cabin. The leader placed his revolver against Doyle's forehead and pulled the trigger, as cooly as a man shooting a lame horse.
>
> That set them off. One, in a frenzy, stabbed Doyle's corpse with his saber. William Doyle was stabbed in the face, slashed over the head, and shot in the side. Drury broke and ran in the darkness, was pursued, and overtaken near a ravine. He put his arms up to ward off their blows, but the men, bearded, burly, and in a near frenzy, hacked at him with their sabers. His fingers and then his arms were cut off; his head was cut open, and he was stabbed in the chest. They continued to hack after he fell — and after he was dead. He had frightened them; he might have escaped (*The Secret Six*, page 6).

46. Oswald Garrison Villard, *John Brown, 1800-1859* (Garden City, New York: Doubleday, Nolan and Company, 1929), pages 171-172.

47. John Brown, in F.B. Sanborn (editor), *The Life and Letters of John Brown, Liberator of Kansas and Martyr of Virginia* (Boston: Roberts Brothers, 1888), page 122.

48. Again, Otto Scott's comments are insightful: "It is only after several generations that it can be seen, with terrible clarity, that Old Brown — by linking murder to his distorted version of religion, and by selecting victims who were innocent of any crime — had reintroduced the old, evil and pagan principle of human sacrifice" (*Secret Six*, page 62).

49. Stephen Douglas, *Congressional Globe* (Thirty-Sixth Congress, First Session), page 553.

50. Richard J. Hinton, *John Brown and His Men* (New York: Funk and Wagnall's Company, 1894), page 123.

Brown was eulogized after his death by Ralph Waldo Emerson, Henry David Thoreau, Theodore Parker, Wendell Phillips, and other leading Abolitionists as "the saint" whose execution made "the gallows as glorious as the cross,"[51] "an angel of light,"[52] "the John the Baptist of the new dispensation of freedom,"[53] and "the impersonation of God's order and God's law."[54] It was also confidently asserted that "the Almighty would welcome him home in Heaven," and "John Brown has gone to Heaven."[55] E.D. Wheelock, a Unitarian minister in Dover, New Hampshire, preached these words from his pulpit in anticipation of the execution of Brown:

> One such man makes total depravity impossible, and proves that American greatness *died not with Washington!* The gallows from which he ascends into Heaven, *will be in our politics*, what the cross is in our religion — the sign and symbol of supreme self-devotedness — and from his sacrificial blood, *the temporal salvation of four millions of our people shall yet spring!* On the second day of December he is to be strangled in a Southern prison, *for obeying the Sermon on the Mount.* But, to be hanged in Virginia, is like being crucified in Jerusalem — it is the last tribute which he pays to *Virtue*! (emphasis in original)[56]

Wendell Phillips declared, "[John Brown] refused to regard anything as government, or any statute as law, except those which conformed to his own sense of justice and right...." and for that "virtue," Phillips admonished his listeners to be "reverently grateful for the privilege of living in a world rendered noble by the daring of heroes, the suffering of martyrs — among whom let none doubt that history will accord an honorable niche to old John Brown."[57] The New York *Tribune* of 2 December 1859 likewise exuded religious adoration

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51. Ralph Waldo Emerson, speech at Tremont Temple, Boston; quoted by Carpenter, *Logic of History*, page 69.

52. Henry David Thoreau, "A Plea For John Brown," in *The Writings of Henry David Thoreau* (Cambridge, Massachusetts: Riverside Press, 1894), Volume X, page 234.

53. Milwaukee (Wisconsin) Chamber of Commerce resolution, 2 December 1859, authored by Edward D. Holton, J.H. Paine, George Tracy, Clarence Shepherd, and B. Domschke; quoted by Carpenter, *Logic of History*, page 67.

54. Wendell Phillips, *Speeches, Lectures, and Letters* (Boston: Walker, Wise and Company, 1864), page 308.

55. S.A. Ashe, *A Southern View of the Invasion of the Southern States and War of 1861-65* (Raleigh, North Carolina: self-published, 1938), page 18.

56. E.D. Wheelock, quoted by Carpenter, *Logic of History*, page 65; McCabe, *Fanaticism and Its Results*, page 22.

57. Wendell Phillips, quoted by Carpenter, *Logic of History*, page 68.

for the dead terrorist:

> While the responsive heart of the North has been substantially sympathizing with the one [John Brown] whom they admire and venerate, and love, the great soul itself has passed away into eternal heavens. During the eighteen centuries which have passed, no such character has appeared anywhere. The galleries of the resounding ages echo with no footfall mightier than the martyr of to-day. He has gone. Efforts to save him were fruitless. Prayers were unavailing. He stood before his murderers defiantly, asking no mercy.
>
> Bewildered not and daunted not, the shifting scenes of his life's drama, at the last, brought to him neither regrets nor forebodings. Having finished the work which God had given him to do, this apostle of a new dispensation, in imitation of the Divine, received with fortitude his baptism of blood! And this beholding, the heavens opened, and Jesus standing at the right hand of the throne of God, this last of Christian martyrs stepped proudly and calmly upon the scaffold, and thence upward into the embrace of angels, and into the General Assembly and Church of the First Born, whose names are written in heaven.[58]

In 1860, *The Public Life of Captain John Brown* was authored by Brown confidant James Redpath and published in Boston by the Unitarian firm of Thayer and Eldridge. In the advertisement for the book, the Abolitionist publishers praised Redpath, "whose previous life had been so identified in feeling and character with the career of the sainted hero," and the author openly declared that he "endorsed John Brown" and "his scheme of emancipation." Chapter One of this book, entitled "December 2, 1859" — a reference to the day of Brown's execution — contained the following text: "To-day John Brown was hanged by a semi-barbarous Commonwealth, as a traitor, murderer, and robber, and fifteen despotic States are rejoicing at his death; while, in the free North, every noble heart is sighing at his fate, or admiring his devotion... or cursing the executioners of their warrior-saint."[59] Redpath then proceeded to tell his readers to expect yet another insurrection which would complete the work left unfinished by Brown.

The well-known painting of John Brown pausing in his walk to the gallows to kiss a Black infant held forth by an adoring slave woman, was typical of the worship that was bestowed upon this convicted felon in the North. The lyrics "John Brown's body lies a-mouldering in the grave" were written to the tune of an old Methodist hymn and were frequently heard sung by Northern troops as they later perpetuated Brown's mission of destruction and murder in the South. Eventually, Julia Ward Howe, wife of Abolitionist and Brown supporter Dr. Samuel Gridley Howe, wrote what is now known as the "Battle Hymn of the Republic" to this tune — a song which speaks of the building of an altar to the god of war,

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58. New York *Tribune*, 2 December 1859; quoted by Carpenter, *ibid*, page 69.

59. James Redpath, *The Public Life of Captain John Brown* (Boston: Thayer and Eldridge, 1860), page 13.

whose "fiery gospel" is "writ in burnished rows of steel," and of the messianic role of the Northern Army in "crush[ing] the serpent" — the Southern Confederacy — and "trampling out the vintage [blood] where the grapes of wrath [Southern Whites] are stored."[60]

In a strange twist of irony, the man so idolized by the Republican party and the Northern troops, had killed numerous innocent citizens in a then-Union State and had attacked United States property, killing a United States marine, while the man in command of the troops sent to Harper's Ferry to suppress the rebellion, was none other than the future Confederate General, Robert Edward Lee.

The Radicals Seek a Dissolution of the Union

The secession movement of 1860-1861, though actually carried out by the Southern States, was, in fact, the result of a Northern faction which had screamed for a dissolution of the Union as early as 1796, during the War of 1812, again at the annexation of Texas in 1845,[61] and which finally organized itself as the inappropriately named Republican party in 1854, calling for a bloody separation of the New England States from the South. In a letter

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60. It is a shame that this reprehensible song, which has nothing at all to do with the true Gospel of the Lord Jesus Christ or with Christian charity, is published today in a great number of church hymnals, and is sung with great enthusiasm even by many Southerners who are ignorant of the true meaning of the lyrics and their infernal roots in the violent, lawless religion of John Brown and the Unitarian Abolitionists. The latter so hated union with the South under the Constitution that, according to Anson Burlingame, Lincoln's Minister to China, they needed "an anti-slavery constitution, an anti-slavery Bible, and an anti-slavery God" (quoted by Carpenter, *Logic of History*, page 94).

61. Former President, John Quincy Adams, who was at the helm of the opposition to the annexation of Texas, declared:

> We... feel bound to call your attention... to the project... intended soon to be consummated — the annexation of Texas to this union.... [B]y this admission of a new slave territory and slave states, *the undue ascendancy of the slaveholding power in the government shall be secured and riveted beyond all redemption*.... We hesitate not to say that annexation... *would be identical with dissolution*. It would be a violation of our national compact... so deep and fundamental... as, in our opinion, not only inevitably to result in a dissolution of the Union, but fully to justify it (speech delivered on 3 March 1843; in Frederick W. Merk, *Slavery and the Annexation of Texas* [New York: Alfred A. Knopf, 1972], page 210; emphasis in original).

Adams' point was that a deliberate attempt to disrupt the balance of power between North and South was of such a serious nature that dissolution of the Union was the appropriate remedy for the aggrieved section — precisely the same argument upon which Southern secession was predicated in 1860-1861.

written on 20 December 1860 — the same day that South Carolina declared her independence from the United States of America — Stephen Douglas noted, "Many of the Republican leaders desire a dissolution of the Union, and urge war as a means of accomplishing disunion."[62] The supporting evidence for this assertion is shockingly abundant. At a Republican convention held in 1856 in Boston, Massachusetts, the following resolution was passed: "Resolved... That this movement [Abolitionism] does not merely seek disunion, but the more perfect union of free States by the expulsion of the slave States from the Confederation, in which they have ever been an element of discourd, danger, and disgrace."[63] Yet another Republican convention, held that same year in Monroe, Wisconsin, passed this resolution: "Resolved, That it is the duty of the North, in case we fail in electing a President and Congress that will restore freedom [Abolitionism] to Kansas, to revolutionize the Government."[64] When Lincoln issued his presidential proclamation of 30 March 1863, which appointed a day of prayer and fasting for "the pardon of our national sins, and the restoration of our now divided and suffering country, to its former condition of unity and peace," the editors of the Boston *Commonwealth* responded, "Our own opinion is, that if God had resolved not to pardon us at all, he would prove it by allowing the restoration of that old 'unity of peace.' That unity was crime; that peace worse than war! May the tongue be withered, ere it is answered, that prays for a restoration of that old state of things, from which God in His mercy seems willing to rescue us — than which His fiercest wrath could find no more terrible doom, for a blind nation, led by blind rulers!"[65] The *True American*, another Republican periodical, sneered, "This twaddle about the Union and its preservation is too silly and sickening for any good effect."[66] In 1854, Horace Greeley published in the New York *Tribune* this insurrectionary poem entitled "The American Flag":

All hail the *flaunting lie!*
The stars look pale and dim;
The stripes are bloody sores —
A lie the vaunting hymn!

It shields a *pirate's* deck!
It binds a man in chains!

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62. Stephen A. Douglas, letter dated 20 December 1860; quoted by Carpenter, *Logic of History*, page 49.

63. Republican resolution delivered at Boston, Massachusetts (1856); quoted by Carpenter, *ibid*., page 55.

64. Republican resolution, Monroe, Wisconsin; quoted by Edmonds, *Facts and Falsehoods*, page 141.

65. Boston *Commonwealth*, quoted by Edmonds, *ibid*., page 143.

66. *The True American*, quoted by Carpenter, *Logic of History*, page 56.

It yokes the captive's neck,
And wipes the bloody stains!

Tear down the flaunting lie;
Half-mast the starry flag;
Insult no sunny sky
With *hate's polluted rag!*

Destroy it, ye who can;
Deep sink it in the waves:
It bears a fellow man,
To groan with fellow slaves!

Furl, furl the boasted *lie!*
Till Freedom lives again,
To rule once more in truth,
Among untrammeled men!

Roll up the starry sheen,
Conceal its bloody stains,
For in its folds are seen
The stamp of rustling chains! (emphasis in original)[67]

It is obvious that the Republican party had begun to wage a political war against the flag of the United States long before Southerners ever opened fire on Fort Sumter. The public statements of individual Republican Abolitionists were no less clear in their desire to see the Union destroyed. For example, Frederick Douglass, the former slave and fanatical Abolitionist, openly declared in 1856, "From this time forth I consecrate the labor of my life to the dissolution of the Union, and I care not whether the bolt that rends it shall come from heaven or from hell!"[68] William Lloyd Garrison declared, "I have said, and I say again, that in proportion to the growth of disunionism, will be the growth of Republicanism...."[69] and:

> The Union is a lie. The American Union is a sham — an imposture — a covenant with death — an agreement with hell and it is our business to call for a dissolution.... I will continue to experiment no longer — it is all madness. Let the Slave-Holding States go, and Slavery will go down with the Union to the dust. If the Church is against disunion, and not on the side of the Slave, then I pronounce it as of the devil. I say, let us cease striking hands with thieves and adulterers, and give to the winds the rallying cry, "No Union with

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67. New York *Tribune*, 1854; quoted by Carpenter, *ibid.*, pages 58-59.

68. Frederick Douglass, quoted by Carpenter, *ibid.*, page 93.

69. William Lloyd Garrison, quoted by Carpenter, *ibid.*, page 56.

Slave-Holders, socially or religiously, and up with the flag of disunion."[70]

He further stated, "There is but one honest, straightforward course to pursue if we would see the slave power overthrown — the Union must be dissolved."[71]

Wendell Phillips' sentiments were the same:

> No man has a right to be surprised at this state of things [the brewing hostilities between North and South]. It is just what we abolitionists and disunionists have attempted to bring about. There is merit in the Republican party. It is the first *sectional party* ever organized in this country. It does not know its own face, but calls itself national; but it is not *national* — it is sectional. The Republican party is a party of the North pledged against the South....
>
> I have labored nineteen years to take fifteen States out of the Union; and if I have spent any nineteen years to the satisfaction of my Puritan conscience, it was those nineteen years (emphasis in original).[72]

Even during the war itself, at a time when Northern Democrats such as Clement Vallandigham were suffering arbitrary arrest and imprisonment for their "treasonous" sentiments,[73] the Republicans did not attempt to conceal their dream of the Union's downfall. In a letter to the Boston *Liberator*, Phillips wrote, "The disunion we sought was one which should be begun by the North on principle.... The North had a right of revolution — the right to break the Union."[74] In April of 1862, Parker Pillsbury declared publicly, "I do not wish to see this government prolonged another day in the present form. I have been for twenty years attempting to overthrow the present dynasty. The Constitution never was so much an engine of cruelty and crime as at the present hour. I am not rejoiced at the tidings of victory to the northern arms; I would far rather see defeat."[75] The following resolution was adopted on 16 May 1862 by the Anti-Slavery Society of Essex County, Massachusetts: *"Resolved*, That the war as hitherto prosecuted, is but a wanton waste of property, a dreadful sacrifice of life, and worse than all, of conscience and of character, to preserve and perpetuate a Union and Con-

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70. Garrison, speech delivered at New York City on 1 August 1855; quoted by McCabe, *Fanaticism and Its Results*, page 15.

71. Garrison, quoted by Wendell Phillips Garrison and Francis Jackson Garrison, *William Lloyd Garrison, 1805-1870* (Boston: Houghton, Mifflin Company, 1894), Volume III, page 414.

72. Wendell Phillips, quoted by Carpenter, *Logic of History*, pages 56, 57.

73. See Clement Vallandigham's 10 July 1861 response to Lincoln's address to Congress in special session on 4 July 1861, in Vallandigham, *Abolition, the Union, and the Civil War*, pages 93-109.

74. Phillips, quoted by Carpenter, *Logic of History*, pages 60, 61.

75. Parker Pillsbury, quoted by Carpenter, *ibid.*, page 57.

stitution which should never have existed, and which, by all the laws of justice and humanity, should in their present form, be at once and forever overthrown."[76]

From the beginning, it had been the motto of those who organized the Republican party that "secession from the Government is a religious and political duty."[77] It was not long before dissolution of the Union and the subsequent war against the South which they envisioned began to be couched in terms of a cosmic struggle between light and darkness, and it was customary for Abolitionists to refer to themselves as "stewards of the Creator" who had been entrusted with the task of establishing "a higher law than the Constitution."[78] In his book, *The Higher Law*, William Hosmer wrote, "Men have no right to make a constitution which sanctions slavery, and it is the imperative duty of all good men to break it, when made.... The fact that a law is constitutional amounts to nothing, unless it is also pure; it must harmonize with the law of God, or be set at naught by all upright men."[79] The previously quoted Helper book boldly declared, "Not to be an abolitionist is to be a willful and diabolical instrument of the devil."[80] At a Republican meeting in New York on 15 May 1857, Unitarian minister Andrew T. Forbes said, "There never has been an hour when this blasphemous and infamous Union should have been made, and now the hour has to be prayed for when it shall be dashed to pieces forever! I hate the Union!"[81] Thomas Wentworth Higginson, the New England Unitarian minister who conspired with John Brown in 1857 and who would later exchange his clerical robes for a commission as Colonel of a Black regiment, had voiced his desire to see the country plunged into bloody conflict, stating that he wanted to "involve every State in the war that is to be."[82]

Historian Witt Bowden correctly described the fanatical mindset of the Abolitionists with these words:

> The origin of the spirit of coercion was not at Fort Sumter. Its origin was in the bitter zeal of righteous men. These men commonly belonged to a well-known type. With them, everything is idealized as good or bad. Their happiness, their sense of their own significance, is in identifying the good with their own ideas and convictions, and in de-

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76. Anti-Slavery Society of Essex County, Massachusetts, quoted by Carpenter, *ibid.*

77. Proto-Republican pamphlet distributed circa 1852; quoted by Edmonds, *Facts and Falsehoods*, page 141.

78. Seward, in Baker, *Works of William Seward*, Volume I, page 23.

79. William Hosmer, *The Higher Law in its Relation to Civil Government With Particular Reference to Slavery and the Fugitive Slave Act* (Auburn, New York: Derby and Miller, 1852), page 176.

80. Helper, *Impending Crisis*, page 368.

81. Andrew T. Forbes, quoted by Edmonds, *Facts and Falsehoods*, page 139.

82. Thomas Wentworth Higginson, quoted by James C. Malin, *John Brown and the Legend* (Philadelphia, Pennsylvania: American Philosophical Society, 1942), pages 698-699.

> stroying whatever fails to conform thereto. To them, slavery was bad in some unique and Satannic sense.... They were denied the spiritual exaltation of earlier men of their type in burning witches and heretics. But men of this type in every generation must have some means of self-expression, and that generation found a furious pleasure in assailing distant slave-holders. In their delusion of unselfish devotion to the good, men of the type persist in serving at all costs their own sense of identity with the good, their own sense of superiority and significance. It never occurs to them that the method of destroying what they assume to be bad may have more badness in it than the thing destroyed. Nor do they readily realize that the attainment of desirable ends may be retarded rather than promoted by stigmatizing opponents with evil motives and by antagonizing them with threats of coercion.[83]

This "avenging force of puritanism in politics,"[84] used as a cover for rampant lawlessness, was appalling to the people of the South, whose section of the country was dominated by the influences of orthodox Christianity. However, it was very appealing to the ever-growing number of Unitarian Abolitionists in the Northeast, who had only to be given the political opportunity to openly manifest the rebellion against a biblical worldview and social system which had already captivated their own unregenerate hearts.[85] The revolutionary doctrines espoused by the Republican party are the context outside of which the events of 1860 onward cannot be properly understood. War was not begun against the South, nor was it ever carried on thereafter, with the mere emancipation of the Southern slaves in view; emancipation of the slaves was only eventually used as a means to achieve the desired end of winning the war. The "party of Lincoln" was clearly bent on a separation of the States from its very formation in 1854 and only abandoned this agenda in favor of "preserving the Union" when its members perceived the wealth and power to be harvested from the destruction and subjugation of a militarily inferior South.

We close this chapter with the following observations of Jefferson Davis, delivered to the people of New York City on 19 October 1858:

> You have among you politicians of a philosophic turn, who preach a high moral-

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83. Witt Bowden, *The Industrial History of the United States* (New York: Adelphi Company, 1930), page 252.

84. Randall, *Civil War and Reconstruction*, page 146.

85. Southern Presbyterian minister James Henley Thornwell described the sectional conflict accurately when he wrote, "The parties in this conflict are not merely Abolitionists and slaveholders, they are Atheists, Socialists, Communists, Red Republicans, Jacobins on the one side and the friends of order and regulated freedom on the other. In one word, the world is the battleground, Christianity and Atheism the combatants, and the progress of humanity the stake." It is not a well-known fact that Karl Marx and Friedrich Engels, the rabidly anti-Christian co-founders of Communism, were both ardent supporters of the Northern revolution (Saul Kussiel, editor, *Karl Marx on the American Civil War* [New York: McGraw Hill Company, 1972]).

ity; a system of which they are the discoverers.... They say, it is true the Constitution dictates this, the Bible inculcates that; but there is a higher law than those, and they call upon you to obey that higher law of which they are the inspired givers. Men who are traitors to the compact of their fathers — men who have perjured the oaths they have themselves taken... these are the moral law-givers who proclaim a higher law than the Bible, the Constitution, and the laws of the land.... These higher law preachers should be tarred and feathered, and whipped by those they have thus instigated.... The man who... preaches treason to the Constitution and the dictates of all human society, is a fit object for a Lynch law that would be higher than any he could urge.[86]

86. Jefferson Davis, in Dunbar Rowland (editor), *Jefferson Davis, Constitutionalist: His Letters, Papers, and Speeches* (Jackson, Mississippi: Mississippi Department of Archives and History, 1923), Volume III, pages 337-338.

SUPPORTING DOCUMENT

Report on the Delivery of Abolition Materials in the Southern States

by Postmaster General Amos Kendall

House Documents, Twenty-Fourth Congress, First Session (1835)

A new question has arisen in the administration of this Department. A number of individuals have established an association in the Northern and Eastern States and raised a large sum of money, for the purpose of effecting the immediate abolition of Slavery in the Southern States. One of the means reported has been the printing of a large mass of newspapers, pamphlets, tracts, and almanacs, containing exaggerated, and in some instances, false accounts of the treatment of slaves, illustrated with cuts calculated to operate on the passions of the colored men, and produce discontent, assassination, and servile war. These they attempted to disseminate throughout the slaveholding States, by the agency of the public mails.

As soon as it was ascertained that the mails contained these productions, great excitement arose, particularly in Charleston, S.C., and to ensure the safety of the mail in its progress Southward, the postmaster at that place agreed to retain them in his office until he could obtain instructions from the Postmaster General. In reply to his appeal, he was informed, that it was a subject upon which the Postmaster General had no legal authority to instruct him. The question again came up from the Postmaster at New York, who had refused to send the papers by the steamboat mail to Charleston, S.C. He was also answered that the Postmaster General possessed no legal authority to give instructions on the subject; but as the undersigned had no doubt that the circumstances of the case justified the detention of the papers, he did not hesitate to say so. Important principles are involved in this question, and it merits

the grave consideration of all departments of the Government.

It is universally conceded, that our States are united only for certain purposes. There are interests in relation to which they are believed to be as independent of each other as they were before the Constitution was formed. The interest which the people of some of the States have in slaves is one of them. No State obtained by the Union any right whatsoever over slavery in any other State, nor did any State lose any of its power over it, within its own borders. On this subject, therefore, if this view be correct, the States are still independent, and may fence round and protect their interest in slaves, by such laws and regulations as in their sovereign will they may deem expedient.

Nor have the people of one State any more right to interfere with this subject in another State, than they have to interfere with the internal regulations, rights of property, or domestic police, of a foreign nation. If they were to combine and send papers among the laboring population of another nation, calculated to produce discontent and rebellion, their conduct would be good ground of complaint on the part of that nation; and, in case it were not repressed by the United States, might be, if perseveringly persisted in, just cause of war. The mutual obligations of our several States to suppress attacks by their citizens on each others' reserved rights and interests, would seem to be greater, because by entering into the Union, they have lost the right of redress which belongs to nations wholly independent. Whatever claim may be set up, or maintained, to a right of free discussion within their own borders of the institutions and laws of other communities, over which they have no rightful control, few will maintain that they have a right, unless it be obtained by compact or treaty, to carry on such discussions within those communities, either orally, or by the distribution of printed papers, particularly if it be in violation of their peculiar laws, and at the hazard of their peace and existence. The Constitution of the United States provides that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," but this clause cannot confer on the citizens of one State, higher privileges and immunities in another, than the citizens of the latter themselves possess. It is not easy, therefore, to perceive how the citizens of the Northern States can possess or claim the privilege of carrying on discussions within the Southern States, by the distribution of printed papers, which the citizens of the latter are forbidden to circulate by their own laws.

Neither does it appear that the United States acquired, by the Constitution, any power whatsoever over this subject except a right to prohibit the importation of slaves after a certain date. On the contrary, that instrument contains evidences, that one object of the Southern States, in adopting it, was to secure to themselves a more perfect control over this interest, and cause it to be respected by the sister States. In the exercise of their reserved rights, and for the purpose of protecting this interest, and ensuring the safety of their people, some of the States have passed laws, prohibiting under heavy penalties, the printing or circulation of papers like those in question, within their respective territories. It has never been alleged that these laws are incompatible with the Constitution and laws of the United States. Nor does it seem possible that they can be so, because they relate to a subject over which the United States cannot rightfully assume any control under that Constitution, either by law or other-

wise. If these principles be sound, it will follow that the State laws on this subject, are, within the scope of their jurisdiction, the supreme laws of the land, obligatory alike on all persons, whether private citizens, officers of the State, or functionaries of the general Government.

The Constitution makes it the duty of the United States "to protect each of the States against invasion; and, on application of the Legislature, or of the Executive, (when the Legislature cannot be convened) against domestic violence." There is no quarter whence domestic violence is so much to be apprehended, in some of the States, as from the servile population, operated upon by mistaken or designing men. It is to obviate danger from this quarter, that many of the State laws, in relation to the circulation of incendiary papers, have been enacted. Without claiming for the General Government the power to pass laws prohibiting discussions of any sort, as a means of protecting States from domestic violence, it may safely be assumed, that the United States have no right, through their officers or departments, knowingly to be instrumental in producing within the several States, the very mischief which the Constitution commands them to repress. It would be an extraordinary construction of the powers of the general Government, to maintain that they are bound to afford the agency of their mails and post offices, to counteract the laws of the States, in the circulation of papers calculated to produce domestic violence; when it would, at the same time, be one of their most important constitutional duties to protect the States against the natural, if not necessary consequences produced by that very agency.

The position assumed by this Department, is believed to have produced the effect of withholding its agency, generally, in giving circulation to the obnoxious papers in the Southern States. Whether it be necessary more effectually to prevent, by legislative enactments, the use of the mails, as a means of evading or violating the constitutional laws of the States in reference to this portion of their reserved rights, is a question which, it appears to the undersigned, may be submitted to Congress, upon a statement of the facts, and their own knowledge of the public necessities.

SUPPLEMENTARY ESSAY

The Myth of Abolition in the Northern States

by George McHenry

There is a reason for everything; and the expression "Yankee trick" is not an exception to this general rule. It is well known that the African slave trade has been carried on principally by the New Englanders, but in the multitude of their new religions, Young Men's Christian Associations, and evangelical (?) haranguings, they have allured the rest of the world into the belief that they were the first people that emancipated their slaves, when the truth is, that they never gave freedom to the African race, and but two of their States — Connecticut and Rhode Island — enacted laws of territorial abolition affecting only unborn generations. Massachusetts, the greatest braggart of them all, has never done anything in the matter; nor has Maine, New Hampshire, nor Vermont.

The erroneous impression in reference to the "philanthropy" of Massachusetts has been induced by the knowledge that at the time of the adoption of the Federal Constitution in 1789 she was the only State of the thirteen without slaves. By an official census taken in 1754 she possessed 4,896, one-half of whom were over 16 years of age, and their owners were not permitted to manumit them without giving security that they should not become a burden upon the parish; the greater portion were, however, sent to other colonies, and the advertisements in the Boston newspapers of that date prove that the young negroes were given away during infancy to the neighbouring colonies who would take them as slaves, so that the labour of the mothers might not be lost: hence the first census of the United States, taken in 1790, does not record a single slave; that of 1830 notices the fact of one person being held in bondage, who was probably taken there as a private servant from some other State. The first slave ship fitted out in the English colonies sailed from Boston in 1648.

Maine holds precisely the same position in regard to the negro race as Massachusetts;

her people, who had been deserted by the Commissioners appointed to govern them, united themselves with that colony in 1652, but their action was not confirmed by the Crown until 1691, Massachusetts having in the meanwhile purchased the proprietary rights; the political co-partnership continued until March 15, 1820, when Maine was admitted as an independent State into the Federal Union. The census of 1830 records two slaves within her borders.

The laws of Vermont also seem to be silent on the subject of slavery. The political situation of this State had been very singular; she was not represented in the Revolutionary Congress, nor was she recognised as an independent commonwealth by Great Britain. She applied for admission into the Union, but New York and New Hampshire both claimed control over her territory, and it was only upon the threat of her people to place themselves again under the dominion of the British throne that she was permitted to subscribe to the Federal compact on March 4, 1791. The census of 1790 reports seventeen slaves within her limits.

The statute books of New Hampshire are equally dumb in reference to emancipation or abolition in any shape; the census acknowledges 158 slaves in 1790, 8 in 1800, 3 in 1830, and 1 in 1840.

Rhode Island adopted a plan of gradual abolition, by declaring that all slaves born in that State after March 1, 1784, should be free. Her census figures stand thus: 952 in 1790, 381 in 1800, 108 in 1810, 48 in 1820, 17 in 1830, and 5 in 1840. In proportion to the size of this State she was very largely engaged in the slave trade, having fifty-four vessels employed in that traffic when the Act of Prohibition took effect, January 1, 1808.

Connecticut passed laws at the same time similar to those of Rhode Island: her slave population was 2,759 in 1790, 951 in 1800, 310 in 1810, 97 in 1820, 25 in 1830, and 17 in 1840.

It must not be forgotten, too, that Massachusetts was the first State to formally recognise "property in man," and has never rescinded the code of rights styles "fundamentals," adopted as early as 1641, wherein the lawfulness of Indian as well as negro slavery and the African slave trade is approved. African slaves, however, have always been held under common law; they were not stolen by the English from the coast of Africa, as has been alleged, but regularly purchased from their owners in that country when the traffic was as legal as any other branch of commerce. In 1650 Connecticut passed laws causing Indians who failed to make satisfaction for injuries to be seized, "either to serve to be shipped out and exchanged for negroes, as the case will justly bear." Rhode Island joined in the general habit of the day, with the exception of the town of Providence. The community of the heretical Roger Williams alone placed the services of the black and white races on the same footing.

Having shown the position of the Yankee States in reference to slavery, a sketch of the institution in the other "Free States" will be next in order.

New York, for the first time, in 1799, passed an Act making free the future issue of her slaves after the males had attained 28, and the females 25 years. Another law was adopted in 1817, declaring them free on the 4th of July, 1827. She held within her borders 21,344

in 1790, 20,343 in 1800, 15,017 in 1810, 10,088 in 1820, 75 in 1830, and 4 in 1840.

In 1784, New Jersey enacted laws for the prospective extinction of slavery — viz.: that all children born after July 4, 1804, should be free. Her slave population was 11,423 in 1790, 12,422 in 1800, 10,851 in 1810, 7,557 in 1820, 2,254 in 1830, 674 in 1840, 236 in 1850, and 18 in 1860.

As early as 1780 Pennsylvania provided for gradual abolition; all slaves born after that time were to become free at the age of 28 years. Her census stood as follows: 3,737 in 1790, 1,706 in 1800, 795 in 1810, 211 in 1820, 403 in 1830, 64 in 1840. The constitution of this State, adopted in 1838, does not prohibit slavery; her Legislature can, therefore, make her a slaveholding State at any time.

New York, New Jersey, and Pennsylvania are classed as middle States. In 1626 importations of slaves commenced at New York; the city itself owned shares in a slave ship, advanced money for its outfit, and participated in the profits. The slaves were sold at auction to the highest bidder, and the average price was about $140. The Governor was instructed to use every exertion to promote the sale of negroes. Bancroft, the great Yankee historian, remarks "that New York is not a slave State like South Carolina, is due to climate, and not to the superior humanity of its founders." The slaves constituted one-sixth of the population of the city of New York in 1750. New Jersey was dismembered from New York when New Netherlands was conquered by England in 1664. The next year a bounty of seventy-five acres of land was offered by the proprietaries for the importation of each able-bodied slave. This was, doubtless, done in part to gain favour with the Duke of York, then President of the African Company. The Quakers of Pennsylvania did not entirely eschew the holding of negro slaves. William Penn himself was a slaveholder. He, in 1699, proposed to provide for the "marriage, religious instruction, and kind treatment of slaves;" but the Legislature vouchsafed no response to his recommendation. In 1712, to a general petition for the emancipation of negro slaves by law, the answer of the same body was, "it is neither just nor convenient to set them at liberty." Slaves, however, were never numerous in Pennsylvania: and as that species of property did not "pay," manumissions were frequent. The larger portion were to be found in Philadelphia, one-fourth of the population of which city, in 1750, are supposed to have been of African descent.

The States of Ohio, Indiana, Illinois, Michigan, Wisconsin, and that part of Minnesota east of the Mississippi, were formed out of the north-western territory ceded to the United States, under the Articles of Confederation, in 1784, by the State of Virginia. In that year Mr. Jefferson submitted to Congress a report for its organisation into five States, with the following proposition: "That after the year 1800 of the Christian era there should be neither slavery nor involuntary servitude in any of the said States." This clause was, however, rejected because it did not provide for the recovery of fugitives from service. In 1787 it was again presented and passed in the following shape: "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment of crimes whereof the parties shall be duly convicted," and "that any person escaping into the same, from whom labour or service is lawfully claimed in any one of the original States, such fugitive may be lawfully

reclaimed, and conveyed to the person claiming his or her labour or service as aforesaid." This "ordinance" was adopted in the month of July during the sitting of Congress at New York. At the same time, the Convention that framed the Federal Constitution, consisting of delegates from twelve States, Rhode Island being unrepresented, was holding its meetings at Philadelphia. Virginia, and not the Northern States, was the cause of the restriction in relation to slavery in the north-western territory, but its climate was hostile to that kind of labour, as events have proved. The States, as independent sovereignties, have a right to hold slaves if they deem proper. Article IV, section 2, of the Constitution, says, "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." A "coloured" person, according to the decision of the Supreme Court, cannot be a citizen of the United States. Ohio had 6 slaves in 1830, and 3 in 1840. Indiana possessed 135 in 1800, 237 in 1810, 190 in 1820, 3 in 1830, and 3 in 1840. Illinois contained 168 in 1810, 917 in 1820, 747 in 1830, 331 in 1840. Michigan held 24 in 1810, and 32 in 1830; and Wisconsin, 11 in 1840. The only other "Free States" are Iowa and Minnesota, west of the Mississippi — in the former State there were 16 slaves in 1840 — and California and Oregon, that never had persons "held to labour."

It will thus be seen that the cry of abolition or emancipation by the Northerners is pure hypocrisy. Most of their slaves were sent to the South, and "philanthropy" in the matter is a perfect myth. It is believed that fifty times as many slaves have been manumitted in the South as in the North.

The preceding essay was extracted from George McHenry, The Cotton Trade: Its Bearing Upon the Prosperity of Great Britain and Commerce of the American Republics *(London: Saunders, Otley, and Company, 1863).*

CHAPTER FIVE

The Negro and the Territorial Dispute

The Undeserved Vilification of Roger Brooke Taney

Perhaps nothing is more hotly debated today, and less understood, than the historical status of the Negro in the American political system. Groups such as the NAACP. and Jesse Jackson's Rainbow-PUSH Coalition, among a host of others, raise and expend huge amounts of money each year promoting the claim that Blacks were guaranteed by America's founding documents — particularly the Declaration of Independence and the Constitution — an absolute social and political equality with Whites. It is common for these modern agitators to single out the old South as the source of Negro oppression, completely ignoring the historical facts which clearly testify to the nearly universal acceptance, not only in the South, but in the North and abroad, of what is routinely denounced in our day as "racism." In fact, as the next chapter will demonstrate, the supposed Northern champions of freedom in the mid-Nineteenth Century came much closer to the modern definition of "racist" in their attitude towards the Black man than did their Southern slave-holding counterparts.

In the famous 1857 Supreme Court case *Dred Scott v. Sandford*, Chief Justice Roger Brooke Taney discussed the question of "whether descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States." In over fifty pages of sound constitutional and historical arguments, Taney concluded that these people "are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States," and that "they were at that time [of ratification] considered as a subordinate and inferior class of

beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them."[1]

Predictably, Taney was and continues to be attacked for writing this opinion, as are those who so much as mention it in a favorable light. Nowhere was this done with more ferocity than in the Northern press. On 16 March 1857, the Boston *Atlas* equated Taney with "Arnold, the traitor," and the Boston *Chronicle* labeled the concurring majority of the Court as "great scoundrels."[2] The New York *Independent* of 26 March 1857 denounced the decision as "a treasonable attempt to alter the law,"[3] and on 12 April as "the most abandoned corruption and putridity of national selfishness and avarice" and "the very *faeces* of moral depravity on the dung hill of the world."[4] The February 1865 issue of the *Atlantic Monthly* predicted that Taney "will most likely, after the traitor leaders [of the Southern Confederacy], be held in infamous remembrance" because he "covered the most glorious pages of his country's history with infamy, and insulted the virtue and intelligence of the civilized world."[5] It became common practice among Northern lawyers to declare the decision to be nothing more than *obiter dictum*.[6] This assertion was eventually written into the history

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1. *Dred Scott v. John A. Sandford* (1857), 80 U.S. 19 How. 393, 422.

2. Boston *Atlas* and *Chronicle*, 16 March 1857; quoted by Elbert William R. Ewing, *The Legal and Historical Status of the Dred Scott Decision* (Washington, D.C.: Cobden Publishing Company, 1908), pages 199-200.

3. New York *Independent*, 26 March 1857; quoted by Ewing, *Status of the Dred Scott Decision*, page 7.

4. New York *Independent*, 12 April 1857; quoted by Ewing, *ibid*., page 202.

5. *Atlantic Monthly*, February 1865; quoted by Ewing, *ibid*, page 7.

6. James G. Blaine, *Twenty Years of Congress: From Lincoln to Garfield* (Norwich, Connecticut: The Henry Bill Publishing Company, 1884), Volume I, page 131. *Black's Law Dictionary* (Saint Paul, Minnesota: West Publishing Company, 1991; Sixth Edition) defines this phrase as follows:

> The word [*dictum*] is generally used as an abbreviated form of *obiter dictum*, "a remark by the way"; that is, an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, or the solution of a question suggested by the case at bar, but not necessarily involved in the case or essential to its determination; any statement of the law enunciated by the court merely by way of illustration, argument, analogy, or suggestion. Statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand are *obiter dicta*, and lack the force of an adjudication.... *Dicta* are opinions of a judge which do not embody the resolution or determination of the court, and made without argument, or full consideration of the point, are not the professed deliberate determinations of the judge himself (page 454).

books after the War of 1861-1865. For example, Albert Bushnell Hart, author of several volumes on American history which were used in the public schools at the beginning of the Twentieth Century, described the decision as "so forced and so contrary to historical facts that the Republican leaders declared that they were not bound by it,"[7] and James Ford Rhodes castigated Taney's arguments as "inhuman" and "a great piece of specious reasoning... outraging precedent, history and justice."[8]

It is extremely difficult for the modern American to fully comprehend the political complexities of this time period and nearly impossible for the average student of history to discern the truth beneath the mountains of anti-Southern propaganda which have been produced over the last century and a half. Consequently, the prevailing belief is that the conflict between North and South was nothing more than a dispute over slavery touched off by the *Dred Scott* decision. The following quote from a recent Christian periodical in Denver, Colorado epitomizes the common misconceptions regarding this Supreme Court decision which persist to this day:

> The decision, with the majority opinion written by Justice Roger B. Taney, was that Dred Scott was not a "person" in the same sense that a white man was a "person," and therefore could not be a citizen of Missouri or of the United States. A slave was not a citizen. Justice Taney and Justice Blackman both used the concept of "not quite human" to deny human rights to an entire class of human beings, declaring them non-persons under the law.
>
> It took a Civil War and hundreds of thousands of lives to overturn Justice Taney's mistake.... The evil of slavery was made possible by the underlying belief that there are some people who aren't really people — the heinous concept of "subhuman."[9]

The above writer's attempt to equate the *Dred Scott* decision with that of *Roe v. Wade* of 1973, which prohibited the States from legislating against abortion, is sheer fabrication.[10] Contrary to his assertion, Taney nowhere applied the term "not quite human" to the Negro slaves, nor is such a concept found anywhere in the text of this decision. Instead, the clear

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7. Albert Bushnell Hart, quoted by Ewing, *Dred Scott Decision*, page 7.

8. James Ford Rhodes, *History of the United States* (New York: Harper and Brothers Publishers, 1893), Volume II, page 266.

9. Terry Martin, *Colorado Christian News*, January 1996, page 24.

10. Ironically, *Roe v. Wade* is based on the so-called Fourteenth Amendment, which itself presupposes the veracity of Justice Taney's assertions in *Scott v. Sandford* regarding the Negro race in America (see Chapter Seventeen). Whether Martin was expecting that his readers would not read Taney's words for themselves, or whether he was merely regurgitating second-hand information which he did not bother to verify himself, is ultimately irrelevant. What *is* relevant is that this sort of dishonest and sloppy reporting is routinely passed off as journalism, and rarely is it ever challenged.

intent of Court's proceedings was to determine Dred Scott's ability to sue for his freedom on the basis of the Common Law rights guaranteed only to State Citizens in the Constitution. Taney's was not an immoral decision, or even a "mistake," but was merely an exposition of the law of the land, which he had sworn to uphold and was duty-bound to defend. What is not realized by the sometimes well-meaning, yet invariably ignorant, advocates of "political correctness" in our day, is that the subject of citizenship was, and remains, a political question over which no constitutional court in the land, the Supreme Court included, ever had the authority to adjudicate.[11] Who could become a Citizen of one of the several States, and hence, a Citizen of the United States within the constitutional definition of the term, had already been declared once and for all by the first Congress in the Naturalization Act of 26 March 1790:

> Section 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,
>
> That any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof, on application to any common law court of record, in any one of the states wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such court, that he is a person of good character, and taking the oath or affirmation prescribed by law, to support the Constitution of the United States, which oath or affirmation such court shall administer; and the clerk of such court shall record such application, and the proceedings thereon; and thereupon such person shall be considered as a citizen of the United States. And the children of such person so naturalized, dwelling within the United States, being under the age of twenty-one years at the time of such naturalization, shall also be considered as citizens of the United States. And the children of citizens of the United States, that may be born beyond the sea, or out of the limits of the United States, shall be considered as natural born citizens;
>
> *Provided*, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States;
>
> *Provided also*, That no person heretofore proscribed by any state, shall be

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11. According to *Black's Law Dictionary* (Sixth Edition), political questions are "[q]uestions of which courts will refuse to take cognizance, or to decide, on account of their purely political character, or because their determination would involve an encroachment upon the executive or legislative powers" (page 1158). In the words of Taney himself:

> It is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to the political or law-making power; to those who formed the sovereignty and framed the Constitution. The duty of the court is, to interpret the instrument they have framed, with the best lights we can obtain on the subject, and to administer it as we find it, according to its true intent and meaning when it was adopted (*Scott v. Sandford*).

> admitted a citizen as aforesaid, except by an act of the legislature of the state in which such person was proscribed.[12]

This restriction of citizenship to "free white persons" was reiterated when the second Naturalization Act replaced the first on 29 January 1795 and was repeated in all subsequent naturalization acts up to 1906, except for a brief period from 1873 to 1875, when it was omitted by mistake.[13]

According to John Quincy Adams, "The condition of the blacks being in this Union regulated by the municipal laws of the separate States, the Government of the United States can neither guarantee their liberty in the States where they could only be received as slaves nor control them in the States where they would be recognized as free."[14] If the Negroes, whether slave or free, were under the local jurisdiction of the States, but beyond the protection of the general Government, it necessarily follows that they were not Citizens under the Constitution and did not and could not enjoy any of the political rights which that compact guaranteed to White Americans. In his widely-used *Law Dictionary*, John Bouvier wrote, "All natives are not citizens of the United States; the descendants of the aborigines, and those of African origin, are not entitled to rights of citizens.... [The] Constitution does not authorize any but white persons to become citizens of the United States; and it must therefore be presumed that no one is a citizen who is not white."[15] In addition to the above-quoted Naturalization Act of 1790, we find additional Acts of Congress which state that "no other than a free white person shall be employed in carrying the mail of the United States" (1802),[16] that restrict suffrage and the office of mayor "in the town of Alexandria" (Washington, D.C.) to "free white male citizens" (1804),[17] that extend the right of suffrage in the Mississippi territory to "free white male inhabitants above the age of twenty-one years" (1808),[18] and that authorize "free white male citizens of the United States" to form "a constitution and State

12. An Act to Establish an Uniform Rule of Naturalization, *Statutes at Large For the United States of America*, Volume I, page 103.

13. *Ozawa v. United States* (1922), 43 S.Ct. 65; 260 U.S. 178; 67 L.ed. 199, *supra*, at 178.

14. John Quincy Adams, in *American State Papers: Foreign Relations* (Washington, D.C.: Gales and Seaton, Printers, 1832), Volume IV, page 400.

15. John Bouvier, *A Law Dictionary Adapted to the Constitution and Laws of the United States of America and of the Several States of the American Union* (Philadelphia, Pennsylvania: J. B. Lippincott Company, 1839), Volume I.

16. *Statutes at Large*, Volume I, page 191.

17. *Ibid*., pages 256, 258.

18. *Ibid*., page 455.

government for the Territory of Orleans" (Louisiana).[19]

The several States likewise adopted this "free white male citizen" restriction in their respective constitutions:

> No free negro, free mulatto, or free person of mixed blood, descended from negro ancestors, to the fourth generation inclusive (though one ancestor of each generation may have been a white person), shall vote for members of the senate or house of commons.[20]
>
> Every free white man at the age of twenty-one years, being a native or naturalized citizen of the United States, and who has been an inhabitant of the State for twelve months immediately preceding the day of any election, and shall have paid public taxes, shall be entitled to vote for a member of the senate for the district in which he resides.[21]
>
> Every white male citizen of the United States, and every white male citizen of Mexico who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the thirtieth day of May, 1848, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law....[22]
>
> In all elections not otherwise provided for by this constitution, every white citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the state during the six months immediately preceding such election; and every white male of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this state during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States one year preceding such election, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote at all elections authorized by law.[23]

In light of these facts, it is undeniable that the U.S. Supreme Court was correct when it was declared in 1922 that the exclusion of non-White people from the privileges of citizenship under the Constitution was "a part of our history as well as our law, welded into the structure of our national polity by a century of legislative and administrative acts and

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19. *Ibid*., page 641.

20. Constitution of North Carolina (1776), Article I, Section 3.

21. Constitution of North Carolina (1865), Article I, Section 3. This constitution was struck down by the Reconstruction Acts of 1867.

22. Constitution of California (1848), Article 2, Section 1.

23. Constitution of Oregon (1857), Article II, Section 2.

judicial decisions."[24]

The Territorial Dispute Between North and South

Although Chief Justice Taney's denial that citizenship was a status enjoyed by Blacks under the Constitution is what holds the attention of modern Americans, his critics in the Nineteenth Century mainly focused on another issue with which the Court was dealing in the *Dred Scott* case of 1857. It was the sensational charge of Abraham Lincoln, who was at the time merely a political upstart from Illinois, that this case was a "piece of machinery" concocted by pro-slavery politicians — namely Senator Stephen Douglas, ex-President Franklin Pierce, current President James Buchanan, and Chief Justice Taney — to force slavery upon the free States of the North.[25] According to Lincoln, the "logical conclusion" to Taney's decision was "that what Dred Scott's master might lawfully do with Dred Scott, in the free State of Illinois, every other master may lawfully do with any other one, or one thousand slaves, in Illinois, or in any other free State."[26] He suggested that the *Dred Scott* decision was merely a stepping-stone to "another Supreme Court decision, declaring that the Constitution of the United States does not permit a State to exclude slavery from its limits."[27] He went on:

> Such a decision is all that slavery now lacks of being alike lawful in all the States. Welcome, or unwelcome, such decision is probably coming, and will soon be upon us, unless the power of the present political dynasty shall be met and overthrown. We shall lie down pleasantly dreaming that the people of Missouri are on the verge of making their State free, and we shall awake to the reality instead, that the Supreme Court has made Illinois a slave State. To meet and overthrow the power of that dynasty, is the work now before all those who would prevent that consummation. That is what we have to do.[28]

Contrary to Lincoln's absurd claim that pro-slavery forces were conspiring with the Supreme Court to make the United States "all one thing" — all slave States — there is overwhelming evidence that the *Dred Scott* suit was instead the brain-child of the radical Northern faction which had long sought to alter the system of American government and which had assumed the garb of the Abolitionist movement in the 1830s in order to conceal

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24. *Ozawa v. United States*, supra, at 207.

25. Lincoln, speech delivered at Springfield, Illinois on 16 June 1858; in Robert W. Johannsen (editor), *The Lincoln-Douglas Debates of 1858* (New York: Oxford University Press, 1965), pages 14-21.

26. Lincoln, *ibid*., page 17.

27. Lincoln, *ibid*., page 19.

28. Lincoln, *ibid*., pages 19-20.

its true identity. A great advance toward this goal had been achieved with the passage of the Missouri Compromise of 1820. This Act of Congress, which the elderly Thomas Jefferson lamented as "the knell of the Union,"[29] admitted Missouri as a slave State on the stipulation that slavery be prohibited in the rest of the Territory comprising the Louisiana Purchase and north of thirty-six degrees and thirty minutes, north latitude — what has since been known as the "Mason-Dixon line." Consequently, slavery was prohibited from nearly one million square miles of territory and allowed in but one-fourth as many square miles. According to Edwin Sparks, "This meant one or possibly two States for the South, and at least six or seven for the North."[30]

This flagrant attempt to disrupt the sectional balance passed with the aid of a small and reluctant majority of Southern votes, but still, the Northern faction was unsatisfied. On 8 August 1846, David Wilmot of Pennsylvania submitted to Congress an amendment to a pending military bill, the purpose of which was to prohibit slavery in the territory just acquired from Mexico,[31] even though a large portion thereof was below the line previously agreed to by both sections in the Missouri Compromise. The so-called Wilmot Proviso was defeated, but the question arose again with renewed vigor three years later. In what was "the most stormy of its sessions,"[32] the debate raged whether Congress was bound by the Constitution when legislating for the Territories as well as for the States, or whether their powers were unrestricted in that regard. The ostensible issue was over the constitutional ability of Congress to prohibit slavery in the Territories, but behind this mask was really the ever-present political struggle between the monarchical (consolidationist) school of Hamilton and the republican (States rights) school of Jefferson. Daniel Webster, from whom we will hear more in a later chapter, declared:

> There is no such thing as extending the Constitution.... It cannot be extended over anything except the old States and the new States that shall come in hereafter when they do come in.... It seems to be taken for granted that the right of trial by jury, the *habeas corpus* and every principle designed to protect personal liberty, is extended by force of the Constitution itself over new territory. That proposition cannot be maintained at all.... [It

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29. Thomas Jefferson, letter to John Holmes, 22 April 1820; in Merril D. Peterson (editor), *Thomas Jefferson: Writings* (New York: Library of America, 1984), page 1435. In another letter to James M. Mason dated 13 April 1820, Jefferson expressed the fear that the political polarization of the States along sectional lines "would kindle such mutual and mortal hatred, as to render separation preferable to eternal discord" (quoted by Virginia Mason, *The Public Life and Diplomatic Correspondence of James M. Mason* [New York: Neal Publishing Company, 1906], page 61).

30. Edwin Earle Sparks, *Expansion of the American People* (Chicago, Illinois: Scott, Foresman and Company, 1901), page 201 (footnote).

31. *Congressional Globe*, 8 August 1846 (Twenty-Ninth Congress, First Session), page 1217.

32. Randall, *Civil War and Reconstruction*, page 119.

> is] altogether impractical and utterly impossible to extend the Constitution of the United States to the Territories.[33]

John C. Calhoun, heir-apparent of the Jeffersonian school, responded as follows:

> ...[T]he simple question is, does the Constitution extend to the territories, or does it not extend to them? Why, the Constitution interprets itself. It pronounces itself to be the supreme law of the land.... [T]he territories of the United States are a part of the land. It is the supreme law, not within the limits of the States of this Union merely, but wherever our flag waves — wherever our authority goes, the Constitution in part goes, not all its provisions certainly, but all its suitable provisions. Why, can we have any authority beyond the Constitution?... [I]f the Constitution does not go there, how are we to have any authority or jurisdiction whatever? Is not Congress the creature of the Constitution?... And shall we, the creature of the Constitution, pretend that we have authority beyond the reach of the Constitution?[34]

Calhoun's logic was impeccable: Congress, which was strictly a body of delegated powers, could not create its own powers *ex nihilo* or set the limits of such powers at its own pleasure. And, if Congress was so bound with regards to the Territories, it logically followed that they could pass no law whatsoever which would deprive or restrict the enjoyment of constitutionally-protected property within the Territories. Along these lines, Calhoun introduced the following resolutions into the Senate on 19 February 1847:

> Resolved, That the territories of the United States belong to the several States composing this Union, and are held by them as their joint and common property.
>
> Resolved, That Congress, as the joint agent and representative of the States of this Union, has no right to make any law, or do any act whatever, that shall directly, or by its effects, make any discrimination between the States of this Union, by which any of them shall be deprived of its full and equal right in any territory of the United States, acquired or to be acquired.
>
> Resolved, That the enactment of any law which, directly or by its effects, deprive the citizens of any of the States of this Union from emigrating, with their property, into any of the territories of the United States, will make such discrimination, and would, therefore, be a violation of the Constitution and the rights of the States from which such citizens emigrated, and in derogation of that perfect equality which belongs to them as members of this Union, and would tend directly to subvert the Union itself.[35]

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33. Daniel Webster, quoted by Ewing, *Dred Scott Decision*, pages 21-22.

34. John C. Calhoun, *Congressional Globe*, 24 February 1849 (Thirtieth Congress, Second Session), page 273.

35. Calhoun, quoted by Lunt, *Origin of the Late War*, pages 191-192.

Calhoun's argument was vindicated in 1852 by an unlikely source: the supreme court of the newly-formed free State of California. In a case involving the status of two Negroes who had been brought as slaves into California while still in its territorial condition, the court determined that, notwithstanding the adoption of an anti-slavery State constitution, these two men remained in bondage. In his concurring opinion, Justice Alexander Anderson wrote:

> The institution of slavery in the United States is both political and municipal.... Slaves were recognized by the Constitution of the United States as property, and protected.... It is appropriate to repeat, that the political character of the institution of slavery goes with the extent of the national territory wherever that is; and the constitutional rights and eminency of the Republic prevail at the moment of the accession of new territory. Congress may modify the forms in which it shall be exercised, and regarded; but this must be *"sub modo,"* pursuant to that instrument itself.... The property here brought into question is that of slaves. The Constitution of the United States was in full force here. Slaves were as much recognized by that as property, as any other objects whatever....
>
> When the United States acquired the Territory of California, it became the common property of all the people of all the States, and the right of emigration of every species of property belonging to the citizen was inherent with its use and possession. By the fifth article of the amendments of the Constitution, it is expressly provided "that no person shall be deprived of his property without due process of law...." These negroes, therefore, being property as before shown when brought into California so remained....
>
> It was the vast and unexampled discovery of gold which brought together an excited population. The man of the North came with his capital in the shape of bales of goods — he of the South sometimes with his slaves. The course of the argument now made finds equal authority and protection for both, under the broad shield of the common Constitution; and that the property of neither can be taken by a surprise, or a strategy, nor without just compensation, and that both had equal rights to come to this golden and sunny land.[36]

Stephen Douglas and the Kansas-Nebraska Act

The sectional tug-of-war began again when Stephen Douglas introduced the Kansas-Nebraska bill on 4 January 1854. This bill was an expression of the doctrine of "popular sovereignty," which took the middle ground between the Northern "free soil" position that Congress had the power to exclude slavery from the Territories, and the Southern position that the Government was required by the Constitution to protect slave property in the Territories. According to Douglas, "[I]n my opinion the people of a Territory can, by lawful means, exclude slavery from their limits prior to the formation of a State constitution.... [U]nder the Constitution, the people have the lawful means to introduce it or exclude it as they please, for the reason that slavery cannot exist a day... unless it is supported by local police regula-

36. *In re Perkins*, 2 Hepburn's California Reports, 452, 455, 459.

tions. Those police regulations can only be established by the local legislature...." [37]Thus, the decision whether to make the two new States of Kansas and Nebraska slave or free would be denied to Congress and left in the hands of the inhabitants applying for admission to the Union. This bill, passed after nearly five months of heated debate, also contained a repeal of the previous Missouri Compromise, which was declared "inoperative and void" and reaffirmed the doctrine that the people are "perfectly free to... regulate their domestic institutions in their own way, subject only to the Constitution of the United States."[38]

The passage of this law sent the North into an uproar. Summing up the fury of the anti-slavery forces, Salmon P. Chase denounced the legislation as "a gross violation of a sacred pledge; as a criminal betrayal of precious rights; as part and parcel of an atrocious plot to exclude from a vast unoccupied region immigrants from the Old World and free laborers from our own States, and convert it into a dreary region of despotism, inhabited by masters and slaves."[39] Horace Greeley's New York *Tribune* addressed Northern Congressmen with these intemperate words:

> We urge, therefore, unbending determination on the part of Northern members hostile to this intolerable outrage, and demand of them, in behalf of peace — in behalf of freedom — in behalf of justice and humanity — resistance to the last. Better that confusion shall ensue in the national councils — *better that Congress should break up in wild disorder — nay, better that the Capitol itself should blaze by the torch of the incendiary*, or fall and bury all its inmates beneath its crumbling ruins, than that this perfidy and wrong should be finally accomplished (emphasis in original).[40]

Even though he personally viewed slavery as "a curse beyond computation, to both white and black,"[41] and despite his desire to "sustain the Constitution of my country as our fathers have made it" and to "yield obedience to the laws, whether I like them or not,"[42]

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37. Stephen Douglas, speech delivered at Freeport, Illinois on 27 August 1858; in Johannsen, *Lincoln-Douglas Debates*, page 88.

38. *Statutes at Large*, Volume X, page 277.

39. Salmon P. Chase, speech delivered in the Senate on 19 January 1854; in J.W. Schuckers, *Life and Public Services of Salmon P. Chase, United States Senator and Governor of Ohio, Secretary of the Treasury, and Chief Justice of the Supreme Court* (New York: D. Appleton and Company, 1874), page 141.

40. New York *Tribune*, quoted by Alexander H. Stephens, speech delivered in the House of Representatives on 28 June 1856; *Congressional Globe* (Thirty-Fourth Congress, First Session), page 724.

41. Stephen Douglas, quoted by Johannsen, *Lincoln-Douglas Debates*, page 7.

42. Douglas, speech delivered at Chicago, Illinois on 9 July 1858; in Johannsen, *ibid.*, page 32.

Stephen Douglas was lambasted for being "pro-slavery" and burned in effigy throughout the North. To concede that the slave property of Southerners was constitutionally secure within the Territories as well as within the States, or even that the inhabitants of the Territories should be left to decide for themselves whether to allow slavery or not, would be to surrender for all time the hope of excluding Negro laborers from the Territories which Free-Soilers, such as David Wilmot, fervently hoped to open to free White labor only. In direct response to the Kansas-Nebraska Act, the so-called "Republican" party was formed on 6 July 1854 by former Whigs, disaffected Democrats, and Free-Soilers "on the sole issue of the non-extension of slavery."[43] As was seen in the previous chapter, this ill-named faction was, according to Wendell Phillips, "the first *sectional party* ever organized in this country" and "a party of the North pledged against the South." To drive the South to its political knees was the stated goal of its organizers, chief among whom was Abraham Lincoln.

The Truth Behind the Dred Scott Case

Referring back to the Webster-Calhoun debate regarding the extension of the Constitution over the Territories, Elbert Ewing pointed out, "There was no decision of the Supreme Court, the arbiter of last resort in such questions, by which it could be known which contention was the correct one, so the great party leaders reargued their respective positions with each new occasion."[44] Thus, the anti-slavery party brought the question before the Court in 1857 by stealth and deception with the hopes of overturning the Kansas-Nebraska Act and silencing their opponents once and for all.[45] In August of the previous year, when the *Dred Scott* case was still pending, Lincoln addressed the South as follows: "The Supreme Court of the United States is the tribunal to decide such a question, and we will submit to its decisions; and if you do also, there will be an end of the matter. Will you? If not, who are the disunionists — you or we?"[46] Of course, the scheme back-fired and the debate was legally settled in favor of the South. In addition to proving that Negroes could not be Citizens under the Constitution, Taney wrote:

> The principle upon which our governments rest, and upon which alone they continue to exist, is the union of States, sovereign and independent within their own limits in their internal and domestic concerns, and bound together as one people by a general

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43. Randall, *Civil War and Reconstruction*, page 134.

44. Ewing, *Dred Scott Decision*, page 22.

45. Elbert Ewing provided the details behind the irregular suit in Chapter Two of his *Dred Scott Decision*.

46. Lincoln, in Howard Wilford Bell (editor), *Letters and Addresses of Abraham Lincoln* (New York: Unit Book Publishing Company, 1905), page 93.

> government, possessing certain enumerated and restricted powers, delegated to it by the people of the several States, and exercising supreme authority within the scope of the power granted to it, throughout the dominion of the United States.... What it acquires, it acquires for the benefit of the people of the several States who created it... and when a Territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it.... The Territory being a part of the United States, the government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out; and the Federal Government can exercise no power over his person or property, beyond what that instrument confers nor lawfully deny any right which it has reserved....

Taney concluded by declaring the Missouri Compromise "not warranted by the Constitution, and... therefore void,"[47] thereby closing the door forever on Congress' ability to exclude slavery from the Territories. The agenda of the Northern sectionalists had thus suffered a great setback, as evidenced by the indignant howls and gnashing of teeth which commenced from that quarter, and Jeffersonian republicanism seemed to have finally triumphed. However, rather than producing a humble submission to the decision of the highest tribunal in the land, as required by the Constitution, "the whole effect of the *Dred Scott* decision was to develop a more determined type of anti-slavery agitation."[48] Reversing his position of two years before, Lincoln declared in behalf of his party, "We oppose the *Dred Scott* decision... as a political rule.... The President and Congress are not to be bound by it. We propose so resisting it as to have a reversal of it if we can, and a new judicial rule established upon the subject."[49] From that point onward, the North became set in its flagrant and determined rebellion to the "supreme law" of the Union, making a sectional schism inevitable.

Again, it must be stressed that there was no real concern for the plight of the Negro slave in the mind of those who instigated the suit. This was proven later by the Republican platforms of 1856 and 1859 which proposed that slavery be made "express and irrevocable" in the States where it already existed.[50] Furthermore, Dred Scott, the representative slave in the case, was merely used as a political pawn in a colossal chess game of sectionalism. In his attempt to prove a conspiracy "between the Democratic owners of Dred Scott and the Judges of the Supreme Court and other parties involved" to use the case to spread slavery throughout the Union, Abraham Lincoln had feigned ignorance of the fact that the hapless Black man was actually owned by Dr. C.C. Chaffee, a Bostonian Abolitionist and member of Lincoln's

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47. 80 U.S., 19 Howard, 447-452.

48. Blaine, *Twenty Years of Congress*, Volume I, page 131.

49. Lincoln, in Bell, *Letters and Addresses of Lincoln*, pages 128-129.

50. Edward Stanwood, *A History of the Presidency* (Boston: Houghton, Mifflin and Company, 1906), page 293.

own party who could have emancipated him at any time. Lincoln refused to admit to this deception even after he was publicly confronted by Stephen Douglas,[51] and the myth of Dred Scott's helpless condition and an alleged pro-slavery conspiracy survives to this day in most history books. For example, historian William C. Davis wrote:

> The case in question went back almost two decades — to a time when the Missouri Compromise... was still the law of the land. At stake was the status of an elderly black man named Dred Scott. In 1834 Scott's owner — an Army surgeon named John Emerson — took his slave from Missouri to a military post in Illinois, though slavery was outlawed in that state. Two years later, transferred to another post, Emerson took Scott to the Wisconsin Territory, where slavery was also outlawed. Emerson eventually brought Scott back to Missouri, where the surgeon died in 1843.
>
> Three years later Scott, with the help of local antislavery lawyers, sued Emerson's heirs for his freedom, contending that his years in Illinois and Wisconsin had made him free. Scott lost his case, then won on appeal in 1850, only to see the Missouri state supreme court reverse the appeal and once again consign him to slavery. Scott thereupon took his case to the federal courts, where he lost again in 1854. After another two years the U.S. Supreme Court agreed to hear the case....
>
> Chief Justice Roger B. Taney, the 79-year-old scion of a wealthy, slave-owning Maryland family, announced the Court's decision on March 6. As to Scott's right to sue, Taney held that he had none.... As to Scott's freedom, Taney held that he had none of that either....
>
> The reaction was immediate. Proslavery people hailed the decision as the final vindication of their rights. From the antislavery states came cries of outrage. The *Dred Scott* ruling had come from a Supreme Court dominated by Southerners, rekindling fears of a "slave power" conspiracy in the federal government — a plot by a wealthy, cruel minority to thwart democratic rule by the majority.[52]

In the above account, one can readily see a regurgitation of Lincoln's discredited

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51. In his 18 September 1858 speech at Charleston, Illinois, Stephen Douglas responded to Lincoln's charge by noting:

> [T]here were no Democratic owners of Dred Scott on the face of the land. Dred Scott was owned at that time by the Rev. Dr. Chaffee, an Abolition member of Congress from Springfield, Massachusetts, and his wife.... [A]s soon as the decision was announced by the court, Dr. Chaffee and his wife executed a deed emancipating him, and put that deed on record. It was a matter of public record, therefore, that at the time the case was taken to the Supreme Court, Dred Scott was owned by an Abolition member of Congress, a friend of Lincoln's, and a leading man of his party, while the defense was conducted by Abolition lawyers — and thus the Abolitionists managed both sides of the case (Johannsen, *Lincoln-Douglas Debates*, page 185).

52. Davis, *Brother Against Brother*, pages 79, 80.

conspiracy theory, repackaged for an unsuspecting modern audience. Furthermore, what Davis failed to mention was the fact that "Emerson's heir" was none other than his widow, who subsequently married Chaffee, thereby transferring legal ownership of Scott to "a Black Republican freedom-shrieking member of Congress."[53] Chaffee and his new wife refused to accept Scott's offer to purchase his freedom in cash and good security,[54] and, according to James Randall, "the ownership of Scott and his family was technically transferred by a fictitious sale to Mrs. Chaffee's brother, J.F.A. Sanford of New York, so that an abolitionist should not appear in the Federal courts in the role of slaveowner."[55] Furthermore, on 26 May 1857 — not two months after the Supreme Court decision — Scott was quietly and carelessly turned onto the streets of St. Louis, Missouri to fend for himself, further proving the expressed concern of the anti-slavery forces for the welfare of the Negroes to be a sham.[56] In the words of the St. Louis *Republic*, "Old and worn out, Scott will have a hard time to make a living if he is forced to depend upon the charities of Black Republicans and abolitionists."[57]

Finally, the feigned apprehension of the Northern Abolitionists and their allies, such as Lincoln, that Southern slaveholders would begin to flock northward with their slaves ignored the clear historical fact that slavery had died out in the Northern States and that the slave population had shifted almost entirely to the Gulf States primarily because of the inability of the Negro to adjust to the harsh Northern climate and his natural affinity for the near-tropical climate of the deep South.[58] Furthermore, as pointed out by Josiah J. Evans of South Carolina, slave labor was not suited for the agriculture of the Territories: "There is no pretense that any one of the great staples that constitute the great material of our foreign commerce, can be cultivated anywhere within the limits of these Territories outside of the Territory of Kansas."[59] There was absolutely no reason at all for Southern plantation owners to move North with their slaves, and they had no inclination to do so. There was also no real inclination for most slaveholders to migrate into the Territories: "...[T]hey demanded a right which they could not actively use — the legal right to carry slaves where few would or could be taken. The one side fought rancorously for what it was bound to get without fighting; the

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53. Springfield (Illinois) *Argus*, 3 June 1857.

54. Ewing, *Dred Scott Decision*, page 29.

55. Randall, *Civil War and Reconstruction*, page 149.

56. Saint Louis *News*, 8 April 1857; New York *Tribune*, 10 April 1857.

57. St. Louis *Republic*, 27 May 1857.

58. J.H. Van Evrie, *White Supremacy and Negro Subordination* (New York: Van Evrie, Horton and Company, 1868), Chapter Twenty.

59. Josiah J. Evans, speech in the Senate on 23 June 1856, *Congressional Globe* (Thirty-Fourth Congress, First Session), page 703.

other, with equal rancor, contended for what in the nature of things it could never use."[60] Consequently, the "whole controversy over the Territories... related to an imaginary negro in an impossible place."[61] The complaint of the South against the Northern anti-slavery forces for attempting to exclude the institution from the Territories really arose from a desire to maintain the integrity of the several States against the ever-increasing centralization of political power in Washington, D.C.[62] As noted by L.Q.C. Lamar of Mississippi, the South rightly looked beyond the slavery issue and saw the activities of the North as an attack on the Constitution itself:

> We of the South, under the necessities of our position, see what is our mission. Regarding that Constitution as the instrument of our protection, we are determined to maintain its sacred compromises. You being the majority, and looking upon it as a restraint upon your power, have taken issue with that Constitution and are attempting to throw off its restrictions. That is the fight between us; and we are ready to meet it here....
>
> I am no disunionist *per se*. I am devoted to the Constitution of this Union, and so long as this Republic is a great tolerant Republic, throwing its loving arms around both sections of the country, I, for one, will bestow every talent which God has given me for its promotion and its glory. Sir, if there is one idea touching merely human affairs, which gives me more of mental exultation than another, it is the conception of this great Republic, this great Union of sovereign States, holding millions of brave, resolute men, in peace and order, not by brute force, not by standing armies, indeed by no visible embodiment of law, but by the silent omnipotence of one great, grand thought — the Constitution of the United States. That Constitution is the life and soul of this great Government..... That is our platform. We stand upon it. We intend to abide by it and to maintain it, and we will permit no persistent violations of its provisions.... When it is violated, persistently violated, when its spirit is no longer observed upon this floor — I war upon your government; I am against it. I raise then the banner of secession, and I will fight under it as long as the blood flows and ebbs in my veins.[63]

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60. Charles W. Ramsdell, "The Natural Limits of Slavery Expansion," *Mississippi Valley Historical Review* (September 1929), Volume XVI, Number 2, page 163.

61. Blaine, *Twenty Years of Congress*, Volume I, page 272.

62. Alexander Stephens predicted in 1857 that if "the slightest encroachments of power are permitted or submitted to in the Territories, they may reach the States ultimately" (*Appendix to the Congressional Globe* [Thirty-Fourth Congress, Third Session], page 134).

63. L.Q.C. Lamar, speech delivered in the House of Representatives on 7 December 1859; in *Congressional Globe* (Thirty-Sixth Congress, First Session), page 45.

SUPPORTING DOCUMENT

Excerpts From Dred Scott v. John F.A. Sandford

80 U.S. 19 How. 393 (1857)

...The question [before us] is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.

It will be observed, that the plea applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country, and sold and held as slaves. The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States. And this being the only matter in dispute on the pleadings, the court must be understood as speaking in this opinion of that class only, that is, of those persons who are the descendants of Africans who were imported into this country, and sold as slaves.

The situation of this population was altogether unlike that of the Indian race. The latter, it is true, formed no part of the colonial communities, and never amalgamated with them in social connections or in government. But although they were uncivilized, they were yet a free and independent people, associated together in nations or tribes, and governed by their own laws. Many of these political communities were situated in territories to which the white race claimed the ultimate right of dominion. But that claim was acknowledged to be subject to the right of the Indians to occupy it as long as they thought proper, and neither the

English nor colonial Governments claimed or exercised any dominion over the tribe or nation by whom it was occupied, nor claimed the right to the possession of the territory, until the tribe or nation consented to cede it. These Indian Governments were regarded and treated as foreign Governments, as much so as if an ocean had separated the red man from the white; and their freedom has constantly been acknowledged, from the time of the first emigration to the English colonies to the present day, by the different Governments which succeeded each other. Treaties have been negotiated with them, and their alliance sought for in war; and the people who compose these Indian political communities have always been treated as foreigners not living under our Government. It is true that the course of events has brought the Indian tribes within the limits of the United States under subjection to the white race; and it has been found necessary, for their sake as well as our own, to regard them as in a state of pupilage, and to legislate to a certain extent over them and the territory they occupy. But they may, without doubt, like the subjects of any other foreign Government, be naturalized by the authority of Congress, and become citizens of a State, and of the United States; and if an individual should leave his nation or tribe, and take up his abode among the white population, he would be entitled to all the rights and privileges which would belong to an emigrant from any other foreign people.

We proceed to examine the case as presented by the pleadings.

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea of abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

It is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to the political or law-making power; to those who formed the sovereignty and framed the Constitution. The duty of the court is, to interpret the instrument they have framed, with the best lights we can obtain on the subject, and to administer it as we find it, according to its true intent and meaning when it was adopted.

In discussing this question, we must not confound the rights of citizenship which a State may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a

citizen of a State, that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights. But this character of course was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Each State may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. The Constitution has conferred on Congress the right to establish an uniform rule of naturalization, and this right is evidently exclusive, and has always been held by this court to be so. Consequently, no State, since the adoption of the Constitution, can in naturalizing an alien, invest him with the rights and privileges secured to a citizen of a State under the Federal Government, although, so far as the State alone is concerned, he would undoubtedly be entitled to the rights of a citizen, and clothed with all the rights and immunities which the constitution and laws of the State attached to that character.

It is very clear, therefore, that no State can, by an act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it.

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embrace the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent? Does the Constitution of the United States act upon him wherever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court thinks the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error [Dred Scott] could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts.

It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States, became

also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guaranteed to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.

It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the Governments and institutions of the thirteen colonies, when they separated from Great Britain and formed new sovereignties, and took their places in the family of independent nations. We must inquire who, at that time, were recognized as the people or citizens of a State, whose rights and liberties had been outraged by the English Government; and who declared their independence, and assumed the powers of Government to defend their rights by force of arms.

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

It is difficult at this day to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.

They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion.

And in no nation was this opinion more firmly fixed or more uniformly acted upon than by the English Government and English people. They not only seized them on the coast

of Africa, and sold them or held them in slavery for their own use; but they took them as ordinary articles of merchandise to every country where they could make a profit on them, and were far more extensively engaged in this commerce than any other nation in the world.

The opinion thus entertained and acted upon in England was naturally impressed upon the colonies they founded on this side of the Atlantic. And, accordingly, a negro of the African race was regarded by them as an article of property, and held, and bought and sold as such, in every one of the thirteen colonies which united in the Declaration of Independence, and afterwards formed the Constitution of the United States. The slaves were more or less numerous in the different colonies, as slave labor was found more or less profitable. But no one seems to have doubted the correctness of the prevailing opinion of the time....

The language of the Declaration of Independence is equally conclusive:

It begins by declaring that, "when in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation."

It then proceeds to say: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them is life, liberty, and the pursuit of happiness; that to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed."

The general words above quoted would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted; and instead of the sympathy of mankind, to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation.

Yet the men who framed this declaration were great men — high in literacy acquirements — high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery. They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, and no one misunderstood them. The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection. This state of public opinion had undergone no change when the Constitution was adopted, and is equally evident from its provisions and language.

The brief preamble sets forth by whom it was formed, for what purposes, and for whose benefit and protection. It declares that it is formed by the people of the United States; that is to say, by those who were members of the different political communities in the several States; and its great object is declared to be to secure the blessing of liberty to themselves and their posterity. It speaks in general terms of the people of the United States, and of citizens of the several States, when it is providing for the exercise of the powers granted or the privileges secured to the citizen. It does not define what description of persons are intended to be included under these terms, or who shall be regarded as a citizen and one of the people. It uses them as terms so well understood, that no further description or definition was necessary.

But there are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed.

One of these clauses reserves to each of the thirteen States the right to import slaves until the year 1808, if it thinks proper. And the importation which it thus sanctions was unquestionably of persons of the race of which we are speaking, as the traffic of slaves in the United States had always been confined to them. And by the other provision the States pledge themselves to each other to maintain the right of property of the master, by delivering up to him any slave who may have escaped from his service, and be found within their respective territories. By the first above-mentioned clause, therefore, the right to purchase and hold this property is directly sanctioned and authorized for twenty years by the people who framed the Constitution. And by the second, they pledge themselves to maintain and uphold the right of the master in the manner specified, as long as the Government they then formed should endure. And these two provisions show, conclusively, that neither the description of persons therein referred to, nor their descendants, were embraced in any of the other provisions of the Constitution; for certainly these two clauses were not intended to confer on them or their posterity the blessing of liberty, or any of the personal rights so carefully provided for the citizen.

No one of that race had ever migrated to the United States voluntarily; all of them had been brought here as articles of merchandise. The number that had been emancipated at that time were but few in comparison with those held in slavery; and they were identified in the public mind with the race to which they belonged, and regarded as a part of the slave population rather than the free. It is obvious that they were not even in the minds of the framers of the Constitution when they were conferring special rights and privileges upon the citizens of a State in every other part of the Union....

No one, we presume, supposes that any change in public opinion or feeling, in relation to this unfortunate race, in the civilized nations of Europe or in this country, should induce the court to give to the words of the Constitution a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted. Such an argument would be altogether inadmissible in any tribunal called on to interpret it. If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself by which

it may be amended; but while it remains unaltered, it must be construed now as it was understood at the time of its adoption. It is not only the same in words, but the same in meaning, and delegates the same powers to the Government, and reserves and secures the same rights and privileges to the citizen; and as long as it continues to exist in its present form, it speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers, and was voted on and adopted by the people of the United States. Any other rule of construction would abrogate the judicial character of this court, and make it the mere reflex of the popular opinion or passion of the day. This court was not created by the Constitution for such purposes. Higher and graver trusts have been confided to it, and it must not falter in the path of duty.

What the construction was at that time, we think can hardly admit of doubt. We have the language of the Declaration of Independence and of the Articles of Confederation, in addition to the plain words of the Constitution itself; we have the legislation of Congress, from the time of its adoption to a recent period; and we have the constant and uniform action of the Executive Department, all concurring together, and leading to the same result. And if anything in relation to the construction of the Constitution can be regarded as settled, it is that which we now give to the word "citizen" and the word "people."

SUPPLEMENTARY ESSAY

The History of the Dred Scott Decision

by Elbert William R. Ewing

In all history territorial expansion has been accompanied by bitter contests. Bloodshed and cruelty, strategum and unmasked force, shameless diplomatic rascality and dark governmental intrigues cloud the titles to the greater number of the world-political geographic divisions. As westward with an ever widening angle the American people poured in ceaseless streams across rivers, prairies and mountains, man's more savage nature burst forth into similar battle. The varied climate of the States from the bleak hills of northern New England down to tropical Florida and Louisiana, and the variety of natural resources, with intercommunications slow and expensive, determined industries and labor systems, producing antagonistic sectional interests. These natural conditions evolved from a labor system once common to the Union, two systems, and two more antagonistic it would be hard to imagine. Conscience and philanthropy had as little to do with the conversion of the slave system of the North into free-labor, as they have in throttling today monopolistic predatory invasions of vast wealth. Moving down from the North and reaching out from the South, in the days of our continental expansion these antagonistic systems, fundamental and in the vanguard of the two lines of march because of the basal and preeminent nature of labor, disputed with each other for supremacy in our new Territories. The grapple was relentless. The bowie-knife and the Sharps' rifle, the torch and the cutlass left their deep, gore-stained traces.

Having grown into manufacturing and shipping interests, the North found not only that the negro slave had not the intelligence to do the work of the mills, but that the slave system in the South to which the mills looked for buyers, did not furnish the markets essential to the highest prosperity. The white laborer from the North, having found the mills and

ships overcrowded and agriculture unprofitable, shrank from contact with the slave-labor system because it monopolized the labor market and created for the white laborer a social odium. Slave labor placed the white laborer at a serious disadvantage. During its days of economic profit, the slave system, favored by nature, made the South affluent as a section, gave time for culture, the study of government, and the development of courtly qualities inherent in the white race of the South. So the politician of the North found in his southern competitor an able and dangerous obstacle, one both ambitious and competent to rule, and who in the administration of the affairs of government was opposed to government paternalism over the manufacturing interests of the North. Thus the labor system of the South found opposition in the *combined labor, capital and politician of the North*. In this opposition the fanatic and insanely conscientious found a fertile field.

The Constitution of the United States left to each State the right and power to legalize and continue the African slave labor. Having been established by the laws of a State, the Federal Government by the Constitution was pledged to protect and return fugitives from the system, such fugitives having escaped beyond the territorial limits of the slave-labor State. Hence the control of a Territory, which rapidly grew to Statehood with power to create or destroy domestic slavery, became important to the slave owner who wished to seek his fortune in the new West, and to the politician, to the white laborer, and to the manufacturer who coveted markets such only as free-labor would open. Thus between the North and the South antagonistic theories of government became constantly more pronounced.

The admission of the State of Missouri in 1820 brought to the front the most astute generals representing these different theories of government. Representatives from the North refused to admit the Territory to be known as Missouri as a State until she should by her constitution forbid domestic slavery, notwithstanding her many thousands of slaves recognized by the Federal Government as valuable property. The people of Missouri were clearly entitled to be recognized as a State, and to avoid the injustice threatened by the obstructionists, an adjustment was finally reached, known as the Missouri Compromise, by which the State was admitted, and a provision incorporated into the bill forbidding slavery in that Territory of Louisiana Purchase outside of Missouri and north of thirty-six degrees and thirty minutes north latitude.

The divergent views of the nature of the Federal Government and of the power of Congress over territory acquired by the United States, differences that had begun to manifest themselves in 1803 when Jefferson acquired the Louisiana Purchase, that became prominent in the dispute over the admission of Missouri, became more pronounced as each further acquisition of territory was made and each time Congress came to discuss or legislate for such domain.

In general propositions from Southern statesmen were charged with having the ulterior purpose of extending slavery for slavery's sake. While, in fact, in the main the issues had intrinsic value, and concerned the very life of the American government, regardless of whether the maintenance of the principles involved would favor either slavery or anti-slavery. Writers of today, as did those who lived through the more strenuous time of our history,

too often make the mistake of measuring the contentions of those days by the slavery standard too exclusively. Had the views of those who, in the main, were anti-slavery because of geography and climate, prevailed, the most happy safeguard of what we call the American government would long since have perished.

After the battle over Missouri with its resulting Missouri Compromise law, the request of President Polk in his message of August 8, 1846, that Congress furnish money to adjust the boundary between Mexico and the United States by the purchase of certain Mexican territories outside of Texas, brought the antagonistic forces again to sharp issues. David Wilmot, a Democrat from Pennsylvania, offered an amendment to the bill appropriating money for the purchase of the country the proposed action would bring us. This is the famous Wilmot Proviso, which prohibited slavery in the territory thus proposed to be purchased. As thus amended the bill passed the House, but failed in the Senate; and in the next year another bill with a similar provision passed the House, but the amendment was omitted in the Senate.

It was this bill which gave the logic of John C. Calhoun another opportunity. He insisted that the Constitution, *ex propio vigore*, extended to the Territories. This is what Benton ironically called "the transmigration of the Constitution." Bitterly and with all his powerful sarcasm Benton opposed the doctrine, insisting that the Constitution was applicable alone to the States.[1]

In 1849 when Congress came to legislate for California and New Mexico, territory lately acquired from Mexico, the debate was renewed with great vigor, especially in the Senate. Berrien of Georgia, Dayton of New Jersey, Webster and Calhoun arose to their greatest heights. Said Webster:

> Let me say that in the general sense there is no such thing as extending the Constitution. The Constitution is extended over the United States and over nothing else. It cannot be extended over anything except the old States and the new States that shall come in hereafter when they do come in. There is a want of accuracy of ideas in this respect that is quite remarkable among eminent gentlemen, and especially professional and judicial gentlemen. It seems to be taken for granted that the right of trial by jury, the *habeas corpus* and every principle designed to protect personal liberty, is extended by force of the Constitution itself over new territory. That proposition cannot be maintained at all....

"Altogether impractical," he concludes and "utterly impossible to extend the Constitution of the United States to the Territories."

In reply Calhoun said:

> Well, then, the proposition that the Constitution does not extend to the Territories is false to that extent. How else does Congress obtain the legislative power over the Territories?... If the Constitution does not extend there, you have no right to legislate or to do

1. Thomas Hart Benton, *Thirty Years View: A History of the Working of the American Government* (New York: D. Appleton and Company, 1854), Volume II, page 713.

> any act in reference to the Territories.... [The Constitution] is the supreme law, in obedience to which and in conformity with which all legislative enactments must be made.

Douglas, later to become famous for his relation to the Kansas-Nebraska bill, explained that he did not believe that the Constitution *ex propio vigore* extended to the Territories, but that he believed that Congress had "the power to extend it in all its parts, over that country;" and that such extension, in his opinion, "made the Territory a State, entitled to representation in Congress, in a *quasi* condition until it could elect its representatives to Congress and organize its State government."[2]

There was no decision of the Supreme Court, the arbiter of last resort in such questions, by which it could be known which contention was the correct one, so the great party leaders reargued their respective positions with each new occasion. In the main the views of Calhoun and those who concurred with him obtained, and the supremacy of the Constitution saved us from degenerating from a democracy. Ever alert, the school of Webster and Benton watched for opportunities to sustain their contentions. So, Congress having refused to follow Webster, his forces turned to the courts as the last source from which it might be possible to retake the lost field.

However, before noticing the specific instance by which it was hoped to retrieve their losses, it is important to remember that as territorial expansion went rapidly westward with it developed on the part of the North, not an effort to destroy slavery because it was slavery, but a bitter antipathy to the negro, the free negro quite as much as the slave; and hence an antagonism to slavery because of the fact that it carried with it the negro. Nowhere was this feeling more implacable than in the newer Northwest States and in the Territories. This opposition to the negro, regardless of his condition, gathered its strength into what came to be known as the Free-Soil party. In 1848 this party nominated and supported Martin Van Buren for President and Charles Francis Adams for Vice-President. Later the anti-negro and anti-slavery forces assumed the name of Free-State party, and in 1859, furnished the bulk of the material for the Republican party which elected Mr. Lincoln. Those affiliated with these various parties opposed, as they had done in Kansas, and earlier in Oregon, to build governments for great States "for free white men only;" and to so safeguard these local governments, as they had done in Illinois and in Ohio, that free negroes would have no part and under which they would have few rights which the white man was bound to respect, and under which a free negro had no legal right to live as a *citizen*. Thus by local laws the free negro was debarred the right of immigration and of residence as he might choose.

This fight against the negro, it was foreseen, would be easier could the Federal Government be brought to protect the Territory, and so by 1859 the Republicans had grown insistent that the government not only should prohibit slavery in the Territories, but that under the Constitution the government could not do otherwise. At the same time, little concerned for the slave as such, it was proposed existing slavery be made express and

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2. *Congressional Globe* (Thirtieth Congress, Second Session), Volume XX, pages 255ff.

irrevokable.[3]

From the ranks of these parties came the means for the prosecution and from their leadership came the men who instituted and who conducted to its conclusion the *Dred Scott Case*.

Dred Scott, of pure African descent, was born of slave parents in Virginia the slave of Captain Peter Blow. His master carried Dred to Missouri about 1827; and there, in 1834 and 1835, he was purchased as a slave by Dr. John Emerson. Dr. Emerson was a native of Pennsylvania, and from that State had been appointed as an assistant surgeon in the regular United States army. He was dishonorably discharged from the army in 1842, and died shortly thereafter.[4] But so far as the courts knew, and as appeared by the record, Emerson was a citizen of Missouri.[5]

In July, 1847, in the State circuit court for the country of St. Louis, Missouri, an action was instituted in which it was asked that Scott be adjudged a freeman. In this suit, brought against Emerson's widow, the administrator, and his surety, it was alleged that Emerson purchased Scott in 1835, and that about 1836 or 1837 he had been carried by the purchaser "from the State of Missouri to Fort Snelling, under the jurisdiction of the United States and in the Territory formerly known as Louisiana, and there held in slavery in violation of the Missouri Compromise."

In November, 1847, and while the first action was yet pending, a second suit in the same court and against the same parties was instituted. This is what is known as a trespass action, and its technical name has misled some authors to state that Scott had been whipped.[6] Nothing in the record anywhere indicates that Scott or any of his family was ever struck. In this later action it was alleged generally, being left to the trial to give specific grounds, that Scott was "a free person, and that the said defendants had held and still hold him in slavery, and other wrongs to the said plaintiff then and there did against the laws of the State of Missouri." In April, 1847, this action was tried before a jury who rendered a verdict against Scott. In December, 1847, this verdict was set aside and a rehearing ordered. At this hearing Scott offered as his evidence the facts of his original slavery, the purchase, and that from Missouri he had been carried to Rock Island, a military fort, in the State of Illinois; and from there to Fort Snelling, in a Territory of the United States (now Minnesota), and at each place

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3. See Republican platforms of 1856 and 1859; Edward Stanwood, *A History of the Presidency* (Boston: Houghton, Mifflin and Company, 1906), page 293.

4. F.B. Heitman, *Historical Register and Dictionary of the United States Army* (Washington, D.C.: Government Printing Office, 1903); W.H. Powell, List of Officers U.S.A.: 1779 to 1900, page 301.

5. 19 Howard 527.

6. John Fiske, *History of the United States For Schools* (Boston: Houghton, Mifflin and Company, 1899), page 360; Francis Curtis, *The Republican Party: A History of its Fifty Years' Existence and a Record of its Measures and Leaders* (New York: G.P. Putnam's Sons, 1904), Volume II, page 376.

detained in servitude about two years, his master being a sojourner and under orders from the government. Upon these facts the judge instructed the jury to bring in a verdict for Scott. Thereupon the defendants appealed to the supreme court of the State. In 1852, the matter resting purely upon questions of law, the case came up for hearing by the State supreme court. Of the three justices then composing the court, two concurred and one dissented. The majority held that the circuit judge was in error as to the law. Having been a slave under and pursuant to the laws of Missouri, having been temporarily out of Missouri, having been held as a slave while away, having been returned as a slave and having sued there, the higher court held that however valid any anti-slavery laws out of Missouri might be, they were not and could not be operative in Missouri, that they were penal in their nature, and would not be enforced by a Missouri court, because in conflict with her policy and laws. No one claimed that either law the benefit of which Scott invoked had any jurisdiction in Missouri. The first claim was based upon the old Ordinance of 1787, in so far as it was of force in Illinois. Historians since however, have enlarged upon the claims of the sojourn in Illinois.[7] Illinois was not, as has been said by some, "doubly protected against slavery;"[8] there was no law whatever of that State under which Scott could have been adjudged free even had he sued while there. Illinois was protected against the free negro; and at no time did she enact any law to enable a slave from any other State to assume the status of a freeman. Repeatedly her highest courts held the Ordinance of 1787 to be void and inoperative, upholding her local slave laws.[9] So as a question of law, the Missouri State trial court was in error, and therefore it was reversed and the case sent back for a new trial pursuant to law as laid down by the higher court.[10]

In 1848 the first and original action had been dismissed, and now it was agreed that the pending action should stand upon the court docket until a hearing could be had in the *United States court* in which Scott's lawyer said he wished also to sue. Accordingly R.M. Field, a well-known St. Louis attorney, representing Scott, in November, 1853, began an action in the *Federal* circuit court for the district in which St. Louis is located. In May, 1854, the cause went before a jury, who found against Scott and his family. Thereupon, a new trial having been refused, an appeal based upon exceptions to the rulings of the trial court, was taken to the Supreme Court of the United States. The facts of the State action, the nature of its decisions, and its abeyance until the decision of the Federal cause, were set out in the

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7. Francis Newton Thorpe, *The Constitutional History of the United States* (Chicago, Illinois: Callahan and Company, 1901), page 537.

8. Frederick Trevor Hill, *Decisive Battles of the Law* (New York: Harper and Brothers, 1907), page 247.

9. Ewing, *Northern Rebellion*, Chapters Five and Six.

10. 15 Mo. 582.

record which thus came before the highest Federal court.[11] When a final decision should have been reached in the State courts, an appeal to the Supreme Court of the United States could have been taken, Federal laws involved being ground of appeal. Such an appeal would have brought up every question of merit of the case before the highest court. But Field was a determined Free-Soiler,[12] and since Scott's case was not to be benefitted by a new action in a Federal court, Field must have had some political purpose in his move, especially since it was not probable the new action could be terminated more speedily than the action in the State court.

Remember that the jurisdiction of Federal courts is limited to cases defined by the Constitution. One such ground is where litigants are citizens of different States. There being no other ground for original Federal jurisdiction, it was declared that Scott was a *citizen* of Missouri, that he had been purchased and was being held in slavery by John F.A. Sandford (Sanford, as the name is usually spelled), and that Sandford was a citizen of the State of New York. This was a pure fiction; but Sandford was the brother of Dr. Emerson's widow, and all parties connived for the purpose of reaching the court with all questions they wished decided.

Too long it has been believed that "as the wily chiefs of Democracy were casting about for a feasible plan of action" in an alleged "effort to fasten slavery upon the Territories," they instituted and prosecuted the Dred Scott Case. Neither these "wily chiefs" nor any Southern leaders were directly or indirectly responsible for this case. That they were not and that the case was a political probe used by wily Northerners, aggressive free-soilers and Republicans, is the more clear when we remember that the collusion as to sale resorted to in order to reach the Federal court, was between Scott's lawyers and Sandford, of New York, all anti-Southern, Dr. Chaffee of Massachusetts, a Republican member of Congress being a party to the agreement. If there had ever been hope of recovering damages against Emerson's estate, in confirmation of which the evidence is entirely lacking, sometimes given as the early motive for the institution of the suit, this hope was abandoned in the interest of the desire entertained by Northern leaders to obtain some advantage against the South and the Democrats. Sandford could not have been held liable for damages alleged to have accrued prior to his purchase, and as no effort was made to show ownership for any time before the Federal action, nothing more than nominal damages could have been obtained against him. The claim that Scott had been by Sandford heavily damaged, set up in the declaration, was, therefore, no more than a blind to hide the real purpose of the politicians.

Of the questions involved in the case as presented to the Federal courts, that of the constitutionality of the Missouri Compromise was the greatest. Constantly stronger up to the

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11. Transcript of Records (U.S. Supreme Court Clerk's Office, 1856), Volume I, Number 3, page 65.

12. *Clesky's Political Textbook* (1860), page 207; Benjamin's speech in the U.S. Senate, March 3, 1858.

institution of this Federal action had grown the conviction, North and South, that the prohibition imposed by the Missouri Compromise was contrary to both the letter and fair intendment of the Constitution; and, for that reason, at the very institution of the Federal suit, its repeal trembled in the balance. If the Supreme Court of the United States should declare such a measure warranted by the Constitution as many especially in the North confidently believed it would, then the great argument in favor of the repeal would be swept from the Democrats. The next year, 1854, and shortly after the institution of the Federal action, the Democrats having a majority in Congress, the Missouri Compromise was actually repealed; but the North was so determined on saving the Territories for her emigrating white laborers, for free white people only, that the next session of Congress found the Democratic majority reduced to a minority, and a crusade for the restoration of the prohibition relentlessly begun. So the power of Congress to enact such a prohibition remained a vital issue in the case, a case destined to become one of the most famous in American history.

The widow Emerson married Dr. C.C. Chaffee of Massachusetts. About the time the case was disposed of by the Supreme Court, Dr. Chaffee was representing his State in Congress. He was a radical Republican — a member of what was known as the "Black Republican Party." In May following the court's final decree, Dr. Chaffee conveyed Dred and his family to Taylor Blow of St. Louis, on condition that they be emancipated, and it is said that this was done on May 26.[13] May 27 the St. Louis *Republic* said, "Old and worn out" Scott "will have a hard time to make a living if he is forced to depend upon the charities of Black Republicans and abolitionists."

As I write this I have before me a letter from the circuit court clerk of the eight judicial circuit, St. Louis, saying that "after diligent search" he is unable to find the deed emancipating Scott. One evidently was made, since its mention is found in the index. But from all I am able to gather, I am confident that no provision was ever made for Scott's old age. His Massachusetts master and mistress simply turned him loose to wander the streets of St. Louis, get odd jobs when he could, and shift as circumstances permitted.[14] At one time, there seems to be no doubt, Dred offered to buy his freedom of Mrs. Emerson, tendering her his market value in cash and good security, but she refused the offer. A great anti-Southern party needed him, and he was not emancipated until he had served their purpose and was no longer of any personal or political value. The New Hampshire *Patriot and State Gazette* gives the Springfield, Illinois *Argus* the credit for discovering Scott's Northern slave-master. Says the *Gazette*: "That paper first exposed to the world that a Black Republican freedom-shrieking member of Congress from Massachusetts was the owner of that family of slavers, and that the suit for their freedom was in fact opposed for his benefit."[15] In the New York

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13. Boston *Courier*, quoted in Providence (Rhode Island) *Post*, March 17, 1857; Washington City *Union*, June 2, 1857.

14. St. Louis *News*, April 8, 1857; New York *Tribune*, April 10, 1857.

15. New Hampshire *Gazette*, June 3, 1857.

Tribune for March 17, 1857, there is a letter from Dr. Chaffee purporting to explain his relation to Dred. The letter shows his evident embarrassment; Chaffee feebly claims he did not own Scott, yet the doctor impeaches that claim by immediately manumitting the negro.

Upon the trial in the Federal circuit court H.A. Garland for Sandford and R.M. Field for Scott entered into a written statement which went to the court as "the facts of the case." So, at all times the questions for the courts were purely those of law arising upon the admitted facts. In the lower court Field was assisted by Francis P. Blair, also an eminent St. Louis lawyer, an active member of the Free-Soil party, and later a staunch Republican. After the case had reached the Supreme Court of the United States, it was argued from the standpoint of the party behind the case and that was furnishing funds for its prosecution, by Montgomery Blair, postmaster general under President Lincoln, a brother of Francis P. Blair, and George T. Curtis, a brother of Mr. Justice Curtis who delivered the stronger of the two dissenting opinions. Reverdy Johnson, the distinguished Maryland lawyer, and Henry S. Geyer, Senator from Missouri, represented the other side. Johnson volunteered out of consideration for the court.

Taking the view of the law as announced by the State supreme court, the trial Federal court held that upon the merits of the case neither Scott nor any of his family had become entitled to the status of a freeman. The facts of the case were the same before all of the courts.[16] These agreed facts, being those which went to the Supreme Court of the United States with the appeal from the result in the trial Federal court are:

Dr. Emerson, in the regular service of the United States army, purchased Scott in Missouri, where the latter was held in slavery under laws recognized by the Constitution of the United States as valid. In 1834, going from Missouri, and under army orders, Emerson carried Scott to the military post at Rock Island, Illinois, "and held him there as a slave until the month of April of May, 1836." Under government orders the doctor then moved, taking Scott, to the military post at Rock Island, Illinois, "and held him there as a slave until the month of April or May, 1836." Under government orders the doctor then moved, taking Scott, to the military post at Fort Snelling, "situated on the west bank of the Missouri rivers, in the Territory known as Upper Louisiana, acquired by the United States from France, and situated north of the latitude thirty-six degrees and thirty minutes north, and north of the State of Missouri." There Dr. Emerson held Scott in slavery until 1838, when he removed the negro, his wife and child back to Missouri.

In 1835 Major Taliaferro, also an army officer, owned a negro girl, Harriet, whom he carried to Fort Snelling, going there in discharge of army duty. At Fort Snelling in 1836, the major sold "Harriet and delivered her as a slave"[17] to Dr. Emerson. There she was held

16. 19 Howard 552.

17. Original Record (U.S. Supreme Court Clerk's Office), page 10. At the time Dr. Emerson was on duty at Fort Snelling quite a number of slaves of both sexes were held there by post officers. Taliaferro had several he had inherited in the State of his birth, Harriet being one (Warren Upham,

in slavery by the doctor until 1838, at which time she and Scott were returned to Missouri with the Emersons.

During the time Dr. Emerson and Major Taliaferro were thus at Rock Island and Fort Snelling they were acting under orders from the officials of the Federal army; they had not gone either to Illinois or to Fort Snelling in what was at that time Wisconsin for the purpose of remaining permanently. As with all our army officers, they were liable to be recalled and removed at any moment; their stay was temporary.

When the case at length, March 6, 1857, was decided by the Supreme Court of the United States, the result was taken to be a great victory for the principles of the Democratic party, and there was much rejoicing throughout the ranks, especially for the South. Democrats in Congress asked for the publication of several thousand copies of the opinion, which was ordered at a cost to the government of $6,5000. The appropriation for this expenditure had little opposition, though Republican members were careful to explain that their assent must not be taken to indicate approval of the court's decision.[18]

The preceding essay was extracted from Elbert William R. Ewing, The Legal and Historical Status of the Dred Scott Decision *(Washington, D.C.: Cobden Publishing Company, 1908).*

Minnesota in Three Centuries: 1655 to 1908 [Mankato, Minnesota: The Publishing Society of Minnesota, 1908], Volume II, page 66.

18. *Congressional Globe* (Thirty-Fifth Congress, First Session), pages 1069-1070; *ibid.* (Thirty-Sixth Congress, First Session), page 293.

CHAPTER SIX
Racial Attitudes in the North and South

Free Soil Antagonism to the Negro Race

> In thus presenting a sketch of the progress of those causes which led to the Southern revolt, it will be seen that slavery, though made an occasion, was not, in reality, the cause of the war. Antislavery was of no serious consequence, and had no positive influence, until politicians, at a late period, seized upon it as an instrument of agitation; and they could not have done so to any mischievous effect, except for an alleged diversity of interests between the sections, involving the question of political power. Wise and patriotic citizens for a long time kept those interests at the proper balance, or the passions which were thus stimulated under just control. As those great men passed away, self-seeking and ambitious demagogues, the pest of republics, disturbed the equilibrium, and were able, at length, to plunge the country into that worst of all public calamities, civil war. The question of morals had as little as possible to do with the result. Philanthropy might have sighed, and fanaticism have howled for centuries in vain, but for the hope of office and the desire of public plunder, on the part of men who were neither philanthropists nor fanatics.[1]

It is preposterous to suggest that hundreds of thousands of lives were expended in the so-called "Civil War" to overturn Chief Justice Taney's decision in *Dred Scott v. Sandford* regarding the political status of American Blacks. In fact, one is hard-pressed to find many Northern spokesmen — even among the most ardent Abolitionists — attempting to dispute the non-citizenship of the Negro. This is because securing the Territories for free White

1. Lunt, *Origin of the Late War*, pages x-xi.

labor, and not citizenship for Negroes, was always the real issue in the minds of the Free-Soilers and the later Republicans. The Free Soil argument was that the presence of slavery was an embarrassment to American democracy and that it impeded the "manifest destiny" of the United States to extend a great economic empire of White freedom across the continent and throughout the world. In relating why all future Territories should be closed to slavery and why California should be admitted as a free State, David Wilmot, author of the aforementioned Wilmot Proviso, said, "The negro race already occupy enough of this fair continent. Let us keep what remains for ourselves, and our children — for the emigrant that seeks our shores — for the poor man, that wealth shall oppress — for the free white laborer, who shall desire to hew him out a home of happiness and peace, on the distant shores of the mighty Pacific."[2] Such was the substance of a three-hour speech in Congress in 1850 delivered by William H. Seward, who was also a member of the Free Soil party, and who would later serve in Lincoln's presidential cabinet as Secretary of State:

> The population of the United States consists of natives of Caucasian origin, and exotics of the same derivation. The native mass readily assimilates to itself and absorbs the exotic, and these constitute one homogenous people. The African race, bond and free, and the aborigines, savage and civilised, being incapable of such assimilation and absorption, remain distinct, and, owing to their peculiar condition, constitute inferior masses, and may be regarded as accidental if not disturbing political forces. The ruling homogenous family, planted at first on the Atlantic shore, and following an obvious law, is seen rapidly and continually spreading itself westward, year by year, subduing the wilderness and the prairie, and thus extending this great political community, which, as fast as it advances, breaks into distinct States for municipal purposes only, while the whole constitutes one entire, contiguous, and compact nation.[3]

It is clear that Seward did not view the Negro, whether slave or free, to be a part of this "great political community" which he foresaw spreading itself across the continent. In his "Irrepressible Conflict" speech, delivered at Rochester, New York on 25 October 1858, Seward stated, "The interests of the white race demand the ultimate emancipation of all men. The white man needs this continent to labor upon.... He must and will have it."[4] Two years later, his views had not changed: "The great fact is now fully realized that the African race here is a foreign and feeble element, like the Indians, incapable of assimilation,... and that it is a pitiful exotic, unwisely and unnecessarily transplanted into our fields, and which it is

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2. David Wilmot, quoted in Richard H. Sewell, *Ballots For Freedom: Antislavery Politics in the United States, 1837-1860* (New York: W.W. Norton, 1976), page 173.

3. William Seward, speech delivered in the Senate on 11 March 1850; *Congressional Globe* (Thirty-First Congress, First Session), Appendix, page 261.

4. Seward, speech delivered at Rochester, New York on 25 October 1858; in Baker, *Works of Seward*, Volume IV, page 302.

unprofitable to cultivate at the cost of the desolation of the native vineyard."[5] According to Republican Senator Benjamin Wade of Ohio, the solution to the "Negro problem" was therefore not only the abolition of slavery, but the removal of the Negro race entirely from the country:

> The Senator from Illinois [Douglas] and my collegue [Pugh] have said that we Black Republicans were advocates of negro equality, and that we wanted to build up a black government. Sir, it will be one of the most blessed ideas of the times, if it shall come to this, that we will make inducements to every free black among us to find his home in a more congenial climate in Central America or Lower Mexico, and we will be divested of every one of them; and then, endowed with the splendid domain that we shall get, we will adopt a homestead policy, and we will invite the poor, the destitute, industrious white man from every clime under heaven, to come in here and make his fortune. So, sir, we will build up a nation, renovated by this process, of white laboring men.[6]

Abraham Lincoln's Views Regarding the Negro

Modern readers may be prone to misinterpret Lincoln's frequent attacks on the "slave dynasty" as an expression of an opposition to slavery on moral grounds, but such is not the case. As noted by Roy Basler, Lincoln "barely mentioned slavery before 1854"[7] — the year the Republican party was born. There were other issues to which Lincoln was much more committed than a mere opposition to slavery, and the latter was clearly viewed by him as a means to an end. From the beginning of his political career until his death, Lincoln was "always a Whig in politics"[8] and therefore had "an unswerving fidelity to the party of Henry Clay and to Clay's American System, the program of internal improvements, protective tariffs, and centralized banking."[9] While campaigning for the Illinois legislature in 1832, he said, "My politics can be briefly stated. I am in favor of the internal improvement system and

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5. William H. Seward, speech delivered at Detroit, Michigan on 4 September 1860; quoted by William P. Pickett, *The Negro Problem: Abraham Lincoln's Solution* (New York: G.P. Putnam's Sons, 1909), page 449.

6. Benjamin Wade, speech delivered in the Senate on 17 December 1860; *Congressional Globe* (Thirty-Sixth Congress, Second Session), page 104.

7. Roy P. Basler (editor), *Abraham Lincoln: His Speeches and Writings* (New York: Da Capo Press, 1946), page 23.

8. Lincoln, quoted by David Donald, *Lincoln* (New York: Simon and Schuster, 1996), page 94.

9. Robert W. Johannsen, *Lincoln, the South, and Slavery: The Political Dimension* (Baton Rouge, Louisiana: Louisiana State University Press, 1991), page 14.

a high protective tariff. These are my sentiments and political principles." [10] Throughout the 1840s and 1850s, he consistently opposed the advocates of free-trade — most of whom were Southern Democrats — and "made more speeches on that subject [the protective tariff] than any other."[11] "Honest Abe" was nominated for the Presidency in 1860, not because of any personal antipathy to slavery, but because he was considered "a stout champion of protection"[12] by Northern industrial interests who saw in the Republican party the prospect of a return to their former favored status of the late 1820s and early 1830s. In fact, the tariff plank had been added to the Chicago platform nearly exclusively to cater to Pennsylvania, without whose support Lincoln would never have been elected.[13] As pointed out by the Philadelphia *North American*: "The people have elected Abraham Lincoln President of the United States.... Pennsylvania, particularly, demanded that the principle of protecting American industries should be recognized and avowed.... [S]lavery was not the dominating idea of the Presidential contest, as has been assumed...." [14] A similar statement appeared in the Philadelphia *Public Ledger*: "The most potent influence that caused many Northern men to aid the Republican party was the tariff question. Manufacturers and miners believed the Democratic party prejudiced to their protection; and therefore had gone over to the Republicans."[15]

Lincoln's political worldview, which "tied economic development to strong centralized national authority,"[16] was nothing less than the old Federalism of Alexander Hamilton in a new form. It is in this economic context that his opposition to the alleged expansion of slavery into the Territories must be understood. Responding to Lincoln's famous "House Divided" speech of 16 June 1858, Stephen Douglas said:

> ...Mr. Lincoln asserts, as a fundamental principle of this government, that there

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10. Lincoln, speech delivered in 1832; quoted in Osborn H. Oldroyd, *The Lincoln Memorial* (New York: American Union Publishing Company, 1882), Volume I, page 102.

11. Lincoln, letter to Edward Wallace, 11 October 1859; in John G. Nicolay and John Hay (editors), *Abraham Lincoln: Complete Works Comprising His Speeches, Letters, State Papers and Miscellaneous Writings* (New York: The Century Company, 1902), Volume V, pages 256-257.

12. I.F. Boughter, "Western Pennsylvania and the Morrill Tariff," *Western Pennsylvania Historical Magazine* (April, 1923), Volume VI, page 128.

13. Reinhard H. Luthin, "Abraham Lincoln and the Tariff," *The American Historical Review* (July, 1944), Volume XLIX, Number 4, page 619.

14. Philadelphia *North American and United States Gazette*, quoted by Luthin, "Abraham Lincoln and the Tariff," page 624.

15. William Bigler, quoted in Philadelphia *Public Ledger*, 12 December 1860.

16. Johannsen, *Lincoln, the South, and Slavery*, page 45.

must be uniformity in the local laws and domestic institutions of each and all the States of the Union; and he therefore invites all the non-slaveholding States to band together, organize as one body, and make war upon slavery in Kentucky, upon slavery in Virginia, upon the Carolinas, upon slavery in all of the slaveholding States in this Union, and to persevere in that war until it shall be exterminated. He then notifies the slaveholding States to stand together as a unit and make an aggressive war upon the Free States of this Union with a view of establishing slavery in them all; of forcing it upon Illinois, of forcing it upon New York, upon New England, and upon every other Free State, and that they shall keep up the warfare until it has been formally established in them all. In other words, Mr. Lincoln advocates boldly and clearly a war of sections, a war of the North against the South, of the Free States against the Slave States, — a war of extermination, — to be continued relentlessly until the one or the other shall be subdued, and all the States shall either become free or become slave....

The framers of the Constitution well understood that each locality, having separate and distinct interests, required separate and distinct laws, domestic institutions, and police regulations adapted to its own wants and its own condition; and they acted on the presumption, also, that these laws and institutions would be as diversified and as dissimilar as the States would be numerous, and that no two would be precisely alike, because the interests of no two would be precisely the same. Hence I assert that the great fundamental principle which underlies our complex system of State and Federal Governments contemplated diversity and dissimilarity in the local institutions and domestic affairs of each and every State then in the Union, or thereafter to be admitted into the confederacy. I therefore conceive that my friend, Mr. Lincoln, has totally misapprehended the great principles upon which our government rests. Uniformity in local and domestic affairs would be destructive of State rights, of State sovereignty, of personal liberty and personal freedom. Uniformity is the parent of despotism the world over, not only in politics, but in religion. Wherever the doctrine of uniformity is proclaimed, that all the States must be free or all slave, that all labor must be white or all black, that all the citizens of the different States must have the same privileges or be governed by the same regulations, you have destroyed the greatest safeguard which our institutions have thrown around the rights of the citizen.

How could this uniformity be accomplished, if it was desirable and possible? There is but one mode in which it could be obtained, and that must be by abolishing the State Legislatures, blotting out State sovereignty, merging the rights and sovereignty of the States in one consolidated empire, and vesting Congress with the plenary power to make all the police regulations, domestic and local laws, uniform throughout the limits of the Republic. When you shall have done this, you will have uniformity. Then the States will all be slave or all be free; then negroes will vote everywhere or nowhere; then you will have a Maine liquor law in every State or none; then you will have uniformity in all things local and domestic, by the authority of the Federal Government. But when you attain that uniformity, you will have converted these thirty-two sovereign, independent States into one consolidated empire, with the uniformity of disposition reigning triumphant through-

out the length and breadth of the land.[17]

A month later, Douglas added:

> Mr. Lincoln and myself differ radically and totally on the fundamental principles of this Government. He goes for consolidation, for uniformity in our local institutions, for blotting out State rights and State sovereignty, and consolidating all the power in the Federal Government, for converting these thirty-two sovereign States into one Empire, and making uniformity throughout the length and breadth of the land. On the other hand, I go for maintaining the authority of the Federal Government within the limits marked out by the Constitution, and then for maintaining and preserving the sovereignty of each and all of the States of the Union, in order that each State may regulate and adopt its own local institutions in its own way, without interference from any power whatsoever. Thus you find there is a distinct issue of principles — principles irreconcilable — between Mr. Lincoln and myself. He goes for consolidation and uniformity in our Government. I go for maintaining the confederation of the sovereign States under the Constitution, as our fathers made it, leaving each State at liberty to manage its own affairs and own internal institutions.[18]

Dominated by the old Jeffersonian republicanism, which stressed the nature of the Union as a compact between sovereign States,[19] and committed to the philosophy of free trade and anti-protectionism,[20] the South as a section traditionally stood in the way of this consolidationist agenda. In the mind of Lincoln and other former Whigs who formed the backbone of the new Republican party, it was therefore imperative that Southern political power be minimized and contained. Lincoln was willing that slavery as an existing institution should be left unmolested and he was strongly in favor of enforcing the fugitive slave laws: "When [Southerners] remind us of their constitutional rights, I acknowledge them, not grudgingly, but fully and fairly; and I would give them any legislation for the reclaiming of their fugitives.... I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no

17. Douglas, speech delivered at Chicago, Illinois on 9 July 1858; in Johannsen, *Lincoln-Douglas Debates*, pages 29, 30-31.

18. Douglas, speech delivered at Springfield, Illinois on 17 July 1858; quoted by Johannsen, *ibid.*, page 92. Lincoln was not present on this occasion, so this speech is not technically classified as part of the Lincoln-Douglas debates.

19. Kentucky Resolutions, 10 November 1798.

20. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Indianapolis, Indiana: The Liberty Fund, [1776], 1981).

inclination to do so."[21] On another occasion, he said, "[A]ll the States have the right to do exactly as they please about their domestic relations, including that of slavery...." However, he was adamant upon "restricting it from the new Territories,"[22] thus making it impossible for additional slave States to be admitted to the Union.

The subject of the tariff, and its important role in bringing on the War Between the States, will be discussed in further detail in a later chapter. It is sufficient to note at present that Lincoln's real concern was for pushing his political agenda, not for the alleged plight of the Southern Negro. In fact, his public statements regarding that race revealed his views to be no different than that of Free-Soilism, which sought to confine the Negroes to the South so as not to compete with White labor in the Territories:

> What I insist upon is, that the new Territories shall be kept free from [slavery] while in the territorial condition. Judge Douglas assumes that we have no interest in them — that we have no right whatever to interfere. I think we have some interest. I think that as white men we have.... Now irrespective of the moral aspect of this question as to whether there is a right or wrong in enslaving a negro, I am still in favor of our new Territories being in such a condition that white men may find a home — may find some spot where they can better their condition — where they can settle upon new soil and better their condition in life. I am in favor of this not merely (I must say it here as I have elsewhere) for our own people who are born amongst us, but as an outlet for *free white people* every where, the world over (emphasis in original).[23]

In an address delivered at Springfield, Illinois on 26 June 1857, Lincoln openly declared himself in favor of racial segregation and the eventual deportation of the Blacks back to their native Africa:

> A separation of the races is the only perfect preventive of amalgamation, but as immediate separation is impossible, the next best thing is to keep them apart where they are not already together.... Such separation, if ever affected at all, must be affected by colonization.... The enterprise is a difficult one, but "where there is a will there is a way"; and what colonization needs now is a hearty will. Will springs from the two elements of moral sense and self-interest. Let us be brought to believe it is morally right, and at the same time, favorable to, or at least not against, our interest, to transfer the African to his

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21. Lincoln, reply to Douglas at Ottawa, Illinois on 21 August 1858; in Johannsen, *Lincoln-Douglas Debates*, page 52.

22. Lincoln, reply to Douglas at Jonesboro, Illinois on 15 September 1858; in Johannsen, *ibid*., pages 131, 132.

23. Lincoln, reply to Douglas on 15 October 1858; in Johannsen, *ibid*., page 316.

native clime, and we shall find a way to do it, however great the task may be.[24]

This was not an isolated statement on Lincoln's part. Indeed, he had much more to say along these lines:

> When Southern people tell us they are no more responsible for the origin of slavery than we are, I acknowledge the fact. When it is said that the institution exists, and it is very difficult to get rid of it in any satisfactory way, I can understand and appreciate the saying. I surely will not blame them for not doing what I should not know how to do myself. If all earthly power were given me, I should not know what to do as to the existing institution. My first impulse would be to free all the slaves, and send them to Liberia, to their own native land. But a moment's reflection would convince me that whatever of high hope — as I think there is — there may be in this in the long run, its sudden execution is impossible. If they were all landed there in a day, they would all perish in the next ten days; and there are not surplus shipping and surplus money enough to carry them there in many times ten days. What then? Free them all, and keep them among us as underlings? Is it quite certain this betters their condition? I think I would not hold one of them in slavery at any rate, yet the point is not clear enough for me to denounce people upon. What next? Free them, and make them politically and socially our equals? My own feelings will not admit of this, and if mine would, we well know that those of the great mass of whites will not. Whether this feeling accords with justice and sound judgment is not the sole question, if indeed it is any part of it. A universal feeling, whether well or ill founded, cannot be safely disregarded. We cannot make them equals. It does seem to me that systems of gradual emancipation might be adopted, but for their tardiness in this I will not undertake to judge our brethren of the South.[25]

> While I was at the hotel to-day, an elderly gentleman called upon me to know whether I was really in favor of producing a perfect equality between the negroes and white people. While I had not proposed to myself on this occasion to say much on that subject, yet as the question was asked me I thought I would occupy perhaps five minutes in saying something in regard to it. I will say then that I am not, nor ever have been, in favor of bringing about in any way the social and political equality of the white and black races — that I am not nor ever have been in favor of making voters or jurors of negroes, nor of qualifying them to hold office, nor to intermarry with white people; and I will say in addition to this that there is a physical difference between the white and black races which I believe will forever forbid the two races living together on terms of social and political equality. And inasmuch as they cannot so live, while they do remain together there must be the position of superior and inferior, and I as much as any other man am in

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24. Lincoln, address at Springfield, Illinois on 26 June 1857; in Roy P. Basler (editor), *The Collected Works of Abraham Lincoln* (New Brunswick, New Jersey: Rutgers University Press, 1953), Volume II, pages 408-409; Nicolay and Hay, *Lincoln: Complete Works*, Volume I, page 235.

25. Lincoln, reply to Douglas at Peoria, Illinois on 16 October 1858; quoted by Nicolay and Hay, *ibid.*, page 186.

favor of having the superior position assigned to the white race.[26]

In response to Stephen Douglas on 18 September 1858, Lincoln was very frank in saying, "I am not in favor of negro citizenship.... Now my opinion is that the different States have the power to make a negro a citizen under the Constitution of the United States if they choose. The *Dred Scott* decision decides that they have not that power. If the State of Illinois had that power I should be opposed to the exercise of it."[27] Less than five months prior to delivering the final draft of the Emancipation Proclamation, Lincoln addressed a delegation of free Blacks at the Executive Mansion with these words:

> ...[W]hy... should the people of your race be colonized, and where? Why should they leave the country? This is, perhaps, the first question for consideration. You and we are different races. We have between us a broader difference than exists between almost any other two races. Whether it is right or wrong I need not discuss, but this physical difference is a great disadvantage to us both, as I think your race suffers very greatly, many of them by living among us, while ours suffers from your presence. In a word we suffer on each side. If this be admitted, it affords a reason at least why we should be separated.
>
> You here are freemen, I suppose... but even when you cease to be slaves, you are yet far removed from being placed on an equality with the white race. You are cut off from many of the advantages which the other race enjoys.... Owing to the existence of the two races on this continent, I need not recount to you the effects upon white men growing out of the institution of slavery.
>
> I believe in its general evil effects on the white race. See our present condition — the country engaged in war — our white men cutting one another's throats — none knowing how far it will extend — and then consider what we know to be the truth. But for your race among us there could not be war, although many men engaged on either side do not care for you one way or the other.... It is better for us both therefore to be separated....[28]

In his autobiography, Benjamin Butler referred to a conversation he had with Lincoln in early April 1865 in which the latter said, "I can hardly believe that the South and North can live in peace, unless we can get rid of the negroes." Butler suggested that the Blacks be shipped down to dig the Panama Canal, to which suggestion Lincoln replied, "There is meat in that, General Butler, there is meat in that; but how will it affect our foreign relations?" [29]

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26. Lincoln, speech delivered at Charleston, Illinois on 18 September 1858; in Johannsen, *Lincoln-Douglas Debates*, page 162.

27. Lincoln, reply to Douglas on 18 September 1858, in Johannsen, *ibid.*, pages 197, 198.

28. Lincoln, speech delivered at the Executive Mansion on 14 August 1862; in Henry J. Raymond, *The Life and Public Services of Abraham Lincoln Together With His State Papers* (New York: Derby and Miller, 1865), page 504.

29. Lincoln, quoted by Butler, *Butler's Book*, Volume II, pages 903-907.

He then suggested that Butler present the plan in writing to Secretary Seward to obtain the latter's assistance in formulating the details. However, an assassin's bullet less than two weeks later squelched any further discussion of these plans for the deportation of America's Blacks.

As we have already seen, Lincoln was certainly not the only Northern leader who believed the Negro to be inferior to the White man. Like Seward, who believed that the African race was "a foreign and feeble element... incapable of assimilation," Senator Charles Sumner of Massachusetts, one of the leading agitators for Abolitionism, wrote of his first sight of Negro slaves, "My worst preconception of their appearance and their ignorance did not fall as low as their actual stupidity.... They appear to be nothing more than moving masses of flesh unendowed with anything of intelligence above the brutes."[30] William Tecumseh Sherman, who would later achieve notoriety for his destructive "March to the Sea," likewise believed that "all the Congresses on earth can't make the negro anything else than what he is; he must be subject to the white man, or he must amalgamate or be destroyed. Two such races cannot live in harmony, save as master and slave."[31] These men were merely voicing a universal racial prejudice which no one at that time, with the possible exception of a handful of fanatics, disputed.

Treatment of Slaves in the Ante-Bellum South

It behooves us now to examine the extravagant charges which the anti-slavery agitators brought against the Southern slaveholders and which have since been written into the history books. As mentioned before, the aversion of modern Americans to the alleged plight of slaves in the old South has been derived from over two hundred years of Abolitionist propaganda. Even before the Nineteenth Century, the Northern press was rife with horrific descriptions of the alleged maltreatment of the Negroes by their aristocratic masters. In the *Pelham Papers*, published in Connecticut in 1796, it was asserted that the slaves were treated *"like brutes"* and that "they are bought and sold; they are fed or kept hungry; they are clothed, or reduced to nakedness; they are beaten, turned out to the fury of the elements, and torn from their dearest connections, *with as little remorse as if they were beasts of the field"* (emphasis in original). This publication even made the outrageous assertion that *"if they were good for food, the probability is that the power of destroying their lives would be enjoyed by their owners as fully as it is over the lives of their cattle"* (emphasis in original).[32]

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30. Charles Sumner, quoted by C. Vann Woodward, *The Burden of Southern History* (Baton Rouge, Louisiana: Louisiana State University Press, 1960), page 87.

31. William Tecumseh Sherman, letter dated July, 1860; quoted by W.A. DeWolfe Howe, "General Sherman's Letters Home," *Scribner's Magazine*, April 1909, page 400.

32. *Pelham Papers*, quoted by Carey, *Olive Branch*, page 255.

The organization of Northern Abolitionism in the 1830s produced a plethora of literature ingeniously designed to play upon the emotions of the reader and to take advantage of the general ignorance of Southern institutions. The year following Weld's ground-breaking compilation, *American Slavery As It Is*, Richard Hildeth's purported history of Southern social life entitled *Despotism in America* was published in Boston. In this inflammatory work, the author claimed the following:

> The Bible has been proscribed at the South, as an incendiary publication; a book not fit for slaves to read or hear. In some parts of the country the catechism is looked upon with almost equal suspicion; and many masters forbid their slaves to hear any preacher, black or white, since they consider religion upon the plantation as quite out of place, a thing dangerous to the master's authority, and therefore not to be endured in the slave....
>
> The slaves are regarded not merely as animals, but as animals of the wildest and most ferocious character. They are thought to be like tigers, trained to draw the plough, whom nothing but fear, the whip, and constant watchfulness, keep at all in subjection, and who if left to themselves would quickly recover their savage natures, and find no enjoyment except to reek in blood.[33]

Likewise, in his *Short History of the English Colonies in America*, Henry Cabot Lodge, a Senator and civil rights advocate from Massachusetts, wrote, "The negroes were hopelessly degraded. They were rarely baptized or married, but lived, like animals, in a state of promiscuous intercourse.... Their condition, therefore, was one of almost complete barbarism.... The slaves were harshly and cruelly treated, and grievously overworked."[34]

In conducting their "research," modern American historians rely heavily upon such fanciful accounts as these to continue the tradition of vilifying antebellum Southern slavery. For example, in the popular Time-Life *Civil War* series, William C. Davis wrote:

> Born into bondage, very likely sold at least once during the course of his or her lifetime, a slave normally began to work in the fields by the age of 12. From that point on, overwork was his daily portion....
>
> The majority of slaves were fed poorly; many subsisted chiefly on a "hog and hominy" diet, which consisted of a peck of corn and about three pounds of fatty salted meat a week. They were generally clothed in shabby homespun or in cheap fabrics known as "Negro cloth," which were manufactured in Northern or English spinning mills. Children wore only shirts and went shoeless even in winter.
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> From six to 12 slaves were quartered in each leaky, drafty, dirt-floored one-room shack.... What medical care slaves received was primitive at best. Malaria, yellow fever,

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33. Richard Hildreth, *Despotism in America: An Inquiry Into the Nature and Results of the Slave-Holding System in the United States* (Boston: Anti-Slavery Society, 1840), pages 45, 71.

34. Henry Cabot Lodge, *A Short History of the English Colonies in America* (Boston: Harper and Brothers, 1881), pages 182.

> cholera, tuberculosis, typhoid, typhus, tetanus and pneumonia took terrible tolls. Many slaves were afflicted with worms, dysentery and rotten teeth. Fewer than four out of 100 lived to be 60 years of age. Slaves were kept in a state of fear by punishment and the threat of punishment. They were required to show abject humility when they addressed whites: They had to bow their heads and lower their gaze. No wonder that slaves — even those who received relatively good treatment — yearned for freedom.[35]

Accompanying this horrific, yet undocumented, account are the photographs of four slaves — two middle-aged males, an elderly male, and a female. All four of these people were obviously well-fed and in perfect health, showing absolutely no sign of the poor diet, manifold diseases, or even the rotten teeth declared to be so common by the author. The same characteristics may be found in the photographs and illustrations offered over the next eight pages of the same book, including a period painting of a Christmas ball enjoyed by slave men and women dressed in evening gowns and tuxedos.[36] On one page is found a photograph of a dozen slave cabins with the notable features of raised wooden floors and chimneys.[37] Furthermore, all of the children shown in this latter photograph are not only well-fed, but also fully clothed. This same phenomenon is blatantly apparent in nearly all the pictorial histories of slavery that are published today,[38] and only in rare instances is any actual evidence offered to substantiate the alleged atrocities.

The truth is that the abominable treatment of slaves described above was a rarity in the South, and was, in fact, against the law. Commenting on the civil protection granted to slaves by law in South Carolina, Judge John Belton O'Neall of the State supreme court said:

> Although slaves, by the Act of 1740, are declared to be chattels personal, yet they are also, in our law, considered as persons with many rights and liabilities, civil and criminal. The right of protection which would belong to a slave, as a human being, is, by the law of slavery, transferred to his master. A master may protect the person of his slave from injury, by repelling force with force, or by action, and in some cases by indictment. Any injury done to the person of his slave, he may redress by action of trespass *vi et armis*, without laying the injury done, with a *per quod servitum amisit*, and this even though he may have hired the slave to another.

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35. Davis, *Brother Against Brother*, pages 48-49.

36. Davis, *ibid*., page 57. Apparently, the publishers perceived the problem this particular picture created for the author's narrative, for they inserted the following caption: "Although many planters sponsored festivities at Christmas time, few of their slaves were as well dressed as these." Again, the reader is expected to accept this claim at face value with no supporting evidence.

37. Davis, *ibid*., page 56.

38. *The Civil War: A House Divided Cannot Stand* (Fort Atkinson, Wisconsin: Home Library Publishing Company, 1976); William C. Davis and Bell I. Wiley (editors), *Photographic History of the Civil War: Fort Sumter to Gettysburg* (New York: Black Dog and Leventhal Publishers, 1994).

By the Act of 1821, the murder of a slave is declared to be felony, without the benefit of clergy; and by the same Act, to kill any slave, on sudden heat or passion, subjects the offender, on conviction, to a fine of not exceeding $500, and imprisonment not exceeding six months....

The Act of 1841 makes the unlawful whipping or beating of any slave, without sufficient provocation by word or act, a misdemeanor; and subjects the offender, on conviction, to imprisonment not exceeding six months, and a fine not exceeding $500.[39]

The Georgia slave law of 1815 stated:

Any owner of a slave, who shall cruelly beat such slave or slaves by unnecessary or excessive whipping; by withholding proper food and nourishment; by requiring greater labour from such slave or slaves than he, or she, or they may be able to perform; by not affording proper clothing, whereby the health of such slave or slaves may be injured or impaired; every such owner or owners of slaves shall, upon sufficient information being laid before the grand jury, be by said grand jury presented; whereupon it shall be the duty of the attorney or solicitor-general to prosecute such owner or owners for misdemeanor; who, on conviction, shall be sentenced to pay a fine, or imprisonment in the county jail, or both, at the discretion of the court.

From and after the passing of this Act, it shall be the duty of the inferior courts of the several counties in this State, on receiving information on oath, of any infirm slave or slaves, in a suffering condition, from the neglect of the owner or owners of said slave or slaves, to make particular inquiries into the situation of such slave or slaves, and render such relief as they, in their discretion, shall think fit. The said courts may, and are hereby authorised to, sue for and recover from the owner or owners of such slave or slaves, in any court having jurisdiction of the same, any law, usage, or custom to the contrary notwithstanding.

Any person who shall maliciously dismember, or deprive a slave of his life, shall suffer such punishment as would be inflicted in case the like offense had been committed on a free white person, and on the like proof, except in case of insurrection by said slave, and unless such death should happen by accident in giving such slave moderate correction.[40]

The Louisiana law relating to slaves was as follows:

Every owner shall be held to give his slaves the quantity of provisions hereinafter specified — to wit, one barrel of Indian corn, or the equivalent thereof in rice, beans, or other grain, and a pint of salt; and to deliver the same to the slaves in kind, every month, and never in money, under a penalty of a fine of ten dollars for every offence. The slave who shall not have, on the property of his owner, a lot of ground to cultivate on his own

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39. John Belton O'Neall, quoted by McHenry, *Cotton Trade*, page 252.

40. Georgia statute of 1815, quoted by McHenry, *ibid*., pages 253-254.

account, shall be entitled to receive from the said owner one linen shirt and pantaloons for the summer, and a linen and woolen great coat and pantaloons for the winter.

As for the hours of work and rest which are to be assigned to slaves in summer, the old usage of the territory shall be adhered to: to wit, the slave shall be allowed half an hour for breakfast during the whole year; from the first of May to the first day of November, they shall be allowed two hours for dinner; and from the first day of November to the first say of May, one hour and a half for dinner.[41]

The constitution of Texas stated:

[The legislature] shall have full power to pass laws, which will oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them, extending to life or limb; and, in the case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves taken from their owner, and sold for the benefit of such owner or owners. They may pass laws to prevent slaves from being brought into this State as merchandise only.

In the prosecution of slaves for the crimes of a higher grade than petit larceny, the Legislature shall have no power to deprive them of an impartial trial by jury.

Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted, in case the like offence had been committed upon a free white person, and on the like proof, except in case of insurrection of such slave.[42]

Race Relations in the Southern States

Slaves in the South were generally viewed as members of the families to whom they belonged and were the recipients of a truly humanitarian social security from cradle to grave. If nothing else, they were considered valuable assets to the plantation economy and, having paid an average of $1,500 in hard cash for a single male slave,[43] a planter was not likely to abuse his investment. In addition, the mental picture painted above of downtrodden and humiliated slaves "yearning for freedom" is much closer to fantasy than fact:

The negroes were perfectly contented with their lot. In general, they were not only happy in their condition, but proud of it. Their hardships were such as are inherent in the state of those who labor at the will of others for their daily bread. On the other hand, they were nursed in sickness, and cared for in old age. If any individual among them displayed

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41. Louisiana statute, quoted by McHenry, *ibid*., page 254.

42. Constitution of the State of Texas (1845), Article VIII.

43. Randall, *Civil War and Reconstruction*, pages 55-56. A healthy female sold for an average of $1,325 and slaves of "unusual value" sometimes sold for as high as $2,500.

> superior abilities or qualities, he could easily obtain his freedom if he desired it. There were many free negroes in each of the slave States, and not a few who were prosperous in business, had acquired no inconsiderable possessions, and held persons of their own race as slaves. To the whole South, at least, the tender mercies which would disturb this state of things seemed cruel; but their people chiefly resented any such interference, because it was unjust to them, as being in violation of the laws of the land.[44]

> The negro slave was a highly valued member of the body politic; a tiller of the soil, whose services could be counted on when the crop was pitched, and a laborer who furnished to all his fellows, young and old, sick and well, a more liberal supply of the necessaries of life than was ever granted to any other laboring class in any other place or any other age. And in what the Economists call the distribution of the wealth that was produced by the negro's labor and the skill of the master who guided and restrained him, the share the master took was small indeed compared with what the Captains of Industry took in the free society of the same day. Compared with the share those Captains take now, the modest share taken by the masters was what the magnates of to-day would scorn to consider. The negro lived, too, in cheerful ignorance of the ills for which he has been so much pitied. One is startled now to hear the cheerful whistle or the loud outburst of song from a negro that once was heard on every hand, night and day. Nor was his attitude one of mere resignation to his lot. That it was one of hearty goodwill to the masters was conclusively shown during the war between the States. A distinguished Northern writer has lately invited attention to the indisputable fact that the negroes could have ended the war during any one day or night that it lasted. And the kindly attitude of the negro to the master was shown not negatively only, not by forbearance only. Not only did a vast majority of them stay at their posts, working to feed and watching to protect the families of the absent soldiers — when all the able-bodied white men were absent soldiers — but after their emancipation ten thousand examples occurred of respectful and grateful and even generous conduct to their late masters for one instance where a revengeful or a reproachful or even disrespectful demonstration was made. Of the few survivors of those who stood in the relation of master and slave, a considerable number still maintain relations of strong and often tender friendship. John Stuart Mill worshipped liberty and detested slavery, but he confessed that the goodwill of the slaves to the master was to him inexplicable.[45]

It should be remembered that Northern anti-slavery books and novels were generally compiled and written by people who had never seen for themselves the atrocities they described with such vivid detail. George Lunt noted that "very few of those who thus drew upon their imaginations for their descriptions and illustrations had ever stepped an inch over Mason and Dixon's line.... When they discoursed upon this subject they dilated upon what

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44. Lunt, *Origin of the Late War*, page 5.

45. Charles L.C. Minor, *The Real Lincoln* (Richmond, Virginia: Everett Waddey Company, [1904] 1928), pages 194-195 (footnote).

might have been, in other nations and other times, as if it were applicable to our own citizens and our own day."[46] The testimony of eye-witnesses was quite different from that of these fanatical visionaries. Kenneth Stampp, by no means a pro-Southern historian, wrote, "Visitors often registered surprise at the social intimacy that existed between masters and slaves in certain instances."[47] For example, James S. Buckingham, an Abolitionist from Great Britain who toured the Southern States in 1839, stated:

> ...[T]he prejudice of color is not nearly so strong in the South as in the North. It is not at all uncommon to see the black slaves of both sexes, shake hands with white people when they meet, and interchange friendly personal inquiries; but at the North I do not remember to have witnessed this once; and neither in Boston, New York, or Philadelphia would white persons generally like to be seen shaking hands and talking familiarly with blacks on the streets.[48]

In his book entitled *The Secession War in America*, published in London during the war, Taliaferro P. Shaffner included the following letter of Major-General John Quitman, a native of New York living in Mississippi in 1822, to his father:

> The mansions of the planters are thrown open to all comers and goers free of charge.... I am now writing from one of these old mansions, and I can give you no better notion of life at the South than by describing the routine of a day. The owner is the widow of a Virginia gentleman of distinction — a brave officer who died in the public service during the last war with Great Britain....
>
> This excellent lady is not rich, merely independent; but by thrifty housewifery, and a good dairy and garden, she contrives to dispense the most liberal hospitality. Her slaves appear to be, in a manner, free, yet are obedient and polite, and the farm is well worked. With all her gayety of disposition and fondness for the young, she is truly pious; and in her own apartments, every night, she has family prayers with her slaves; one or more of them being often called on to sing and pray. When a minister visits the house, which happens very frequently, prayers night and morning are always said; and on occasions the whole household and the guests assemble in the parlor; chairs are provided for the servants. They are married by a clergyman of their own color; and a sumptuous supper is always prepared. On public holidays they have dinners equal to an Ohio barbecue; and Christmas, for a week or ten days, is a protracted festival for the blacks. They are a happy, careless, unreflecting, good-natured race; who left to themselves would degenerate into drones or brutes; but, subjected to wholesome restraint and stimulus, become the best and most

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46. Lunt, *Origin of the Late War*, page 182.

47. Kenneth Stampp, *The Peculiar Institution: Slavery in the Antebellum South* (New York: Alfred A. Knopf, 1956), page 323.

48. James S. Buckingham, *The Slave States of America* (London: Fisher, Son and Company, 1841), Volume II, page 112.

> contented of laborers. They are strongly attached to "old massa" and "old missus;" but their devotion to "young massa" and "young missus," amounts to enthusiasm. They have great family pride, and are the most arrant coxcombs and aristocrats in the world. At a wedding I witnessed here last Saturday evening, where some one hundred and fifty negroes were assembled — many being invited guests — I heard a number of them addressed as governors, generals, judges, and doctors (the titles of their masters); and a spruce, tight-set darkey, who waits on me in town, was called "Major Quitman." The "colored ladies" are invariably Miss Joneses, Miss Smiths, or some such title. They are exceedingly pompous and ceremonious; gloved and highly perfumed. The "gentlemen" sport canes, ruffles, and jewelry; wear boots and spurs; affect crape on their hats, and carry huge segars. The belles wear gaudy colors, "tote" their fans with the air of Spanish senoritas; and never stir out, though black as the ace of spades, without their parasols.
>
> In short, these "niggers," as you call them, are the happiest people I have ever seen; and some of them, in form, features, and movements, are real sultanas. So far from being fed on "salted cottonseed," as we used to believe in Ohio, they are oily, sleek, bountifully fed, well clothed, well taken care of; and one hears them at all times whistling and singing cheerfully at their work....
>
> Compared with the ague-smitten and suffering settlers that you and I have seen in Ohio, or the sickly and starved operatives we read of in factories and in mines, these Southern slaves are indeed to be envied. They are treated with great humanity and kindness.[49]

Ironically, the most devastating rebuttal of Abolitionist anti-slavery propaganda to be published in the Nineteenth Century was written by one of their own number — Nehemiah Adams of Boston, who toured the South for three months in 1854. Instead of the expected scenes of cowing slaves, whose humanity was being crushed by cruel bondage, what he found was a well-ordered society in which the Negroes were mainly content, well-cared for by their masters, and even evangelized.[50] In his book, *A Southside View of Slavery*,

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49. Major-General John Quitman, quoted by Taliaferro P. Shaffner, *The Secession War in America* (London: Hamilton, Adams and Company, 1862), pages 302-304.

50. Church membership among Blacks was astonishingly high in the old South. Adams stated that, in some regions, the number of Black communicants was as high as four times greater than that of the White communicants. In Virginia in 1856, the total number of Black communicants in the Baptist churches was forty-five thousand; in Savannah, Georgia, a full one-third of the Black population were church members; in South Carolina, Negroes comprised one-third of the total number of church communicants in the State (*Southside View of Slavery*, pages 53-54). Adams noted, "Religion has gained wonderful ascendency among this people.... I never perceived in their prayers any thing that reminded me of their condition as slaves. They made no allusions to sorrows but those which are spiritual, and they chiefly dwelt upon their temptations. But the love of Christ and heaven were the all-inspiring themes of their prayers and hymns" (*ibid.*, page 55). If nothing else, the introduction of hundreds of thousands of Negro slaves to the eternally liberating Gospel of Christ was certainly one of the merits of the institution of slavery in the antebellum South.

Adams described the legal protection enjoyed by the Southern slaves:

> Pauperism is prevented by slavery. This idea is absurd, no doubt, in the apprehension of many at the north, who think that slaves are, as a matter of course, paupers. Nothing can be more untrue.
>
> Every slave has an inalienable claim in law upon his owner for support for the whole of life. He can not be thrust into an almshouse, he can not become a vagrant, he can not beg his living, he can not be wholly neglected when he is old and decrepit.
>
> I saw a white-headed negro at the door of his cabin on a gentleman's estate, who had done no work for ten years. He enjoys all the privileges of the plantation, garden, and orchard; is clothed and fed as carefully as though he were useful. On asking him his age, he said he thought he "must be nigh a hundred"; that he was a servant to a gentleman in the army "when Washington fit Cornwallis and took him at Little York."
>
> At a place called Harris's Neck, Georgia, there is a servant who has been confined to his bed with rheumatism thirty years, and no invalid has more reason to be grateful for attention and kindness.
>
> Going into the office of a physician and surgeon, I accidentally saw the leg of a black man which had just been amputated for an ulcer. The patient will be a charge upon his owner for life. An action at law may be brought against one who does not provide a comfortable support for his servants.[51]

In regions where slavery was no longer a profitable enterprise, and in States where manumission was made legally difficult, if not impossible, many individual planters felt "they were involved in a regime which they could not control, but which required them to carry on, more for the sake of their slaves than for their own welfare."[52] Even when manumission was permitted, the slaveowner was usually not released from responsibility for the welfare of his former slaves. According to a law passed by the General Assembly of Virginia on 17 December 1792, "It shall be lawful for any person... to emancipate and set free his or her slaves.... provided always, that all slaves so set free, not being in the judgment of the Court of sound mind and body, or being above the age of forty-five years, or being males under the age of twenty-one, or females under the age of eighteen years, shall respectively be supported and maintained by the person so liberating them, or by his or her estate...."[53] Compare this law to the cold indifference in the North, especially in Massachusetts, where slaveowners in the Eighteenth Century "manumitted aged or infirm slaves to relieve the master from the charge of supporting them."[54]

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51. Adams, *ibid*., pages 47-48.

52. Randall, *Civil War and Reconstruction*, page 114.

53. *A Collection of All Such Acts of the General Assembly of Virginia of a Public and Permanent Nature as are Now in Force* (Richmond, Virginia: Samuel Pleasants, Jr., 1803), page 200.

54. Spears, *American Slave Trade*, page 92.

The above descriptions of plantation life in the South cannot be easily discounted, especially when they have been corroborated by the participants themselves. In the late 1930s, the Works Project Administration of the U.S. Government collected the testimonies of former slaves throughout the South which are preserved in the *Slave Narratives* in the National Archives of Washington, D.C. The majority of those interviewed had fond memories of their masters and mistresses on Southern plantations. For example, Tom Douglas, a former slave of Alabama, stated, "Slavery times wuz sho good times. We wuz fed an' clothed an' had nothin' to worry about."[55] Simon Phillips of Alabama said, "People has the wrong idea of slave days. We was treated good. My massa never laid a hand on me the whole time I was wid him.... Sometime we loaned the massa money when he was hard pushed."[56] Gus Brown of Richmond, Virginia remembered his former master back in Alabama with these words: "I cannot forget old massa. He was good and kind. He never believed in slavery, but his money was tied up in slaves and he didn't want to lose all he had. I knows I will see him in heaven and even though I have to walk ten miles for a bite of bread, I can still be happy to think about the good times we had then."[57] Exhibiting a profound sadness about the results of the forced "emancipation" brought about by the North, Mary Rice of Alabama said, "I was happy all de time in slavery days, but dere ain't much to git happy over now."[58] James Gill of Arkansas likewise testified, "...[A]ll dem good times ceasted atter a while when de War come and de Yankees started all dere debbilment. Us was Confederates all de while."[59] It is not surprising, in light of these and a multitude of similar testimonies, that following their compilation over seventy years ago, the *Slave Narratives* were immediately suppressed and hidden from the public.

While it is true that Blacks were excluded from citizenship in the South — as they were throughout the Union — they nevertheless were viewed as valuable members of Southern society and, with few exceptions, were treated as such. As historian James G. Randall noted:

> There was... such a vast difference between the laws on paper and the system that existed in reality that it would be unhistorical to judge the slave regime in the South by this or that severe law which might be found by digging up old codes. The laws, especially where they were most drastic, were not strictly applied. Slaves were, in fact, taught to read and write; they did go abroad in a manner forbidden by statute; they did congregate despite

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55. Tom Douglas, quoted in *Slave Narratives: A Folk History of Slavery in the United States From Interviews With Former Slaves* (Washington, D.C.: Government Printing Office, 1934), Volume I (The Alabama Narratives), pages 218-219.

56. Simon Phillips, quoted in *ibid.*, pages 312, 315.

57. Gus Brown, quoted in *ibid.*, pages 224-226.

58. Mary Rice, quoted in *ibid.*, pages 329-330.

59. James Gill, quoted in *ibid.*, Volume III, page 19.

> laws forbidding their assembling. Members of the legislatures satisfied their sense of social duty by passing severe laws; and the people paid as much or as little attention to the laws as they saw fit.... It could not be said that either the laws themselves or the actual practices of the institution were primarily motivated by any intention to treat the Negroes harshly.[60]

The fact that so many slaveholders were conscientious in the treatment of their slaves proves that abuse and neglect were not inherent characteristics of the antebellum relationship between master and slave, and that racial animosity was not the foundation of the institution. In fact, according to the 1860 census, there were 250,000 free Blacks in the South,[61] many of whom owned slaves of their own. For example, in 1860, the number of Black slaveholders in the State of South Carolina alone was 171, holding property in 766 slaves.[62] Nearly one-half of those classified as "colored taxpayers" in Charleston owned between them a total of 390 slaves,[63] and at the end of the war, 241 slaves in that city were released from service to their Black masters.[64] It is true that some of the slaves purchased and held by these Negro masters were "their own kindred, bought and held merely because the laws forbade manumission without exile."[65] Nevertheless, others had an economic, not merely a personal, interest in the institution. According to Larry Koger, "...[M]any black masters did not intend to manumit their slaves and viewed the institution of slavery as a source of labor to be exploited for their own benefit. Indeed, free blacks not only used the labor of slaves to till the soil of their farms and plantations but also purchased slaves to work in their businesses as skilled and unskilled laborers.... [T]he system of American slavery was a universal institution in which even Afro-Americans became slaveowners and occasionally ascended to the ranks of large slaveowning planters."[66]

Modern history revisionism notwithstanding, the evidence is overwhelming that the old South was the true friend of the Black man and that the rampant inhumanity so often associated with Southern culture is largely a myth. Furthermore, the institution of slavery was rapidly dying out in the upper South, and would not likely have survived in the deep South

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60. Randall, *Civil War and Reconstruction*, pages 47, 48.

61. Randall, *ibid.*, page 50.

62. Larry Koger, *Black Slaveowners in South Carolina, 1790-1860* (Jefferson, North Carolina: McFarland and Company, Inc., 1985), page 18.

63. Ulrich B. Phillips, *American Negro Slavery* (New York: D. Appleton and Company, 1918), page 434.

64. Koger, *Black Slaveowners*, page 18.

65. Ulrich B. Phillips, *Life and Labor in the Old South* (Boston: Little, Brown, and Company, 1929), page 71 (footnote).

66. Koger, *Black Slaveowners*, page 2.

longer than another generation. Had the interference of the Northern Abolitionists not threatened the fabric of Southern society, the voices of the extreme pro-slavery apologists[67] would never have had a very large audience[68] and the racial tensions which arose following the war would probably not have developed:

> The South has been vilified for not educating the negro in the days of slavery.
>
> The South was giving the negro the best possible education — that education that fitted him for the workshop, the field, the church, the kitchen, the nursery, the home. This was an education that taught the negro self-control, obedience and perseverance — yes, taught him to realize his weaknesses and how to grow stronger for the battle of life. The institution of slavery as it was in the South, so far from degrading the negro, was fast elevating him above his nature and his race....
>
> The black man ought to thank the institution of slavery — the easiest road that any slave people have ever passed from savagery to civilization with the kindest and most humane masters. Hundreds of thousands of the slaves in 1865 were professing Christians and many were partaking of the communion in the church of their masters.[69]

Anti-Negro Laws in the Northern States

To say that the prevailing attitude towards the Black man was not as positive in the North as in the South would be a gross understatement. In 1838, Alexis de Tocqueville of Great Britain wrote of his tour of both North and South in his book *Democracy in America* and described race relations in this country as follows: "Prejudice of race appears to be stronger in the States that have abolished slavery, than in those where it still exists; and nowhere is it so intolerant as in those States where servitude has never been known.... [The Southern people are] much more tolerant and compassionate."[70] According to another Brit-

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67. William Sumner Jenkins, *Pro-Slavery Thought in the Old South* (Chapel Hill, North Carolina: The University of North Carolina Press, 1960).

68. On 10 January 1838, John C. Calhoun credited five years of Abolitionist agitation for the shift in Southern thought on the subject of slavery from a general indifference and even hostility toward the institution to one which defended it as a positive good: "This agitation has produced one happy effect at least; it has compelled us in the South to look into the nature and character of this great institution, and to correct many false impressions that even we had entertained in relation to it. Many in the South once believed that it was a moral and political evil; that folly and delusion are gone; we see it now in its true light, and regard it as the most safe and stable basis for free institutions in the world" (*Congressional Globe* [Twenty-Fifth Congress, Second Session], pages 61-62).

69. Rutherford, *Truths of History*, page 18.

70. Alexis de Tocqueville, *Democracy in America* (London: George Allard, 1838), page 338.

ish writer, free Negroes were "treated like lepers" in the North. [71] The biographers of William Lloyd Garrison noted, "The free colored people were looked upon as an inferior caste to whom their liberty was a curse, and their lot worse than that of the slaves...." Throughout the North, there was a spirit which "either by statute or custom, denied to a dark skin, civil, social and educational equality...."[72]

In addition to the restriction of suffrage and the holding of public office to White males only, which was common to nearly all of the States, several of the Northern States went much further than those in the South to enact laws regulating and even prohibiting the immigration of Blacks and Mulattoes within their borders. When drafting a constitution in preparation to admission to the Union, the Ohio Convention, composed mainly of New Englanders, determined that "people of color" were not to be considered as parties and therefore should have no part in the administration of the new State government.[73] In 1804, the State legislature passed a law that required Blacks to produce certificates of their freedom from a Court of Record and execute bonds not to become charges upon the counties in which they settled.[74] The Ohio supreme court went so far as to declare in 1831 that "color alone is sufficient to indicate a negro's inability to testify against a white man."[75] In another case, the same court declared:

> It has always been admitted, that our political institutions embrace the white population only. Persons of color were not recognized as having any political existence. They had no agency in our political organizations, and possessed no political rights under it. Two or three of the States form exceptions. The constitutions of fourteen expressly exclude persons of color by a provision similar to our own; and, in the balance of the States, they are excluded on the ground that they were never recognized as a part of the body politic.... Indeed, it is a matter of history, that the very object of introducing the word *white* into our constitution, by the convention framing that instrument, was to put this question beyond all cavil or doubt, by, in express terms, excluding all persons from the enjoyment of the elective franchise, except persons of pure white blood.
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> ...Hence, we find, so early as 1804, followed up by another act in 1807, statutes discouraging the emigration of blacks into our State, and imposing upon those among us such conditions and restrictions as would induce the vast majority of them to quit the

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71. James Spence, "The American Republic: Resurrection Through Dissolution," *Northern British Review*, February 1862, page 240.

72. Garrison and Garrison, *William Lloyd Garrison*, Volume I, pages 253-254.

73. Jacob Burnet, *Notes on the Early Settlement of the North-Western Territory* (Cincinnati, Ohio: Derby, Bradley and Company, 1847), page 355.

74. George W. Williams, *History of the Negro Race in America* (New York: G.P. Putnam's Sons, 1885), Volume II, pages 111-119; Ewing, *Dred Scott Decision*, page 63.

75. *Calvin v. Carter* (1831), 4 Hammonds' Oregon Reports 351.

> State. Thus, we have denied them all constitutional right to remain even in the State....
>
> This exclusion of persons of color, or, of any degree of colored blood, from all political rights, is not founded upon a mere naked prejudice, but upon natural differences. The two races are placed as wide apart by the hand of nature as *white* from *black*, and, to break down the barriers, fixed, as it were, by the Creator himself, in a political and social amalgamation, shocks us, as something unnatural and wrong. It strikes us as a violation of the laws of nature. It would be productive of no good. It would degrade the white, if it could be accomplished, without elevating the black. Indeed, if we gather lessons of wisdom from the history of mankind, walk by the light of our experience, or consult the principles of human nature, we shall be convinced that the two races never can live together upon terms of equality and *harmony* (emphasis in original).[76]

On 10 February 1831, the legislature of Indiana enacted a very similar restriction as existed in Ohio, but with the adoption of its 1851 constitution, Blacks and Mulattoes were entirely prohibited entry or settlement into the State.[77] This prohibition was inserted with the approval of a ninety thousand majority of the popular vote.[78]

Anti-Negro legislation began in Illinois only one year after the State was organized and admitted to the Union. On 30 March 1819, an act went into effect which stated that "no black or mulatto person shall be permitted to settle or reside in this State, unless he or she shall first produce a certificate signed by some judge or some clerk of some court of the United States, of his or her actual freedom." All free Blacks were required by this law to register themselves together with the evidence of their freedom in the county where they intended to reside, and it also prohibited the employment of any Black or Mulatto who had not been so registered. Furthermore, this act prescribed "lashes on his or her bare back" for slaves found "ten miles from the tenement of his or her master" (a maximum of thirty-five lashes), "being on the plantation or in the tenement of another than the master, not being sent on lawful business" (ten lashes), and for the gathering of three or more slaves "for the purpose of dancing or reveling either by day or night" (thirty-nine lashes).[79] On 17 January 1829, this act was supplemented by another which declared that any Blacks or Mulattoes found within the State without the necessary registration papers were to be "deemed runaway slaves," arrested by the Sheriff, and if not claimed, were to be sold "for the best price he can

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76. *Thacher v. Hawk* (1842), 11 Stanton's Ohio Reports 384-385. Ironically, Edwin M. Stanton, who would later serve as Secretary of War under Lincoln and would advocate the emancipation of the Southern slaves, was the court reporter at this time.

77. Williams, *Negro Race in America*, Volume II, pages 119-122; McHenry, *Cotton Trade*, page 247.

78. Wilson, *Slave Power in America*, Volume II, page 185.

79. Illinois statute of 30 March 1819, quoted by Ewing, *Dred Scott Decision*, pages 79-80.

get."[80] Not satisfied with these laws, the Illinois legislature passed yet another act "to prevent the immigration of free negroes into this state" and added that any Black person found in violation of this law should be fined and sold into temporary servitude to pay the fine and cost of prosecution.[81] Thus, as one writer put it, Negroes "seeking homes on the prairies... were put upon the block."[82] The provisions of this statute were finally added to the State constitution in 1862 with these words: "No negro or mulatto shall immigrate or settle in this state after the adoption of the constitution."[83] In 1843, the supreme court of Illinois declared that the purpose of these laws was "to prevent the influx of that most unacceptable population."[84]

The following provision was written into the 1857 constitution for Oregon:

> No free negro or mulatto not residing in this State at the adoption of this constitution, shall come, reside, or be within this State, or hold any real estate, or make any contracts, or maintain any suit therein; and the legislative assembly shall provide by penal laws for the removal by public officers of all such negroes and mulattoes, and for their effectual exclusion from this State, and for the punishment of persons who shall bring them into the State, or employ or harbor them.[85]

On 9 December 1857, Governor George L. Curry certified that 8,641 Citizens of Oregon had voted in favor of this constitution, with only 1,081 opposing it.[86]

In 1835, a free Black man sued for the right to vote in Pennsylvania. The State supreme court replied:

> ...[A] free negro or mulatto is not a citizen within the meaning of the Constitution and laws of the United States, and of the State of Pennsylvania, and, therefore, is not entitled to the right of suffrage.... But in addition to interpretation from usage, this anteced-

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80. Illinois statute of 17 January 1829, quoted by Ewing, *ibid.*, page 80.

81. Williams, *Negro Race in America*, page 123.

82. Arthur Charles Cole, *The Irrepressible Conflict: 1850-1865* (New York: Macmillan Company, 1934), page 264.

83. Constitution of Illinois (1862), Article XVIII, Section 1. This amendment was approved by a majority of 100,590 voters (*Journal of the Constitutional Convention of the State of Illinois* [Springfield, Illinois: C.H. Lanphier, 1862], page 1098).

84. *Eells v. The People* (1843), 4 Scammon 513. There is no record that Abraham Lincoln ever objected to any of these anti-Negro laws which were passed by his own State, and his own public statements on the subject indicated his support of them.

85. Constitution of Oregon (1857), Article I, Section 35.

86. *General Laws of Oregon*, 1845-1864; cited by Ewing, *Dred Scott Decision*, page 66.

ent legislation declared that no colored race was party to our social compact. Our ancestors settled the province as a community of white men; and the blacks were introduced into it as a race of slaves; whence an unconquerable prejudice of caste, which has come down to our day.... Consistently with this prejudice, is it to be credited that parity of rank would be allowed to such a race?... I have thought fair to treat the question as it stands affected by our own municipal regulations without illustration from those of other States, where the condition of the race has been still less favored. Yet it is proper to say that the second section of the fourth article of the Federal Constitution, presents an obstacle to the political freedom of the negro, which seems to be insuperable.[87]

Even in the New England States, where Abolitionist ideals were most prevalent, Negroes were not found to be treated equally with Whites. As late as 1802, the following law was in force in Massachusetts:

That no person, being an African or negro, other than a subject of the Emperor of Morocco, or a citizen of the United States, to be evidenced by a certificate, &c., shall tarry within this commonwealth for a longer time than two months; if he does, the justices have power to order such person to depart, &c., and if such person shall not depart within ten days, &c., such person shall be committed to the prison or house of correction. And for this offense, &c., he shall be whipped, &c., and ordered again to depart in ten days; and if he does not, the same process and punishment to be inflicted, and so *toties quoties*.[88]

Intermarriage between Blacks and Whites was also prohibited by law in both Massachusetts and Maine as late as 1835.[89]

While Blacks were not excluded from Connecticut, the legislature nevertheless enacted a law in 1833 which forbade the establishment within the State of any "school, academy, or literary institution, for the instruction or education of colored persons, who are not inhabitants of this State." This was done because it was feared that making education available to non-resident Negroes would lead "to the great increase of the colored population of the State, and thereby to the injury of the people."[90] In October of that same year, the constitutionality of this law was brought before the Connecticut supreme court for review. Responding to the assertion of the defendant in this case that the law violated Article IV, Section 2 of the United States Constitution — the "Comity Clause" which guaranteed that the rights of a State Citizen would be protected throughout the Union — Chief Justice David Daggett wrote an opinion which was nearly identical to what Taney would deliver over thirty

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87. *Hobbs v. Fogg* (1835), 6 Watts, 553, 554.

88. Massachusetts statute of 1802, quoted by McHenry, *Cotton Trade*, page 244.

89. McHenry, *ibid*.

90. Connecticut statute of 1833, quoted by Garrison and Garrison, *William Lloyd Garrison*, Volume I, page 321.

years later:

> The persons contemplated in this act are not citizens within the obvious meaning of that section of the Constitution of the United States which I have just read. Let me begin by putting this plain question: Are *slaves* citizens? At the adoption of the Constitution of the United States, every State was a slave State.... We all know that slavery is recognized in that Constitution; it is the duty of this court to take that Constitution as it is, for we have sworn to support it.... Then slaves were not considered citizens by the framers of the Constitution....
>
> Are *free blacks* citizens?... To my mind it would be a perversion of terms, and the well known rules of construction, to say that slaves, free blacks, or Indians were citizens, within the meaning of that term as used in the Constitution. God forbid that I should add to the degradation of this race of men; but I am bound, by my duty, to say that they are not citizens (emphasis in original).[91]

Finally, when drafting and ratifying a constitution in 1859, the people of Kansas — most of whom were Abolitionist immigrants from the New England States — both excluded free Blacks from citizenship and forbade their settlement in the State.[92] The provision in the Kansas constitution which denied citizenship to the Negro was ratified by an overwhelming majority vote of 2,223 to 453.[93] Thus we see that "free soil" in the North really meant "free from Negroes." This is why the so-called "Underground Railroad" ended, not in the Northern States of the Union, but in Canada. Even the majority of Northern Abolitionists did not advocate the social and political equality of Blacks within their own States; they agitated for thirty years for the destruction of slavery, but what to do with four million freedmen they considered to be a Southern problem. In fact, so great was the apprehension in the North during the war of the possibility of a massive immigration of Blacks as a result of emancipation in the South that Lincoln was compelled to reassure the Northern Congressmen with the following address:

> But it is dreaded that the freed people will swarm forth and cover the whole land. Are they not already in the land? Will liberation make them more numerous? Equally distributed among the whites of the whole country, and there would be but one colored to seven whites. Could the one in any way disturb the seven?...
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> But why should emancipation South send the free people North? People of any color seldom run unless there be something to run from. Heretofore colored people to some extent have fled North from bondage and now perhaps from both bondage and

91. *Crandall v. The State* (1833), 10 Connecticut Reports, 339, 340, 345, 347.

92. Dr. H. Von Holst, *The Constitutional and Political History of the United States* (Chicago, Illinois: Callahan and Company, 1889), Volume V, page 168.

93. Ewing, *Dred Scott Decision*, page 66.

> destitution. But if gradual emancipation and deportation be adopted they will have neither to flee from.... And in any event cannot the North decide for itself whether to receive them?[94]

It is beyond reasonable dispute that Stephen Douglas was merely stating an historical fact when he declared in 1858 that "this Government was established on the white basis. It was made by white men, for the benefit of white men and their posterity forever, and never should be administered by any except white men."[95] Whether this was just or unjust is irrelevant to the point at hand: the system of government thus established could only be altered or abolished by those who framed it or by their posterity, to whom alone they bequeathed the authority to do so. As we shall see, this has never been done and a century and a half of propaganda has not changed that fact, no matter how many millions of Americans have been led to believe otherwise.

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94. Lincoln, 1 December 1862 message to Congress; in Richardson, *Messages and Papers of the Presidents*, Volume VIII, pages 3341-3342.

95. Stephen A. Douglas, response to Lincoln at Charleston, Illinois on 18 September 1858; in Johannsen, *Lincoln-Douglas Debates*, page 196.

SUPPORTING DOCUMENT

John C. Calhoun's Speech in the United States Senate

Congressional Globe — 6 February 1837

I do not belong to the school which holds that aggression is to be met by concession. Mine is the opposite creed, which teaches that encroachments must be met at the beginning, and that those who act on the opposite principle are prepared to become slaves. In this case, in particular, I hold concession or compromise to be fatal. If we concede an inch, concession would follow concession — compromise would follow compromise, until our ranks would be so broken that effectual resistance would be impossible. We must meet the enemy on the frontier, with a fixed determination of maintaining our position at every hazard. Consent to receive these insulting petitions, and the next demand will be that they be referred to a committee in order that they may be deliberated and acted upon. At the last session we were modestly asked to receive them, simply to lay them on the table, without any view to ulterior action.... I then said, that the next step would be to refer the petition to a committee, and I already see indications that such is now the intention. If we yield, that will be followed by another, and we will thus proceed, step by step, to the final consummation of the object of these petitions. We are now told that the most effectual mode of arresting the progress of abolition is, to reason it down; and with this view it is urged that the petitions ought to be referred to a committee. That is the very ground which was taken at the last session in the other House, but instead of arresting its progress it has since advanced more rapidly than ever. The most unquestionable right may be rendered doubtful, if once admitted to be a subject of controversy, and that would be the case in the present instance. The subject is beyond the jurisdiction of Congress — they have no right to touch it in any shape or form, or to make it the subject of deliberation or discussion....

As widely as this incendiary spirit has spread, it has not yet infected this body, or the

great mass of the intelligent and business portion of the North; but unless it be speedily stopped, it will spread and work upwards till it brings the two great sections of the Union into deadly conflict. This is not a new impression with me. Several years since, in a discussion with one of the Senators from Massachusetts (Mr. Webster), before this fell spirit had showed itself, I then predicted that the doctrine of the proclamation and the Force Bill — that this Government had a right, in the last resort, to determine the extent of its own powers, and enforce its decision at the point of the bayonet, which was so warmly maintained by that Senator — would at no distant day arouse the dormant spirit of abolitionism. I told him that the doctrine was tantamount to the assumption of unlimited power on the part of the Government, and that such would be the impression on the public mind in a large portion of the Union. The consequence would be inevitable. A large portion of the Northern States believed slavery to be a sin, and would consider it as an obligation of conscience to abolish it if they should feel themselves in any degree responsible for its continuance, and that this doctrine would necessarily lead to the belief of such responsibility. I then predicted that it would commence as it has with this fanatical portion of society, and that they would begin their operations on the ignorant, the weak, the young, and the thoughtless — and gradually extend upwards till they would become strong enough to obtain political control, when he and others holding the highest stations in society, would, however reluctant, be compelled to yield to their doctrines, or be driven into obscurity. But four years have since elapsed, and all this is already in a course of regular fulfilment.

Standing at the point of time at which we have now arrived, it will not be more difficult to trace the course of future events now than it was then. They who imagine that the spirit now abroad in the North, will die away of itself without a shock or convulsion, have formed a very inadequate conception of its real character; it will continue to rise and spread, unless prompt and efficient measures to stay its progress be adopted. Already it has taken possession of the pulpit, of the schools, and, to a considerable extent, of the press; those great instruments by which the mind of the rising generation will be formed.

However sound the great body of the non-slaveholding States are at present, in the course of a few years they will be succeeded by those who will have been taught to hate the people and institutions of nearly one-half of this Union, with a hatred more deadly than one hostile nation ever entertained towards another. It is easy to see the end. By the necessary course of events, if left to themselves, we must become, finally, two people. It is impossible under the deadly hatred which must spring up between the two great nations, if the present causes are permitted to operate unchecked, that we should continue under the same political system. The conflicting elements would burst the Union asunder, powerful as are the links which hold it together. Abolition and the Union cannot coexist. As the friend of the Union I openly proclaim it — and the sooner it is known the better. The former may now be controlled, but in a short time it will be beyond the power of man to arrest the course of events. We of the South will not, cannot, surrender our institutions. To maintain the existing relations between the two races, inhabiting that section of the Union, is indispensable to the peace and happiness of both. It cannot be subverted without drenching the country in blood

and the extermination of one or the other of the races.... But let me not be understood as admitting, even by implication, that the existing relations between the two races in the slaveholding States is an evil — far otherwise; I hold it to be a good, as it has thus far proved itself to be to both, and will continue to prove so if not disturbed by the fell spirit of abolition. I appeal to facts. Never before has the black race of Central Africa, from the dawn of history to the present day, attained a condition so civilized and so improved, not only physically, but morally and intellectually.

In the meantime, the white or European race, has not degenerated. It has kept pace with its brethren in other sections of the Union where slavery does not exist. It is odious to make comparison; but I appeal to all sides whether the South is not equal in virtue, intelligence, patriotism, courage, disinterestedness, and all the high qualities which adorn our nature.

But I take higher ground. I hold that in the present state of civilization, where two races of different origin, and distinguished by color, and other physical differences, as well as intellectual, are brought together, the relation now existing in the slaveholding States between the two, is, instead of an evil, a good — a positive good. I feel myself called upon to speak freely upon the subject where the honor and interests of those I represent are involved. I hold then, that there never has yet existed a wealthy and civilized society in which one portion of the community did not, in point of fact, live on the labor of the other. Broad and general as is this assertion, it is fully borne out by history. This is not the proper occasion, but, if it were, it would not be difficult to trace the various devices by which the wealth of all civilized communities has been so unequally divided, and to show by what means so small a share has been allotted to those by whose labor it was produced, and so large a share given to the non-producing classes.

The devices are almost innumerable, from the brute force and gross superstition of ancient times, to the subtle and artful fiscal contrivances of modern. I might well challenge a comparison between them and the more direct, simple, and patriarchal mode by which the labor of the African race is, among us, commanded by the European. I may say with truth, that in few countries so much is left to the share of the laborer, and so little exacted from him, or where there is more kind attention paid to him in sickness or infirmities of age. Compare his condition with the tenants of the poor houses in the more civilized portions of Europe — look at the sick, and the old and infirm slave, on one hand, in the midst of his family and friends, under the kind superintending care of his master and mistress, and compare it with the forlorn and wretched condition of the pauper in the poorhouse. But I will not dwell on this aspect of the question; I turn to the political; and here I fearlessly assert that the existing relation between the two races in the South, against which these blind fanatics are waging war, forms the most solid and durable foundation on which to rear free and stable political institutions. It is useless to disguise the fact. There is and always has been in an advanced stage of wealth and civilization, a conflict between labor and capital. The condition of society in the South exempts us from the disorders and dangers resulting from this conflict; and which explains why it is that the political condition of the slaveholding States has

been so much more stable and quiet than that of the North....

Surrounded as the slaveholding States are with such imminent perils, I rejoice to think that our means of defense are ample, if we shall prove to have the intelligence and spirit to see and apply them before it is too late. All we want is concert, to lay aside all party differences and unite with zeal and energy in repelling approaching dangers. Let there be concert of action, and we shall find ample means of security without resorting to secession or disunion. I speak with full knowledge and a thorough examination of the subject, and for one see my way clearly.... I dare not hope that anything I can say will arouse the South to a due sense of danger; I fear it is beyond the power of mortal voice to awaken it in time from the fatal security into which it has fallen.

SUPPLEMENTARY ESSAY

Religion and the Demise of Slavery

by Nehemiah Adams

When the Hebrew nation was organized by the Most High, he found among the people masters and slaves. He could have purged out slaveholding by positive enactments; he could have rid the people of all the slave owners by making their dead bodies fall in the wilderness. Instead of this, he made slavery the subject of legislation, prescribed its duties, and protected the parties concerned in the performance of them.

But who can withhold his tribute of love and adoration at the divine goodness and wisdom which mark the whole Mosaic code, as illustrated in that honorable regard for man, as man, which strove continually to lift and break the yoke of bondage to his fellow-man from his neck? They who assert that the Bible sanctions the relation of master and slave are bound to show in what spirit and with what intentions the Most High permitted the relation to remain. Otherwise they commit the fearful mistake of making infinite goodness and wisdom countenance oppression.

There are some extremely interesting and even beautiful illustrations in the Bible of the destiny of involuntary servitude to be from the first a waning, transient relation. Every thing pointed to freedom as the desirable condition; easements, deliverances from it, were skillfully prepared in the Hebrew constitution. Maiming, concubinage, the children of concubines, years of release, jubilees, all the various conditions and seasons connected with the termination of bondage, show that slavery was a condition out of which it is the destiny of human nature to rise; and falling into it is a calamity, a retrogression.

The preferableness of freedom to slavery, in the divine mind and plan, is set forth in the passage where Jeremiah, in the name of God, directed, in the last days of the nation, that every Hebrew servant should be manumitted according to law; for afflictions were making

them break off their sins. This divine injunction was obeyed; but afterwards they reconsidered their repentance, and the servants were reduced again to bondage. God appeals to them against this outrage, by reminding them of Egypt, and of his appointment in their early history of years of release, and charges them with "polluting" his name by the reestablishment of slavery over those who had a right to liberty, threatening them for this in these words of awful irony: "Behold, I proclaim a liberty for you, saith the Lord, to the sword, to the pestilence, and to the famine; and I will make you to be removed into all the kingdoms of the earth" (Jer. xxxiv. 8-22).

The New Testament speaks out, not in ordinances, but in words, and teaches more distinctly that freedom is to be preferred when it may be had. "If thou mayest be free, use it rather." It is as though bondage were incident to darkness and twilight, and removable only by the clear sunlight of a state of society which would be incompatible with every form of oppression. So we find that wherever the influence of religion reaches a high point, slavery wholly changes its character, though it may continue in form and name. It may be benevolent to individuals, to a class, that the form of slavery remain; but in such a case the yoke is broken, and to fight against the form and the name, when the thing itself had ceased to be an evil, would be to fight a shadow.

The wise manner in which the Apostles deal with slavery is one incidental proof of their inspiration. The hand of the same God who framed the Mosaic code is evidently still at work in directing his servants, the Apostles, how to deal with slavery. Men with their benevolence and zeal, if left to themselves, would, some of them, have gone to extremes on that subject; for "ultraism," as we call it, is the natural tendency of good men, not fully instructed, in their early zeal. The disposition to put away a heathen husband or wife, abstaining from marriage and from meats, Timothy's omission to take wine in sickness, show this, and make it remarkable that slavery was dealt with as it was by the Apostles. Only they who had the Spirit of God in them could have spoken so wisely, so temperately, with regard to an evil which met them every where with its bad influences and grievous sorrows. Some in their day, who professed to be Christian teachers, were "ultraists," and could not restrain themselves, but evidently encouraged servants not to count their masters worthy of all honor, and to use the equality of divine grace to them and their believing masters, as a claim to equality in other things, thus despising their believing masters because they were brethren. Never is the Apostle Paul more severe in the use of epithets than in denouncing such teachers and their doctrines. Far as possible from countenancing servitude as a condition which man has a right to perpetuate, or to which any class of men is doomed, but declaring plainly that freedom is to be preferred by the slave, he and his fellow-laborers employed themselves in disseminating those principles and that spirit which would make slavery as an oppression impossible, changing its whole nature by abolishing all the motives which create such an institution. But as it is not sunrise in every place at the same moment, and in places where the sun has risen there are ravines and vales, where the light is slow to enter, so we can not expect that the evils of slavery will disappear at once, even where the religion of Christ generally prevails; but in proportion as it extends its influence, slavery is sure to cease in all

its objectionable features. An interesting illustration of this, on a large scale, is afforded by the state of slavery in the United States and Cuba. Spanish slavery has a very mild code, but is severe and oppressive. American slavery has perhaps as rigid a code as any; but practically, it is the mildest form of involuntary servitude, and few would justify themselves in doing no better for their slaves than the law requires. Pure religion must have the credit of this difference, teaching us that to remove slavery we must promote spiritual religion, and to this end use every means to propagate Christian knowledge and Christian charity.

We are not as wise as Paul if we withdraw our Christian teachers and books, imbued with the great principles of pure religion, from communities where we are not allowed to do all the good which we may desire, or to present a duty in such specific forms as our preferences dictate. Our principle ought not to be, to abandon men as soon as we are resisted, or can not say and do all that we would; but we should study ways to remain, trusting to the power of light and love to open doors for us. The dust which we too readily shake off from our feet against men will be a witness against us, rather than against them. It must gratify the arch enemy to see us withdraw our forces in solemn indignation at his show of resistance. The children of this world do not suffer themselves to be so easily foiled, nor do they force unacceptable offerings upon Japan, but ply her with things to tempt her desire for further commodities, representing their usefulness in ways which do not excite national jealousy and pride.

It is refreshing to escape from those books of overheated zeal which attack slavery, and read the passages in the New Testament relating to the subject; breathing a spirit fatal to oppression, yet counseling no measures against it because of its seeming trust in its own omnipotent influence wherever it shall build its throne.

Paul's refusal to interfere between Onesimus and his master is one of those gentle lessons of wisdom on this subject which are so characteristic of his spirit in dealing with this public evil. That small epistle to Philemon, that one chapter, that little piece of parchment, that mere note of apology — that this should have fallen into the sacred canon, and not the epistle to Laodicea, is curious and interesting to those who regard the providence of God in the canon of Scripture. That little writing is like a small, firm beach, where storms have beaten, but have left it pure and white. It is the least of all seeds in Paul's Epistles. It is a curiosity of inspiration, a solitary idiom in a language, a Stonehenge in a country, a warm stream in the sea; it begins with loving salutations, ends with affectionate Christian messages, and sends back a servant to his master and to a system of slavery under which this fugitive could, if his master required, be put to death. Now, he who argues from this that he has an unqualified right to reclaim his slave, and subject him to just such treatment as he pleases, is as much at fault as those who are at the other extreme. It was to a Philemon that Onesimus was returned; it was to Abraham's house that Hagar was remanded. While the abstract principle of ownership is defended by these examples, he who uses them to the injury of a fellow-being will find that God has stores of vengeance for him, and that his own "Master in heaven" is the inexorable Judge.

The difference in the Apostles' way of dealing with slavery, and with other evils,

teaches clearly that the relation itself is not in their view sinful. Many insist that it is sinful, that the Apostles must so have regarded it, and that the reason why they did not attack it is, they would not interfere with the laws and government. It is said, "they girdled slavery, and left it to die."

But this surely is not in accordance with the apostolic spirit. There is no public wickedness which they merely girdled and left to die. Paul did not quietly pass his axe round the public sins of his day. His divine Master did not so deal with adultery and divorces. James did not girdle wars and fightings, governmental measures. Let Jude be questioned on this point, with that thunderbolt of an Epistle in his hand. Even the beloved disciple disdained this gentle method of dealing with public sins when he prophesied against all the governments of the earth at once.

But slavery, declared by some to be the greatest sin against God's image in man, most fruitful, it is said, of evils, is not assaulted, but the sins and abuses under it are reproved, the duties pertaining to the relation of master and slave are prescribed, a slave is sent back to servitude with an inspired epistle in his hand, and slavery itself is nowhere assailed. On the contrary, masters are instructed and exhorted with regard to their duties as slaveholders. Suppose the instructions which are addressed to slaveholders to be addressed to those sinners with whom slaveholders are promiscuously classed by many, for example: "Thieves, render to those from whom you may continue to steal, that which is just and equal." "And, ye murderers, do the same things unto your victims, forbearing threatenings." "Let as many as are cheated count their extortioners worthy of all honor." If to be a slave owner is in itself parallel with stealing and other crimes, miserable subterfuge to say that Paul did not denounce it because it was connected with the institutions of society; that he "girdled it, and left it to die." Happy they whose principles with regard to slavery enable them to have a higher opinion of Paul than thus to make him a timeserver and a slave to expediency.

But was he therefore "a proslavery man"? Not he. Would he have spoken against American slavery had he lived in our day? Surely he would; against its evils, its abuses, its sins, but not against the relation of master and slave. Suppose that Philemon had thrown Onesimus into prison for absconding, and Paul had heard of his having lain there three months till he was sick with jail fever, and likely to die. If he could have reached Philemon through church discipline, and the offender had persisted in his sin, we can imagine Paul directing the church "in the name of the Lord Jesus to deliver such an one to Satan for the destruction of the flesh, that the spirit may be saved in the day of our Lord Jesus." Any church that suffers a member to deal wrongfully with his servant, or suffers a slave member to be recklessly sold, has in Paul's epistles single words and whole sentences which ought to make it quail. Yet there is not a word there against the relation of master and slave; and for what reason?

The way in which the Apostles evidently purposed to remove slavery, was by creating a state of things in which it would cease. This method is not analogous to girdling trees, but to another process resorted to by husbandmen. Their only method of expelling certain weeds — sorrel, for example — is, to enrich the soil. The gospel is to slavery what the growing of

clover is to sorrel. Religion in masters destroys every thing in slavery which makes it obnoxious; and not only so, it converts the relation of the slave into an effectual means of happiness. In many instances at the South, for example, slavery is no more slavery so long as those masters live; and if religion were every where predominant, their servants would not suffer by the death of their masters any more than by time and chance, which happen to all. Religion will never remove men's need of being served and of serving; but it will make service an honorable and happy employment, under whatever name it may pass. And as farmers do not attack weeds for the mere sake of expelling them, but to use their place for something better, so the New Testament does not attack slavery to drive it out, but gets possession of the heart, which is naturally tyrannical and covetous, and, filling it with the fruits of the Spirit, the works of the flesh disappear.

When a man repents and is converted, he does not repent of his sins one by one, but there is a state of heart created within him, with regard to all sin, which constitutes repentance. In accordance with this we do not find the Bible laboring merely to make a man specifically penitent, but it uses one sin and another to lead the man back to that heart which is the root of all his sins. Those who preach to convicts tell us that when they are convinced of sin, if they fix their thoughts upon particular transgressions, and make them the special subjects of repentance, one of two things happens; they either see the whole of their sin and misery by means of these instances of wickedness, or they confine their thoughts to these items, and then become superficial and self-righteous. David's sin, as we see by the fifty-first Psalm, led him to feel and deplore his ruined nature. Many attempts to reform particular evils in society which grow out of human wickedness have no effect to make men true penitents, though reformations of morals and of abuses are always auxiliary to religion; but if an equal amount of zeal employed in assailing abuses were employed in promoting Christian piety and charity by diffusing Christian knowledge and ordinances, and also by the influence of a good temper and spirit, especially where Christian men are the objects of our zeal, and their cooperation and influence are our surest means of success, we should see changes in society brought about in a healthful way, which would be permanent because of the basis of character on which they would rest. And all this antifebrile sentiment is scorned by overheated zealots. Still there is sound discretion in these words of Dr. Chalmers:

> I have been a projector in my day, and, much as I have been employed with the economics of society, my conviction is more and more strengthened in the utter vanity of all expedients short of faith in the gospel of Jesus Christ; whose disciples are the salt of the earth, and through whose spirituality and religion, alone, we can look for the permanent civilization and comfort of the species, or even for earthly blessings; which come after, and not before, the kingdom of God and his righteousness.

The apostolic spirit with regard to slavery, surely, is not of the same tone with the spirit which encourages slaves every where to flee from their masters, and teaches them that his swiftest horse, his boat, his purse, are theirs, if they wish to escape. Philemon, traveling with Onesimus, was not annoyed by a vigilance committee of Paul's Christian friends with

a *habeas corpus* to rescue the servant from his master; nor did these friends watch the arrival of ships to receive a fugitive consigned by "the saints and faithful brethren which were at Colosse" to the "friends of the slave" at Corinth. True, these disciples had not enjoyed the light which the Declaration of American Independence sheds on the subject of human rights. Moses, Paul, and Christ were their authorities on moral subjects; but our infidels tell us that we should have a far different New Testament could it be written for us now; but since we can not have a new Bible now and then, this proves that "God can not make a revelation to us in a book." Every man, they say, must decide as to his duty by the light of present circumstances, not by a book written eighteen hundred years ago. Zeal against American slavery has thus been one of the chief modern foes to the Bible. Let him who would not become an infidel and atheist beware and not follow his sensibilities, as affected by cases of distress, in preference to the word of God, which the unhappy fate of some who have made shipwreck of their faith in their zeal against slavery shows to be the best guide.

I may be allowed to state the manner in which my own mind was relieved at the South with regard to the prospects of slavery. From youth, I had believed that its removal is essential to our continued existence as a nation, and yet no one saw in what way this change was to be effected. My error was in supposing that the blacks must be removed in order to remove slavery, or, that they must be emancipated; that we must have some "first of August" to mark a general manumission. Now there are many slaveholders at the South who make the condition of their slaves as comfortable and happy as the condition of the same persons could be in any circumstances. Wicked men are permitted by the present laws to practise iniquity and oppression; but when the influence of good men so far prevails as to make laws which will restrain and govern those who are susceptible to no influence but that of authority, the form of slavery will be all pertaining to it which will remain, and this only while it is for the highest good of all concerned, and acknowledged to be so by both parties, the doom of the blacks, as a race, being abandoned, and the interests of each individual, his inclination and aptitude, being regarded in finding employment for him. I saw that if good men at the South were left to themselves without annoyance by foreign intervention, the spirit of the New Testament with regard to slavery might ere long be fulfilled. Nor would the Old Testament jubilee, or seventh year release, be necessary; these, like other things in Moses, being done away in Christ by the bestowal of liberty, or protection under Christian masters; no ceremonial, therefore, being needed to effect or announce their liberty, and jubilees and seventh years, indeed, not coming fast enough, and being too formal for the times. Let us feel and act fraternally with regard to the South, defend them against interference, abstain from every thing assuming and dictatorial, leave them to manage their institution in view of their accountability to God, and, if we please, in view of the line upon line and precept upon precept which we, their many and very capable instructors, male and female, have vouchsafed to them, and we may expect that American slavery will cease to be any thing but a means of good to the African race. When no longer available for good, the form itself will be abolished.

Suppose that we should receive a report from missionaries giving an account of three

millions of people brought out of heathenism and elevated to the position of the slaves in our Southern States. While we should join with the missionaries to deplore remaining evils and certain liabilities to evil among them, we should fill our prayers with praises at the marvelous work of grace among that people. And were the foreign lords of that people generally in favor of their improvement, and very many of them examples of all kindness and faithfulness, we should be careful how we interfered with the leaven which was leavening, slowly, but surely, the whole mass of the population. Some, however, as now, would wish to precipitate the process.

In addition to what has been said of the way in which the gospel will affect slavery, it may be observed that common humanity, self-interest, and law may, each in its own method, do all the good in its power, without waiting for the higher motives of spiritual religion. Nor are we to neglect or disparage means and measures which tend to good, though actuated merely by considerations of policy. Yet spiritual religion is God's chosen instrument of doing the greatest amount of good in the best possible way. It puts every thing at work for its object; it purifies our motives; it makes the result permanent; it saves men from the temptations incident to victory and defeat.

The preceding essay was extracted from Nehemiah Adams, A Southside View of Slavery *(Boston: T.R. Marvin and B.B. Mussey and Company, 1854).*

PART TWO
Abraham Lincoln and the Birth of a Modern Empire

When dangers thicken, the only device may be the Roman one of a temporary dictatorship. Something like this happened in the War of Secession, for the powers then conferred upon President Lincoln, or exercised without Congressional censure by him, were almost as much in excess of those enjoyed under the ordinary law as the authority of a Roman dictator exceeded that of a Roman consul.

— James Bryce

CHAPTER SEVEN

State Sovereignty and the Right of Secession

The Union Viewed as an Experiment

In his excellent treatise on the nature of the Union entitled *Is Davis a Traitor?*, Southern political apologist Albert Taylor Bledsoe wrote, "The final judgment of History in relation to the war of 1861 will, in no small degree, depend on its verdict with respect to the right of secession. If, when this right was practically asserted by the South, it had been conceded by the North, there would not have been even a pretext for the tremendous conflict which followed."[1] Secession became the great political question of the Nineteenth Century to be decided, not by appealing to law and reason, which method Abraham Lincoln ridiculed as "exceedingly thin and airy,"[2] but, in the words of Supreme Court Justice Robert C. Grier, by "wager of Battle,"[3] or, to quote John Andrews, Governor of Massachusetts, by "the logic of bayonets and rifles and pikes...."[4]

From the formation of the original Confederacy under the Articles of Confederation

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1. Albert Taylor Bledsoe, *Is Davis a Traitor?* (Richmond, Virginia: The Hermitage Press, Inc., 1907), page 1.

2. Abraham Lincoln, quoted by Paul S. Whitcomb, "Lincoln and Democracy," *Tyler's Quarterly Magazine*, July 1927; reprinted in Minor, *Real Lincoln*, page 255.

3. Justice Robert C. Grier, December 1862, *U.S. Reports*, Volume 67, page 668.

4. John Andrews, excerpt from a speech delivered in Tremont Temple, Boston; quoted by the New York *Herald*, December 1859.

of 1777, and continuing on after the ratification of the Constitution of 1789, it was a well-understood and universally accepted political doctrine that the Union was a compact, or a "league of friendship" between thirteen independent and sovereign States, from which the parties thereof could constitutionally and peacefully withdraw at will. According to Henry Cabot Lodge:

> When the Constitution was adopted by the votes of States at Philadelphia, and accepted by the votes of States in popular conventions, it is safe to say there was no man in this country, from Washington and Hamilton on the one side to George Clinton and George Mason on the other, who regarded our system of Government, when first adopted, as anything but an experiment entered upon by the States, and from which each and every State had the right to peaceably withdraw, a right which was very likely to be exercised.[5]

The truth of Lodge's statement is established by George Washington himself, who, in his farewell address, asked, "Is there a doubt whether a common government can embrace so large a sphere? Let experience solve it. To listen to mere speculation in such a case were criminal. It is well worth a fair and full experiment." In his correspondence with various dignitaries, Washington constantly referred to the Union of States as "the new confederacy"[6] and a "confederated Government,"[7] and he spoke of the Constitution as "a compact or treaty"[8] between "the people of the several states."[9] In a letter to General Henry Knox, dated 17 June 1788, he wrote, "I can not but hope that the States which may be disposed to make a secession [from the Union] will think often and seriously on the consequence."[10] Eleven days later, writing to General Pinckney, he announced that New Hampshire had "acceded to the new Confederacy," and, referring to North Carolina, he said, "I should be astonished if that State should withdraw from the Union."[11]

James Madison, who is commonly referred to as "the father of the Constitution," and who was in an authoritative position to properly interpret that instrument, envisioned a "confederate republic" composed of "confederate States," and described the proposed constitutional system as "a confederacy founded on republican principles, and composed of repub-

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5. Henry Cabot Lodge, *Daniel Webster* (Boston: Houghton, Mifflin, and Company, 1899), page 176.

6. George Washington, letter to General Pinckney, 28 June 1788; quoted by Sage, *Republic of Republics*, page 248.

7. Washington, letter to Sir Edward Newenham, 20 July 1788; quoted by Sage, *ibid*., page 251.

8. Washington, letter to David Stuart, 17 October 1787; quoted by Sage, *ibid*., page 247.

9. Washington, letter to Count Rochambeau, 8 January 1788; quoted by Sage, *ibid*., page 248.

10. Washington, letter to Henry Knox, 17 June 1788; quoted by Sage, *ibid*., pages 249-250.

11. Washington, letter to Pinckney, 28 June 1788; quoted by Sage, *ibid*., page 250.

lican members."[12] He was certainly aware of the "republican principles" contained in the Declaration of Independence which stated, not only that governments are not republican which do not "deriv[e] their just powers from the consent of the governed," but that, should a government not answer to the purposes for which it was established, "it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." Indeed, he practically repeated the words of Thomas Jefferson when he wrote of "the great principle of self-preservation" and of "the transcendent law of nature and of nature's God, which declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed."[13]

Madison also said, "Were the plan of the Convention adverse to the public happiness, my voice would be, Reject the plan. Were the Union itself inconsistent with the public happiness, it would be, Abolish the Union."[14] It may be argued that these were Madison's opinions *prior* to ratification of the Constitution and therefore cannot be made to apply to the status of the States *after* they had entered the new Union. However, as late as 1830, after the new system had been operational for over forty years, he was still uncertain "whether the Union will answer the ends of its existence or otherwise." He went on:

> Should the provisions of the Constitution as here reviewed be found not to secure the Government and rights of the States against usurpations and abuses on the part of the United States, the final resort within the purview of the Constitution lies in an amendment of the Constitution according to a process applicable by the States.
>
> And in the event of a failure of every constitutional resort, and an accumulation of usurpations and abuses, rendering passive obedience and non-resistance a greater evil, than resistance and revolution, there can remain but one resort, the last of all, an appeal from the cancelled obligations of the constitutional compact, to original rights and the law of self-preservation. This is the *ultima ratio* under all Government whether consolidated, confederated, or a compound of both; and it cannot be doubted that a single member of the Union, in the extremity supposed, but in that only, would have a right, as an extra and ultra constitutional right, to make the appeal.[15]

This was not the first time that Madison had described the Union in terms of a compact between the States. In a speech delivered before the Virginia Legislature in 1798, he

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12. Madison, *Federalist Papers*, Number XLIII.

13. Madison, *ibid*.

14. Madison, *ibid*., Number XLV.

15. Madison, letter to the *North American Review*, 28 August 1830; quoted in Marvin Meyers (editor), *The Mind of the Founder: Sources of the Political Thought of James Madison* (Indianapolis, Indiana: The Bobbs-Merrill Company, 1973), page 529.

said, "The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity.... The States... [are] the parties to the constitutional compact...."[16] Twenty-three years later, his views had not changed: "Our governmental system is established by a compact, not between the Government of the United States and the State Governments, but between the States as sovereign communities, stipulating each with the other a surrender of certain portions of their respective authorities, to be exercised by a common Government, and a reservation for their own exercise, of all the other authorities."[17] In the Kentucky Resolutions of November, 1798, Thomas Jefferson described the Constitution as "this compact" to which "each State acceded as a State, and is an integral party...."[18] Similarly, Gouverneur Morris, who served on the Committee on Style which delivered the final wording of the Constitution, stated that his purpose in attending the Convention of 1787 was "to form a compact for the good of America." He was "ready to do so with all the States" and, in the event that not all States would enter such a compact, he expressed his desire "to join with any States that would." In his mind, "the compact was to be voluntary."[19] Even Alexander Hamilton, who advocated a strong centralized government bordering on a monarchy, had to admit that the Union under the proposed Constitution would "still be, in fact and in theory, an association of States, or a confederacy."[20] Hamilton was not so dull-witted as to believe secession from a confederacy of States to be impossible, since that is precisely what each of the States would have to do in relation to the Articles of Confederation "in order to form a more perfect Union" under the Constitution.[21] In a letter to Timothy Pickering dated 16 September 1803, he wrote that, despite his disappointment with the results of the Convention, the republican form of government set forth in the Constitution "should have a fair and full trial," and then added, "I sincerely hope that it may not hereafter be discovered, that through want of sufficient attention to the last idea, the experiment of republican government, even in this country, has not been as complete, as satisfactory, and as decisive as could be wished." Thus, American "republicanism" was clearly identified in the minds of these framers with sovereign States in voluntary union, or, more accurately,

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16. Madison, address to the Virginia Legislature in December, 1798; quoted by McHenry, *Cotton Trade*, page xxxii.

17. Madison, letter to the *North American Review*, 28 August 1830; quoted in Marvin Meyers (editor), *The Mind of the Founder: Sources of the Political Thought of James Madison* (Indianapolis, Indiana: The Bobbs-Merrill Company, 1973), page 529.

18. Kentucky Resolutions, 10 November 1798.

19. Morris, speech delivered on 12 July 1787; quoted by Scott, *Lost Principle*, page 44.

20. Hamilton, *Federalist Papers*, Number IX.

21. George Ticknor Curtis, *History of the Origin, Formation, and Adoption of the Constitution of the United States* (New York: Harper and Brothers, 1855), Volume II, pages 181-182.

confederation with one another.

It is interesting to note that State sovereignty and the reserved right of secession was taught by the United States Government to cadets at West Point Military Academy during the 1825-1826 term, and perhaps longer, through William Rawle's book, *A View of the Constitution of the United States of America*.[22] In this book, which was also used as a political textbook by several other colleges and academies throughout the country at the time,[23] the author, a Philadelphia lawyer and staunch Federalist, wrote the following:

> It depends on the state itself to retain or abolish the principle of representation, because it depends on itself whether it will continue a member of the Union. To deny this right would be inconsistent with the principle of which all our political systems are founded, which is, that the people have in all cases, a right to determine how they will be governed....
>
> The secession of a state from the Union depends on the will of the people of such state. The people alone, as we have already seen, hold the power to alter their constitutions. But in any manner by which a secession is to take place, nothing is more certain than that the act should be deliberate, clear, and unequivocal. To withdraw from the Union is a solemn, serious act. Whenever it may appear expedient to the people of a state, it must be manifested in a direct and unequivocal manner.[24]

State Sovereignty the Foundation of the Union

It is clear from the available historical facts that the Constitution would have never been ratified if it had been understood that, in doing so, the States would surrender their sovereignty, as well as their right of secession should the experiment fail. We need look no further for proof of the reserved right of secession than in the ratification of at least three of the original thirteen States. Following are excerpts from the ratifications of the States of Virginia, New York, and Rhode Island respectively:

> We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the general assembly, and now met in convention, having fully and freely

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22. Edgar S. Dudley, "Was 'Secession' Taught at West Point?", *The Century Magazine* (New York, 1909), Volume LXXVIII, page 635. In his biography of Robert E. Lee, Douglas Southall Freeman mentioned the tradition that Rawle's book was used at West Point beyond 1826 *(R.E. Lee: A Biography* [New York: Charles Scribner's Sons, 1935], Volume One, page 79). For example, Dabney H. Maury, who graduated in 1846, claimed that the book was used at West Point as late as 1861 ("West Point and Secession," *Southern Historical Society Papers* 6 [July-Dec., 1878], page 249).

23. *The National Cyclopedia of American Biography* (New York: James T. White and Company, 1897), Volume VII, page 442.

24. William Rawle, *A View of the Constitution of United States of America* (Philadelphia, Pennsylvania: Philip H. Nicklin and Company, 1829), pages 296, 302.

investigated and discussed the proceedings of the Federal Convention, and being prepared as well as the most mature deliberation hath enabled us to decide thereon, Do, in the name and in behalf of the people of Virginia, declare and make known that the powers granted under the Constitution being derived from the people of the United States may be resumed by them whensoever the same shall be perverted to their injury or oppression, and that every power not granted thereby remains with them and at their will.... That each State in the Union shall, respectively, retain every power, jurisdiction and right which is not by this Constitution delegated to the Congress of the United States, or to the Departments of the Federal Government.[25]

We, the delegates of the people of New York... do declare and make known that the powers of government may be reassumed by the people whenever it shall become necessary to their happiness; that every power, jurisdiction, and right which is not by the said Constitution clearly delegated to the Congress of the United States, or the department of the government thereof, remains to the people of the several States, or to their respective State governments, to whom they may have granted the same; and that those clauses in the said Constitution, which declare that Congress shall not have or exercise certain powers, do not imply that Congress is entitled to any powers not given by the said Constitution; but such clauses are to be construed either as exceptions in certain specified powers or as inserted merely for greater caution.[26]

We, the delegates of the people of Rhode Island and Plantations, duly elected... do declare and make known... that the powers of government may be resumed by the people whenever it shall become necessary to their happiness; that every power, jurisdiction, and right which is not by the said Constitution clearly delegated to the Congress of the United States, or the department of the government thereof, remains to the people of the several States, or to their respective State governments, to whom they may have granted the same;... that the United States shall guarantee to each State its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Constitution expressly delegated to the United States.[27]

The importance of these statements was explained by Jefferson Davis:

These expressions are not mere *obiter dicta*, thrown out incidentally, and entitled only to be regarded as an expression of opinion by their authors. Even if only such, they would carry great weight as the deliberately expressed judgment of enlightened contemporaries, but they are more: they are parts of the very acts or ordinances by which these

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25. Virginia Ordinance of Ratification, 25 June 1788; in Elliott, *Debates in the Several State Conventions*, Volume V, page 3.

26. New York Ordinance of Ratification; in *Documentary History of the United States Constitution* (Washington, D.C.: U.S. Department of State, 1894), Volume II, page 191.

27. Rhode Island Ordinance of Ratification; in *ibid.*, Volume II, page 311, 316.

> States ratified the Constitution and acceded to the Union, and can not be detached from them. If they are invalid, the ratification itself was invalid, for they are inseparable. By inserting these declarations in their ordinances, Virginia, New York, and Rhode Island, formally, officially, and permanently, declared their interpretation of the Constitution as recognizing the right of secession by the resumption of their grants. By accepting the ratifications with this declaration incorporated, the other States as formally accepted the principle which it asserted.[28]

Joseph Story's Theory of a Consolidated Nation

It was not until the Nineteenth Century was well underway that the theory of a permanently consolidated nation from which withdrawal was unlawful first made an appearance in Joseph Story's *Commentaries on the Constitution*.[29] Daniel Webster would rely heavily on Story's work in his debates in Congress, first with South Carolina Senator Robert Hayne in 1830 and then with John C. Calhoun, also of South Carolina, three years later. The proponents of this novel theory denied that the Constitution was either "a compact between State governments" or that it had been "established by the people of the several States," asserting that it had instead been established by "the people of the United States in the aggregate."[30] The States had thus never been sovereign political bodies, for they were the creatures of the Union rather than *vice versa*. Therefore, it was reasoned, for the people of a State to declare their independence from this indivisible Union was to declare the impossible and to commit an act of treason against the nation which had given it the right to exist. In the words of Webster:

> This word "accede," not found either in the Constitution itself or in the ratification of it by any one of the States, has been chosen for use here, doubtless not without a well-considered purpose. The natural converse of accession is secession; and therefore, when it is stated that the people of the States acceded to the Union, it may be more plausibly argued that they may secede from it. If, in adopting the Constitution, nothing was done but acceding to a compact, nothing would seem necessary, in order to break it up, but to secede from the same compact. But the term is wholly out of place. Accession, as a word applied to political associations, implies coming into a league, treaty, or confederacy, by one hitherto a stranger to it; and secession implies departing from such league or confeder-

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28. Davis, *Rise and Fall of the Confederate Government*, Volume I, page 173.

29. Joseph Story, *Commentaries on the Constitution* (Boston: Hilliard, Gray and Company, 1833).

30. Daniel Webster, in Benton, *Abridgment of the Debates of Congress*, Volume X, page 448. With this assertion, Webster contradicted his earlier, and correct, assertions in an address to the citizens of Boston on 15 December 1819, not only that the States enjoyed "the exclusive possession of sovereignty" within their own boundaries, but that "the only parties to the Constitution, contemplated by it originally, were the thirteen confederated States" and that the Constitution "rests on compact" (quoted by Davis, *Rise and Fall of the Confederate Government*, Volume I, page 166).

> acy. The people of the United States have used no such form of expression in establishing the present Government....
>
> There is no language in the whole Constitution applicable to a confederation of States. In the Constitution it is the people who speak, not the States.[31]

A review of the writings of Washington, Madison, and the other framers, including even Hamilton, will show that these men were not at all shy in using the very terms which Webster decried as "wholly out of place" when describing the nature of the federal Union under the Constitution. According to the very men directly involved in its creation, the Constitution was a compact to which each State, acting upon its own authority, voluntarily acceded. Therefore, secession of a State from the Union, though undesirable, was nevertheless a possibility. What is most remarkable about the opposite theory is that it originated from within the rapidly dwindling ranks of the old Federalist party, which had been, less than a generation before, the chief agitator for the secession of the Northeastern States from the Union. Having been driven from power by the election of Thomas Jefferson in 1800, the Federalists were thereafter, during the second war with England, seen agitating once again for the secession of those States and for the establishment of a New England confederacy. Story's own State of Massachusetts was the most vocal in proclaiming the doctrine of State sovereignty and the right of nullification which would later be so ably championed by Calhoun and so vehemently opposed by Story's apprentice, Webster.

As a Supreme Court justice, Story "perpetually insisted on construing the Constitution from the standpoint of that small and defeated party in the Federal Convention which wanted to form a government on the model of the English monarchy in everything but the name."[32] This was the party which, while John Adams was President, was responsible for passing the Alien and Sedition Acts of 1796, the latter of which prescribed a two thousand dollar fine and two years imprisonment for anyone who "should write or publish, or cause to be published, any libel against the Government of the United States, or either House of Congress, or against the President." C. Chauncey Burr described the effects of this Act: "A great many editors, and other gentlemen, were imprisoned under this act. Even to ridicule the President was pronounced by the corrupt partisan judges a violation of the law. Men were beaten almost to death for neglecting to pull off their hats when the President was passing, and every man who did not instantly prostrate himself before the ensigns of Federal royalty, was denounced as the enemy of his country."[33] Both the Alien and Sedition Acts were promptly denounced by Thomas Jefferson in the Kentucky Resolutions and by James Madison in the Virginia Resolutions, and they were thereafter repealed. We need not review how

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31. Webster, in Benton, *Abridgment of the Debates of Congress*, Volume IX, Part I, pages 556, 566.

32. C. Chauncey Burr, "Introduction," in Abel P. Upshur, *The True Nature and Character of Our Federal Government* (New York: Van Evrie, Horton and Company, [1840] 1868), page i.

33. Burr, in Upshur, *ibid.*, page iii.

the Federalists not long afterwards violated the spirit of their own sedition law in the deprecations they heaped upon the Government, and the President in particular, during the War of 1812.

Had Alexander Hamilton, the consummate monarchist at the Constitutional Convention of 1787, still been living when Story's *Commentaries* were initially published in 1830, they would have likely received his hearty endorsement. Unfortunately, due to their otherwise brilliant content, they did not receive the reprobation they deserved for their advancement of the consolidationist heresy of the Federalists, and they soon supplanted the abler work of Story's more honest Federalist colleague, William Rawle, as the textbook most widely consulted by politicians and lawyers on questions of American constitutional law.

It should be noted that in 1830, the records of the debates in the Philadelphia Convention had not yet been published and since the proceedings had been conducted in secret, their contents were entirely unknown to the public. Furthermore, the generation of men who had participated in the founding of the Republic under the Constitution had, with few exceptions, but recently passed from the scene. The appearance of Story's theory on the political stage occurred concurrent with this passing; had a Jefferson or even a Washington still lived to rebut Story's postulations, it is doubtful that his work would have long survived or risen above obscurity.

In 1840, Abel P. Upshur, a lawyer from Virginia who served as Secretary of the Navy in the Tyler Adminstration, published his brilliant response to Story entitled *The True Nature and Character of Our Federal Government*. Responding to the claim advanced by Story that prior to the severance of political ties with Great Britain, the people of the thirteen colonies "were in a strict sense fellow-subjects, and in a variety of respects, one people," Upshur wrote:

> In order to constitute "one people," in a political sense, of the inhabitants of different countries, something more is necessary than that they should owe a common allegiance to a common sovereign.... By the term "people," as here used, we do not mean merely a number of persons. We mean by it a political corporation, the members of which owe a common allegiance to a common sovereignty, and do not owe any allegiance which is *not* common; who are bound by no laws except such as that sovereignty may prescribe; who owe to one another reciprocal obligations; who possess common political interests; who are liable to common political duties; and who can exert no sovereign power except in the name of the whole. Anything short of this, would be an imperfect definition of that political corporation which we call "a people."
>
> Tested by this definition, the people of the American colonies were, in no conceivable sense, "one people." They owed, indeed, allegiance to the British King, as the head of each colonial government, and as forming a part thereof; but this allegiance was exclusive, in each colony, to its own government, and, consequently, to the King as the head thereof and was not a common allegiance of the people of all the colonies, to a common head. These colonial governments were clothed with the sovereign power of making laws, and of enforcing obedience to them, from their own people. The people of one colony owed no allegiance to the government of any other colony, and were not bound by its laws.

> The colonies had no common legislature, no common treasury, no common military power, no common judicatory. The people of one colony were not liable to pay taxes to any other colony, nor to bear arms in its defence; they had no right to vote in its elections; no influence nor control in its municipal government; no interest in its municipal institutions. There was no prescribed form by which the colonies could act together, for any purpose whatever; they were not known as "one people" in any one function of government. Although they were all, alike, dependencies of the British Crown, yet, even in the action of the parent country, in regard to them, they were recognized as separate and distinct. They were established at different times, and each under an authority from the Crown, which applied to itself alone. They were not even alike in their organization. Some were provincial, some proprietary, and some charter governments. Each derived its form of government from the particular instrument establishing it, or from assumptions of power acquiesced in by the Crown, without any connection with, or relation to, any other. They stood upon the same footing, in every respect, with other British colonies, with nothing to distinguish their relation either to the parent country or to one another (emphasis in original).[34]

Referring to the Declaration of Independence, Judson A. Landon wrote, "The thought in the mind of the framers no doubt was that every colony was free and independent of the king. There was no need to say independent of each other; they had always been so, and the idea of erecting a common, central government out of all, was not yet suggested."[35] That this was how the signers of the Declaration understood their own political condition is beyond dispute. For example, while separation from Great Britain was still being discussed, James Wilson noted, "All the different members of the British empire are distinct states, Independent of each other, but connected together under the same sovereign."[36] Samuel Chase, another signer of the Declaration who later served on the Supreme Court during Washington's administration, likewise attested to the fact that the former "united colonies" were "each of them... a sovereign and independent state, that is, that each of them had a right to govern itself by its own authority and its own laws, without any control from any other power on earth."[37] These statements undermine Story's supposition that the Declaration of Independence necessarily consolidated the inhabitants of the former colonies into "one people." According to Story, "The colonies did not severally act for themselves, and proclaim their own independence."[38] Not only is this assertion proven false by the very words of the Declaration

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34. Upshur, *ibid*., pages 22-23.

35. Judson A. Landon, *The Constitutional History and Government of the United States* (Boston: Houghton, Mifflin and Company, 1905), page 59.

36. James Wilson, quoted by T.R. Fehrenbach, *Greatness to Spare* (Princeton, New Jersey: D. Van Nostrand, 1968), page 107.

37. *Ware v. Hylton* (1796), 3 Dallas 224.

38. Story, *Commentaries on the Constitution*, Volume I, page 197.

itself, which, in its closing paragraph, referred to the colonies as possessing the right "to be Free and Independent States," but also by the Treaty of Peace, signed at Paris on 3 September 1783, in which King George III acknowledged, separately and by name, each of the thirteen former colonies "to be free sovereign and independent states," promising to "treat with them as such." Upshur wrote:

> The Congress of 1775, by which independence was declared, was appointed... by the colonies in their separate and distinct capacity, each acting for itself, and not conjointly with any other. They were the representatives each of his own colony, and not of any other; each had authority to act in the name of his own colony, and not in that of any other; each colony gave its own vote by its own representatives, and not by those of any other colony. Of course, it was as separate and distinct colonies that they deliberated on the Declaration of Independence. When, therefore, they declare, in the adoption of that measure, that they act as "the representatives of the United States of America," and "in the name and by the authority of the good people of these colonies," they must of course be understood as speaking in the character of which they had all along acted; that is, as the representatives of separate and distinct colonies, and not as the joint representatives of any one people.... It is impossible to suppose, therefore, in common justice to the sagacity of Congress, that they meant anything more by the Declaration of Independence, than simply to sever the tie which had theretofore bound them to England, and to assert the rights of the separate and distinct colonies, as separate and independent States; particularly as the language which they use is fairly susceptible of this construction. The instrument itself is entitled, "The Unanimous Declaration of the Thirteen United States of America;" of *States*, separate and distinct bodies politic, and not of "one people" or nation, composed of all of them together; "united," as independent States may be, by compact or agreement, and not *amalgamated*, as they would be, if they formed *one* nation or body politic (emphasis in original).[39]

While the colonies were certainly united militarily in their efforts to throw off the yoke of British tyranny, they had no such political union as envisioned by Story. On this point, all constitutional authorities prior to Story were agreed. According to Thomas M. Cooley, "At the opening of their struggle for Independence the American States had no common bond of union except such as exist in a common cause and common danger. They were not yet a nation; they were only a loose confederacy, and no compact or articles of agreement determined the duties of the several members to each other, or to the confederacy as an aggregate of all."[40] In discussing the origin of American institutions, James Monroe noted two indisputable facts: "The first is, that in wresting the power, or what is called the sovereignty, from the crown, it passed directly to the people. The second, that it passed directly to the people of each colony, and not to the people of all the colonies in the aggregate

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39. Upshur, *Our Federal Government*, pages 53-55.

40. Thomas M. Cooley, quoted by Ewing, *Northern Rebellion*, page 12.

— to thirteen distinct communities, and not to one."[41] There would be no real political union between the fledgling States until they became so associated under the Articles of Confederation, and even then, we find in the second article of that document the declaration that each State "retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled." Obviously, then, when Jefferson in the Declaration spoke of a time when "it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of Nature and of Nature's God entitle them," he was either speaking abstractly or applying the phrase "one people" to each of the colonies respectively. Read in any other way, the Declaration would place Jefferson, the champion of decentralization and of State sovereignty, squarely in the camp of Hamilton, the consolidationist. The absurdity of such an attempt is too transparent for comment.

Story's Theory Refuted By the Framers

Finally, Story brought his faulty premise to an equally faulty conclusion: the "one people" who issue their Declaration of Independence in 1776 are the same "people of the United States" who, in 1787 "do ordain and establish this Constitution for the United States of America." Thus, the theory of the people "in the aggregate" is presented for our consideration. However, Story fared no better in his exposition of this doctrine than in his exposition of those preceding it, for his thesis is immediately disproved when the original wording of the Preamble is read: "We, the people of the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, do ordain, declare and establish the following Constitution, for the government of ourselves and our posterity."[42] Upshur commented:

> On the very next day this preamble was unanimously adopted; and the reader will at once perceive, that it carefully preserves the distinct sovereignty of the States, and discountenances all idea of consolidation. The draft of the Constitution thus submitted was discussed, and various alterations and amendments adopted (but without any change in the preamble), until the 8th of September, 1787, when the following resolution was passed: "It was moved and seconded to appoint a committee of five, to revise the style of, and arrange the articles agreed to by, the House; which passed in the affirmative." It is manifest that this committee had no power to change the *meaning* of anything which had been adopted, but were authorized merely to "revise the style," and arrange the matter in proper

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41. James Monroe, quoted by Ewing, *ibid*., page 15.

42. Jonathan Elliott (editor), *Journal and Debates of the Federal Convention* (Washington, D.C.: self-published, 1836), Volume I, page 255.

> order. On the 12th of the same month they made their report. The preamble, as they reported it, is in the following words: "We, *the people of the United States*, in order to form a more perfect union...." It does not appear that any attempt was made to change this phraseology in any material point, or to reinstate the original. The presumption is, therefore, that the two were considered as substantially the same, particularly as the committee had no authority to make any change except in the style....
>
> There is, however, another and a perfectly conclusive reason for the change of phraseology, from the States by name, to the more general expression "the United States;" and this, too, without supposing that it was intended thereby to convey a different idea as to the parties of the Constitution. The revised draft contained a proviso, that the Constitution should go into operation when adopted and ratified by nine States. It was, of course, uncertain whether more than nine would adopt it or not, and if they should not, it would be altogether improper to name them as parties to that instrument (emphasis in original).[43]

The testimony of the framers themselves substantiate Upshur's observations. In response to Patrick Henry's fear that what was being established by the Constitution "must be one great consolidated national government of the people of all the States"[44] — Story's theory of the people in the aggregate — James Madison said:

> Who are parties to it? The people — but not the people as composing one great body; but the people as composing thirteen sovereignties: were it, as the gentleman [Henry] asserts, a consolidated government, the assent of a majority of the people would be sufficient for its establishment, and as a majority have adopted it already, the remaining States would be bound by the act of the majority, even if they unanimously reprobated it: were it such a government as is suggested, it would be now binding on the people of this State [Virginia], without having had the privilege of deliberating upon it; but, sir, no State is bound by it, as it is, without its own consent. Should all the States adopt it, it will be then a government established by the thirteen States of America, not through the intervention of the Legislatures, but by the people at large. In this particular respect the distinction between the existing and proposed governments is very material. The existing system has been derived from the dependent, derivative authority of the Legislatures of the States, whereas this is derived from the superior power of the people.[45]

Elsewhere, Madison added:

> The Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but this assent and ratification is to be given by the people, not as individuals comprising one entire nation, but as com-

43. Upshur, *Our Federal Government*, pages 70-72.

44. Patrick Henry, in Elliott, *Journal and Debates*, Volume III, page 54.

45. James Madison, in Elliott, *ibid*., pages 114-115.

> posing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State — the authority of the people themselves. The act, therefore, establishing the Constitution will not be a *national*, but a *federal* act.
>
> That it will be a federal, and not a national act, as these terms are understood by objectors, the act of the people, as forming so many independent States, not as forming one aggregate nation, is obvious from this single consideration, that it is to result neither from the decision of a *majority* of the people of the Union, nor from that of a *majority* of the States. It must result from the *unanimous* assent of the several States that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority; in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the States, as evidences of the will of a majority of the people of the United States. Neither of these has been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its voluntary act (emphasis in original).[46]

Likewise, Luther Martin, one of the delegates to the Philadelphia Convention in 1787, commented:

> At the separation from the British Empire, the people of America preferred the establishment of themselves into thirteen separate sovereignties instead of incorporating themselves into one: to these they look up for the security of their lives, liberties and properties: to these they must look up. The federal government they formed, to defend the whole against foreign nations, in case of war, and to defend the lesser States against the ambition of the larger: they are afraid of granting powers unnecessarily, lest they should defeat the original end of the Union; lest the powers should prove dangerous to the sovereignties of the particular States which the Union was meant to support....[47]

William Patterson, another delegate who later became Governor of New Jersey, had this to say of the intent of the Convention:

> Can we, on this ground, form a national Government? I fancy not. Our commissions give a complexion to the business; and can we suppose that, when we exceed the bounds of our duty, the people will approve our proceedings?
>
> We are met here as the deputies of thirteen independent, sovereign States, for

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46. Madison, *Federalist Papers*, Number XXXIX.

47. Luther Martin, speech delivered on 20 June 1787; in Madison, *Debate in the Federal Convention*, Volume I, page 205.

> federal purposes. Can we consolidate their sovereignty and form one nation, and annihilate the sovereignties of our States, who have sent us here for other purposes?[48]

Such statements as these are to be found in abundance throughout the writings, public statements, and private correspondence of the men living at the time of the adoption of the Constitution, especially those who were instrumental in the actual framing of the document. Since Story and Webster had access to many of these writings, especially the *Federalist Papers*, one is left to conclude that their groundless theories and postulations were the product of a deliberate and pre-meditated attempt to deceive their followers.

Abraham Lincoln Resurrects the Monarchical Theory

It was the hopelessly false monarchical theory of Story and Webster which Abraham Lincoln, contrary to the intent of the framers of the Constitution, contrary to the disunionist sentiments of prominent members of the Republican party, and contrary even to the pro-secession views expressed at one time by himself on the floor of Congress,[49] adopted and proclaimed in his first Inaugural Address of 4 March 1861:

> I hold that in contemplation of universal law and of the Constitution the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law

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48. William Patterson, in Madison, *ibid*., page 76.

49. Let the reader consider the words of Lincoln himself:

> Any people anywhere, being inclined and having the power, have the right to rise up and shake off the existing government, and form a new one that suits them better. This is a most valuable, a most sacred right — a right which we hope and believe is to liberate the world. Nor is this right confined to cases in which the whole people of an existing government may choose to exercise it. Any portion of such people, that can, may revolutionize, and make their own of so much of the territory as they inhabit (excerpt from a speech delivered in the U.S. House of Representatives on 12 January 1848; *Congressional Globe*, Volume XIX, page 94).

Technically, Lincoln was referring to the "right of revolution" stated in the Declaration of Independence rather than the right of a State under the Constitution to secede from the Union. This was just one of the many times he displayed his bent for inconsistencies. If the thirteen colonies had a right to secede from the British Crown to whom they were *subject*, why did not the thirteen Southern States have the right to peacefully withdraw from their sister States with whom they were *co-equals*? If the political condition of the States in 1861 was more mature than it had been in 1776, then so was their right of secession. If the right of secession existed under the royal charters which gave them existence, then it also existed under a Constitution which they, by an act of their sovereign ratification, had brought into existence. The logic is inescapable even though it was later lost on Lincoln when he was President.

> of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our National Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself....
>
> Descending from these general principles, we find the proposition that in legal contemplation the Union is perpetual confirmed by the history of the Union itself. The Union is much older than the Constitution. It was formed, in fact, by the Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured, and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778 [sic]. And finally, in 1787, one of the declared objects for ordaining and establishing the Constitution was "to form a more perfect Union." But if destruction of the Union by one or by a part only of the States be lawfully possible, the Union is less perfect than before the Constitution, having lost the vital element of perpetuity.
>
> It follows from these views that no State upon its own mere motion can lawfully get out of the Union; that resolves and ordinances to that effect are legally void, and that acts of violence within any State or States against the authority of the United States are insurrectionary or revolutionary, according to circumstances.
>
> I therefore consider that in view of the Constitution and the laws the Union is unbroken, and to the extent of my ability, I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States. Doing this I deem to be only a simple duty on my part, and I shall perform it so far as practicable unless my rightful masters, the American people, shall withhold the requisite means or in some authoritative manner direct the contrary. I trust this will not be regarded as a menace, but only as the declared purpose of the Union that it will constitutionally defend and maintain itself.[50]

Lincoln elaborated on this view in his address to Congress in special session on 4 July 1861:

> Our States have neither more nor less power than that reserved to them in the Union by the Constitution, no one of them ever having been a State *out* of the Union.... Having never been States, either in substance or in name, *outside* the Union, whence this magical omnipotence of "State rights," asserting a claim of power to lawfully destroy the Union itself? Much is said about the "sovereignty" of the States, but the word even is not in the National Constitution, nor, as is believed, in any of the State constitutions.... The States have their status in the Union, and they have no other legal status. If they break from this, they can do so only against law and by revolution. The Union, and not themselves separately, procured their independence and their liberty. By conquest or purchase the Union gave each of them whatever of independence and liberty it has. The Union is older

50. Lincoln, First Inaugural Address, in *Inaugural Addresses of the Presidents of the United States From George Washington to George Bush* (Washington, D.C.: Government Printing Office, 1989).

> than the States, and, in fact, it created them as States (emphasis in original).[51]

Lincoln, the lawyer, had either not done his homework or had chosen to ignore the clear testimony of the historical record. It was his assertion that no State had "been a State *out* of the Union... either in substance or in name." However, the States of North Carolina and Rhode Island were indeed, both "in substance and in name," out of the Union after the Constitution had already been in operation for, in the case of the former, nearly nine months, and in the case of the latter, a full fifteen months. It was hoped that both States would eventually ratify the Constitution and thus accede to the Union thereunder, but no one suggested that either North Carolina or Rhode Island should be treated by the eleven States of the then-existing federal Union as anything less than sovereign political bodies. For example, George Washington, in his capacity as President of the United States, wrote to the Senate on 26 September 1789, "Having yesterday received a letter written in this month by the Governor of Rhode Island, at the request and in behalf of the General Assembly of that State, addressed to the President, the Senate, and the House of Representatives of the eleven United States of America in Congress assembled, I take the earliest opportunity of laying a copy of it before you."[52] Portions of the letter mentioned by Washington follow:

> State of Rhode Island and Providence Plantations,
> In General Assembly, September Session, 1789.
>
> To the President, the Senate, and the House of Representatives of the eleven United States of America in Congress assembled:
>
> The critical situation in which the people of this State are placed engages us to make these assurances, on their behalf, of their attachment and friendship to their sister States, and of their disposition to cultivate mutual harmony and friendly intercourse. They know themselves to be a handful, comparatively viewed, and, although they now stand as it were alone, they have not separated themselves or departed from the principles of that Confederation, which was formed by the sister States in their struggle for freedom and in the hour of danger....
>
> Our not having acceded to or adopted the new system of government formed and adopted by most of our sister States, we doubt not, has given uneasiness to them. That we have not seen our way clear to it, consistently with our idea of the principles upon which we all embarked together, has also given pain to us. We have not doubted that we might

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51. Lincoln, address to Congress in special session; in James D. Richardson (editor), *A Compilation of the Messages and Papers of the Presidents* (Washington, D.C.: Bureau of National Literature, 1922), Volume VII, page 3228.

52. George Washington, letter to Congress, 26 September 1789. This document appears under the title "Rhode Island desires to maintain friendly relations with the United States" in *American State Papers: Miscellaneous*, Volume I, page 9.

thereby avoid present difficulties, but we have apprehended future mischief....

Can it be thought strange that, with these impressions, they should wait to see the proposed system organized and in operation? — to see what further checks and securities would be agreed to and established by way of amendments, before they could adopt it as a constitution of government for themselves and their posterity?...

We are induced to hope that we shall not be altogether considered as foreigners having no particular affinity or connection with the United States; but that trade and commerce, upon which the prosperity of this State much depends, will be preserved as free and open between this State and the United States, as our different situations at present can possibly admit....

We feel ourselves attached by the strongest ties of friendship, kindred, and interest, to our sister States; and we can not, without the greatest reluctance, look to any other quarter for those advantages of commercial intercourse which we conceive to be more natural and reciprocal between them and us.

I am, at the request and in behalf of the General Assembly, your most obedient, humble servant.

John Collins, Governor[53]

In the *Federalist* Number XLIII, Madison had raised the question, "What relation is to subsist between the nine or more States ratifying the Constitution, and the remaining few who do not become parties to it?" The above letter certainly supplied the answer. It could not be clearer to the unbiased reader that it was both unabashedly declared by Governor Collins and accepted without question by the authorities of the eleven United States of America, that, not only did Rhode Island have a lawfully functioning government prior to its entrance into the Union under the Constitution, but, as a sovereign State, it was also in all respects foreign to the United States. We have already seen how the people of Rhode Island clung tenaciously to and without equivocation declared their sovereignty in their ratification of the Constitution in May of 1790, which, incidentally, was passed by a mere majority of two votes.

Lincoln's claim that the States were never acknowledged in their constitutions as sovereign is also easily disproved. The original constitution of Massachusetts opened with these words: "The people inhabiting the territory formerly called the Province of Massachusetts Bay do hereby solemnly and mutually agree with each other to form themselves into a free, sovereign, and independent body politic, or State, by the name of The Commonwealth of Massachusetts." As we have seen, it was this attribute of sovereignty which was boldly asserted when Massachusetts repeatedly threatened to secede from the Union. The New Hampshire constitution likewise referred to the State as a "free, sovereign, and independent body politic." Of course, it was not necessary for a State to declare itself to be a sovereign power in its own constitution, for such a document was but the declared will of the people

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53. Rhode Island Governor John Collins, letter to The President, the Senate, and the House of Representatives of the eleven United States of America in Congress assembled; in *ibid.*, page 10.

of such State, in whom the sovereignty resided. It was well understood that, in a republic, as each State was and remained, a constitution may be changed or abolished as the people see fit. Lincoln was apparently under the delusion that the States were created by their constitutions, rather than *vice versa*.

Finally, the absurdity of Lincoln's assertion that the federal Constitution nowhere applies the attribute of sovereignty to a State should have been obvious to his audience. The Constitution did not need to explicitly refer to the several States as sovereign any more than it was necessary for the constitutions of the States to do so. This was because, in its own words, it was merely a compact entered into "between the States so ratifying the Same."[54] If the States were sovereign prior to their ratification of the Constitution, then they did not somehow lose that sovereignty simply because they failed to so declare themselves in the document of their own creation. We have already discussed how the States had once and for all time declared themselves in the Declaration of Independence to be "Free and Independent States," and were acknowledged to be such by King George III when he signed the peace treaty of 1783. In this condition, they asserted "full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do." It was this sovereign right to "contract alliances" that gave birth to the first Union under the Articles of Confederation in which document each State expressly reserved "its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled." This reservation was repeated in the Constitution, the Tenth Amendment of which states that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Nowhere in this document did the States surrender any portion of their sovereignty to the new federal Government, nor was it possible for them to have done so since true sovereignty is not an attribute capable of division:

> Under the American theory of republican government, conventions of the people, duly elected and accredited as such, are invested with the plenary power inherent in the people of an organized and independent community, assembled in mass. In other words, they represent and exercise what is properly the *sovereignty* of the people. State Legislatures, with restricted powers, do not possess or represent sovereignty. Still less does the Congress of a union or confederacy of States, which is by two degrees removed from the seat of sovereignty. We sometimes read or hear of "delegated sovereignty," "divided sovereignty," with other loose expressions of the same sort; but no such thing as a division or delegation of sovereignty is possible (emphasis in original).[55]
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> Whatever was done in establishing the Constitution of government, must have

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54. U.S. Constitution, Article VII.

55. Davis, *Rise and Fall of the Confederate Government*, Volume I, page 99.

> been done by sovereignty. Of course I speak of voluntary action, *i.e.* free exercise and effectuation of will. So that if any sovereignty was put in the federal pact, sovereignty must, *ex mero motu*, have divided itself. It must have exerted its will, whether it intended to divide itself, or delegate powers. When this will was exerted, the Constitution was made and established, and *the said will necessarily existed through the act*. We know, then, that it was not sovereignty, but something else that was put, *by sovereignty*, in the federal pact....
>
> Any thinking man can see that sovereignty's exercise of its right of government is functional, and involves no change of itself, in place, nature, or right, much less does it divide and conquer itself — committing *felo de se* (emphasis in original).[56]

Instead, what the States delegated to their common agent was power to act in certain specifically enumerated instances. Agency never involves an actual transfer of one particle of the principal's sovereignty to the agent; since the latter merely acts in behalf of and in representation of the former, a sovereign agent is an obvious contradiction in terms. In the words of the Supreme Court, "While sovereign powers are delegated to the agencies of government, sovereignty itself remains with the People, by whom and for whom, all government exists and acts."[57] Hence, we find that the articles establishing each of the three Branches of the Government begin with the words, "All legislative Powers herein granted shall be vested in a Congress of the United States" (Article I), "The executive Power shall be vested in a President of the United States of America" (Article II), and "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as Congress may from time to time ordain and establish" (Article III).

If one were inclined to use Lincoln's own logic against him, it might be argued that the federal Government cannot be sovereign because the Constitution nowhere says that it is so. However, we need not rely upon specious syllogisms to prove our point since the historical record clearly speaks for itself. In the *Federalist*, Number XL, Madison wrote that, under the new system of government, "the States, in all unenumerated cases, are left in the enjoyment of their sovereign and independent jurisdiction," adding that "the great principles of the Constitution proposed by the Convention may be considered less as absolutely new, than as the expansion of principles which are found in the Articles of Confederation." In Number XLIII, he described the Senate as "a palladium to the residuary sovereignty of the States" — that is, the inherent powers which the States withheld from the general Government. In Number LXXXI of the same series, Alexander Hamilton also stated, without equivocation, that the attribute of sovereignty "is now enjoyed by the government of every State

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56. Sage, *Republic of Republics*, pages 328, 329. See also Emmerich de Vattel, *The Law of Nations: Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns* (New York: Samuel Campbell, 1796), Book I, Chapter 1, Section 65; Francis Lieber, *Civil Liberty and Self Government* (Philadelphia, Pennsylvania: J.B. Lippincott and Company, 1859), page 156.

57. *Yick Wo vs. Hopkins and Woo Lee vs. Hopkins* (1886), 118 U.S. 356.

in the Union. Unless, therefore, there is a surrender of this immunity in the plan of the Convention, it will remain with the States...." No such surrender is to be found in Constitution, but rather the opposite is clearly declared in the Tenth Amendment.

In addition to Madison and Hamilton, we also have the united testimony of the other members of the 1787 Convention. John Dickinson, who had served as President of Delaware, and later of Pennsylvania, prior to attending the Convention, described the new system as "a confederacy of republics... in which the sovereignty of each state is represented with equal suffrage in one legislative body... and the sovereignties and people... conjointly represented in a president."[58] Gouverneur Morris, the delegate from Pennsylvania who presided over the Committee on Style which was responsible for the change in the wording of the Preamble, declared some years after the Constitution had gone into effect that it was "a compact, not between individuals, but between political societies... each enjoying sovereign power, and, of course, equal rights."[59] James Wilson, also of Pennsylvania, said that the States under the Constitution "confederate[d] anew on better principles" than under the Articles and that the resulting government was "a federal body of our own creation." He went on: "Let it be remembered that the business of the federal convention was not local, but general; not limited to the views and establishments of a single state, but co-extensive with the continent, and comprehending the views and establishments of thirteen independent sovereignties."[60] Tench Coxe, yet another delegate from Pennsylvania, said, "Had the federal convention meant to exclude the idea of union, that is, of several and separate sovereignties joining in a confederacy, they would have said, 'We, the people of America,' for union necessarily involves the idea of competent states, which complete consolidation excludes. But the severalty of the states is frequently recognised in the most distinct manner, in the course of the Constitution."[61]

Roger Sherman stated that "the government of the United States was instituted by a number of sovereign states for the better security of their rights, and the advancement of their interests."[62] Samuel Adams of Massachusetts, at the ratification convention of that State, boldly asserted that, "consonant with the second article" of the Articles of Confederation,

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58. John Dickinson, *The Political Writings of John Dickinson, Esquire* (Wilmington, Delaware: Bonsol and Niles, 1801), Volume II, page 107.

59. Gouverneur Morris, quoted by Jared Sparks, *Life of Gouverneur Morris With Selections From His Correspondence and Miscellaneous Papers* (Boston: Gary and Bowen, 1832), Volume III, page 193.

60. James Wilson, in Elliott, *Debates in the Several State Conventions*, Volume II, page 443.

61. Tench Coxe, quoted by George McHenry, *The Position and Duty of Pennsylvania: A Letter Addressed to the President of the Philadelphia Board of Trade* (London: Henry F. Mackintosh, 1863), page 90.

62. Roger Sherman, quoted by Sage, *Republic of Republics*, page 48.

each State in the new Union "retains its sovereignty, freedom, and independence, and every power... not expressly delegated to the united states."[63] These men were saying nothing different than such a noted authority on international law as Emmerich de Vattel, who wrote:

> Every nation that governs itself, under what form soever, without any dependence on foreign power, is a sovereign state....
>
> Several sovereign and independent states may unite themselves together by a perpetual confederacy, without each in particular ceasing to be a perfect state. They will form together a federal republic: the deliberations in common will offer no violence to the sovereignty of each member, though they may, in certain aspects, put some restraint on the exercise of it, in virtue of voluntary engagements. A person does not cease to be free and independent, when he is obliged to fulfill the engagements into which he has very willingly entered.[64]

As such, there could be nothing but self-imposed forbearance to keep the people of a State from exercising said sovereignty by withdrawing from the Union which they had entered of their own volition.

Thus, Lincoln's argument against State sovereignty and the right of secession rested upon the fallacious theory of Story and Webster that the American people form one conglomerate political mass, rather than a confederation of distinct political bodies. Furthermore, he interpreted the Constitution as if it were the source of political sovereignty, with certain powers being reserved by the same to each State as a king might grant a charter to a body of subjects desiring to form a colony. In light of the massive weight of evidence against these views, it is a wonder that Lincoln was not hooted from his platform by an angry crowd justly feeling their intelligence insulted by such ignorant drivel as was delivered in his first Inaugural Address. It is also no less a wonder that such nonsense was accepted by the Northern people as justification for war against the South. Bernard Janin Sage wrote:

> Would to God these perversions and blunders had been as harmless as they are amusing!... These are called "constitutional views!" If "views" at all, they are "views" *afar off* — through the moral mirage of platforms, partisan speeches, and sectional commentaries, which distort every thing, and turn it upside down. Why! if Hamilton, Jay, Washington, Hancock, Franklin, and all those fathers who were so fortunate as to die early, were to re-visit their beloved America, such "views" would astonish them as much as it would to see people standing on their heads, houses inverted, ships "walking the waters," with masts for legs; trees rooted in the sky; rivers running to their sources; or babes giving birth to their parents.
>
> They would find their voluntary union of states to have grown involuntary and indissoluble: states degraded to counties, and returned to a worse than British provincial-

63. Samuel Adams, in Elliott, *Debates in the Several State Conventions*, Volume II, page 131.

64. Vattel, *Law of Nations*, Book I, Chapter I, Sections 4, 10.

> ism; and the *quondam* governmental agency, transmuted to an "absolute supremacy," and swaying the sceptre of an empire! (emphasis in original)[65]

Sovereigns Cannot Rebel Against Their Agent

In his book *The American Union*, which was published in Great Britain just after the start of the war, James Spence asked the following questions:

> Assuredly there is no disposition in this country to lean in favour of turmoil; but we cannot realize an act as that of rebellion or treason or piracy, simply because these names are applied to it. We are told that in the United States the people are sovereign. Here is an act committed by many millions of this sovereign people; against whom do they rebel? Can a sovereign, or a large portion of a sovereignty, be a rebel? In the usual meaning of our language rebellion is an act of the subject. Are, then, many millions of the sovereign people of the United States subjects, and to whom? Who is the monarch so supreme that in comparison even the sovereignty of the people may be termed a rebel? Is it the law? But where is the law? Assertions are not laws, nor yet ambitious theories, nor yet conceptions of advantage. Laws are enactments solemn, comprehensive, on known and legible record. Where, then, is the law which the States of the South have broken? And if in America the Government be merely an agent, then, as there exists no law that forbids the secession of a State, against whom or what do they rebel?[66]

These were questions which the demagogues in the North never attempted to answer before marching their troops southward to subjugate sovereign States. Oddly enough, the doctrine of State sovereignty and the right of secession was well understood by leading Republicans until they were all infected with sudden mass amnesia by Lincoln's first Inaugural Address. For example, on 20 March 1850, William Seward, author of "The Irrepressible Conflict," stated, "Every man in this country, every man in Christendom, who knows anything of the philosophy of government, knows that this republic has been thus successful only by reason of the stability, strength, and greatness, of the individual States."[67]

On 9 November 1860, the editors of the New York *Herald* put these words into print: "The current of opinion seems to set strongly in favor of reconstruction, and leaving out the New England States. These latter are thought to be so fanatical it would be impossible there would be any peace under a Government to which they are parties."[68] Two days later, they continued: "The South has an undeniable right to secede from the Union. In the event of

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65. Sage, *Republic of Republics*, pages 238-239.

66. Spence, *American Union*, pages 290-291.

67. William H. Seward, quoted by Spence, *ibid.*, page 230.

68. New York *Herald*, 9 November 1860; quoted by Edmonds, *Facts and Falsehoods*, page 180.

secession, the City of New York, the State of New Jersey, and very likely Connecticut, will separate from New England, where the black man is put on a pinnacle above the white. New York City is for the Union first, and for the gallant and chivalrous South afterwards."[69] Also on the ninth of November, Horace Greeley, editor of the Republican organ, the New York *Tribune*, expressed much the same sentiments:

> If the cotton States consider the value of the Union debatable, we maintain their perfect right to discuss it; nay, we hold with Jefferson, to the inalienable right of communities to alter or abolish forms of government that have become oppressive or injurious: and if the cotton States decide that they can do better out of the Union than in it, we insist on letting them go in peace. The right to secede may be a revolutionary one, but it exists nevertheless; and we do not see how one party can have a right to do what another party has a right to prevent. We must ever resist the asserted right of any State to remain in the Union and nullify or defy the laws thereof: to withdraw from the Union is quite another matter. And, whenever a considerable section of our Union shall deliberately resolve to go out, we shall resist all coercive measures designed to keep her in. We hope never to live in a republic whereof one section is pinned to the residue by bayonets.[70]

On the seventeenth of December, only three days before the secession of South Carolina, he continued, "If it [the Declaration of Independence] justified the secession from the British Empire of three millions of colonists in 1776, we do not see why it would not justify the secession of five millions of Southrons from the Federal Union in 1861. If we are mistaken on this point, why does not some one attempt to show wherein and why?"[71] Of course, none of Greeley's fellow Republicans dared take up his challenge until after war hysteria had seized the North four months later, because they knew that the historical and constitutional evidence would not have led rational minds to any other conclusion. Wendell Phillips, for example, responded to news of the secession of the Gulf States with these words: "'The covenant with death' is annulled; 'the agreement with hell' is broken to pieces. The chain which has held the slave system since 1787 is parted. Thirty years ago, Southern leaders, sixteen years ago, Northern Abolitionists, announced their purpose to seek the dissolution of the American Union. Who dreamed that success would come so soon?"[72] Senator Charles Sumner of Massachusetts said, "Nothing can possibly be so horrible, so wicked or

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69. New York *Herald*, 11 November 1860; quoted by Edmonds, *ibid.*, page 176.

70. New York *Tribune*, 9 November 1860; quoted by Horace Greeley, *The American Conflict* (Hartford, Connecticut: O.D. Chase, 1866), Volume I, page 359.

71. New York *Tribune*, 17 December 1860; quoted by George Ticknor Curtis, *Life of James Buchanan, Fifteenth President of the United States* (New York: D. Appleton and Company, 1883), Volume II, page 430.

72. Phillips, speech delivered on 20 January, 1861; in Phillips, *Speeches, Lectures, and Letters*, page 343.

so foolish as a war on the South."[73] Senator Benjamin F. Wade of Ohio, who was even more vocal in declaring "the States in their sovereignty" to be "the judge in the last resort of the violation of the Constitution of the United States," asserted "the rights of the States to protect their own citizens" against efforts "to consolidate this government into a miserable despotism."[74] On 4 December 1856, he had this to say on the floor of the Senate:

> If they [the Southern people] do not feel interested in upholding this Union — if it really entrenches on their rights — if it endangers their institutions to such an extent that they cannot feel secure under it — if their interests are violently assailed by the means of this Union, I am not one of those who expect that they will long continue under it. I am not one of those who ask them to continue in such a Union. It would be doing violence to the platform of the party to which I belong. We have adopted the old Declaration of Independence as the basis of our political movements, which declares that any people, when their Government ceases to protect their rights, when it is so subverted from the true purposes of government as to oppress them, have the right to recur to fundamental principles, and if need be, to destroy the Government under which they live, and to erect upon its ruins another conducive to their welfare. I hold that they have this right. I will not blame any people for exercising it, whenever they think the contingency has come. I certainly shall be an advocate of that same doctrine whenever I find that the principles of this Government have become so oppressive to the section to which I belong, that a free people ought not longer to endure it.... I hope the Union will continue forever. I believe it may continue forever. I see nothing at present which I think should dissolve it; but if other gentlemen see it, I say again that they have the same interest in maintaining this Union, in my judgment, as we of the North have. If they think they have not, be it so. You cannot forcibly hold men in the Union; for the attempt to do so, it seems to me, would subvert the first principles of the Government under which we live.[75]

On the eighteenth of December, 1860, he again stated, "I do not... so much blame the people of the South; because they believe, and they are led to believe by all the information that comes before them, that we, the dominant party to-day, who have just seized upon the reins of this Government, are their mortal enemies, and stand ready to trample their institutions under foot."[76] Wade's feigned sympathy was hardly convincing, for it had been the prominent members of the "dominant party" themselves, repeatedly in their own speeches

73. Charles Sumner, quoted by *North American Review* (October, 1879), page 378.

74. Benjamin F. Wade, quoted by Hunter McGuire and George L. Christian, *The Confederate Cause and Conduct in the War Between the States* (Richmond, Virginia: L.H. Jenkins, Inc., 1907), page 43.

75. Wade, speech delivered in the Senate on 4 December 1856; *Congressional Globe* (Thirty-Four Congress, Third Session), page 25.

76. Wade, speech delivered in the Senate on 17 December 1860; *ibid.* (Thirty-Sixth Congress, Second Session), page 100.

and published works, who had led the Southern people to view them as "mortal enemies." The Senator's hypocrisy was further demonstrated when he made the following statements after the war had commenced:

> And, after all this, to talk of a Union! Sir, I have said you have no Union. I say you have no Union to-day worthy of the name. I am here a conservative man, knowing, as I do, that the only salvation to your Union is that you divest it entirely from all the taints of slavery. If we can't have that, then I go for no Union at all; but I go for a — fight![77]

> I would reduce the aristocratic slaveholders to utter poverty. I know they are conceited; I know they are essentially aristocratic. I am fully persuaded that their minds and their feelings are so in antagonism to Republican Democratic doctrines that it is impossible to reconcile them, and we shall never have peace until we have reduced the leaders to utter poverty, and taken thereby their influence away. I am for doing it. It ought to be done.[78]

In light of these facts, we must ask the question, Did the States of the North possess the right "to protect their own citizens" from "the violation of the Constitution of the United States" — or worse, from the threatened wholesale murder of helpless women and children — while the States of the South were somehow destitute of this right? Apparently so, for it should be noted that Greeley, Phillips, Sumner, and Wade would, only a few months later, become the most vicious mouthpieces of Republican hatred of the Southern people, calling for, at least in Wade's case, their utter destruction as a just punishment for merely asserting and acting upon the very ideals expressed by the Chicago Convention which nominated Abraham Lincoln in 1860:

> *Resolved*, That the maintenance inviolate of the rights of the States, and especially the right of each State to order and control its own domestic institutions, according to its own judgment exclusively, is essential to that balance of power on which the perfection and endurance of our political fabric depends, and we denounce the lawless invasion by armed force of the soil of any State or Territory, no matter what pretext, as among the gravest of crimes.[79]

On his way to Washington, D.C. to be inaugurated as President of the United States, Lincoln further elaborated on his party's platform in a speech which he delivered at his home in Springfield, Illinois: "What is 'invasion'? Would the marching of an army into South

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77. Wade, quoted by Lunt, *Origin of the Late War*, page 388.

78. Wade, speech delivered in the Senate on 25 June 1862; *Congressional Globe* (Thirty-Seventh Congress, Second Session); quoted by Carpenter, *Logic of History*, page 91.

79. Thomas Hudson McKee, *National Conventions and Platforms of All Political Parties 1789-1900* (Baltimore, Maryland: Friedenwald Company, 1900), page 68.

Carolina, without the consent of her people, and with hostile intent toward them be 'invasion'? I certainly think it would, and it would be 'coercion' also if South Carolinians were forced to submit."[80] As we shall see, Lincoln was a criminal by his party's and his own definition of the word.

80. Lincoln, address to the Indiana State Legislature on 12 February 1861; in *Harper's Weekly*, 23 February 1861, page 119; Greeley, *American Conflict*, Volume I, page 419.

SUPPORTING DOCUMENT

John C. Calhoun's Response to Daniel Webster

Congressional Globe — 26 February 1833

The Senator from Massachusetts in his argument against the Resolutions, directed his attack almost exclusively against the first; on the ground, I suppose, that it was the basis of the other two, and that, unless the first could be demolished, the others would follow of course. In this he was right. As plain and as simple as the facts contained in the first are, they cannot be admitted to be true without admitting the doctrines for which I, and the State I represent, contend. He commenced his attack with a verbal criticism on the Resolution, in the course of which he objected strongly to two words, "constitutional" and "accede." To the former, on the ground that the word, as used (constitutional compact), was obscure — that it conveyed no definite meaning — and that Constitution was a noun-substantive, and not an adjective. I regret that I have exposed myself to the criticism of the Senator. I certainly did not intend to use any expression of doubtful sense, and if I have done so, the Senator must attribute it to the poverty of my language, and not to design I trust, however, that the Senator will excuse me, when he comes to hear my apology. In matters of criticism, authority is of the highest importance, and I have an authority of so high a character, in this case, for using the expression which he considers so obscure and so unconstitutional, as will justify me even in his eyes. It is no less than the authority of the Senator himself — given on a solemn occasion (the discussion on Mr. Foote's Resolution), and doubtless with great deliberation, after having duly weighed the force of the expression:

> Nevertheless, I do not complain, nor would I countenance any movement to alter this arrangement of representation. It is the original bargain — the Compact — let it stand — let the advantage of it be fully enjoyed. The Union itself is too full of benefits to be

> hazarded in propositions for changing its original basis. I go for the Constitution, as it is, and for the Union, as it is. But I am resolved not to submit, in silence, to accusations, either against myself, individually, or against the North, wholly unfounded and unjust — accusations which impute to us a disposition to evade the *Constitutional compact*, and to extend the power of the Government over the internal laws and domestic condition of the States.

It will be seen by this extract that the Senator not only used the phrase "constitutional compact," which he now so much condemns, but, what is still more important, he calls the Constitution a compact — a bargain — which contains important admissions, having a direct and powerful bearing on the main issue, involved in the discussion, as will appear in the sequel. But, strong as his objection is to the word "constitutional," it is still stronger to the word "accede," which, he thinks, has been introduced into the Resolution with some deep design, as I suppose, to entrap the Senate into an admission of the doctrine of State Rights. Here, again, I must shelter myself under authority. But I suspect the Senator, by a sort of instinct (for our instincts often strangely run before our knowledge), had a prescience, which would account for his aversion for the word, that this authority was no less than Thomas Jefferson himself, the great apostle of the doctrine of State Rights. The word was borrowed from him. It was taken from the Kentucky Resolutions, as well as the substance of the resolution itself. But I trust I may neutralize whatever aversion the authorship of this word may have excited in the mind of the Senator, by the introduction of another authority — that of Washington, himself — who, in his speech to Congress, speaking of the admission of North Carolina into the Union, uses this very term, which was repeated by the Senate in their reply. Yet, in order to narrow the ground between the Senator and myself as much as possible, I will accommodate myself to his strange antipathy against the two unfortunate words, by striking them out of the Resolution, and substituting — in their place, those very words which the Senator himself has designated as constitutional phrases. In the place of that abhorred adjective "constitutional," I will insert the very noun substantive "constitution;" and, in the place of the word "accede," I will insert the word "ratify," which he designates as the proper term to be used.

As proposed to be amended, the Resolution would read:

> Resolved, That the people of the several States composing these United States are united as parties to a compact, under the title of the Constitution of the United States, which the people of each State ratified as a separate and Sovereign community, each binding itself by its own particular ratification; and that the Union of which the said compact is the bond, is a union *between* the States ratifying the same.

Where, sir, I ask, is that plain case of revolution? Where that hiatus, as wide as the globe, between the premises and the conclusion, which the Senator proclaimed would be apparent, if the Resolution was reduced into constitutional language? For my part, with my poor powers of conception, I cannot perceive the slightest difference between the Resolution,

as first introduced, and as it is proposed to be amended in conformity to the views of the Senator. And, instead of that hiatus between the premises and conclusion, which seems to startle the imagination of the Senator, I can perceive nothing but a continuous and solid surface, sufficient to sustain the magnificent superstructure of State Rights. Indeed, it seems to me that the Senator's vision is distorted by the medium through which he views every thing connected with the subject; and that the same distortion which has presented to his imagination this hiatus, as wide as the globe, where not even a fissure exists, also presented that beautiful and classical image of a strong man struggling in a bog, without the power of extricating himself, and incapable of being aided by any friendly hand; while, instead of struggling in a bog, he stands on the everlasting rock of truth.

Having now noticed the criticisms of the Senator, I shall proceed to meet and repel the main assault on the Resolution. He directed his attack against the strong point, the very horn of the citadel of State Rights. The Senator clearly perceived that, if the Constitution be a compact, it was impossible to deny the assertions contained in the Resolutions, or to resist the consequences which I had drawn from them, and, accordingly, directed his whole fire against that point; but, after so vast an expenditure of ammunition, not the slightest impression, so far as I can perceive, has been made. But to drop the simile, after a careful examination of the notes which I took of what the Senator said, I am now at a loss to know whether, in the opinion of the Senator, our Constitution is a compact or not, though the almost entire argument of the Senator was directed to that point. At one time he would seem to deny directly and positively that it was a compact, while at another he would appear, in language not less strong, to admit that it was.

I have collated all that the Senator has said upon this point; and, that what I have stated may not appear exaggerated, I will read his remarks in juxtaposition. He said that, "The Constitution means a Government, not a compact." "Not a constitutional compact, but a Government." "If compact, it rests on plighted faith, and the mode of redress would be to declare the whole void." "States may secede, if a league or compact."

I thank the Senator for these admissions, which I intend to use hereafter.

"The States agreed that each should participate in the sovereignty of the other." Certainly, a very correct conception of the Constitution; but where did they make that agreement but by the Constitution, and how could they agree but by compact?

"The system, not a compact between States in their sovereign capacity, but a Government proper, founded on the adoption of the people, and creating individual relations between itself and the citizens." This, the Senator lays down as a leading, fundamental principle to sustain his doctrine, and, I must say, with strange confusion and uncertainty of language; not, certainly, to be explained by any want of command of the most appropriate words on his part.

"It does not call itself a compact, but a constitution. The Constitution rests on compact, but it is no longer a compact." I would ask, to what compact does the Senator refer, as that on which the Constitution rests? Before the adoption of the present Constitution, the States had formed but one compact, and that was the old Confederation; and, certainly, the

gentleman does not intend to assert that the present Constitution rests upon that. What, then, is his meaning? What can it be, but that the Constitution itself is a compact? And how will his language read, when fairly interpreted, but that the Constitution was a compact, but is no longer a compact? It had, by some means or another, changed its nature, or become defunct.

He next states that "A man is almost untrue to his country who calls the Constitution a compact." I fear the Senator, in calling it a compact, a bargain, has called down this heavy denunciation on his own head. He finally states that "It is founded on compact, but not a compact." "It is the result of a compact." To what are we to attribute this strange confusion of words? The Senator has a mind of high order, and perfectly trained to the most exact use of language. No man knows better the precise import of the words he uses. The difficulty is not in him, but in his subject. He who undertakes to prove that this Constitution is not a compact, undertakes a task which, be his strength ever so great, must oppress him by its weight. Taking the whole of the argument of the Senator together, I would say that it is his impression that the Constitution is not a compact, and will now proceed to consider the reason which he has assigned for this opinion.

He thinks there is an incompatibility between *constitution* and *compact*. To prove this, he adduces the words "ordain and establish," contained in the preamble of the Constitution. I confess I am not capable of perceiving in what manner these words are incompatible with the idea that the Constitution is a compact. The Senator will admit that a single State may ordain a constitution; and where is the difficulty, where the incompatibility, of two States concurring in ordaining and establishing a constitution? As between the States themselves, the instrument would be a compact; but in reference to the Government, and those on whom it operates, it would be ordained and established — ordained and established by the joint authority of two, instead of the single authority of one.

The next argument which the Senator advances to show that the language of the Constitution is irreconcilable with the idea of its being a compact, is taken from that portion of the instrument which imposes prohibitions on the authority of the States. He said that the language used, in imposing the prohibitions, is the language of a superior to an inferior; and that, therefore, it was not the language of a compact, which implies the equality of the parties. As a proof, the Senator cited several clauses of the Constitution which provide that no State shall enter into treaties of alliance and confederation, lay imposts, etc., without the assent of Congress. If he had turned to the Articles of the old Confederation, which he acknowledges to have been a compact, he would have found that those very prohibitory articles of the Constitution were borrowed from that instrument; that the language, which he now considers as implying superiority, was taken *verbatim* from it. If he had extended his researches still further, he would have found that it is the habitual language used in treaties, whenever a stipulation is made against the performance of any act. Among many instances, which I could cite, if it were necessary, I refer the Senator to the celebrated treaty negotiated by Mr. Jay with Great Britain, in 1793, in which the very language used in the Constitution is employed.

To prove that the Constitution is not a compact, the Senator next observes that it

stipulates nothing, and asks, with an air of triumph, "Where are the evidences of the stipulations between the States?" I must express my surprise at this interrogatory, coming from so intelligent a source. Has the Senator never seen the ratifications of the Constitution by the several States? Did he not cite them on this very occasion? Do they contain no evidence of stipulations on the part of the States? Nor is the assertion less strange that the Constitution contains no stipulations.

So far from regarding it in the light in which the Senator regards it, I consider the whole instrument but a mass of stipulations. What is that but a stipulation to which the Senator refers when he states, in the course of his argument, that each State had agreed to participate in the Sovereignty of the others.

But the principal argument on which the Senator relied to show that the Constitution is not a compact, rests on the provision, in that instrument, which declares that "this Constitution, and laws made in pursuance thereof, and treaties made under their authority, are the supreme law of the land." He asked, with marked emphasis, "Can a compact be the supreme law of the land?" His argument, in fact, as conclusively proves that treaties are not compacts as that the Constitution is not a compact. I might rest the issue on this decisive answer; but, as I desire to leave not a shadow of doubt on this important point, I shall follow the gentleman in the course of his reasoning.

He defines a Constitution to be a fundamental law, which organizes the Government, and points out the mode of its action. I will not object to the definition, though, in my opinion, a more appropriate one, or, at least, one better adapted to American ideas, could be given. My objection is not to the definition, but to the attempt to prove that the fundamental laws of a State cannot be a compact, as the Senator seems to suppose. I hold the very reverse to be the case; and that, according to the most approved writers on the subject of Government, these very fundamental laws which are now stated not only not to be compacts, but inconsistent with the very idea of compacts, are held invariably to be compacts; and, in that character, are distinguished from the ordinary laws of the country. I will cite a single authority, which is full and explicit on this point, from a writer of the highest repute.

Burlamaqui says, vol. ii, part 1, chap. i, sees. 35, 36, 37, 38:

> It entirely depends upon a free people to invest the Sovereigns, whom they place over their heads, with an authority either absolute or limited by certain laws. These regulations, by which the supreme authority is kept within bounds, are called *the fundamental laws of the State*. The fundamental laws of a State, taken in their full extent, are not only the decrees by which the entire body of the nation determine the form of Government, and the manner of succeeding to the Crown, but are likewise covenants between the people and the person on whom they confer the Sovereignty, which regulate the manner of governing, and by which the supreme authority is limited.
>
> These regulations are called fundamental laws, because they are the basis, as it were, and foundation of the State on which the structure of the Government is raised, and, because the people look upon these regulations as their principal strength and support.
>
> The name of laws, however, has been given to these regulations in an improper

and figurative sense, for, properly speaking, they are real covenants. But as these covenants are obligatory between the contracting parties, they have the force of laws themselves.

The same, vol. ii, part 2, ch. i, sees. 19 and 22, in part:

The whole body of the nation, in whom the supreme power originally resides, may regulate the Government by a fundamental law, in such manner, as to commit the exercise of the different parts of the supreme power to different persons or bodies, who may act independently of each other in regard to the rights committed to them, but still subordinate to the laws from which those rights are derived.

And these fundamental laws are real covenants, or what the civilians call *pacta conventa*, between the different orders of the republic, by which they stipulate that each shall have a particular part of the Sovereignty, and that this shall establish the form of Government. It is evident that, by these means, each of the contracting parties acquires a right, not only of exercising the power granted to it, but also of preserving that original right.

A reference to the constitution of Great Britain, with which we are better acquainted than with that of any other European Government, will show that that is a compact. Magna Charta may certainly be reckoned among the fundamental laws of that kingdom. Now, although it did not assume, originally, the form of a compact, yet, before the breaking up of the meeting of the Barons which imposed it on King John, it was reduced into the form of a covenant, and duly signed by Robert Fitzwalter and others, on the one part, and the King on the other.

But we have a more decisive proof that the Constitution of England is a compact, in the resolution of the Lords and Commons, in 1688, which declared, "King James the Second, having endeavored to subvert the constitution of the kingdom, by breaking the original contract between the King and people, and having, by the advice of Jesuits and other wicked persons, violated the fundamental law, and withdrawn himself out of the kingdom, hath abdicated the Government, and that the throne is thereby become vacant."

But why should I refer to writers upon the subject of Government, or inquire into the constitution of foreign States, when there are such decisive proofs that our Constitution is a compact? On this point the Senator is estopped. I borrow from the gentleman, and thank him for the word. His adopted State, which he so ably represents on this floor, and his native State, the States of Massachusetts and New Hampshire, both declared, in their ratification of the Constitution, that it was a compact. The ratification of Massachusetts is in the following words:

The Convention having impartially discussed, and fully considered, the Constitution for the United States of America, reported to Congress by the Convention of Delegates from the United States of America, and submitted to us by a resolution of the General Court of the said commonwealth, passed the 25th day of October last past, and ac-

> knowledging, with grateful hearts, the goodness of the Supreme Ruler of the universe in affording the people of the United States, in the course of his providence, an opportunity, deliberately and peaceably, without fraud or surprise, of entering into an explicit and solemn compact with each other, by assenting to and ratifying a new Constitution, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, do, in the name and in behalf of the people of the commonwealth of Massachusetts, assent to and ratify the said Constitution for the United States of America.

The ratification of New Hampshire is taken from that of Massachusetts, and almost in the same words. But proof, if possible, still more decisive, may be found in the celebrated resolutions of Virginia on the alien and sedition law, in 1798, and the responses of Massachusetts and the other States. These resolutions expressly assert that the Constitution is a compact between the States, in the following language:

> That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the States are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.
>
> That the General Assembly doth also express its deep regret, that a spirit has in sundry instances, been manifested by the federal government, to enlarge its powers by forced constructions of the constitutional charter which defines them; and that implications have appeared of a design to expound certain general phrases (which having been copied from the very limited grant of power in the former Articles of Confederation were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases; and so as to consolidate the States by degrees, into one sovereignty, the obvious tendency and inevitable consequence of which would be, to transform the present republican system of the United States into an absolute, or at best a mixed monarchy.

They were sent to the several States. We have the replies of Delaware, New York, Connecticut, New Hampshire, Vermont, and Massachusetts, not one of which contradicts this important assertion on the part of Virginia; and, by their silence, they all acquiesce in its truth.

Now, I ask the Senator himself — I put it to his candor to say, if South Carolina be estopped on the subject of the protective system, because Mr. Burke and Mr. Smith proposed a moderate duty on hemp, or some other article, I know not what, nor do I care, with a view of encouraging its production (of which motion, I venture to say, not one individual in a

hundred in the State ever heard), whether he and Massachusetts, after this clear, full, and solemn recognition that the Constitution is a compact (both on his part and that of his State), be not forever estopped or this important point?

There remains one more of the Senator's arguments, to prove that the Constitution is not a compact, to be considered. He says it is not a compact, because it is a Government; which he defines to be an organized body, possessed of the will and power to execute its purposes by its own proper authority; and which, he says, bears not the slightest resemblance to a compact. But I would ask the Senator, Whoever considered a Government, when spoken of as the agent to execute the powers of the Constitution, and distinct from the Constitution itself, as a compact? In that light it would be a perfect absurdity. It is true that, in general and loose language, it is often said that the Government is a compact, meaning the Constitution which created it, and vested it with authority to execute the powers contained in the instrument; but when the distinction is drawn between the Constitution and the Government, as the Senator has done, it would be as ridiculous to call the Government a compact, as to call an individual, appointed to execute the provisions of a contract, a contract; and not less so to suppose that there could be the slightest resemblance between them. In connection with this point, the Senator, to prove that the Constitution is not a compact, asserts that it is wholly independent of the State and pointedly declares that the States have not a right to touch a hair of its head; and this, with that provision in the Constitution that three-fourths of the States have a right to alter, change, amend, or even to abolish it, staring him in the face.

I have examined all of the arguments of the Senator intended to prove that the Constitution is not a compact; and I trust I have shown, by the clearest demonstration, that his arguments are perfectly inconclusive, and that his assertion is against the clearest and most solemn evidence — evidence of record, and of such a character that it ought to close his lips forever.

I turn now to consider the other, and, apparently contradictory aspect in which the Senator presented this part of the subject: I mean that in which he states that the Government is founded in compact, but is no longer a compact. I have already remarked, that no other interpretation could be given to this assertion, except that the Constitution was once a compact, but is no longer so. There was a vagueness and indistinctness in this part of the Senator's argument, which left me altogether uncertain as to its real meaning. If he meant, as I presume he did, that the compact is an executed, and not an executory one — that its object was to create a Government, and to invest it with proper authority — and that, having executed this office, it had performed its functions, and, with it, had ceased to exist, then we have the extraordinary avowal that, the Constitution is a dead letter — that it had ceased to have any binding effect, or any practical influence or operation.

It has, indeed, often been charged that the Constitution has become a dead letter; that it is continually violated, and has lost all its control over the Government; but no one has ever before been bold enough to advance a theory on the avowed basis that it was an executed, and, therefore, an extinct instrument. I will not seriously attempt to refute an argument, which, to me, appears so extravagant. I had thought that the Constitution was to endure

forever; and that, so far from its being an executed contract, it contained great trust powers for the benefit of those who created it, and of all future generations — which never could be finally executed during the existence of the world, if our Government should so long endure.

I will now return to the first Resolution, to see how the issue stands between the Senator from Massachusetts and myself. It contains three propositions. First, that the Constitution is a compact; second, that it was formed by the States, constituting distinct communities; and, lastly, that it is a, subsisting and binding compact between the States. How do these three propositions now stand? The first, I trust, has been satisfactorily established; the second, the Senator has admitted, faintly, indeed, but still he has admitted it to be true. This admission is something. It is so much gained by discussion. Three years ago even this was a contested point. But I cannot say that I thank him for the admission; we owe it to the force of truth. The fact that these States were declared to be free and independent States at the time of their independence; that they were acknowledged to be so by Great Britain in the treaty which terminated the war of the Revolution, and secured their independence; that they were recognized in the same character in the old Articles of the Confederation; and, finally, that the present Constitution was formed by a Convention of the several States; afterwards submitted to them for their respective ratifications, and was ratified by them separately, each for itself, and each, by its own act, binding its citizens — formed a body of facts too clear to be denied, and too strong to be resisted.

It now remains to consider the third and last proposition contained in the Resolution, — that it is a binding and a subsisting compact between the States. The Senator was not explicit on this point. I understood him, however, as asserting that, though formed by the States, the Constitution was not binding between the States as distinct communities, but between the American people in the aggregate; who, in consequence of the adoption of the Constitution, according to the opinion of the Senator, became one people, at least to the extent of the delegated powers. This would, indeed, be a great change. All acknowledge that, previous to the adoption of the Constitution, the States constituted distinct and independent communities, in full possession of their Sovereignty; and, surely, if the adoption of the Constitution was intended to effect the great and important change in their condition which the theory of the Senator supposes, some evidence of it ought to be found in the instrument itself. It professes to be a careful and full enumeration of all the powers which the States delegated, and of every modification of their political condition. The Senator said that he looked to the Constitution in order to ascertain its real character; and, surely, he ought to look to the same instrument in order to ascertain what changes were, in fact, made in the political condition of the States and the country. But, with the exception of "we, the people of the United States," in the preamble, he has not pointed out a single indication in the Constitution, of the great change which as he conceives, has been effected in this respect.

Now, sir, I intend to prove, that the only argument on which the gentleman relies on this point, must utterly fail him. I do not intend to go into a critical examination of the expression of the preamble to which I have referred. I do not deem it necessary. But if it were, it might be easily shown that it is at least as applicable to my view of the Constitution as to

that of the Senator; and that the whole of his argument on this point rests on the ambiguity of the term *thirteen United States*; which may mean certain territorial limits, comprehending within them the whole of the States and Territories of the Union. In this sense, the people of the United States may mean *all* the people living within these limits, without reference to the States or Territories in which they may reside, or of which they may be citizens; and it is in this sense only, that the expression gives the least countenance to the argument of the Senator.

But it may also mean, *the States united*, which inversion alone, without further explanation, removes the ambiguity to which I have referred. The expression in this sense, obviously means no more than to speak of the people of the several States in their united and confederated capacity; and, if it were requisite, it might be shown that it is only in this sense that the expression is used in the Constitution. But it is not necessary. A single argument will forever settle this point. Whatever may be the true meaning of the expression, it is not applicable to the condition of the States as they exist under the Constitution, but as it was under the old Confederation, before its adoption. The Constitution had not yet been adopted, and the States, in ordaining it, could only speak of themselves in the condition in which they then existed, and not in that in which they would exist under the Constitution. So that, if the argument of the Senator proves any thing, it proves, not (as he supposes) that the Constitution forms the American people into an aggregate mass of individuals, but that such was their political condition before its adoption, under the old Confederation, directly contrary to his argument in the previous part of this discussion.

But I intend not to leave this important point, the last refuge of those who advocate consolidation, even on this conclusive argument. I have shown that the Constitution affords not the least evidence of the mighty change of the political condition of the States and the country, which the Senator supposed it effected; and I intend now, by the most decisive proof, drawn from the instrument itself, to show that no such change was intended, and that the people of the States are united under it as States, and not as individuals. On this point there is a very important part of the Constitution entirely and strangely overlooked by the Senator in this debate, as it is expressed in the first Resolution, which furnishes conclusive evidence not only that the Constitution is a compact, but a subsisting compact, binding between the States. I allude to the seventh Article, which provides that the ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution "*between the States* so ratifying the same." Yes, *"between the States."* These little words mean a volume. Compacts, not laws, bind *between* States; and it here binds, not as between individuals, but between *the States*: the States *ratifying*; implying, as strong as language can make it, that the Constitution is what I have asserted it to be — a compact, ratified. by the States, and a subsisting compact, binding the States ratifying it.

But, sir, I will not leave this point, all-important in establishing the true theory of our Government, on this argument alone, as demonstrative and conclusive as I hold it to be. Another, not much less powerful, but of a different character, may be drawn from the tenth amended Article, which provides that the powers not delegated to the United States by the

Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people. The Article of Ratification, which I have just cited, informs us that the Constitution, which delegates powers, was ratified by the States, and is binding between them. This informs us to whom the powers are delegated — a most important fact in determining the point immediately at issue between the Senator and myself. According to his views, the Constitution created a union between individuals, if the solecism may be allowed, and that it formed, at least to the extent of the powers delegated, one people, and not a Federal Union of the States, as I contend; or, to express the same idea differently, that the delegation of powers was to the American people in the aggregate (for it is only by such delegation that they could be constituted one people), and not to the *United States* — directly contrary to the Article just cited, which declares that the powers are delegated to the United States. And here it is worthy of notice, that the Senator cannot shelter himself under the ambiguous phrase, "to the people of the United States," under which he would certainly have taken refuge, had the Constitution so expressed it; but fortunately for the cause of truth and the great principles of constitutional liberty for which I am contending, "people," is omitted: thus making the delegation of power clear and unequivocal to the *United States*, as distinct political communities, and conclusively proving that all the powers delegated are reciprocally delegated by the States to each other, as distinct political communities.

So much for the delegated powers. Now, as all admit, and as it is expressly provided for in the Constitution, the *reserved* powers are reserved "to the States *respectively*, or to the people." None will pretend that, as far as they are concerned, we are one people, though the argument to prove it, however absurd, would be far more plausible than that which goes to show that we are one people to the extent of the delegated powers. This reservation "to the people" might, in the hands of subtle and trained logicians, be a peg to hang a doubt upon; and had the expression "to the people" been connected, as fortunately it is not, with the delegated instead of the reserved powers, we should not have heard of this in the present discussion.

I have now established, I hope, beyond the power of controversy, every allegation contained in the first Resolution — that the Constitution is a compact formed by the people of the several States, as distinct political communities, and subsisting and binding between the States in the same character; which brings me to the consideration of the consequences which may be fairly deduced, in reference to the character of our political system, from these established facts.

The first and most important is, they conclusively establish that ours is a Federal system — a system of States arranged in a Federal Union, each retaining its distinct existence and sovereignty. Ours has every attribute which belongs to a Federative System. It is founded on compact; it is formed by sovereign communities, and is binding between them in their sovereign capacity. I might appeal, in confirmation of this assertion, to all elementary writers on the subject of Government, but will content myself with citing one only. Burlamaqui, quoted with approbation by Judge Tucker, in his *Commentary on Blackstone*, himself a high authority, says:

Political bodies, whether great or small, if they are constituted by a people formerly independent, and under no civil subjection, or by those who justly claim independence from any civil power they were formerly subject to, have the civil supremacy in themselves, and are in a State of equal right and liberty with respect to all other States, whether great or small. No regard is to be had in this matter to names, whether the body-politic be called a kingdom, an empire, a principality, a dukedom, a country, a republic, or free town. If it can exercise justly all the essential parts of civil power within itself, independently of any other person or body-politic — and no other has any right to rescind or annul its acts — it has the civil supremacy, how small soever its territory may be, or the number of its people, and has all the rights of an independent State.

This independence of States, and their being distinct political bodies from each other, is not obstructed by any alliance or confederacies whatsoever, about exercising jointly any parts of the supreme powers, such as those of peace and war, in league offensive and defensive. Two States, notwithstanding such treaties, are separate bodies, and independent.

These are, then, only deemed politically united, when some one person or council is constituted with a right to exercise some essential powers for both, and to hinder either from exercising them separately. If any person or council is empowered to exercise all these essential powers for both, they are then one State: such is the State of England and Scotland, since the Act of Union made at the beginning of the eighteenth century, whereby the two kingdoms were incorporated into one, all parts of the supreme power of both kingdoms being thenceforward united, and vested in the three Estates of the realm of Great Britain; by which entire coalition, though both kingdoms retain their ancient laws and usages in many respects, they are as effectually united and incorporated, as the several petty kingdoms, which composed the heptarchy, were before that period.

But when only a portion of the supreme civil power is vested in one person or council for both, such as that of peace and war, or of deciding controversies between different States, or their subjects, while each, within itself, exercises other parts of the supreme power, independently of all the others — in this case they are called *Systems of States*, which Burlamaqui defines to be an assemblage of perfect Governments, strictly united by some common bond, so that they seem to make but a single body with respect to those affairs which interest them in common, though each preserves its Sovereignty, full and entire, independently of all others. And in this case, he adds, the Confederate States engage to each other only to exercise, with common consent, certain parts of the Sovereignty, especially that which relates to their mutual defence against foreign enemies. But each of the Confederates retains an entire liberty of exercising, as it thinks proper, those parts of the Sovereignty which are not mentioned in the treaty of Union, as parts that ought to be exercised in common. And of this nature is the American Confederacy, in which each State has resigned the exercise of certain parts of the supreme civil power which they possessed before (except in common with the other States included in the Confederacy), reserving to themselves all their former powers, which are not delegated to the United States by the common bond of Union.

A visible distinction, and not less important than obvious, occurs to our observation, in comparing these different kinds of Union. The kingdoms of England and Scotland

are united into one kingdom; and the two contracting States, by such an incorporate Union, are, in the opinion of Judge Blackstone, totally annihilated, without any power of revival; and a third arises from their conjunction, in which all the rights of Sovereignty, and particularly that of Legislation, are vested. From whence he expresses a doubt, whether any infringements of the fundamental and essential conditions of the Union would, of itself, dissolve the Union of those kingdoms; though he readily admits that, in the case of a *Federate* alliance, such an infringement would certainly rescind the compact between the Confederated States. In the United States of America, on the contrary, each State retains its own antecedent form of Government; its own laws, subject to the alteration and control of its own Legislature only; its own executive officers and council of State; its own courts of Judicature, its own judges, its own magistrates, civil officers, and officers of the militia; and, in short, its own civil State, or body politic, in every respect whatsoever. And by the express declaration of the 12th article of the amendments to the Constitution, the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. In Great Britain, a new *civil State* is created by the annihilation of two antecedent civil States; in the American States, a general *Federal* council and administration is provided, for the joint exercise of such of their several powers as can be more conveniently exercised in that mode than any other, leaving their *civil State* unaltered; and all the other powers, which the States antecedently possessed, to be exercised by them respectively, as if no Union or connection were established between them.

The ancient Achaia seems to have been a Confederacy founded upon a similar plan; each of those little States had its distinct possessions, territories, and boundaries; each had its Senate or Assembly, its magistrates and judges; and every State sent Deputies to the General Convention, and had equal weight in all determinations. And most of the neighboring States which, moved by fear of danger, acceded to this Confederacy, had reason to felicitate themselves.

These Confederacies, by which several States are united together by a perpetual league of alliance, are chiefly founded upon this circumstance, that each particular people choose to remain their own masters, and yet are not strong enough to make head against a common enemy. The purport of such an agreement usually is, that they shall not exercise some part of the Sovereignty, there specified, without the general consent of each other. For the leagues, to which these systems of States owe their rise, seem distinguished from others (so frequent among different States), chiefly by this consideration, that, in the latter, each confederate people determine themselves, by their own judgment, to certain mutual performances; yet so that, in all other respects, they design not, in the least, to make the exercise of that part of the Sovereignty, whence these performances proceed, dependent on the consent of their allies, or to retrench any thing from their full and unlimited power of governing their own States. Thus, we see that ordinary treaties propose, for the most part, as their aim, only some particular advantage of the States thus transacting — their interests happening, at present, to fall in with each other — but do not produce any lasting union as to the chief management of affairs. Such was the treaty of alliance between America and France, in the year 1778, by which, among other articles, it was agreed that neither of the two parties should conclude either truce or peace with Great Britain, without the formal consent of the other, first obtained, and whereby they mutually engaged not to

> lay down their arms until the independence of the United States should be formally or tacitly assured by the treaty or treaties which should terminate the war. Whereas, in these confederacies of which we are now speaking, the contrary is observable, they being established with this design, that the several States shall forever link their safety, one with another; and, in order to their mutual defence, shall engage themselves not to exercise certain parts of their Sovereign power, otherwise than by a common agreement and approbation. Such were the stipulations, among others, contained in the Articles of Confederation and perpetual Union between American States, by which it was agreed that no State should, without the consent of the United States, in Congress assembled, send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with, any king, prince or State; nor keep up any vessels of war, or body of forces, in time of peace; nor engage in any war, without the consent of the United States in Congress assembled, unless actually invaded; nor grant commissions to any ships of war, or letters of marque and reprisal, except after a declaration of war by the United States in Congress assembled, with several others; yet each State, respectively, retains its Sovereignty, freedom and independence, and every power, jurisdiction and right which is not expressly delegated to the United States in Congress assembled. The promises made in these two cases, here compared, run very differently; in the former, thus: I will join you, in this particular war, as a confederate, and the manner of our attacking the enemy shall be concerted by our common advice; nor will we desist from war, till the particular end thereof, the establishment of the independence of the United States, be obtained in the latter, thus: None of us who have entered into this alliance, will make use of our right as to the affairs of war and peace, except by the general consent of the whole confederacy. We observed before that these Unions submit only some certain parts of the Sovereignty to mutual direction; for it seems hardly possible that the affairs of different States should have so close a connection, as that all and each of them should look on it as their interest to have no part of the chief Government exercised without the general concurrence. The most convenient method, therefore, seems to be, that the particular States reserve to themselves all those branches of the supreme authority, the management of which can have little or no influence in the affairs of the rest.

If we compare our present system with the old Confederation, which all acknowledge to have been *Federal* in its character, we shall find that it possesses all the attributes which belong to that form of Government as fully and completely as that did. In fact, *in this particular*, there is but a single difference, and that not essential, as regards the point immediately under consideration, though very important in other respects. The Confederation was the act of the State Governments, and formed a union of Governments. The present Constitution is the act of the States themselves, or, which is the same thing, of the people of the several States, and forms a union of them as Sovereign communities. The States, previous to the adoption of the Constitution, were as separate and distinct political bodies as the Governments which represent them, and there is nothing in the nature of things to prevent them from uniting under a compact, in a Federal Union, without being blended in one mass, any more than uniting the Governments themselves, in like manner, without merging them in a single Government. To illustrate what I have stated by reference to ordinary transactions, the Con-

federation was a contract between agents — the present Constitution a contract between the principals themselves; or, to take a more analogous case, one is a League made by ambassadors; the other, a League made by Sovereigns — the latter no more tending to unite the parties into a single Sovereignty than the former. The only difference is in the solemnity of the act and the force of the obligation.

We will now proceed to consider some of the conclusions which necessarily follow from the facts and positions already established. They enable us to decide a question of vital importance under our system: Where does sovereignty reside? If I have succeeded in establishing the fact that ours is a Federal system, as I conceive I conclusively have, that fact of itself determines the question which I have proposed. It is of the very essence of such a system, that the sovereignty is in the parts, and not in the whole; or, to use the language of Mr. Palgrave, "The parts are the units in such a system, and the whole the multiple; and not the whole the unit and the parts the fractions." Ours, then, is a Government of twenty-four Sovereignties, united by a constitutional compact, for the purpose of exercising certain powers through a common Government as their joint agent, and not a Union of the twenty-four Sovereignties into one, which, according to the language of the Virginia Resolutions, already cited, would form a Consolidation. And here I must express my surprise that the Senator from Virginia should avow himself the advocate of these very Resolutions, when he distinctly maintains the idea of a Union of the States in one Sovereignty, which is expressly condemned by these Resolutions as the essence of a consolidated Government.

Another consequence is equally clear, that, whatever modifications were, made in the condition of the States under the present Constitution, they extended only to the exercise of their powers by compact, and not to the sovereignty itself, and are such as Sovereigns are competent to make: it being a conceded point, that it is competent to them to stipulate to exercise their powers in a particular manner, or to abstain altogether from their exercise, or to delegate them to agents, without in any degree impairing sovereignty itself. The plain state of the facts, as regards our Government, is, that these States have agreed by compact to exercise their sovereign powers jointly, as already stated; and that, for this purpose, they have ratified the compact in their sovereign capacity, thereby making it the constitution of each State, in nowise distinguished from their own separate constitutions, but in the super-added obligation of compact — of faith mutually pledged to each other. In this compact, they have stipulated, among other things, that it may be amended by three fourths of the States: that is, they have conceded to each other by compact the right to add new powers or to subtract old, by the consent of that proportion of the States, without requiring, as otherwise would have been the case, the consent of all: a modification no more inconsistent, as has been supposed, with their sovereignty, than any other contained in the compact. In fact, the provision to which I allude furnishes strong evidence that the Sovereignty is, as I contend, in the States severally, as the amendments are effected, not by any one three fourths, but by any three fourths of the States, indicating that the sovereignty is in each of the States.

If these views be correct, it follows, as a matter of course, that the allegiance of the people is to their several States, and that treason consists in resistance to the joint authority

of the *States* united, not, as has been absurdly contended, in resistance to the Government of the United States, which, by the provision of the Constitution, has only the right of punishing.

Having now said what I intended in relation to my first Resolution, both in reply to the Senator from Massachusetts, and in vindication of its correctness, I will now proceed to consider the conclusions drawn from it in the second Resolution — that the General Government is not the exclusive and final judge of the extent of the powers delegated to it, but that the States, as parties to the compact, have a right to judge, in the last resort, of the infractions of the compact, and of the mode and measure of redress.

It can scarcely be necessary, before so enlightened at body, to premise that our system comprehends two distinct Governments — the General and State Governments, which, properly considered, form but one — the former representing the joint authority of the States in their Confederate capacity, and the latter that of each States separately. I have premised this fact simply with a view of presenting distinctly the answer to the argument offered by the Senator from Massachusetts to prove that the General Government has a final and exclusive right to judge, not only of delegated powers, but also of those reserved to the States. That gentleman relies for his main argument on the assertion that a Government, which he defines to be an organized body, endowed with both will, and power, and authority in *proprio vigore* to execute its purpose, has a right inherently to judge of its powers. It is not my intention to comment upon the definition of the Senator, though it would not be difficult to show that his ideas of Government are not very American. My object is to deal with the conclusion, and not the definition. Admit then, that the Government has the right of judging of its powers, for which he contends. Now, then, will he withhold, upon his own principle, the right of judging from the State Governments, which he has attributed to the General Government? If it belongs to one, on his principle, it belongs to both; and if to both, when they differ, the veto, so abhorred by the Senator, is the necessary result: as neither, if the right be possessed by both, can control the other.

The Senator felt the force of this argument, and, in order to sustain his main position, he fell back on that clause of the Constitution which provides that "this Constitution, and the laws made in pursuance thereof, shall be the supreme law of the land." This is admitted; no one has ever denied that the Constitution, and the laws made in *pursuance* of it, are of paramount authority. But it is equally undeniable that laws *not* made in pursuance are not only not of paramount authority, but are of no authority whatever, being of themselves null and void; which presents the question, who are to judge whether the laws be or be not pursuant to the Constitution? and thus the difficulty, instead of being taken away, is removed but one step further back. This the Senator also felt, and has attempted to overcome, by setting up, on the part of Congress and the judiciary, the final and exclusive right of judging, both for the Federal Government and the States, as to the extent of their respective powers. That I may do full justice to the gentleman, I will give his doctrine in his own words. He states:

> That there is a supreme law, composed of the Constitution, the laws passed in

> pursuance of it, and the treaties; but in cases coming before Congress, not assuming the shape of cases in law and equity, so as to be subjects of judicial discussion, Congress must interpret the Constitution so often as it has occasion to pass laws; and in cases capable of assuming a judicial shape, the Supreme Court must be the final interpreter.

Now, passing over this vague and loose phraseology, I would ask the Senator upon what principle can he concede this extensive power to the Legislative and Judicial departments, and withhold it entirely from the Executive? If one has the right it cannot be withheld from the other. I would also ask him on what principle — if the departments of the General Government are to possess the right of judging, finally and conclusively, of their respective powers — on what principle can the same right be withheld from the State Governments, which, as well as the General Government, properly considered, are but departments of the same general system, and form together, properly speaking, but one Government? This was a favorite idea of Mr. Macon, for whose wisdom I have a respect increasing with my experience, and who I have frequently heard say, that most of the misconceptions and errors in relation to our system, originated in forgetting that they were but parts of the same system. I would further tell the Senator, that, if this right be withheld from the State Governments; if this restraining influence, by which the General Government is confined to its proper sphere, be withdrawn, then that department of the Government from which he has withheld the right of judging of its own powers (the Executive), will, so far from being excluded, become the *sole* interpreter of the powers of the Government. It is the *armed* interpreter, with powers to execute its own construction, and without the aid of which the construction of the other departments will be impotent.

But I contend that the States have a far clearer right to the sole construction of their powers than any of the departments of the Federal Government have. This power is expressly reserved, as I have stated on another occasion, not only against the several departments of the General Government, but against the United States themselves. I will not repeat the arguments which I then offered on this point, and which remain unanswered, but I must be permitted to offer strong additional proof of the views then taken, and which, if I am not mistaken, are conclusive on this point. It is drawn from the ratification of the Constitution by Virginia, and is in the following words:

> We, the Delegates of the people of Virginia, duly elected in pursuance of a recommendation from the General Assembly, and now met in Convention, having fully and freely investigated and discussed the proceedings of the Federal Convention, and being prepared, as well as the most mature deliberation hath enabled us, to decide thereon, do, in the name and in behalf of the people of Virginia, declare and make known that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them, whensoever the same shall be perverted to their injury or oppression, and that every power not granted thereby remains with them, and at their will; that, therefore, no right, of any denomination, can be cancelled, abridged, restrained, or modified, by the Congress, by the Senate or House of Representatives, acting in any capacity,

> by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that, among other essential rights, the liberty of conscience, and of the press, cannot be cancelled, abridged, restrained, or modified by any authority of the United States. With these impressions, with a solemn appeal to the Searcher of all hearts for the purity of our intentions, and under the conviction that whatsoever imperfections may exist in the Constitution ought rather to be examined in the mode prescribed therein, than to bring the Union in danger by a delay, with the hope of obtaining amendments previous to the ratifications, we, the said Delegates, in the name and in the behalf of the people of Virginia, do, by these presents, assent to and ratify the Constitution recommended, on the 17th day of September, 1787, by the Federal Convention for the Government of the United States, hereby announcing to all those whom it may concern, that the said Constitution is binding upon the said people, according to an authentic copy hereto annexed, in the words following....

It thus appears that this sagacious State (I fear, however, that her sagacity is not so sharp-sighted now as formerly) ratified the Constitution, with an explanation as to her reserved powers; that they were powers subject to her own will, and reserved against every department of the General Government — Legislative, Executive, and Judicial — as if she had a prophetic knowledge of the attempts now made to impair and destroy them: which explanation can be considered in no other light than as containing a condition on which she ratified, and, in fact, making part of the Constitution of the United States — extending as well to the other States as herself. I am no lawyer, and it may appear to be presumption in me to lay down the rule of law which governs in such cases, in a controversy with so distinguished an advocate as the Senator from Massachusetts. But I shall venture to lay it down as a rule in such cases, which I have no fear that the gentleman will contradict, that, in case of a contract between several partners, if the entrance of one on condition be admitted, the condition enures to the benefit of all the partners. But I do not rest the argument simply upon this view. Virginia proposed the tenth amended article, the one in question, and her ratification must be at least received as the highest evidence of its true meaning and interpretation.

If these views be correct — and I do not see how they can be resisted — the rights of the States to judge of the extent of their reserved powers stands on the most solid foundation, and is good against every department of the General Government; and the judiciary is as much excluded from an interference with the reserved powers as the Legislative or Executive departments. To establish the opposite, the Senator relies upon the authority of Mr. Madison, in the *Federalist*, to prove that it was intended to invest the Court with the power in question. In reply, I will meet Mr. Madison with his own opinion, given on a most solemn occasion, and backed by the sagacious Commonwealth of Virginia. The opinion to which I allude will be found in the celebrated Report of 1799, of which Mr. Madison was the author. It says:

> But it is objected, that the judicial authority is to be regarded as *the sole expositor of the Constitution in the last resort*; and it may be asked for what reason the declaration

> by the General Assembly, supposing it to be theoretically true, could be required at the present day, and in so solemn a manner.
>
> On this objection it might be observed, *first*, that there may be instances of usurped power, which the forms of the Constitution would never draw within the control of the Judicial department; *secondly*, that, if the decision of the judiciary be raised above the authority of the Sovereign parties to the Constitution, the decisions of the other departments, not carried by the forms of the Constitution before the judiciary, must be equally authoritative and final as the decisions of this department. But the proper answer to this objection is, that the Resolution of the General Assembly relates to those great and extraordinary cases in which all the forms of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The Resolution supposes that dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the Judicial department, also, may exercise or sanction dangerous powers beyond the grant of the Constitution; and, consequently, that the ultimate right of the parties to the Constitution to judge whether the Compact was dangerously violated, must extend to violations by one delegated authority as well as by another; by the judiciary as well as by the executive or the Legislature.

But why should I waste words in reply to these or any other authorities, when it has been so clearly established that the rights of the States are reserved against each and every department of the Government, and no authority in opposition can possibly shake a position so well established? Nor do I think it necessary to repeat the argument which I offered when the bill was under discussion, to show that the clause in the Constitution which provides that the judicial power shall extend to all cases in law or equity arising under this Constitution, and to the laws and treaties made under its authority, has no bearing on the point in controversy; and that even the boasted power of the Supreme Court to decide a law to be unconstitutional, so far from being derived from this or any other portion of the Constitution, results from the necessity of the case — where two rules of unequal authority come in conflict — and is a power belonging to all courts, superior and inferior, State and General, Domestic, and Foreign.

I have now, I trust, shown satisfactorily, that there is no provision in the Constitution to authorize the General Government, through any of its departments, to control the action of a State within the sphere of its reserved powers; and that, of course, according to the principle laid down by the Senator from Massachusetts himself, the Government of the States, as well as the General Government, has the right to determine the extent of their respective powers, without the right on the part of either to control the other. The necessary result is the veto, to which he so much objects; and to get clear of which, he informed us, was the object for which the present Constitution was formed. I know not whence he has derived his information, but my impression is very different, as to the immediate motives which led to the formation of that instrument. I have always understood that the principle was, to give to Congress the power to regulate commerce, to lay impost duties, and to raise a revenue for the payment of the public debt and the expenses of the Government; and to subject the action of the citizens, individually, to the operation of the laws, as a substitute for force. If the

object had been to get clear of the veto of the States, as the Senator states, the Convention, certainly, performed their work in a most bungling manner. There was, unquestionably, a large party in that body, headed by men of distinguished talents and influence, who commenced early and worked earnestly to the last, to deprive the States — not directly, for that would have been too bold an attempt, but indirectly — of the veto. The good sense of the Convention, however, put down every effort, however disguised and perseveringly made. I do not deem it necessary to give, from the journals, the history of these various and unsuccessful attempts — though it would afford a very instructive lesson. It is sufficient to say that it was attempted, by proposing to give to Congress power to annul the acts of the States which they might deem inconsistent with the Constitution; to give to the President the power of appointing the Governors of the States, with a view of vetoing State laws through his authority; and, finally, to give the judiciary the power to decide controversies between the States and the General Government; all of which failed — fortunately for the liberty of the country — utterly and entirely failed; and in this failure we have the strongest evidence, that it was not the intention of the Convention to deprive the States of the veto power. Had the attempt to deprive them of this power been directly made, and failed, every one would have seen and felt, that it would furnish conclusive evidence in favor of its existence. Now, I would ask, what possible difference can it make in what form this attempt was made? Whether by attempting to confer on the General Government a power incompatible with the exercise of the veto on the part of the States, or by attempting directly to deprive them of the right to exercise it? We have thus direct and strong proof that, in the opinion of the Convention, the States, unless deprived of it, possess the veto power — or, what is another name for the same thing, the right of nullification. I know that there is a diversity of opinion among the friends of State Rights in regard to this power, which I regret, as I cannot but consider it as a power essential to the protection of the minor and local interests of the community, and the liberty and the Union of the country. It is the very shield of State Rights, and the only power by which that system of injustice against which we have contended for more than thirteen years can be arrested: a system of hostile Legislation — of plundering by law, which must necessarily lead to a conflict of arms, if not prevented.

But I rest the right of a State to judge of the extent of its reserved powers, in the last resort, on higher grounds — that the Constitution is a compact, to which the States are parties in their Sovereign capacity; and that, as in all other cases of compact between parties having no common umpire, each has a right to judge for itself. To the truth of this proposition, the Senator from Massachusetts has himself assented, if the Constitution itself be a compact — and that it is, I have shown, I trust, beyond the possibility of a doubt. Having established this point, I now claim, as I stated I would do, in the course of the discussion, the admissions of the Senator, and, among them, the right of secession and nullification, which he conceded would necessarily follow if the Constitution be, indeed, a Compact.

I have now replied to the arguments of the Senator from Massachusetts so far as they directly apply to the Resolutions, and will, in conclusion, notice some of his general and detached remarks. To prove that ours is a consolidated Government, and that there is an

immediate connection between the Government and the citizen, he relies on the fact that the laws act directly on individuals. That such is the case I will not deny; but I am very far from conceding the point that it affords the decisive proof, or even any proof at all, of the position which the Senator wishes to maintain. I hold it to be perfectly within the competency of two or more States to subject their citizens, in certain cases, to the direct action of each other, without surrendering or impairing their sovereignty. I recollect, while I was a member of Mr. Monroe's cabinet, a proposition was submitted by the British Government to permit a mutual right of search and seizure, on the part of each Government, of the citizens of the other, on board of vessels engaged in the slave trade, and to establish a joint tribunal for their trial and punishment. The proposition was declined, not because it would impair the sovereignty of either, but on the ground of general expediency, and because it would be incompatible with the provisions of the Constitution which establish the judicial power, and which provisions require the judges to be appointed by the President and Senate. If I am not mistaken, propositions of the same kind were made and acceded to by some of the Continental powers.

With the same view the Senator cited the suability of the States as evidence of their want of sovereignty; at which I must express my surprise, coming from the quarter it does. No one knows better than the Senator that it is perfectly within the competency of a sovereign State to permit itself to be sued. We have on the statute-book a standing law, under which the United States may be sued in certain land cases. If the provision in the Constitution on this point proves any thing, it proves, by the extreme jealousy with which the right of suing a State is permitted, the very reverse of that for which the Senator contends.

Among other objections to the views of the Constitution for which I contend, it is said that they are novel. I hold this to be a great mistake. The novelty is not on my side, but on that of the Senator from Massachusetts. The doctrine of consolidation which he maintains is of recent growth. It is not the doctrine of Hamilton, Ames, or any of the distinguished Federalists of the period, all of whom strenuously maintained the Federative character of the Constitution, though they were accused of supporting a system of policy which would necessarily lead to consolidation. The first disclosure of that doctrine was in the case of M'Culloch; in which the Supreme Court held the doctrine, though wrapped up in language somewhat indistinct and ambiguous. The next, and more open avowal, was by the Senator of Massachusetts himself, about three years ago, in the debate on Foote's resolution. The first official annunciation of the doctrine was in the recent proclamation of the President, of which the bill that has recently passed this body is the bitter fruit.

It is further objected by the Senator from Massachusetts, and others, against the doctrine of State Rights; as maintained in this debate, that, if it should prevail, the peace of the country would be destroyed. But what if it should not prevail? Would there be peace? Yes, the peace of despotism: that peace which is enforced by the bayonet and the sword; the peace of death, where all the vital functions of liberty have ceased. It is this peace which the doctrine of State Sovereignty may disturb by that conflict, which, in every free State, if properly organized, necessarily exists between liberty and power; but which, if restrained within proper limits, gives a salutary exercise to our moral and intellectual, faculties. In the

case of Carolina, which has caused all this discussion, who does not see if the effusion of blood be prevented, that the excitement, the agitation, and the inquiry which it has caused, will be followed by the most beneficial consequences? The country had sunk into avarice, intrigue, and electioneering — from which nothing but some such event could rouse it, or restore those honest and patriotic feelings which had almost disappeared under their baneful influence. What Government has ever attained power and distinction without such conflicts? Look at the degraded state of all those nations where they have been put down by the iron arm of the Government.

I, for my part, have no fear of any dangerous conflict, under the fullest acknowledgment of State Sovereignty: the very fact that the States may interpose will produce moderation and justice. The General Government will abstain from the exercise of any power in which they may suppose three fourths of the States will not sustain them; while, on the other hand, the States will not interpose but on the conviction that they will be supported by one fourth of their co-States. Moderation and justice will produce confidence, attachment and patriotism; and these, in turn, will offer most powerful barriers against the excess of conflicts between the States and the General Government.

But we are told that, should the doctrine prevail, the present system would be as bad, if not worse, than the old Confederation. I regard the assertion only as evidence of that extravagance of declaration in which, from excitement of feeling, we so often indulge. Admit the power, and still the present system would be as far removed from the weakness of the old Confederation as it would be from the lawless and despotic violence of consolidation. So far from being the same, the difference between the Confederation and the present Constitution would still be most strongly marked. If there were no other distinction, the fact that the former required the concurrence of the States to execute its acts, and the latter, the act of a State to arrest them, would make a distinction as broad as the ocean. In the former, the *vis inertiae* of our nature is in opposition to the action of the system. Not to act was to defeat. In the latter the same principle is on the opposite side — action is required to defeat. He who understands human nature will see, in this fact alone, the difference between a feeble and illy-contrived Confederation, and the restrained energy of a Federal system. Of the same character is the objection that the doctrine will be the source of weakness. If we look to mere organization and physical power as the only source of strength, without taking into the estimate the operation of moral causes, such would appear to be the fact; but if we take into the estimate the latter, we shall find that those Governments have the greatest strength in which power has been most efficiently checked. The Government of Rome furnishes a memorable example. There, two independent and distinct powers existed — the people acting by Tribes, in which the Plebeians prevailed, and by Centuries, in which the Patricians ruled. The Tribunes were the appointed representatives of the one power, and the Senate of the other; each possessed of the authority of checking and overruling one another, not as departments of the Government, as supposed by the Senator from Massachusetts, but as independent powers — as much so as the State and General Governments. A shallow observer would perceive, in such an organization, nothing but the perpetual source of anarchy, discord, and weakness;

and yet experience has proved that it was the most powerful Government that ever existed; and reason teaches that this power was derived from the very circumstances which hasty reflection would consider the cause of weakness, I will venture an assertion, which may be considered extravagant, but in which history will fully bear me out, that we have no knowledge of any people where the power of arresting the improper acts of the Government, or what may be called the negative power of Government, was too strong — except Poland, where every freeman possessed a veto. But even there, although it existed in so extravagant a form, it was the source of the highest and most lofty attachment to liberty, and the most heroic courage: qualities that more that once saved Europe from the domination of the crescent and cimeter. It is worthy of remark, that the fate of Poland is not to be attributed so much to the excess of this negative power of itself, as to the facility which it afforded to foreign influence in controlling its political movements.

I am not surprised that, with the idea of a perfect Government which the Senator from Massachusetts has formed — a Government of an absolute majority, unchecked and unrestrained, operating through a representative body — he should be so much shocked with what he is pleased to call the absurdity of the State *veto*. But let me tell him that his scheme of a perfect Government, as beautiful as he conceives it to be, though often tried, has invariably failed — has always run, whenever tried, through the same uniform process of faction, corruption, anarchy, and despotism. He considers the representative principle as the great modern improvement in legislation, and of itself sufficient to secure liberty. I cannot regard it in the light in which he does. Instead of modern, it is of remote origin, and has existed, in greater or less perfection, in every free State, from the remotest antiquity. Nor do I consider it as of itself sufficient to secure liberty, though I regard it as one of the indispensable means — the means of securing the people against the tyranny and oppression of their *rulers*. To secure liberty, another means is still necessary — the means of securing the different portions of society against the injustice and oppressions of each other, which can only be effected by *veto*, interposition, or nullification, or by whatever name the restraining or negative power of Government may be called.

SUPPLEMENTARY ESSAY

The Constitutional Right of Secession

by James Spence

Secession is by no means a novel doctrine. In the first session of Congress under the new Constitution, it was threatened in the first serious contest that arose; and this in the presence of several of the framers of the Constitution. Again, when Washington expressed reluctance to be elected as President for a second term, Jefferson wrote to urge his assent; and the weightiest reason he assigned, in proof that the country required experience at the head of affairs, was this — that the coming election would involve great danger of a "secession from the Union" of those who should be defeated. It can hardly be supposed that this right would have been openly declared by members of Congress, or that the probability of the event would have been thus urged on Washington had it been regarded by public opinion as an illegal or treasonable act. It seems rather to be inferred that there existed in the minds of those, who with the facts so recent were most competent to judge, a conviction that the right existed and might be exercised — that able and just government would avoid it — but still that it was there.

The doctrine, indeed, has been maintained and loudly declared, both in the North and South, at frequent periods in the history of the Union. Jefferson, in his *Ana*, refers to that occasion of its being first raised in Congress, and observes that it was the Eastern, that is, the Northern States, who especially threatened to secede. He describes a walk with Hamilton, in which the latter painted pathetically the danger of the secession of their members, and the separation of the States. And the Northern States were the first to raise it practically. The war of 1813 was highly unpopular in that district, and when called upon by the President to supply their quotas of militia, they absolutely declined. In the words of Jefferson to Lafayette: "During the war four of the Eastern States were only attached to the Union, like so many

inanimate bodies to living men." But they went far beyond inaction. They called a Convention at Hartford, of which the proceedings were suppressed, but the object is well known; a flag appeared with five stripes, secession was threatened in the loudest terms, nor can there be a doubt in the mind of any one who studies the events of that period, that the New England States would have seceded from the Union had the war continued.

The State of Massachusetts has threatened, indeed, on four separate occasions to secede from the Union. First, in the debates referred to on the adjustment of the State debts; secondly, on the purchase of Louisiana and its admission into the Union; thirdly, during the war of 1813; and fourthly, on the annexation of Texas, when, we believe, one chamber of her legislature actually passed a vote of secession. On these occasions it was no mere act of excited individuals, but the general voice of the community. Yet this State is now the loudest in denouncing it, when inconvenient to herself; and a bastile is now said to be preparing in the vicinity of Boston, for the incarceration of those as political prisoners, who simply utter the opinions which, when it suited, this very State has so often and so vehemently expressed.

It has been a popular illustration with the advocates of the Union, that if a State may secede, so may a county from a State, or a town from a county, until society break up into chaos. The fallacy of this is very obvious. A State claims to secede in virtue of her right as a sovereignty. When a county becomes a sovereignty it may prefer an equal claim, but then it cannot be a county. The comparison fails in other respects. The secession of a State from others is the case of men who separate; the secession of a county would be that of a limb torn from the body. There is also no such practical danger as that which has been described. The secession of a single State would be suicidal; it would be surrounded with custom-houses, cramped with restrictions, and crushed under the expenses involved. North Carolina and Rhode Island, after refusing to join the Union, and holding out for more than two years, were at last constrained to accede, by the same causes which will always prevent any State from attempting to stand alone. Practically the right could not be exercised, even if conceded, except by a number of States together, sufficient in resources to enable them to maintain their position, and to endure the heavy cost of a separate government. Indeed, if justly governed, it is by no means clear why there should be any desire to secede.

A much more subtle argument was used by Jefferson, since often repeated. He observed that if one State claimed the right to secede from the rest, the others would have equal right to secede from one State, which would amount to turning it out of the Union. The argument is based on the assumption that a State, claiming the one, and objecting to the other, would exhibit a conflict of principles. But a State would protest against ejection because it involves compulsion; and she claims a right to retire, because if compelled to remain, that is equally a compulsory restraint. Both really involve the same principle; ejection and imprisonment are equally acts of compulsion: and this principle is alike objected to in both cases.

It has been argued that a State would thus claim the right to exercise her will against the others, whilst denying them the right to use their will as against herself. But the case is not one of will within the limit of individual action, but of compulsion extending to, and

exercised over, another. A State compelled to go or to remain has a forcible restraint imposed on its will; but in seceding it imposes no restraint on the will of others — they remain free to follow, or continue as before.

It has been urged that reasonable men would not have formed a system exposed to ruin at any time by the secession of its constituents. But the question is not whether the terms of the compact were wise or prudent, but simply what those terms are, and the force they possess. Men make injudicious wills, but these cannot be disputed on the ground of their narrow wisdom. The argument ignores, too, the facts which surrounded the framing of the Constitution. It was the result of a series of compromises. Hence that which may appear unreasonable for any community to have enacted for itself, is reasonable enough when viewed correctly, as the best system it was possible to compass under the circumstances.

Much stress has been laid on the term "supreme," as applied to the federal laws. In reality their only supremacy is in extent — in extending throughout the whole country, whilst the action of a State law is confined within its boundaries. Apart from this, the State is as supreme as the federal law. No question exists of relative rank, of any superiority; each is supreme in its own department, both are equally powerless beyond it. The Federal Government has indeed no absolute law-making power; for all its laws are liable to be declared void by the Supreme Court. That court declared null and void the most important law ever passed by the federal legislature — the Missouri compromise. It sits not merely as the interpreter, but as the judge of the law.

It has been argued that the present Constitution differs in principle from the Articles of Confederation, in enabling the Federal Government to act directly on individuals, instead of doing so through the State governments. The inference is drawn that the sovereignty of the States has been surrendered by this concession. Had such a right been committed to a foreign Government, or to any substantive power, this might have been a natural inference. But the Federal Government has no substantive power, and is only the joint agent of the States. These act directly on their own citizens, each through its special government or agent, in the great majority of cases. They agree to act on them through the Federal or common agent in certain other specified cases. This is simply a more effective manner of procedure, a question of detail, greatly improving the administration, but affecting in nowise the question of sovereignty. Further, it was pointed out by Madison in the Convention that the principle itself was not new, but existed under the Articles of Confederation, in several cases which he specified.

A federal republic is a partnership of republics. It has been argued that, admitting this to be the case, still, when once formed, it could not be dissolved by one without the consent of the others. But a very common form of partnership, in this and other countries, is partnership at will; from this any one party may retire without consulting the rest. And it seems to have escaped observation, how much wider are the powers of a sovereign State than those of a private individual. To a partnership of States the words of Madison apply: "When resort can be had to no common superior, the parties to the compact must themselves be the rightful judges, whether the bargain has been pursued or violated."

It has, indeed, been contended that the principles of a partnership at will could not apply, because this was to last for ever. On the point of duration the Constitution is silent, except in what is merely the expression of a desire, in the preamble, "to secure the blessings of liberty to ourselves and our posterity." On this subject there is no enactment or injunction. But on turning to the previous Articles of Confederation, we find in the title the words "perpetual union," and in the body, the express injunction — "And the union shall be perpetual." On this point they clearly possessed greater force than that of the Constitution; yet, notwithstanding this, they were terminated at the end of a few years, and that, too, with liberty to any State to leave the Federation altogether. The Union has, therefore, proved, by its own act, that terms of this nature have no force of law, but simply indicate the intention and the desire of the parties at the time. We find, too, that the Federal Government entered into a close alliance with France, the terms of which strongly enjoined that it should last for ever; yet these terms were held to be no obstacle to annulling it, without the consent of the other party.

On turning to the Constitution, it causes surprise to find that no prohibition of secession exists in it. Those who framed it were men well versed in public affairs, surrounded by angry passions, employed in the very act of breaking up a Constitution, if, indeed, it may not be said, of seceding from one of the States, for Rhode Island continued to adhere to it. They provided for a State dividing into two or more — for several uniting into one — for the admission of States yet to come into existence. Why, then, this remarkable omission? A contingency far more probable than these was that of a State becoming dissatisfied, and desiring to separate. Was such an omission the result of negligence, of inability to foresee so probable an event, or was it the result of design?

It has been contended that it would have been improper to forbid a State to withdraw — that it would have been "futile and undignified" to have added to a law, "And be it further enacted that the said law shall not be violated." But this is just what all law has to do; and that which does it not, is not law. Who had the powers of a lawgiver over independent, sovereign States, entering into a compact of their own free will? And where is the law, either to be violated or obeyed? There is a provision for a State separating into pieces, and this appears quite as undignified as to provide against a State, whole and intact, separating from the rest. There is provision against the treason of individuals; and if a State can also commit treason, it would be strange law that provided against crime on a small scale, omitting to deal with it when on a large one. The men who framed the Constitution were eminently practical men. It cannot be supposed that they would slight so formidable a danger. Why, then, the omission? For the soundest and wisest reasons, which we have on record from their own lips.

In the first place, had there been inserted in the Constitution a compulsory clause of this nature, it would have been impossible to obtain the ratification of the States. Very difficult, at the present day, would it be to obtain the assent to such a clause even of the Northern States. Theoretically nothing would be easier, but when it came to the point, it would hardly be possible to prevail upon Massachusetts, even at this day, to abandon, for ever, her often-asserted independence and sovereignty, and accept, in reality and truth, that position in which

she is said now to exist — that of the province of a wider power. And if there would now be such practical difficulty, with the State whose present professions are those most favourable to the step, how great would have been the obstacles when all the States were to be included, many hostile to, and jealous of, the rest, and when the task was regarded, and proved to be, all but impossible, without this further and strong element of repugnance?

In the next place, the framers of the Constitution perceived, that should they forbid the retirement of a State, they must provide means to prevent it; otherwise it would be an idle precept, a mere solicitation to remain. Other questions might be referred to the Supreme Court, but a retiring State withdrew from its jurisdiction. Other forms of delinquency could be visited on individuals, but here was the action of a whole community. Goodwill must have died out before it could occur; argument would be vain; there could be no appeal except to force. But no force was to be created, adequate to an undertaking of this nature. The first act under the Constitution for regulating the military establishment, provided for a standing force of only 1,216 rank and file. True, in case of need this might be increased; but a cardinal principle with the people was to distrust standing armies; a subject on which their feeling was jealous in the extreme. It was impracticable to run counter to this, even so far as to provide the framework of an army equal to such an object. The only possible force would be that of the remaining States, to be employed in coercing those that desired to secede. On such a proposition the views of the two chief framers of the Constitution are on record. In the Convention, on the 31st May, 1787, Madison declared that "the use of force against a State would be more like a declaration of war, than an infliction of punishment, and would probably be considered by the party attacked, as a dissolution of all previous compacts; a union of States containing such an ingredient seemed to provide for its own destruction." Again, on the 8th June, he observed: "Any government formed on the supposed practicability of using force against the unconstitutional proceedings of the States, would prove as visionary and fallacious as the government of Congress."

Hamilton, in that great authority the *Federalist*, after showing the futility of employing force against a State, concludes thus:

> When the sword is once drawn the passions of men observe no bounds of moderation. The suggestions of wounded pride, the instigations of resentment, would be apt to carry the States against which the arms of the Union were exerted, to any extreme to avenge the affront, or to avoid the disgrace of submission. The first war of this kind would probably terminate in a dissolution of the Union.

In one of the debates in the New York State Convention, Hamilton made use of these words: "To coerce a State would be one of the maddest projects ever devised. No State would ever suffer itself to be used as the instrument of coercing another." His far-seeing description in the *Federalist* is but too applicable to the events of the present day; and remarkable it is that he, the master spirit of the Unionists, should have denounced as "madness" that coercion which is adopted by his followers at the present day.

But there was a consideration of still higher import. The Constitution was a voluntary

act, framed on the principles of free, mutual assent, and common belief in its advantages. To introduce force as a means of maintaining it, would be repugnant to these principles. It would be a commencement on the voluntary system, to be continued under compulsion. Force is an attribute of monarchy; the throne represents and wields the strength of the nation. Each part is subservient to the whole, and none can revolt without foreknowledge of this force to encounter and overthrow. But the basis of a Federal Republic is the reverse of all this. It stands upon consent, which is the abnegation of force. In place of submission of part to the whole, the parties are co-equal. Compulsion is not only inapplicable, but opposed to the principle of the system. And the men of that day were too logical to be unaware of this; they declined to incorporate with the structure they were rearing a principle directly antagonistic to it.

There is another great constitutional authority, the fountain head of American politics — the Declaration of Independence — of which the first clause bears directly on this question:

> We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that amongst these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive to these ends, it is the right of the people to alter, or abolish it.

These are the constitutional principles for the guidance of every citizen. When the people of Georgia, left in doubt by the silence of the Federal compact on the subject of secession, refer to these to enlighten them, to what conclusion must they come — what hesitation can they feel? They are told that the "pursuit of happiness" is "an inalienable right of man"; they feel that the government over them has become "destructive of this end"; they read that thereupon "it is the right of the people to alter or abolish it." It will, indeed, be said that the people referred to, are the whole people of the whole country, but this is not the fact. That, indeed, may promote the happiness of Georgia, which produces woe in California, at a distance of three thousand five hundred miles. By what arithmetic can the balance of happiness be adjusted between them? Further, the Declaration of Independence did not speak for all the people under the rule it denounced, but for a small portion of them only; nor did it speak for the people of the United States as a single people, but as separate colonies now claiming to be independent, the respective, original States. Clearly, then, this language is adopted by the people of each separate colony now a State, having a form of government over it of which it is to judge, and which, whenever so disposed, it may abolish.

Again, governments are unjust unless their powers are based on the "consent of the governed." Here the same question arises, Who are the governed who are to consent? Are the people of the State of Georgia to refrain from dissenting until they agree with the people of Oregon, more remote than England from Arabia? But this principle also was enunciated, like the last, for the guidance of each separate, distinct community. Upon these principles we

can arrive at no other conclusions than these — that according to the constitutional doctrines of America, whenever a State decides by the vote of a majority of its people, that the government over it has become destructive to the ends of its welfare and happiness, and no longer exists in its consent, such State has a right to abolish that government, so far as it concerns itself, or, in other words, has a right to secede from the Union.

The preceding essay was extracted from James Spence, The American Union: Its Effect on National Character and Policy *(London: Richard Bentley and Son, 1862).*

CHAPTER EIGHT
The Departure of the Southern States

"To Withdraw From the Union is a Solemn Act"

In a speech delivered in 1839 before the New York Historical Society, John Quincy Adams, an old school Abolitionist from Massachusetts, voiced a sentiment that would soon be forgotten by those who came after him:

> Nations acknowledge no judge between them upon earth; and their governments, from necessity, must, in their intercourse with each other, decide when the failure of one part to a contract to perform its obligations absolves the other from the reciprocal fulfillment of its own. But this last of earthly powers is not necessary to the freedom or independence of States connected together by the immediate action of the people of whom they consist. To the people alone is there reserved as well the dissolving as the constituent power, and that power can be exercised by them only under the tie of conscience, binding them to the retributive justice of Heaven.
>
> With these qualifications, we may admit the same right as vested in the *people of every State* in the Union, with reference to the General Government, which was exercised by the people of the united colonies with reference to the supreme head of the British Empire, of which they formed a part; and under these limitations have the people of each State in the Union a right to secede from the confederated Union itself.
>
> Thus stands the right. But the indissoluble link of Union between the people of the several States of this confederated nation is, after all, not in the right, but in the heart. If the day should ever come (may Heaven avert it) when the affections of the people of these States shall be alienated from each other, when the fraternal spirit shall give way to cold indifference, or collision of interests shall fester into hatred, the bonds of political associations will no longer hold together parties no longer attracted by the magnetism of concili-

> ated interests and kindly sympathies; and *far better will it be for the people of the disunited States to part in friendship from each other, than to be held together by constraint*. Then will be the time for reverting to the precedents which occurred at the formation and adoption of the Constitution, to form again a *more perfect Union, by dissolving that which could no longer bind*, and to leave the separated parts to be reunited by the law of political gravitation to the center (emphasis in original).[1]

As was discussed in the previous chapter, secession was both an historically accepted and a constitutionally valid right retained by a sovereign State in the event that the compact made with the other States was violated to the peril of its people. Not only was this right at one time universally recognized, but it was actually threatened, and according to Stephen D. Carpenter, effectively exercised by three New England States in 1814. Furthermore, the right of the people of a State to separate from the federal Union was taught, with Government funding, to cadets at West Point from 1825 to 1826 in William Rawle's *View of the Constitution* — a book which remains in the library at West Point to this day. It was Rawle's assertion that "[t]o withdraw from the Union is a solemn, serious act," and that "[w]henever it may appear expedient to the people of a state, it must be manifested in a direct and unequivocal manner." He stated further:

> If a faction should attempt to subvert the government of a state for the purpose of destroying its republican form, the paternal power of the Union could thus be called forth to subdue it.
>
> Yet it is not to be understood that its interposition would be justifiable, if the people of a state should determine to retire from the Union, whether they adopted another or retained the same form of government....[2]

Having established that the secession of the Southern States was not unlawful in and of itself, and that a faction (Abolitionism as absorbed by the Republican party) had for thirty years attempted to subvert, not just "the government of a state," but the general Government of the United States itself, destroy the Republican form of government in the several States, and instigate a massive civil war between them as the means to abolish slavery, the question which now must be addressed is this: Was the secession of the Southern States a "solemn and serious act" and was it manifested to the world "in a direct and unequivocal manner?" We have seen how the New England States threatened to dissolve their ties with the South during the conflict with Great Britain in which the protection of the Union was most needed by all its members, and that those who called for dissolution were by no means "solemn and serious," but were as fanatical as they were unreasonable in their railings against the Union.

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1. John Quincy Adams, *The Jubilee of the Constitution* (New York: Samuel Coman, 1839), pages 66-69.

2. Rawle, *View of the Constitution*, page 296.

If it can be demonstrated that such fanaticism likewise characterized the State Conventions in the South following Lincoln's election, then the finger of criticism would appropriately point to the South as at least the co-agitators of an unnecessary war between the States.

In his address to Congress on the nineteenth of December 1859, President James Buchanan stated:

> It ought never to be forgotten that however great may have been the political advantages resulting from the Union, these would all prove to be as nothing, should the time ever arrive when they cannot be enjoyed without serious danger to the personal safety of the people of fifteen members of the Confederacy.
>
> If the peace of the domestic fireside throughout these States should ever be invaded, if the mothers of families within this extensive region should not be able to retire to rest at night without suffering dreadful apprehensions of what may be their own fate and that of their children before the morning, it would be in vain to account to such a people the political benefits which result to them from the Union.
>
> Self-preservation is the first law of nature, and therefore any state of society in which the sword is all the time suspended over the heads of the people must at last become intolerable.[3]

The previously discussed sentiments and activities of the Republicans in the North were what sparked the Southern secession movement of 1860-1861. Southerners had seen what the fanatical ravings of the Abolitionists had accomplished and had begun to prepare themselves for the "impending crisis" which the Radicals were threatening to bring upon them. The tension came to a head with the nomination of Abraham Lincoln, who had earlier denounced as treasonous a resolution introduced by Stephen Douglas that those inciting the insurrection of slaves should be punished.[4] It is a suppressed fact of history that Lincoln, though publicly opposing Abolitionism, privately donated $100 to John Brown's seditious mission[5] and openly stated that he had no "objections of a moral nature" to emancipation "in view of possible consequences of insurrection and massacre at the South."[6] In his famous "House Divided" speech, Lincoln had stated that the Union could no longer remain "half-slave and half-free," and that it would have to become "all one thing or all the other." The people of the Southern States had no desire to force slavery on their Northern neighbors, despite the fact that some of the slaveholders believed that the institution was, in and of

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3. James Buchanan, in Richardson, *Messages and Papers of the Presidents*, Volume VII, Page 3085.

4. Nicolay and Hay, *Lincoln: Complete Works*, Volume I, page 611.

5. William H. Herndon and Jesse William Weik, *Life of Lincoln* (Chicago, Illinois: Bedford, Clark and Company, 1889), Volume II, page 380.

6. Lincoln, in Nicolay and Hay, *Lincoln: Complete Works*, Volume II, page 234.

itself, beneficial for both master *and* slave.[7] They therefore perceived Lincoln's words as an open threat to destroy the social structure of their section, and, taking into account the atrocities committed by John Brown, the newly canonized patron saint of the Republican party, it is at least understandable why the slave States reacted as they did to Lincoln's election in 1860. Jefferson Davis noted, "...[T]he Southern States did not proceed, as has been unjustly charged, from chagrin at their defeat in the election, or from any personal hostility to the President-elect, but from the fact that they recognized in him the representative of a party professing principles destructive to 'their peace, their prosperity, and their domestic tranquility'... Still it was hoped, against hope, that some adjustment might be made to avert the calamities of a practical application of the theory of an 'irrepressible conflict.'"[8] What steps the South took to avert conflict with the North, and how the Northern leaders responded, will be the subject of the next chapter.

The South Carolina Convention Votes For Secession

It has been customary for the history book writers since the war to refer to the "fire-eaters" of South Carolina as having, for all intents and purposes, highjacked the reins of power in that State, leading her people in a direction that was not generally desired. However, "the calmness and deliberation, with which the measures requisite for withdrawal were adopted and executed, afford the best refutation of the charge that they were the result of haste, passion, or precipitation."[9] To the contrary, the State Convention of South Carolina stated in its "Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union":

> We maintain that in every compact between two or more parties, the obligation

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7. As demonstrated in Chapter Three, this sentiment was not universal in the South. A large number of slaveholders, especially in Virginia, viewed the institution as a curse and the presence of the Black race in America as inimical to White civilization. Thomas Jefferson summarized this prevalent feeling in the following:

> I can say with conscious truth that there is not a man on earth who would sacrifice more than I would to relieve us from this heavy reproach, in any practicable way. The cession of that kind of property — for so it is misnamed — is a bagatelle which would not cost me a second thought if, in that way, a general emancipation and expatriation could be effected; and gradually, and with due sacrifice, I think it might be; but as it is, we have the wolf by the ears and can neither hold him nor safely let him go. Justice is in one scale, and self-preservation in the other (22 April 1820 letter to John Holmes; in Peterson, *Thomas Jefferson: Writings*, page 1435).

8. Davis, *Rise and Fall of the Confederate Government*, Volume I, page 53.

9. Davis, *ibid*., page 199.

is mutual; that the failure of one of the contracting parties to perform a material part of the agreement, entirely releases the obligation of the other; and that where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure, with all its consequences....

We affirm that these ends for which this Government was instituted have been defeated, and the Government itself has been made destructive of them by the action of the non-slaveholding States. Those States have assumed the right of deciding upon the propriety of our domestic institutions; and have denied the rights of property established in fifteen of the States and recognized by the Constitution; they have denounced as sinful the institution of slavery; they have permitted open establishment among them of societies, whose avowed object is to disturb the peace and to eloign the property of the citizens of other States. They have encouraged and assisted thousands of our slaves to leave their homes; and those who remain, have been incited by emissaries, books and pictures to servile insurrection.

For twenty-five years this agitation has been steadily increasing, until it has now secured to its aid the power of the common Government. Observing the *forms* of the Constitution, a sectional party has found within that Article establishing the Executive Department, the means of subverting the Constitution itself. A geographical line has been drawn across the Union, and all the States north of that line have united in the election of a man to the high office of President of the United States, whose opinions and purposes are hostile to slavery. He is to be entrusted with the administration of the common Government, because he has declared that that "Government cannot endure permanently half slave, half free," and that the public mind must rest in the belief that slavery is in the course of ultimate extinction....

On the 4th day of March next, this party will take possession of the Government. It has announced that the South shall be excluded from the common territory, that the judicial tribunals shall be made sectional, and that a war must be waged against slavery until it shall cease throughout the United States.

The guaranties of the Constitution will then no longer exist; the equal rights of the States will be lost. The slaveholding States will no longer have the power of self-government, or self-protection, and the Federal Government will have become their enemy.

Sectional interest and animosity will deepen the irritation, and all hope of remedy is rendered vain, by the fact that public opinion at the North has invested a great political error with the sanction of more erroneous religious belief.

We, therefore, the People of South Carolina, by our delegates in Convention assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, have solemnly declared that the Union heretofore existing between this State and the other States of North America, is dissolved, and that the State of South Carolina has resumed her position among the nations of the world, as a separate and independent State; with full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do (emphasis in original).

The ordinances and declarations of the causes of secession produced by the other

Southern States were similar in content and were written in the same solemn tone.[10] There is no hint in these documents of the fanaticism which permeated the public statements and documents of the Northern Abolitionists. Furthermore, in the cases of Texas, Virginia, and Tennessee, the secession ordinances were submitted directly to a referendum in those States and subsequently ratified by overwhelming majorities of the people themselves.

Lincoln resolved in his first Inaugural Address to hold the Southern States in the Union unless his "rightful masters, the American people, shall withhold the requisite means or in some authoritative manner direct the contrary." However, when the people of the South did just that, he declared their secession ordinances to be "legally void," and denounced their lawfully organized conventions as insurrectionary "combinations." As will be seen in the next chapter, Lincoln repulsed all Southern overtures for peace in 1861 and deliberately forced the Confederates to fire the first shot of the war at Fort Sumter. He again refused to enter into peace negotiations with the Confederate Government four years later at the Hampton Roads Peace Conference, stating that he would accept nothing less from the Southern States than unconditional surrender. Clearly, the true purpose of the war was, as Luther Martin had warned over seventy years before, "the total abolition and destruction of all state governments,"[11] not the restoration of the Union and not the abolition of slavery.

On at least one occasion, Lincoln revealed his "rightful masters" to be, not the American people, but the private financial interests and political aristocrats who controlled him from behind the cover of the slavery agitation.[12] In spite of this, he had the blasphemous audacity in his second Inaugural Address to attribute the continuation of the carnage he had initiated to the prescriptive will of a just and holy God.[13] It will become increasingly evident to the reader of this book that the pagan bloodlust of the Northern politicians of the Nineteenth Century doomed not only themselves and their young sons, but future generations of Americans yet unborn, to utter ruin. Matthew Carey's warning to the public agitators during the war of 1812 about the serious consequences of an unjustified revolution was long forgotten — or ignored — by the agitators in the 1850s and 1860s:

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10. Ordinances of Secession of the Southern States and Declarations of the Causes of Secession of the Southern States (see pages 299ff of the present volume).

11. Luther Martin, quoted by Rutland, *Ordeal of the Constitution*, page 29.

12. See Testimony of Col. John B. Baldwin, pages 351ff of the present volume.

13. Lincoln's words were as follows: "Yet, if God will that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, still it must be said, the judgments of the Lord are true and righteous altogether." In his book entitled *Why Was Lincoln Murdered?* (New York: Grosset and Dunlap, 1937), Otto Eisenschiml offered extensive evidence to show that it was, in fact, Lincoln and his fellow Republicans themselves whose will it was that the war continue as long as it did until subjugation of the South was certain.

It is an easy process to raise commotions, and provoke seditions. But to allay them is always arduous; often impossible. Ten men may create an insurrection; which one hundred, of equal talents and influence, may be utterly unable to suppress. The weapon of popular discontent, easily wielded at the outset, becomes, after it has arrived at maturity, too potent for the feeble grasp of the agents by whom it has been called into existence. It hurls them and those against whom it was first employed, into the same profound abyss of misery and destruction. Whoever requires illustration of this theory, has only to open any page of the history of France from the era of the national convention till the commencement of the reign of Bonaparte. If he be not convinced by the perusal, "he would not be convinced, though one were to rise from the dead."[14]

14. Carey, *Olive Branch*, page 327.

SUPPORTING DOCUMENT

Ordinances of Secession of the Southern States

South Carolina

An Ordinance to dissolve the union between the State of South Carolina and other States united with her under the compact entitled "The Constitution of the United States of America";

We, the people of the State of South Carolina, in convention assembled, do declare and ordain, and it is hereby declared and ordained, That the ordinance adopted by us in convention on the twenty-third day of May, in the year of our Lord one thousand seven hundred and eighty-eight, whereby the Constitution of the United States of America was ratified, and also all acts and parts of acts of the General Assembly of this State ratifying amendments of the said Constitution, are hereby repealed; and that the union now subsisting between South Carolina and other States, under the name of the "United States of America," is hereby dissolved.

Done at Charleston the twentieth day of December, in the year of our Lord one thousand eight hundred and sixty.

Mississippi

An Ordinance to dissolve the union between the State of Mississippi and other States united with her under the compact entitled "The Constitution of the United States of America."

The people of the State of Mississippi, in convention assembled, do ordain and declare, and it is hereby ordained and declared, as follows, to wit:

Section 1. That all the laws and ordinances by which the said State of Mississippi became a member of the Federal Union of the United States of America be, and the same are hereby, repealed, and that all obligations on the part of the said State or the people thereof to observe the same be withdrawn, and that the said State doth hereby resume all the rights, functions, and powers which by any of said laws or ordinances were conveyed to the Government of the said United States, and is absolved from all the obligations, restraints, and duties incurred to the said Federal Union, and shall from henceforth be a free, sovereign, and independent State.

Section 2. That so much of the first section of the seventh article of the constitution of this State as requires members of the Legislature and all officers, executive and judicial, to take an oath or affirmation to support the Constitution of the United States be, and the same is hereby, abrogated and annulled.

Section 3. That all rights acquired and vested under the Constitution of the United States, or under any act of Congress passed, or treaty made, in pursuance thereof, or under any law of this State, and not incompatible with this ordinance, shall remain in force and have the same effect as if this ordinance had not been passed.

Section 4. That the people of the State of Mississippi hereby consent to form a federal union with such of the States as may have seceded or may secede from the Union of the United States of America, upon the basis of the present Constitution of the said United States, except such parts thereof as embrace other portions than such seceding States.

Thus ordained and declared in convention the 9th day of January, in the year of our Lord 1861.

Florida

We, the people of the State of Florida, in convention assembled, do solemnly ordain, publish, and declare, That the State of Florida hereby withdraws herself from the confederacy of States existing under the name of the United States of America and from the existing Government of the said States; and that all political connection between her and the Government of said States ought to be, and the same is hereby, totally annulled, and said Union of States dissolved; and the State of Florida is hereby declared a sovereign and independent nation; and that all ordinances heretofore adopted, in so far as they create or recognize said Union, are rescinded; and all laws or parts of laws in force in this State, in so far as they recognize or assent to said Union, be, and they are hereby, repealed.

Passed 10 January 1861.

Alabama

An Ordinance to dissolve the union between the State of Alabama and the other States united under the compact styled "The Constitution of the United States of America"

Whereas, the election of Abraham Lincoln and Hannibal Hamlin to the offices of president and vice-president of the United States of America, by a sectional party, avowedly hostile to the domestic institutions and to the peace and security of the people of the State of Alabama, preceded by many and dangerous infractions of the Constitution of the United States by many of the States and people of the Northern section, is a political wrong of so insulting and menacing a character as to justify the people of the State of Alabama in the adoption of prompt and decided measures for their future peace and security, therefore:

Be it declared and ordained by the people of the State of Alabama, in Convention assembled, That the State of Alabama now withdraws, and is hereby withdrawn from the Union known as "the United States of America," and henceforth ceases to be one of said United States, and is, and of right ought to be a Sovereign and Independent State.

Sec 2. Be it further declared and ordained by the people of the State of Alabama in Convention assembled, That all powers over the Territory of said State, and over the people thereof, heretofore delegated to the Government of the United States of America, be and they are hereby withdrawn from said Government, and are hereby resumed and vested in the people of the State of Alabama.

And as it is the desire and purpose of the people of Alabama to meet the slaveholding States of the South, who may approve such purpose, in order to frame a provisional as well as permanent Government upon the principles of the Constitution of the United States,

Be it resolved by the people of Alabama in Convention assembled, That the people of the States of Delaware, Maryland, Virginia, North Carolina, South Carolina, Florida, Georgia, Mississippi, Louisiana, Texas, Arkansas, Tennessee, Kentucky and Missouri, be and are hereby invited to meet the people of the State of Alabama, by their Delegates, in Convention, on the 4th day of February, A.D., 1861, at the city of Montgomery, in the State of Alabama, for the purpose of consulting with each other as to the most effectual mode of securing concerted and harmonious action in whatever measures may be deemed most desirable for our common peace and security.

And be it further resolved, That the President of this Convention, be and is hereby instructed to transmit forthwith a copy of the foregoing Preamble, Ordinance, and Resolutions to the Governors of the several States named in said resolutions.

Done by the people of the State of Alabama, in Convention assembled, at Montgomery, on this, the eleventh day of January, A.D. 1861.

Georgia

We the people of the State of Georgia in Convention assembled do declare and ordain and it is hereby declared and ordained that the ordinance adopted by the State of Georgia in convention on the 2nd day of Jany. in the year of our Lord seventeen hundred and eighty-eight, whereby the Constitution of the United States of America was assented to, ratified and adopted, and also all acts and parts of acts of the general assembly of this State, ratifying and adopting amendments to said Constitution, are hereby repealed, rescinded and abrogated.

We do further declare and ordain that the union now existing between the State of Georgia and other States under the name of the United States of America is hereby dissolved, and that the State of Georgia is in full possession and exercise of all those rights of sovereignty which belong and appertain to a free and independent State.

Passed 19 January 1861.

Louisiana

An Ordinance to dissolve the union between the State of Louisiana and other States united with her under the compact entitled "The Constitution of the United States of America."

We, the people of the State of Louisiana, in convention assembled, do declare and ordain, and it is hereby declared and ordained, That the ordinance passed by us in convention on the 22d day of November, in the year eighteen hundred and eleven, whereby the Constitution of the United States of America and the amendments of the said Constitution were adopted, and all laws and ordinances by which the State of Louisiana became a member of the Federal Union, be, and the same are hereby, repealed and abrogated; and that the union now subsisting between Louisiana and other States under the name of "The United States of America" is hereby dissolved.

We do further declare and ordain, That the State of Louisiana hereby resumes all rights and powers heretofore delegated to the Government of the United States of America; that her citizens are absolved from all allegiance to said Government; and that she is in full possession and exercise of all those rights of sovereignty which appertain to a free and independent State.

We do further declare and ordain, That all rights acquired and vested under the Constitution of the United States, or any act of Congress, or treaty, or under any law of this State, and not incompatible with this ordinance, shall remain in force and have the same effect as if this ordinance had not been passed.

Adopted in convention at Baton Rouge this 26th day of January, 1861.

Texas

An Ordinance, To dissolve the Union between the State of Texas and the other States united under the Compact styled "the Constitution of the United States of America."

Whereas, The Federal Government has failed to accomplish the purposes of the compact of union between these States, in giving protection either to the persons of our people upon an exposed frontier, or to the property of our citizens, and

Whereas, the action of the Northern States of the Union is violative of the compact between the States and the guarantees of the Constitution; and,

Whereas, The recent developments in Federal affairs make it evident that the power of the Federal Government is sought to be made a weapon with which to strike down the interests and property of the people of Texas, and her sister slave-holding States, instead of permitting it to be, as was intended, our shield against outrage and aggression;

Therefore,

Section 1. We, the people of the State of Texas, by delegates in convention assembled, do declare and ordain that the ordinance adopted by our convention of delegates on the 4th day of July, A.D. 1845, and afterwards ratified by us, under which the Republic of Texas was admitted into the Union with other States, and became a party to the compact styled "The Constitution of the United States of America," be, and is hereby, repealed and annulled; that all the powers which, by the said compact, were delegated by Texas to the Federal Government are revoked and resumed; that Texas is of right absolved from all restraints and obligations incurred by said compact, and is a separate sovereign State, and that her citizens and people are absolved from all allegiance to the United States or the government thereof.

Section 2. This ordinance shall be submitted to the people of Texas for their ratification or rejection, by the qualified voters, on the 23rd day of February, 1861, and unless rejected by a majority of the votes cast, shall take effect and be in force on and after the 2d day of March, A.D. 1861.

Provided, that in the Representative District of El Paso said election may be held on the 18th day of February, 1861.

Done by the people of the State of Texas, in convention assembled, at Austin, this 1st day of February, A.D. 1861. Ratified 23 February 1861 by a vote of 46,153 for and 14,747 against.

Virginia

An Ordinance to repeal the ratification of the Constitution of the United State of America by the State of Virginia, and to resume all the rights and powers granted under said Constitution.

The people of Virginia in their ratification of the Constitution of the United States

of America, adopted by them in convention on the twenty-fifth day of June, in the year of our Lord one thousand seven hundred and eighty-eight, having declared that the powers granted under said Constitution were derived from the people of the United States and might be resumed whensoever the same should be perverted to their injury and oppression, and the Federal Government having perverted said powers not only to the injury of the people of Virginia, but to the oppression of the Southern slave-holding States:

Now, therefore, we, the people of Virginia, do declare and ordain, That the ordinance adopted by the people of this State in convention on the twenty-fifth day of June, in the year of our Lord one thousand seven hundred and eighty-eight, whereby the Constitution of the United States of America was ratified, and all acts of the General Assembly of this State ratifying and adopting amendments to said Constitution, are hereby repealed and abrogated; that the union between the State of Virginia and the other States under the Constitution aforesaid is hereby dissolved, and that the State of Virginia is in the full possession and exercise of all the rights of sovereignty which belong and appertain to a free and independent State.

And they do further declare, That said Constitution of the United States of America is no longer binding on any of the citizens of this State.

This ordinance shall take effect and be an act of this day, when ratified by a majority of the voters of the people of this State cast at a poll to be taken thereon on the fourth Thursday in May next, in pursuance of a schedule hereafter to be enacted.

Adopted by the convention of Virginia 17 April 1861.
Ratified by a vote of 132,201 to 37,451 on 23 May 1861.

Arkansas

An Ordinance to dissolve the union now existing between the State of Arkansas and the other States united with her under the compact entitled "The Constitution of the United States of America."

Whereas, in addition to the well-founded causes of complaint set forth by this convention, in resolutions adopted on the 11th of March, A.D. 1861, against the sectional party now in power in Washington City, headed by Abraham Lincoln, he has, in the face of resolutions passed by this convention pledging the State of Arkansas to resist to the last extremity any attempt on the part of such power to coerce any State that had seceded from the old Union, proclaimed to the world that war should be waged against such States until they should be compelled to submit to their rule, and large forces to accomplish this have by this same power been called out, and are now being marshaled to carry out this inhuman design; and to longer submit to such rule, or remain in the old Union of the United States, would be disgraceful and ruinous to the State of Arkansas:

Therefore we, the people of the State of Arkansas, in convention assembled, do

hereby declare and ordain, and it is hereby declared and ordained, That the "ordinance and acceptance of compact" passed and approved by the General Assembly of the State of Arkansas on the 18th day of October, A.D. 1836, whereby it was by said General Assembly ordained that by virtue of the authority vested in said General Assembly by the provisions of the ordinance adopted by the convention of delegates assembled at Little Rock for the purpose of forming a constitution and system of government for said State, the propositions set forth in "An act supplementary to an act entitled 'An act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes,' were freely accepted, ratified, and irrevocably confirmed, articles of compact and union between the State of Arkansas and the United States, and all other laws and every other law and ordinance, whereby the State of Arkansas became a member of the Federal Union, be, and the same are hereby, in all respects and for every purpose herewith consistent, repealed, abrogated, and fully set aside; and the union now subsisting between the State of Arkansas and the other States, under the name of the United States of America, is hereby forever dissolved.

And we do further hereby declare and ordain, That the State of Arkansas hereby resumes to herself all rights and powers heretofore delegated to the Government of the United States of America; that her citizens are absolved from all allegiance to said Government of the United States, and that she is in full possession and exercise of all the rights and sovereignty which appertain to a free and independent State.

We do further ordain and declare, That all rights acquired and vested under the Constitution of the United States of America, or of any act or acts of Congress, or treaty, or under any law of this State, and not incompatible with this ordinance, shall remain in full force and effect, in nowise altered or impaired, and have the same effect as if this ordinance had not been passed.

Adopted and passed in open convention on the 6th day of May, A.D. 1861.

North Carolina

An Ordinance to dissolve the union between the State of North Carolina and the other States united with her, under the compact of government entitled "The Constitution of the United States."

We, the people of the State of North Carolina in convention assembled, do declare and ordain, and it is hereby declared and ordained, That the ordinance adopted by the State of North Carolina in the convention of 1789, whereby the Constitution of the United States was ratified and adopted, and also all acts and parts of acts of the General Assembly ratifying and adopting amendments to the said Constitution, are hereby repealed, rescinded, and abrogated.

We do further declare and ordain, That the union now subsisting between the State

of North Carolina and the other States, under the title of the United States of America, is hereby dissolved, and that the State of North Carolina is in full possession and exercise of all those rights of sovereignty which belong and appertain to a free and independent State.

Done in convention at the city of Raleigh, this the 20th day of May, in the year of our Lord 1861, and in the eighty-fifth year of the independence of said State.

Tennessee

Declaration of Independence and Ordinance dissolving the federal relations between the State of Tennessee and the United States of America.

First. We, the people of the State of Tennessee, waiving any expression of opinion as to the abstract doctrine of secession, but asserting the right, as a free and independent people, to alter, reform, or abolish our form of government in such manner as we think proper, do ordain and declare that all the laws and ordinances by which the State of Tennessee became a member of the Federal Union of the United States of America are hereby abrogated and annulled, and that all the rights, functions, and powers which by any of said laws and ordinances were conveyed to the Government of the United States, and to absolve ourselves from all the obligations, restraints, and duties incurred thereto; and do hereby henceforth become a free, sovereign, and independent State.

Second. We furthermore declare and ordain that article 10, sections 1 and 2, of the constitution of the State of Tennessee, which requires members of the General Assembly and all officers, civil and military, to take an oath to support the Constitution of the United States be, and the same are hereby, abrogated and annulled, and all parts of the constitution of the State of Tennessee making citizenship of the United States a qualification for office and recognizing the Constitution of the United States as the supreme law of this State are in like manner abrogated and annulled.

Third. We furthermore ordain and declare that all rights acquired and vested under the Constitution of the United States, or under any act of Congress passed in pursuance thereof, or under any laws of this State, and not incompatible with this ordinance, shall remain in force and have the same effect as if this ordinance had not been passed.

Sent to referendum 6 May 1861 by the legislature, and approved by the voters by a vote of 104,471 to 47,183 on 8 June 1861.

Missouri

An act declaring the political ties heretofore existing between the State of Missouri and the United States of America dissolved.

Whereas the Government of the United States, in the possession and under the control of a sectional party, has wantonly violated the compact originally made between said Government and the State of Missouri, by invading with hostile armies the soil of the State, attacking and making prisoners the militia while legally assembled under the State laws, forcibly occupying the State capitol, and attempting through the instrumentality of domestic traitors to usurp the State government, seizing and destroying private property, and murdering with fiendish malignity peaceable citizens, men, women, and children, together with other acts of atrocity, indicating a deep-settled hostility toward the people of Missouri and their institutions; and

Whereas the present Administration of the Government of the United States has utterly ignored the Constitution, subverted the Government as constructed and intended by its makers, and established a despotic and arbitrary power instead thereof: Now, therefore,

Be it enacted by the general assembly of the State of Missouri, That all political ties of every character now existing between the Government of the United States of America and the people and government of the State of Missouri are hereby dissolved, and the State of Missouri, resuming the sovereignty granted by compact to the said United States upon admission of said State into the Federal Union, does again take its place as a free and independent republic amongst the nations of the earth.

This act to take effect and be in force from and after its passage.

Approved, October 31, 1861.

Kentucky

Whereas, the Federal Constitution, which created the Government of the United States, was declared by the framers thereof to be the supreme law of the land, and was intended to limit and did expressly limit the powers of said Government to certain general specified purposes, and did expressly reserve to the States and people all other powers whatever, and the President and Congress have treated this supreme law of the Union with contempt and usurped to themselves the power to interfere with the rights and liberties of the States and the people against the expressed provisions of the Constitution, and have thus substituted for the highest forms of national liberty and constitutional government a central despotism founded upon the ignorant prejudices of the masses of Northern society, and instead of giving protection with the Constitution to the people of fifteen States of this Union have turned loose upon them the unrestrained and raging passions of mobs and fanatics, and because we now seek to hold our liberties, our property, our homes, and our families under the protection of the reserved powers of the States, have blockaded our ports, invaded our soil, and waged war upon our people for the purpose of subjugating us to their will; and

Whereas, our honor and our duty to posterity demand that we shall not relinquish our own liberty and shall not abandon the right of our descendants and the world to the inestima-

ble blessings of constitutional government: Therefore,

Be it ordained, That we do hereby forever sever our connection with the Government of the United States, and in the name of the people we do hereby declare Kentucky to be a free and independent State, clothed with all power to fix her own destiny and to secure her own rights and liberties.

And whereas, the majority of the Legislature of Kentucky have violated their most solemn pledges made before the election, and deceived and betrayed the people; have abandoned the position of neutrality assumed by themselves and the people, and invited into the State the organized armies of Lincoln; have abdicated the Government in favor of a military despotism which they have placed around themselves, but cannot control, and have abandoned the duty of shielding the citizen with their protection; have thrown upon our people and the State the horrors and ravages of war, instead of attempting to preserve the peace, and have voted men and money for the war waged by the North for the destruction of our constitutional rights; have violated the expressed words of the Constitution by borrowing five millions of money for the support of the war without a vote of the people; have permitted the arrest and imprisonment of our citizens, and transferred the constitutional prerogatives of the Executive to a military commission of partisans; have seen the writ of *habeas corpus* suspended without an effort for its preservation, and permitted our people to be driven in exile from their homes; have subjected our property to confiscation and our persons to confinement in the penitentiary as felons, because we may choose to take part in a cause for civil liberty and constitutional government against a sectional majority waging war against the people and institutions of fifteen independent States of the old Federal Union, and have done all these things deliberately against the warnings and vetoes of the Governor and the solemn remonstrances of the minority in the Senate and House of Representatives: Therefore,

Be it further ordained, That the unconstitutional edicts of a factious majority of a Legislature thus false to their pledges, their honor, and their interests are not law, and that such a government is unworthy of the support of a brave and free people, and that we do therefore declare that the people are thereby absolved from all allegiance to said government, and that they have a right to establish any government which to them may seem best adapted to the preservation of their rights and liberties.

Adopted 20 November 1861, by a group of Kentucky soldiers in the Confederate Army, styling itself as a "Convention of the People of Kentucky."

SUPPORTING DOCUMENT

Declarations of the Causes of Secession

Georgia

The people of Georgia having dissolved their political connection with the Government of the United States of America, present to their confederates and the world the causes which have led to the separation. For the last ten years we have had numerous and serious causes of complaint against our non-slave-holding confederate States with reference to the subject of African slavery. They have endeavored to weaken our security, to disturb our domestic peace and tranquility, and persistently refused to comply with their express constitutional obligations to us in reference to that property, and by the use of their power in the Federal Government have striven to deprive us of an equal enjoyment of the common Territories of the Republic. This hostile policy of our confederates has been pursued with every circumstance of aggravation which could arouse the passions and excite the hatred of our people, and has placed the two sections of the Union for many years past in the condition of virtual civil war. Our people, still attached to the Union from habit and national traditions, and averse to change, hoped that time, reason, and argument would bring, if not redress, at least exemption from further insults, injuries, and dangers. Recent events have fully dissipated all such hopes and demonstrated the necessity of separation. Our Northern confederates, after a full and calm hearing of all the facts, after a fair warning of our purpose not to submit to the rule of the authors of all these wrongs and injuries, have by a large majority committed the Government of the United States into their hands. The people of Georgia, after an equally full and fair and deliberate hearing of the case, have declared with equal firmness that they shall not rule over them. A brief history of the rise, progress, and policy of anti-slavery and the political organization into whose hands the administration of the

Federal Government has been committed will fully justify the pronounced verdict of the people of Georgia.

The party of Lincoln, called the Republican party, under its present name and organization, is of recent origin. It is admitted to be an anti-slavery party. While it attracts to itself by its creed the scattered advocates of exploded political heresies, of condemned theories in political economy, the advocates of commercial restrictions, of protection, of special privileges, of waste and corruption in the administration of Government, anti-slavery is its mission and its purpose. By anti-slavery it is made a power in the state. The question of slavery was the great difficulty in the way of the formation of the Constitution. While the subordination and the political and social inequality of the African race was fully conceded by all, it was plainly apparent that slavery would soon disappear from what are now the non-slave-holding States of the original thirteen. The opposition to slavery was then, as now, general in those States and the Constitution was made with direct reference to that fact. But a distinct abolition party was not formed in the United States for more than half a century after the Government went into operation. The main reason was that the North, even if united, could not control both branches of the Legislature during any portion of that time. Therefore such an organization must have resulted either in utter failure or in the total overthrow of the Government. The material prosperity of the North was greatly dependent on the Federal Government; that of the South not at all. In the first years of the Republic the navigating, commercial, and manufacturing interests of the North began to seek profit and aggrandizement at the expense of the agricultural interests. Even the owners of fishing smacks sought and obtained bounties for pursuing their own business (which yet continue), and $500,000 is now paid them annually out of the Treasury. The navigating interests begged for protection against foreign shipbuilders and against competition in the coasting trade. Congress granted both requests, and by prohibitory acts gave an absolute monopoly of this business to each of their interests, which they enjoy without diminution to this day. Not content with these great and unjust advantages, they have sought to throw the legitimate burden of their business as much as possible upon the public; they have succeeded in throwing the cost of light-houses, buoys, and the maintenance of their seamen upon the Treasury, and the Government now pays above $2,000,000 annually for the support of these objects. These interests, in connection with the commercial and manufacturing classes, have also succeeded, by means of subventions to mail steamers and the reduction in postage, in relieving their business from the payment of about $7,000,000 annually, throwing it upon the public Treasury under the name of postal deficiency. The manufacturing interests entered into the same struggle early, and have clamored steadily for Government bounties and special favors. This interest was confined mainly to the Eastern and Middle non-slave-holding States. Wielding these great States it held great power and influence, and its demands were in full proportion to its power. The manufacturers and miners wisely based their demands upon special facts and reasons rather than upon general principles, and thereby mollified much of the opposition of the opposing interest. They pleaded in their favor the infancy of their business in this country, the scarcity of labor and capital, the hostile legislation of other countries toward them, the

great necessity of their fabrics in the time of war, and the necessity of high duties to pay the debt incurred in our war for independence. These reasons prevailed, and they received for many years enormous bounties by the general acquiescence of the whole country.

But when these reasons ceased they were no less clamorous for Government protection, but their clamors were less heeded — the country had put the principle of protection upon trial and condemned it. After having enjoyed protection to the extent of from 15 to 200 per cent. upon their entire business for above thirty years, the act of 1846 was passed. It avoided sudden change, but the principle was settled, and free trade, low duties, and economy in public expenditures was the verdict of the American people. The South and the Northwestern States sustained this policy. There was but small hope of its reversal; upon the direct issue, none at all.

All these classes saw this and felt it and cast about for new allies. The anti-slavery sentiment of the North offered the best chance for success. An anti-slavery party must necessarily look to the North alone for support, but a united North was now strong enough to control the Government in all of its departments, and a sectional party was therefore determined upon. Time and issues upon slavery were necessary to its completion and final triumph. The feeling of anti-slavery, which it was well known was very general among the people of the North, had been long dormant or passive; it needed only a question to arouse it into aggressive activity. This question was before us. We had acquired a large territory by successful war with Mexico; Congress had to govern it; how, in relation to slavery, was the question then demanding solution. This state of facts gave form and shape to the anti-slavery sentiment throughout the North and the conflict began. Northern anti-slavery men of all parties asserted the right to exclude slavery from the territory by Congressional legislation and demanded the prompt and efficient exercise of this power to that end. This insulting and unconstitutional demand was met with great moderation and firmness by the South. We had shed our blood and paid our money for its acquisition; we demanded a division of it on the line of the Missouri restriction or an equal participation in the whole of it. These propositions were refused, the agitation became general, and the public danger was great. The case of the South was impregnable. The price of the acquisition was the blood and treasure of both sections — of all, and, therefore, it belonged to all upon the principles of equity and justice.

The Constitution delegated no power to Congress to exclude either party from its free enjoyment; therefore our right was good under the Constitution. Our rights were further fortified by the practice of the Government from the beginning. Slavery was forbidden in the country northwest of the Ohio River by what is called the ordinance of 1787. That ordinance was adopted under the old confederation and by the assent of Virginia, who owned and ceded the country, and therefore this case must stand on its own special circumstances. The Government of the United States claimed territory by virtue of the treaty of 1783 with Great Britain, acquired territory by cession from Georgia and North Carolina, by treaty from France, and by treaty from Spain. These acquisitions largely exceeded the original limits of the Republic. In all of these acquisitions the policy of the Government was uniform. It opened them to the settlement of all the citizens of all the States of the Union. They emi-

grated thither with their property of every kind (including slaves). All were equally protected by public authority in their persons and property until the inhabitants became sufficiently numerous and otherwise capable of bearing the burdens and performing the duties of self-government, when they were admitted into the Union upon equal terms with the other States, with whatever republican constitution they might adopt for themselves.

Under this equally just and beneficent policy law and order, stability and progress, peace and prosperity marked every step of the progress of these new communities until they entered as great and prosperous commonwealths into the sisterhood of American States. In 1820 the North endeavored to overturn this wise and successful policy and demanded that the State of Missouri should not be admitted into the Union unless she first prohibited slavery within her limits by her constitution. After a bitter and protracted struggle the North was defeated in her special object, but her policy and position led to the adoption of a section in the law for the admission of Missouri, prohibiting slavery in all that portion of the territory acquired from France lying North of 36 [degrees] 30 [minutes] north latitude and outside of Missouri. The venerable Madison at the time of its adoption declared it unconstitutional. Mr. Jefferson condemned the restriction and foresaw its consequences and predicted that it would result in the dissolution of the Union. His prediction is now history. The North demanded the application of the principle of prohibition of slavery to all of the territory acquired from Mexico and all other parts of the public domain then and in all future time. It was the announcement of her purpose to appropriate to herself all the public domain then owned and thereafter to be acquired by the United States. The claim itself was less arrogant and insulting than the reason with which she supported it. That reason was her fixed purpose to limit, restrain, and finally abolish slavery in the States where it exists. The South with great unanimity declared her purpose to resist the principle of prohibition to the last extremity. This particular question, in connection with a series of questions affecting the same subject, was finally disposed of by the defeat of prohibitory legislation.

The Presidential election of 1852 resulted in the total overthrow of the advocates of restriction and their party friends. Immediately after this result the anti-slavery portion of the defeated party resolved to unite all the elements in the North opposed to slavery and to stake their future political fortunes upon their hostility to slavery everywhere. This is the party to whom the people of the North have committed the Government. They raised their standard in 1856 and were barely defeated. They entered the Presidential contest again in 1860 and succeeded.

The prohibition of slavery in the Territories, hostility to it everywhere, the equality of the black and white races, disregard of all constitutional guarantees in its favor, were boldly proclaimed by its leaders and applauded by its followers.

With these principles on their banners and these utterances on their lips the majority of the people of the North demand that we shall receive them as our rulers.

The prohibition of slavery in the Territories is the cardinal principle of this organization.

For forty years this question has been considered and debated in the halls of Con-

gress, before the people, by the press, and before the tribunals of justice. The majority of the people of the North in 1860 decided it in their own favor. We refuse to submit to that judgment, and in vindication of our refusal we offer the Constitution of our country and point to the total absence of any express power to exclude us. We offer the practice of our Government for the first thirty years of its existence in complete refutation of the position that any such power is either necessary or proper to the execution of any other power in relation to the Territories. We offer the judgment of a large minority of the people of the North, amounting to more than one-third, who united with the unanimous voice of the South against this usurpation; and, finally, we offer the judgment of the Supreme Court of the United States, the highest judicial tribunal of our country, in our favor. This evidence ought to be conclusive that we have never surrendered this right. The conduct of our adversaries admonishes us that if we had surrendered it, it is time to resume it.

The faithless conduct of our adversaries is not confined to such acts as might aggrandize themselves or their section of the Union. They are content if they can only injure us. The Constitution declares that persons charged with crimes in one State and fleeing to another shall be delivered up on the demand of the executive authority of the State from which they may flee, to be tried in the jurisdiction where the crime was committed. It would appear difficult to employ language freer from ambiguity, yet for above twenty years the non-slave-holding States generally have wholly refused to deliver up to us persons charged with crimes affecting slave property. Our confederates, with punic faith, shield and give sanctuary to all criminals who seek to deprive us of this property or who use it to destroy us. This clause of the Constitution has no other sanction than their good faith; that is withheld from us; we are remediless in the Union; out of it we are remitted to the laws of nations.

A similar provision of the Constitution requires them to surrender fugitives from labor. This provision and the one last referred to were our main inducements for confederating with the Northern States. Without them it is historically true that we would have rejected the Constitution. In the fourth year of the Republic Congress passed a law to give full vigor and efficiency to this important provision. This act depended to a considerable degree upon the local magistrates in the several States for its efficiency. The non-slave-holding States generally repealed all laws intended to aid the execution of that act, and imposed penalties upon those citizens whose loyalty to the Constitution and their oaths might induce them to discharge their duty. Congress then passed the act of 1850, providing for the complete execution of this duty by Federal officers. This law, which their own bad faith rendered absolutely indispensible for the protection of constitutional rights, was instantly met with ferocious revilings and all conceivable modes of hostility. The Supreme Court unanimously, and their own local courts with equal unanimity (with the single and temporary exception of the supreme court of Wisconsin), sustained its constitutionality in all of its provisions. Yet it stands to-day a dead letter for all practicable purposes in every non-slave-holding State in the Union. We have their covenants, we have their oaths to keep and observe it, but the unfortunate claimant, even accompanied by a Federal officer with the mandate of the highest judicial authority in his hands, is everywhere met with fraud, with force, and with legislative enact-

ments to elude, to resist, and defeat him. Claimants are murdered with impunity; officers of the law are beaten by frantic mobs instigated by inflammatory appeals from persons holding the highest public employment in these States, and supported by legislation in conflict with the clearest provisions of the Constitution, and even the ordinary principles of humanity. In several of our confederate States a citizen cannot travel the highway with his servant who may voluntarily accompany him, without being declared by law a felon and being subjected to infamous punishments. It is difficult to perceive how we could suffer more by the hostility than by the fraternity of such brethren.

The public law of civilized nations requires every State to restrain its citizens or subjects from committing acts injurious to the peace and security of any other State and from attempting to excite insurrection, or to lessen the security, or to disturb the tranquillity of their neighbors, and our Constitution wisely gives Congress the power to punish all offenses against the laws of nations.

These are sound and just principles which have received the approbation of just men in all countries and all centuries; but they are wholly disregarded by the people of the Northern States, and the Federal Government is impotent to maintain them. For twenty years past the abolitionists and their allies in the Northern States have been engaged in constant efforts to subvert our institutions and to excite insurrection and servile war among us. They have sent emissaries among us for the accomplishment of these purposes. Some of these efforts have received the public sanction of a majority of the leading men of the Republican party in the national councils, the same men who are now proposed as our rulers. These efforts have in one instance led to the actual invasion of one of the slave-holding States, and those of the murderers and incendiaries who escaped public justice by flight have found fraternal protection among our Northern confederates.

These are the same men who say the Union shall be preserved.

Such are the opinions and such are the practices of the Republican party, who have been called by their own votes to administer the Federal Government under the Constitution of the United States. We know their treachery; we know the shallow pretenses under which they daily disregard its plainest obligations. If we submit to them it will be our fault and not theirs. The people of Georgia have ever been willing to stand by this bargain, this contract; they have never sought to evade any of its obligations; they have never hitherto sought to establish any new government; they have struggled to maintain the ancient right of themselves and the human race through and by that Constitution. But they know the value of parchment rights in treacherous hands, and therefore they refuse to commit their own to the rulers whom the North offers us. Why? Because by their declared principles and policy they have outlawed $3,000,000,000 of our property in the common territories of the Union; put it under the ban of the Republic in the States where it exists and out of the protection of Federal law everywhere; because they give sanctuary to thieves and incendiaries who assail it to the whole extent of their power, in spite of their most solemn obligations and covenants; because their avowed purpose is to subvert our society and subject us not only to the loss of our property but the destruction of ourselves, our wives, and our children, and the desolation

of our homes, our altars, and our firesides. To avoid these evils we resume the powers which our fathers delegated to the Government of the United States, and henceforth will seek new safeguards for our liberty, equality, security, and tranquility.

Approved, Tuesday, 29 January 1861.

Mississippi

A Declaration of the Immediate Causes which Induce and Justify the Secession of the State of Mississippi from the Federal Union.

In the momentous step which our State has taken of dissolving its connection with the government of which we so long formed a part, it is but just that we should declare the prominent reasons which have induced our course.

Our position is thoroughly identified with the institution of slavery — the greatest material interest of the world. Its labor supplies the products which constitute by far the largest and most important portions of commerce of the earth. These products are peculiar to the climate verging on the tropical regions, and by an imperious law of nature, none but the black race can bear exposure to the tropical sun. These products have become necessities of the world, and a blow at slavery is a blow at commerce and civilization. That blow has been long aimed at the institution, and was at the point of reaching its consummation. There was no choice left us but submission to the mandates of abolition, or a dissolution of the Union, whose principles had been subverted to work out our ruin.

That we do not overstate the dangers to our institution, a reference to a few facts will sufficiently prove.

The hostility to this institution commenced before the adoption of the Constitution, and was manifested in the well-known Ordinance of 1787, in regard to the Northwestern Territory.

The feeling increased, until, in 1819-20, it deprived the South of more than half the vast territory acquired from France.

The same hostility dismembered Texas and seized upon all the territory acquired from Mexico.

It has grown until it denies the right of property in slaves, and refuses protection to that right on the high seas, in the Territories, and wherever the government of the United States had jurisdiction.

It refuses the admission of new slave States into the Union, and seeks to extinguish it by confining it within its present limits, denying the power of expansion.

It tramples the original equality of the South under foot.

It has nullified the Fugitive Slave Law in almost every free State in the Union, and has utterly broken the compact which our fathers pledged their faith to maintain.

It advocates negro equality, socially and politically, and promotes insurrection and incendiarism in our midst.

It has enlisted its press, its pulpit and its schools against us, until the whole popular mind of the North is excited and inflamed with prejudice.

It has made combinations and formed associations to carry out its schemes of emancipation in the States and wherever else slavery exists.

It seeks not to elevate or to support the slave, but to destroy his present condition without providing a better.

It has invaded a State, and invested with the honors of martyrdom the wretch whose purpose was to apply flames to our dwellings, and the weapons of destruction to our lives.

It has broken every compact into which it has entered for our security.

It has given indubitable evidence of its design to ruin our agriculture, to prostrate our industrial pursuits and to destroy our social system.

It knows no relenting or hesitation in its purposes; it stops not in its march of aggression, and leaves us no room to hope for cessation or for pause.

It has recently obtained control of the Government, by the prosecution of its unhallowed schemes, and destroyed the last expectation of living together in friendship and brotherhood.

Utter subjugation awaits us in the Union, if we should consent longer to remain in it. It is not a matter of choice, but of necessity. We must either submit to degradation, and to the loss of property worth four billions of money, or we must secede from the Union framed by our fathers, to secure this as well as every other species of property. For far less cause than this, our fathers separated from the Crown of England.

Our decision is made. We follow their footsteps. We embrace the alternative of separation; and for the reasons here stated, we resolve to maintain our rights with the full consciousness of the justice of our course, and the undoubting belief of our ability to maintain it.

South Carolina

Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union

The people of the State of South Carolina, in Convention assembled, on the 26th day of April, A.D., 1852, declared that the frequent violations of the Constitution of the United States, by the Federal Government, and its encroachments upon the reserved rights of the States, fully justified this State in then withdrawing from the Federal Union; but in deference to the opinions and wishes of the other slaveholding States, she forbore at that time to exercise this right. Since that time, these encroachments have continued to increase, and further forbearance ceases to be a virtue.

And now the State of South Carolina having resumed her separate and equal place among nations, deems it due to herself, to the remaining United States of America, and to the nations of the world, that she should declare the immediate causes which have led to this act.

In the year 1765, that portion of the British Empire embracing Great Britain, undertook to make laws for the government of that portion composed of the thirteen American Colonies. A struggle for the right of self-government ensued, which resulted, on the 4th of July, 1776, in a Declaration, by the Colonies, "that they are, and of right ought to be, *Free and Independent States*; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do."

They further solemnly declared that whenever any "form of government becomes destructive of the ends for which it was established, it is the right of the people to alter or abolish it, and to institute a new government." Deeming the Government of Great Britain to have become destructive of these ends, they declared that the Colonies "are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved."

In pursuance of this Declaration of Independence, each of the thirteen States proceeded to exercise its separate sovereignty; adopted for itself a Constitution, and appointed officers for the administration of government in all its departments — Legislative, Executive and Judicial. For purposes of defense, they united their arms and their counsels; and, in 1778, they entered into a League known as the Articles of Confederation, whereby they agreed to entrust the administration of their external relations to a common agent, known as the Congress of the United States, expressly declaring, in the first Article "that each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not, by this Confederation, expressly delegated to the United States in Congress assembled."

Under this Confederation the war of the Revolution was carried on, and on the 3rd of September, 1783, the contest ended, and a definite Treaty was signed by Great Britain, in which she acknowledged the independence of the Colonies in the following terms:

"Article 1 — His Britannic Majesty acknowledges the said United States, viz: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be *Free, Sovereign, and Independent States*; that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, propriety and territorial rights of the same and every part thereof."

Thus were established the two great principles asserted by the Colonies, namely: the right of a State to govern itself; and the right of a people to abolish a Government when it becomes destructive of the ends for which it was instituted. And concurrent with the establishment of these principles, was the fact, that each Colony became and was recognized by the mother Country a *Free, Sovereign, and Independent State*.

In 1787, Deputies were appointed by the States to revise the Articles of Confedera-

tion, and on 17th September, 1787, these Deputies recommended for the adoption of the States, the Articles of Union, known as the Constitution of the United States.

The parties to whom this Constitution was submitted, were the several sovereign States; they were to agree or disagree, and when nine of them agreed the compact was to take effect among those concurring; and the General Government, as the common agent, was then invested with their authority.

If only nine of the thirteen States had concurred, the other four would have remained as they then were — separate, sovereign States, independent of any of the provisions of the Constitution. In fact, two of the States did not accede to the Constitution until long after it had gone into operation among the other eleven; and during that interval, they each exercised the functions of an independent nation.

By this Constitution, certain duties were imposed upon the several States, and the exercise of certain of their powers was restrained, which necessarily implied their continued existence as sovereign States. But to remove all doubt, an amendment was added, which declared that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people. On the 23rd May, 1788, South Carolina, by a Convention of her People, passed an Ordinance assenting to this Constitution, and afterwards altered her own Constitution, to conform herself to the obligations she had undertaken.

Thus was established, by compact between the States, a Government with definite objects and powers, limited to the express words of the grant. This limitation left the whole remaining mass of power subject to the clause reserving it to the States or to the people, and rendered unnecessary any specification of reserved rights.

We hold that the Government thus established is subject to the two great principles asserted in the Declaration of Independence; and we hold further, that the mode of its formation subjects it to a third fundamental principle, namely: the law of compact. We maintain that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement, entirely releases the obligation of the other; and that where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure, with all its consequences.

In the present case, that fact is established with certainty. We assert that fourteen of the States have deliberately refused, for years past, to fulfill their constitutional obligations, and we refer to their own Statutes for the proof.

The Constitution of the United States, in its fourth Article, provides as follows:

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due."

This stipulation was so material to the compact, that without it that compact would not have been made. The greater number of the contracting parties held slaves, and they had previously evinced their estimate of the value of such a stipulation by making it a condition

in the Ordinance for the government of the territory ceded by Virginia, which now composes the States north of the Ohio River.

The same article of the Constitution stipulates also for rendition by the several States of fugitives from justice from the other States.

The General Government, as the common agent, passed laws to carry into effect these stipulations of the States. For many years these laws were executed. But an increasing hostility on the part of the non-slaveholding States to the institution of slavery, has led to a disregard of their obligations, and the laws of the General Government have ceased to effect the objects of the Constitution. The States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Illinois, Indiana, Michigan, Wisconsin and Iowa, have enacted laws which either nullify the Acts of Congress or render useless any attempt to execute them. In many of these States the fugitive is discharged from service or labor claimed, and in none of them has the State Government complied with the stipulation made in the Constitution. The State of New Jersey, at an early day, passed a law in conformity with her constitutional obligation; but the current of anti-slavery feeling has led her more recently to enact laws which render inoperative the remedies provided by her own law and by the laws of Congress. In the State of New York even the right of transit for a slave has been denied by her tribunals; and the States of Ohio and Iowa have refused to surrender to justice fugitives charged with murder, and with inciting servile insurrection in the State of Virginia. Thus the constituted compact has been deliberately broken and disregarded by the non-slaveholding States, and the consequence follows that South Carolina is released from her obligation.

The ends for which the Constitution was framed are declared by itself to be "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." These ends it endeavored to accomplish by a Federal Government, in which each State was recognized as an equal, and had separate control over its own institutions. The right of property in slaves was recognized by giving to free persons distinct political rights, by giving them the right to represent, and burthening them with direct taxes for three-fifths of their slaves; by authorizing the importation of slaves for twenty years; and by stipulating for the rendition of fugitives from labor.

We affirm that these ends for which this Government was instituted have been defeated, and the Government itself has been made destructive of them by the action of the non-slaveholding States. Those States have assumed the right of deciding upon the propriety of our domestic institutions; and have denied the rights of property established in fifteen of the States and recognized by the Constitution; they have denounced as sinful the institution of slavery; they have permitted open establishment among them of societies, whose avowed object is to disturb the peace and to eloign the property of the citizens of other States. They have encouraged and assisted thousands of our slaves to leave their homes; and those who remain, have been incited by emissaries, books and pictures to servile insurrection.

For twenty-five years this agitation has been steadily increasing, until it has now

secured to its aid the power of the common Government. Observing the *forms* of the Constitution, a sectional party has found within that Article establishing the Executive Department, the means of subverting the Constitution itself. A geographical line has been drawn across the Union, and all the States north of that line have united in the election of a man to the high office of President of the United States, whose opinions and purposes are hostile to slavery. He is to be entrusted with the administration of the common Government, because he has declared that that "Government cannot endure permanently half slave, half free," and that the public mind must rest in the belief that slavery is in the course of ultimate extinction.

This sectional combination for the subversion of the Constitution, has been aided in some of the States by elevating to citizenship, persons who, by the supreme law of the land, are incapable of becoming citizens; and their votes have been used to inaugurate a new policy, hostile to the South, and destructive of its beliefs and safety.

On the 4th day of March next, this party will take possession of the Government. It has announced that the South shall be excluded from the common territory, that the judicial tribunals shall be made sectional, and that a war must be waged against slavery until it shall cease throughout the United States.

The guaranties of the Constitution will then no longer exist; the equal rights of the States will be lost. The slaveholding States will no longer have the power of self-government, or self-protection, and the Federal Government will have become their enemy.

Sectional interest and animosity will deepen the irritation, and all hope of remedy is rendered vain, by the fact that public opinion at the North has invested a great political error with the sanction of more erroneous religious belief.

We, therefore, the People of South Carolina, by our delegates in Convention assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, have solemnly declared that the Union heretofore existing between this State and the other States of North America, is dissolved, and that the State of South Carolina has resumed her position among the nations of the world, as a separate and independent State; with full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do.

Adopted 24 December 1860
[Committee signatures]

Texas

A Declaration of the Causes which Impel the State of Texas to Secede from the Federal Union

The government of the United States, by certain joint resolutions, bearing date the 1st day of March, in the year A.D. 1845, proposed to the Republic of Texas, then *a free, sovereign and independent nation*, the annexation of the latter to the former, as one of the co-equal

States thereof,

The people of Texas, by deputies in convention assembled, on the fourth day of July of the same year, assented to and accepted said proposals and formed a constitution for the proposed State, upon which on the 29th day of December in the same year, said State was formally admitted into the Confederated Union.

Texas abandoned her separate national existence and consented to become one of the Confederated Union to promote her welfare, insure domestic tranquility and secure more substantially the blessings of peace and liberty to her people. She was received into the confederacy with her own constitution, under the guarantee of the federal Constitution and the compact of annexation, that she should enjoy these blessings. She was received as a commonwealth holding, maintaining and protecting the institution known as negro slavery — the servitude of the African to the white race within her limits — a relation that had existed from the first settlement of her wilderness by the white race, and which her people intended should exist in all future time. Her institutions and geographical position established the strongest ties between her and other slave-holding States of the confederacy. Those ties have been strengthened by association. But what has been the course of the government of the United States, and of the people and authorities of the non-slave-holding States, since our connection with them?

The controlling majority of the Federal Government, under various pretences and disguises, has so administered the same as to exclude the citizens of the Southern States, unless under odious and unconstitutional restrictions, from all the immense territory owned in common by all the States on the Pacific Ocean, for the avowed purpose of acquiring sufficient power in the common government to use it as a means of destroying the institutions of Texas and her sister slaveholding States.

By the disloyalty of the Northern States and their citizens and the imbecility of the Federal Government, infamous combinations of incendiaries and outlaws have been permitted in those States and the common territory of Kansas to trample upon the federal laws, to war upon the lives and property of Southern citizens in that territory, and finally, by violence and mob law, to usurp the possession of the same as exclusively the property of the Northern States.

The Federal Government, while but partially under the control of these our unnatural and sectional enemies, has for years almost entirely failed to protect the lives and property of the people of Texas against the Indian savages on our border, and more recently against the murderous forays of banditti from the neighboring territory of Mexico; and when our State government has expended large amounts for such purpose, the Federal Government has refuse reimbursement therefor, thus rendering our condition more insecure and harassing than it was during the existence of the Republic of Texas.

These and other wrongs we have patiently borne in the vain hope that a returning sense of justice and humanity would induce a different course of administration.

When we advert to the course of individual non-slave-holding States, and that of a majority of their citizens, our grievances assume far greater magnitude.

The States of Maine, Vermont, New Hampshire, Connecticut, Rhode Island, Massachusetts, New York, Pennsylvania, Ohio, Wisconsin, Michigan and Iowa, by solemn legislative enactments, have deliberately, directly or indirectly, violated the 3rd clause of the 2nd section of the 4th article of the federal Constitution, and laws passed in pursuance thereof; thereby annulling a material provision of the compact, designed by its framers to perpetuate the amity between the members of the confederacy and to secure the rights of the slave-holding States in their domestic institutions — a provision founded in justice and wisdom, and without the enforcement of which the compact fails to accomplish the object of its creation. Some of those States have imposed high fines and degrading penalties upon any of their citizens or officers who may carry out in good faith that provision of the compact, or the federal laws enacted in accordance therewith.

In all the non-slave-holding States, in violation of that good faith and comity which should exist between entirely distinct nations, the people have formed themselves into a great sectional party, now strong enough in numbers to control the affairs of each of those States, based upon an unnatural feeling of hostility to these Southern States and their beneficent and patriarchal system of African slavery, proclaiming the debasing doctrine of equality of all men, irrespective of race or color — a doctrine at war with nature, in opposition to the experience of mankind, and in violation of the plainest revelations of Divine Law. They demand the abolition of negro slavery throughout the confederacy, the recognition of political equality between the white and negro races, and avow their determination to press on their crusade against us, so long as a negro slave remains in these States.

For years past this abolition organization has been actively sowing the seeds of discord through the Union, and has rendered the federal congress the arena for spreading firebrands and hatred between the slave-holding and non-slave-holding States.

By consolidating their strength, they have placed the slave-holding States in a hopeless minority in the federal congress, and rendered representation of no avail in protecting Southern rights against their exactions and encroachments.

They have proclaimed, and at the ballot box sustained, the revolutionary doctrine that there is a "higher law" than the Constitution and laws of our Federal Union, and virtually that they will disregard their oaths and trample upon our rights.

They have for years past encouraged and sustained lawless organizations to steal our slaves and prevent their recapture, and have repeatedly murdered Southern citizens while lawfully seeking their rendition.

They have invaded Southern soil and murdered unoffending citizens, and through the press their leading men and a fanatical pulpit have bestowed praise upon the actors and assassins in these crimes, while the governors of several of their States have refused to deliver parties implicated and indicted for participation in such offenses, upon the legal demands of the States aggrieved.

They have, through the mails and hired emissaries, sent seditious pamphlets and papers among us to stir up servile insurrection and bring blood and carnage to our firesides.

They have sent hired emissaries among us to burn our towns and distribute arms and

poison to our slaves for the same purpose.

They have impoverished the slave-holding States by unequal and partial legislation, thereby enriching themselves by draining our substance.

They have refused to vote appropriations for protecting Texas against ruthless savages, for the sole reason that she is a slave-holding State.

And, finally, by the combined sectional vote of the seventeen non-slave-holding States, they have elected as president and vice-president of the whole confederacy two men whose chief claims to such high positions are their approval of these long continued wrongs, and their pledges to continue them to the final consummation of these schemes for the ruin of the slave-holding States.

In view of these and many other facts, it is meet that our own views should be distinctly proclaimed.

We hold as undeniable truths that the governments of the various States, and of the confederacy itself, were established exclusively by the white race, for themselves and their posterity; that the African race had no agency in their establishment; that they were rightfully held and regarded as an inferior and dependent race, and in that condition only could their existence in this country be rendered beneficial or tolerable.

That in this free government *all white men are and of right ought to be entitled to equal civil and political rights*; that the servitude of the African race, as existing in these States, is mutually beneficial to both bond and free, and is abundantly authorized and justified by the experience of mankind, and the revealed will of the Almighty Creator, as recognized by all Christian nations; while the destruction of the existing relations between the two races, as advocated by our sectional enemies, would bring inevitable calamities upon both and desolation upon the fifteen slave-holding States.

By the secession of six of the slave-holding States, and the certainty that others will speedily do likewise, Texas has no alternative but to remain in an isolated connection with the North, or unite her destinies with the South.

For these and other reasons, solemnly asserting that the federal Constitution has been violated and virtually abrogated by the several States named, seeing that the federal government is now passing under the control of our enemies to be diverted from the exalted objects of its creation to those of oppression and wrong, and realizing that our own State can no longer look for protection, but to God and her own sons — We the delegates of the people of Texas, in Convention assembled, have passed an ordinance dissolving all political connection with the government of the United States of America and the people thereof and confidently appeal to the intelligence and patriotism of the freemen of Texas to ratify the same at the ballot box, on the 23rd day of the present month.

Adopted in Convention on the 2nd day of Feby, in the year of our Lord one thousand eight hundred and sixty-one and of the independence of Texas the twenty-fifth.

[Delegates' signatures]

SUPPLEMENTARY ESSAY

On the Permanence of the Union

by William Rawle

The United States shall guarantee to every state in the Union a republican form of government, shall protect each of them against invasion, and on application of the legislature, or of the executive when the legislature cannot be convened, against domestic violence.

The Union is an association of the people of republics; its preservation is calculated to depend on the preservation of those republics. The people of each pledge themselves to preserve that form of government in all. Thus each becomes responsible to the rest, that no other form of government shall prevail in it, and all are bound to preserve it in every one.

But the mere compact, without the power to enforce it, would be of little value. Now this power can be no where so properly lodged, as in the Union itself. Hence, the term guarantee, indicates that the United States are authorized to oppose, and if possible, prevent every state in the Union from relinquishing the republican form of government, and as auxiliary means, they are expressly authorized and required to employ their force on the application of the constituted authorities of each state, "to repress domestic violence." If a faction should attempt to subvert the government of the state for the purpose of destroying its republican form, the paternal power of the Union could thus be called forth to subdue it.

Yet it is not to be understood, that its interposition would be justifiable, if the people of a state should determine to retire from the Union, whether they adopted another or retained the same form of government, or if they should, with the express intention of seceding, expunge the representative system from their code, and thereby incapacitate themselves from concurring according to the mode now prescribed, in the choice of certain public officers of the United States.

The principle of representation, although certainly the wisest and best, is not essential

to the being of a republic, but to continue a member of the Union, it must be preserved, and therefore the guarantee must be so construed. It depends on the state itself to retain or abolish the principle of representation, because it depends on itself whether it will continue a member of the Union. To deny this right would be inconsistent with the principle on which all our political systems are founded, which is, that the people have in all cases, a right to determine how they will be governed.

The states, then, may wholly withdraw from the Union, but while they continue, they must retain the character of representative republics. Governments of dissimilar forms and principles cannot long maintain a binding coalition. "Greece," says Montesquieu," was undone as soon as the king of Macedonia obtained a seat in the amphyctionic council."[1] It is probable, however, that the disproportionate force as well as the monarchical form of the new confederate had its share of influence in the event. But whether the historical fact supports the theory or not, the principle in respect to ourselves is unquestionable.

We have associated as republics. Possessing the power to form monarchies, republics were preferred and instituted. The history of the ancient, and the state of the present world, are before us. Of modern republics, Venice, Florence, the United Provinces, Genoa, all but Switzerland have disappeared. They have sunk beneath the power of monarchy, impatient at beholding the existence of any other form than its own. An injured province of Turkey, recalling to its mind the illustrious deeds of its ancestors, has ventured to resist its oppressors, and with a revival of the name of Greece, a hope is entertained of the permanent institution of another republic. But monarchy stands by with a jealous aspect, and fearful lest its own power should be endangered by the revival of the maxim, that sovereignty can ever reside in the people, affects a cold neutrality, with the probable anticipation that it will conduce to barbarian success. Yet that gallant country, it is trusted, will persevere. An enlightened people, disciplined through necessity, and emboldened even by the gloom of its prospects, may accomplish what it would not dare to hope.[2]

This abstract principle, this aversion to the extension of republican freedom, is now invigorated and enforced by an alliance avowedly for the purpose of overpowering all efforts to relieve mankind from their shackles. It is essentially and professedly the exaltation of monarchies over republics, and even over every alteration in the forms of monarchy, tending to acknowledge or secure the rights of the people. The existence of such a combination warrants and requires that in some part of the civilized world, the republican system should be able to defend itself. But this would be imperfectly done, by the erection of separate, independent, though contiguous governments. They must be collected into a body, strong in

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1. *Federalist*, No. 43.

2. Since this passage was written, the affairs of Greece have assumed somewhat of a different aspect. The Turkish fleet has been *accidentally* destroyed by the combined powers, and the French have landed a body of men, with an apparent intention to promote the independence of this afflicted country.

proportion to the firmness of its union; respected and feared in proportion to its strength. The principle on which alone the Union is rendered valuable, and which alone can continue it, is the preservation of the republican form.

In what manner this guaranty shall be effectuated is not explained, and it presents a question of considerable nicety and importance.

Not a word in the Constitution is intended to be inoperative, and one so significant as the present was not lightly inserted. The United States are therefore bound to carry it into effect whenever the occasion arises, and finding as we do, in the same clause, the engagement to protect each state against domestic violence, which can only be by the arms of the Union, we are assisted in a due construction of the means of enforcing the guaranty. If the majority of the people of a state deliberately and peaceably resolve to relinquish the republican form of government, they cease to be members of the Union. If a faction, an inferior number, make such an effort, and endeavour to enforce it by violence, the case provided for will have arisen, and the Union is bound to employ its power to prevent it.

The power and duty of the United States to interfere with the particular concerns of a state are not, however, limited to the violent efforts of a party to alter its constitution. If from any other motives, or under any other pretexts, the internal peace and order of the state are disturbed, and its own powers are insufficient to suppress the commotion, it becomes the duty of its proper government to apply to the Union for protection. This is founded on the sound principle that those in whom the force of the Union is vested, in diminution of the power formerly possessed by the state, are bound to exercise it for the good of the whole, and upon the obvious and direct interest that the whole possesses in the peace and tranquility of every part. At the same time it is properly provided, in order that such interference may not wantonly or arbitrarily take place, that it shall only be on the request of the state authorities: otherwise the self-government of the state might be encroached upon at the pleasure of the Union, and a small state might fear or feel the effects of a combination of larger states against it under colour of constitutional authority; but it is manifest, that in every part of this excellent system, there has been the utmost care to avoid encroachments on the internal powers of the different states, whenever the general good did not imperiously require it.

No form of application for this assistance is pointed out, nor has been provided by any act of congress, but the natural course would be to apply to the president, or officer for the time being, exercising his functions. No occasional act of the legislature of the United States seems to be necessary, where the duty of the president is pointed out by the Constitution, and great injury might be sustained, if the power was not promptly exercised.

In the instance of foreign invasion, the duty of immediate and unsolicited protection is obvious, but the generic term invasion, which is used without any qualification, may require a broader construction.

If among the improbable events of future times, we shall see a state forgetful of its obligation to refer its controversies with another state to the judicial power of the Union, endeavour by force to redress its real or imaginary wrongs, and actually invade another state, we shall perceive a case in which the supreme power of the Union may justly interfere:

perhaps we may say is bound to do so.

The invaded state, instead of relying merely on its own strength for defence, and instead of gratifying its revenge by retaliation, may prudently call for and gratefully receive the strong arm of the Union to repel the invasion, and reduce the combatants to the equal level of suitors in the high tribunal provided for them. In this course, the political estimation of neither state could receive any degradation. The decision of the controversy would only be regulated by the purest principles of justice, and the party really injured, would be certain of having the decree in its favour carried into effect.

It rests with the Union, and not with the states separately or individually, to increase the number of its members.[3] The admission of another state can only take place on its own application. In the formation of colonies under the denominations of territories, the habit has been, to assure them their formation into states when the population should become sufficiently large. On that event, the inhabitants acquire a right to assemble and form a constitution for themselves, and the United States are considered as bound to admit the new state into the Union, provided its form of government be that of a representative republic. This is the only check or control possessed by the United States in this respect.

If a measure so improbable should occur in the colony, as the adoption of a monarchical government, it could not be received into the Union, although it assumed the appellation of a state, but the guaranty of which we have spoken, would not literally apply — the guaranty is intended to secure republican institutions to states, and does not in terms extend to colonies. As soon, however, as a state is formed out of a colony, and admitted into the Union, it becomes the common concern to enforce the continuance of the republican form. There can be no doubt, however, that the new state may decline to apply for admission into the Union, but it does not seem equally clear, that if its form of government coincided with the rules already mentioned, its admission could be refused. The inhabitants emigrate from the United States, and foreigners are permitted to settle, under the express or implied compact, that when the proper time arrives, they shall become members of the great national community, without being left to an exposed and unassisted independence, or compelled to throw themselves into the arms of a foreign power. It would seem, however, that the constitution adopted, ought to be submitted to the consideration of congress, but it would not be necessary that this measure should take place at the time of its formation, and it would be sufficient if it were presented and approved at the time of its admission. The practice of congress has not, however, corresponded with these positions, no previous approbation of the constitution has been deemed necessary.

It must also be conceded, that the people of the new state retain the same power to alter their constitution, that is enjoyed by the people of other states, and provided such alter-

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3. There is, however, a restriction on this point, which must be noticed. No new state can be formed or erected within the jurisdiction of any other state, nor can any state be formed by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned as well as of congress.

ations are not carried so far as to extinguish the republican principle, their admission is not affected.

The secession of a state from the Union depends on the will of the people of such state. The people alone as we have already seen, hold the power to alter their constitution. The Constitution of the United States is to a certain extent, incorporated into the constitutions of the several states by the act of the people. The state legislatures have only to perform certain organical operations in respect to it. To withdraw from the Union comes not within the general scope of their delegated authority. There must be an express provision to that effect inserted in the State constitution. This is not at present the case with any of them, and it would perhaps be impolitic to confide it with them. A matter so momentous, ought not to be entrusted to those who would have it in their power to exercise it lightly and precipitately upon sudden dissatisfaction, or causeless jealousy, perhaps against the interests and the wishes of a majority of their constituents.

But in any manner by which a secession is to take place, nothing is more certain than that the act should be deliberate, clear, and unequivocal. The perspicuity and solemnity of the original obligation require correspondent qualities in its dissolution. The powers of the general government, cannot be defeated or impaired by an ambiguous or implied secession on the part of the state, although a secession may perhaps be conditional. The people of the state may have some reasons to complain in respect to acts of the general government, they may in such cases invest some of their own officers with the power of negotiation, and may declare an absolute secession in case of their failure. Still, however, the secession must in such case be distinctly and peremptorily declared to take place on that event, and in such case — as in the case of an unconditional secession, — the previous ligament with the Union, would be legitimately and fairly destroyed. But in either case the people is the only moving power.

But we may pursue the subject somewhat further.

To withdraw from the Union is a solemn, serious act. Whenever it may appear expedient to the people of a state, it must be manifested in a direct and unequivocal manner. If it is ever done indirectly, the people must refuse to elect representatives, as well as to suffer their legislature to re-appoint senators. The senator whose time had not yet expired, must be forbidden to continue in the exercise of his functions.

But without plain, decisive measures of this nature, proceeding from the only legitimate source, the people, the United States cannot consider their legislative powers over such states suspended, nor their executive or judicial powers any way impaired, and they would not be obliged to desist from the collection of revenue within such state.

As to the remaining states among themselves, there is no opening for a doubt.

Secessions may reduce the number to the smallest integer admitting combination. They would remain united under the same principles and regulations among themselves that now apply to the whole. For a state cannot be compelled by other states to withdraw from the Union, and therefore, if two or more determine to remain united, although all the others desert them, nothing can be discovered in the Constitution to prevent it.

The consequences of an absolute secession cannot be mistaken, and they would be serious and afflicting.

The seceding state, whatever might be its relative magnitude, would speedily and distinctly feel the loss of the aid and countenance of the Union. The Union losing a proportion of the national revenue, would be entitled to demand from it a proportion of the national debt. It would be entitled to treat the inhabitants and the commerce of the separated state, as appertaining to a foreign country. In public treaties already made, whether commercial or political, it could claim no participation, while the foreign powers would unwillingly calculate, and slowly transfer to it, any portion of the respect and confidence borne towards the United States.

Evils more alarming may readily be perceived. The destruction of the common band would be unavoidably attended with more serious consequences than the mere disunion of the parts.

Separation would produce jealousies and discord, which in time would ripen into mutual hostilities, and while our country would be weakened by internal war, foreign enemies would be encouraged to invade with the flattering prospect of subduing in detail, those whom, collectively, they would dread to encounter.

Such in ancient times was the fate of Greece, broken into numerous independent republics. Rome, which pursued a contrary policy, and absorbed all her territorial acquisitions in one great body, attained irresistible power.

But it may be objected, that Rome also has fallen. It is true; and such is the history of man. Natural life and political existence alike give way at the appointed measure of time, and the birth, decay, and extinction of empires only serve to prove the tenuity and illusion of the deepest schemes of the statesmen, and the most elaborate theories of the philosopher. Yet it is always our duty to inquire into, and establish those plans and forms of civil association most conducive to present happiness and long duration: the rest we must leave to Divine Providence, which hitherto has so graciously smiled on the United States of America.

We may contemplate a dissolution of the Union in another light, more disinterested but not less dignified, and consider whether we are not only bound to ourselves but to the world in general, anxiously and faithfully to preserve it.

The first example which has been exhibited of a perfect self-government, successful beyond the warmest hopes of its authors, ought never to be withdrawn while the means of preserving it remain.

If in other countries, and particularly in Europe, a systematic subversion of the political rights of man shall gradually overpower all rational freedom, and endanger all political happiness, the failure of our example should not be held up as a discouragement to the legitimate opposition of the sufferers; if, on the other hand, an emancipated people should seek a model on which to frame their own structure; our Constitution, as permanent in its duration as it is sound and splendid in its principles, should remain to be their guide.

In every aspect therefore which this great subject presents, we feel the deepest impression of a sacred obligation to preserve the union of our country; we feel our glory, our

safety, and our happiness, involved in it; we unite the interests of those who coldly calculate advantages with those who glow with what is little short of filial affection; and we must resist the attempt of its own citizens to destroy it, with the same feelings that we should avert the dagger of the parricide.

The preceding essay was extracted from William Rawle, A View of the Constitution of the United States of America *(Philadelphia, Pennsylvania: Philip H. Nicklin and Company, 1829).*

CHAPTER NINE
The Economic Background of the War

Lincoln's Cabinet Members Warn of Civil War

Abraham Lincoln's message to the people of the seceded Southern States in his first Inaugural Address was of a pacific and conciliatory nature. "The Government will not assail you," was his promise. "You can have no conflict without being yourselves the aggressors." However, his subsequent actions proved these expressed sentiments to be insincere and deliberately worded to set the stage for an unprecedented act of treachery against those whom Lincoln affirmed to be his "fellow countrymen" — an act which was intended to incite a violent reaction. It is one of the most terrible of history's ironies that Lincoln, foremost in America's mind as the man who "saved the Union," was actually responsible for its deliberate destruction. The threat of Republican Senator Thaddeus Stevens that "this Union never shall... be restored under the Constitution as it is,"[1] was indeed carried out to fulfillment by the Lincoln Administration. To establish this fact, let us now turn our attention to the firing upon of Fort Sumter.

Fort Sumter, situated in the entrance to the Charleston harbor in South Carolina, was held by United States troops under the command of Major Robert Anderson. A native of Kentucky, Anderson nevertheless saw his duty to the Union as paramount over his loyalty to his section of the country. However, he understood, in light of the armistice which had been entered into between South Carolina and the Buchanan Administration on 6 December

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1. Thaddeus Stevens, *Congressional Globe* (Thirty-Seven Congress, Third Session), 9 December 1862, page 51.

1860,[2] that an attempt by the United States military to garrison the fort would precipitate war. Such was the sentiment of all but two of the seven members of Lincoln's own Cabinet. In a letter dated 15 March 1861, Lincoln asked his Cabinet whether it was wise to attempt to provision the fort,[3] to which question his Secretary of State, William Seward, replied:

> If it were possible to peaceably provision Fort Sumter, of course, I should answer that it would be both unwise and inhuman not to attempt it. But the facts of the case are known to be that the attempt must be made with the employment of military and marine force which would provoke combat and probably initiate a civil war which the Government of the United States would be committed to maintain, through all changes, to some definite conclusion....
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> Suppose the expedition successful, we have then a garrison in Fort Sumter that can defy assault for six months. What is it to do then? Is it to make war by opening its batteries to demolish the defenses of the Carolinians? Can it demolish them if it tries? If it cannot, what is the advantage we shall have gained? If it can, how will it check or prevent disunion? In either case, it seems to me, that we will have inaugurated a civil war by our own act, without an adequate object, after which reunion will be hopeless, at least under this Administration or in any other way than by a popular disavowal both of the war and of the Administration which unnecessarily commenced it. Fraternity is the element of union; war the very element of disunion.[4]

Secretary of War Simon Cameron's response was that "it would be unwise now to make such an attempt" to garrison Fort Sumter and that "the cause of humanity and the highest obligation of the public interest would be best promoted" by abandoning the fort. He concluded:

> Whatever might have been done as late as a month ago, it is too sadly evident that it cannot now be done without the sacrifice of life and treasure not at all commensurate with the object to be attained; and as the abandonment of the fort in a few weeks, sooner or later, appears to be the inevitable necessity, it seems to me that the sooner it be done the

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2. H.W. Johnstone, *Truth of the War Conspiracy of 1861* (Idylwild, Georgia: self-published, 1921), page 9; Lyon Gardiner Tyler, *John Tyler and Abraham Lincoln: Who Was the Dwarf?* (Richmond, Virginia: Richmond Press, Inc., 1929), pages 16-17; Webb Garrison, *Lincoln's Little War* (Nashville, Tennessee: Rutledge Hill Press, 1997), page 51.

3. Nicolay and Hay, *Lincoln: Complete Works*, Volume II, page 11; United States War Department, *Official Records of the Union and Confederate Armies in the War of the Rebellion* (Washington, D.C.: Government Printing Office, 1880), Series I, Volume I, page 196.

4. William H. Seward, reply to Lincoln; in Nicolay and Hay, *Abraham Lincoln: Complete Works*, Volume II, pages 11, 14.

better.[5]

Secretary of the Navy Gideon Welles wrote, "By sending or attempting to send provisions into Fort Sumter, will not war be precipitated? It may be impossible to escape it under any course of policy that may be pursued, but I am not prepared to advise a course that would provoke hostilities.... I do not, therefore, under all the circumstances, think it wise to provision Fort Sumter."[6] Secretary of the Interior Caleb B. Smith's reply was as follows:

> The commencement of civil war would be a calamity greatly to be deplored and should be avoided if the just authority of the Government may be maintained without it. If such a conflict should become inevitable, it is much better that it should commence by the resistance of the authorities or the people of South Carolina to the legal action of the Government in enforcing the laws of the United States....
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> If a conflict should be provoked by the attempt to reinforce Fort Sumter, a divided sentiment in the North would paralyze the arm of the Government, while the treason in the Southern States would be openly encouraged in the North.... I, therefore, respectfully answer the inquiry of the President by saying that in my opinion it would not be wise, under all the circumstances, to attempt to provision Fort Sumter.[7]

Secretary of the Treasury Salmon Portland Chase returned an affirmative answer, but added, "I will oppose any attempt to reinforce Fort Sumter, if it means war."[8] Postmaster General Montgomery Blair was the only member of Lincoln's Cabinet who gave an unqualified affirmative reply to Lincoln's query, stating his opinion that, "This would completely demoralize the rebellion," and "No expense nor care should therefore be spared to achieve this success."[9]

The South's Traditional Opposition to Protectionism

> [The] contrast between the Northern and Southern minds is vividly illustrated in the different ideas and styles of their worship of that great American idol — the Union. In the North there never was any lack of rhetorical fervor for the Union; its praises were sounded in every note of tumid literature, and it was familiarly entitled "the glorious." But

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5. Simon Cameron, reply to Lincoln; in *ibid.*, page 17; *Official Records: Armies*, Series I, Volume I, pages 196, 199.

6. Gideon Welles, reply to Lincoln; in Nicolay and Hay, *Lincoln: Complete Works*, Volume II, page 18.

7. Caleb B. Smith, reply to Lincoln; in *ibid.*, pages 19-20.

8. Salmon Portland Chase, reply to Lincoln; in *ibid.*, page 15.

9. Montgomery Blair, reply to Lincoln; in *ibid.*, page 21.

> the North worshipped the Union in a very low, commercial sense; it was a source of boundless profit; it was productive of tariffs and bounties; and it had been used for years as the means of sectional aggrandizement.
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> The South regarded the Union in a very different light. It estimated it at its real value, and although quiet and precise in its appreciation, and not given to transports, there is this remarkable assertion to be made: that the *moral* veneration of the Union was peculiarly a sentiment of the South and entirely foreign to the Northern mind. It could not be otherwise, looking to the different political schools of the two sections (emphasis in original).[10]

Before we proceed with the Fort Sumter narrative, the historical background requires explanation. As most wars have been throughout modern history, the War of 1861 was essentially a financial conflict.[11] More precisely, it was a "fatal clash of the two economic nations within the republic" which resulted from a gradual departure on the part of the North "from the old ways toward large-scale industry, toward giant capitalism, [and] toward a centralized, national economy...." and a firm resistance to such change on the part of the South.[12] In a speech delivered in the Virginia Convention of 1788, Patrick Henry had predicted that the South would eventually find itself economically subjugated to the North once the latter had secured to itself a majority in the new federal Government: "This government subjects every thing to the Northern majority. Is there not, then, a settled purpose to check the Southern interest?... How can the Southern members prevent the adoption of the most oppressive mode of taxation in the Southern States, as there is a majority in favor of the Northern States?"[13] Henry's prediction was not long in being realized. As early as 1789, the first impost bill was introduced in Congress which protected the New England fishing industry and its production of molasses, and exhibited, in the opinion of William Grayson, "a great disposition... for the advancement of commerce and manufactures in preference to agriculture." Thus, when the Union under the Constitution was but two months old, many Southerners felt that their States were already being obliged to serve the North as "the milch cow out

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10. Pollard, *Lost Cause*, page 52.

11. On this point, Alexander Hamilton was correct when he wrote:

> Has commerce hitherto done anything more than change the objects of war? Is not the love of wealth as domineering and enterprising a passion as that of power or glory? Have not there been as many wars founded upon commercial motives since that has become the prevailing system of nations as were before occasioned by the cupidity of territory or dominion? Has not the spirit of commerce, in many instances, administered new incentives to the appetite, both for the one and for the other? (*Federalist*, Number VI).

12. Matthew Josephson, *The Robber Barons: The Great American Capitalists 1861-1901* (New York: Harcourt, Brace and Company, 1934), pages 3, 4.

13. Patrick Henry, in Elliott, *Debates in the Several State Conventions*, Volume III, page 328.

of whom the substance would be extracted."[14] In a pamphlet published in 1850, Muscoe Russell Garnett of Virginia wrote:

> The whole amount of duties collected from the year 1791, to June 30, 1845, after deducting the drawbacks on foreign merchandise exported, was $927,050,097. Of this sum the slaveholding States paid $711,200,000, and the free States only $215,850,097. Had the same amount been paid by the two sections in the constitutional ratio of their federal population, the South would have paid only $394,707,917, and the North $532,342,180. Therefore, the slaveholding States paid $316,492,083 more than their just share, and the free States as much less.[15]

From the days of the illustrious Henry onwards, the South had generally stood in the way of the Northern goal to make permanent such an unjust system of taxation.[16] According to John Taylor of Virginia, a high protective tariff system, like that which existed in Great Britain, was "undoubtedly the best which has ever appeared for extracting money from the people; and commercial restrictions, both upon foreign and domestick commerce, are its most effectual means for accomplishing this object. No equal mode of enriching the party of government, and impoverishing the party of people, has ever been discovered."[17] Nevertheless, the North clung tenaciously to its protectionist policy and managed to push through the tariff legislation of 1828 which provoked South Carolina to resistance to the general Government and nearly to secession from the Union during the Administration of Andrew Jackson.[18] It should be noted that, by 1828, the public debt was near to extinction and, at the

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14. William Grayson, letter to Patrick Henry, 12 June 1789; quoted by Carpenter, *South as a Conscious Minority*, pages 29-30.

15. Muscoe Russell Hunter Garnett, *The Union, Past and Future: How It Works and How to Save It* (Charleston, South Carolina: Walker and James Press, 1850), page 12.

16. John C. Calhoun, "South Carolina Exposition and Protest," 19 December 1828; in Ross M. Lence (editor), *Union and Liberty: The Political Philosophy of John C. Calhoun* (Indianapolis, Indiana: Liberty Fund, 1992), pages 313-365.

17. John Taylor, *Tyranny Unmasked* (Indianapolis, Indiana: Liberty Fund, Inc., 1992), page 11. In this book, Taylor also made the following and very remarkable prediction: "I believe that a loss of independent internal power by our confederated States, and an acquisition of supreme power by the Federal department, or by any branch of it, will substantially establish a consolidated republic over all the territories of the United States, though a federal phraseology might still remain; that this consolidation would introduce a monarchy; and that the monarchy, however limited, checked, or balanced, would finally become a complete tyranny" (page xxvii). Whether or not this prediction has proven true the reader will be able to judge for himself.

18. John G. Van Deusen, *Economic Bases of Disunion in South Carolina* (New York: AMS Press, Incorporated, 1928), pages 19-21, 59-103, 328.

current rate of taxation on imported goods, a twelve to thirteen million dollar annual surplus would have been created in the Treasury.[19] Thus, the excuse for a high tariff system as a source of Government revenue was a flimsy one at best; the so-called "Tariff of Abomination" really served no other purpose than to "rob and plunder nearly one half of the Union, for the benefit of the residue."[20] James Spence of London explained the effects of such a high tariff on the Southern economy:

> This system of protecting Northern manufactures, has an injurious influence, beyond the effect immediately apparent. It is doubly injurious to the Southern States, in raising what they have to buy, and lowering what they have to sell. They are the exporters of the Union, and require that other countries shall take their productions. But other countries will have difficulty in taking them, unless permitted to pay for them in the commodities which are their only means of payment. They are willing to receive cotton, and to pay for it in iron, earthenware, woollens. But if by extravagant duties, these be prohibited from entering the Union, or greatly restricted, the effect must needs be, to restrict the power to buy the products of the South. Our imports of Southern productions, have nearly reached thirty millions sterling a year. Suppose the North to succeed in the object of its desire, and to exclude our manufactures altogether, with what are we to pay? It is plainly impossible for any country to export largely, unless it be willing also, to import largely. Should the Union be restored, and its commerce be conducted under the present tariff, the balance of trade against us must become so great, as either to derange our monetary system, or compel us to restrict our purchases from those, who practically exclude other payment than gold. With the rate of exchange constantly depressed, the South would receive an actual money payment, much below the current value of its products. We should be driven to other markets for our supplies, and thus the exclusion of our manufactures by the North, would result in a compulsory exclusion, on our part, of the products of the South.
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> This is a consideration of no importance to the Northern manufacturer, whose only thought is the immediate profit he may obtain, by shutting out competition. It may be, however, of very extreme importance to others — to those who have products they are anxious to sell to us, who are desirous to receive in payment, the very goods we wish to dispose of, and yet are debarred from this. Is there not something of the nature of commercial slavery, in the fetters of a system that prevents it? If we consider the terms of the compact, and the gigantic magnitude of Southern trade, it becomes amazing, that even the attempt should be made, to deal with it in such a manner as this.[21]

George McDuffie of South Carolina stated in the House of Representatives, "If the union of these states shall ever be severed, and their liberties subverted, historians who

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19. Pollard, *Lost Cause*, page 61.

20. John Randolph, speech delivered in the House of Representatives on 22 April 1828; in *Register of Debates in Congress* (Twentieth Congress, First Session), page 2472.

21. Spence, *American Union*, pages 178-179.

record these disasters will have to ascribe them to measures of this description. I do sincerely believe that neither this government, nor any free government, can exist for a quarter of a century under such a system of legislation."[22] While the Northern manufacturer enjoyed free trade with the South, the Southern planter was not allowed to enjoy free trade with those countries to which he could market his goods at the most benefit to himself. Furthermore, while the six cotton States — South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Arkansas — had less than one-eighth of the representation in Congress, they furnished two-thirds of the exports of the country, much of which was exchanged for imported necessities.[23] Thus, McDuffie noted that because the import tariff effectively hindered Southern commerce, the relation which the Cotton States bore to the protected manufacturing States of the North was now the same as that which the colonies had once borne to Great Britain; under the current system, they had merely changed masters.[24]

Such was the consistent argument of South Carolinian politicians and editorialists right up to the moment of secession in late 1860. Robert Barnwell Rhett, who served in the House of Representatives and then in the Senate, said in 1850, "The great object of free governments is liberty. The great test of liberty in modern times, is to be free in the imposition of taxes, and the expenditure of taxes.... For a people to be free in the imposition and payment of taxes, they must lay them through their representatives."[25] Consequently, because they were being taxed without corresponding representation, the Southern States had been reduced to the condition of colonies of the North and thus were no longer free. The solution was determined by John Cunningham to exist only in independence:

> The legislation of this Union has impoverished them [the Southern States] by taxation and by a diversion of the proceeds of our labor and trade to enriching Northern Cities and States. These results are not only sufficient reasons why we would prosper better out of the union but are of themselves sufficient causes of our secession. Upon the mere score of commercial prosperity, we should insist upon disunion. Let Charleston be relieved from her present constrained vassalage in trade to the North, and be made a free port and my life on it, she will at once expand into a great and controlling city.[26]

In a letter to the *Carolina Times* in 1857, Representative Laurence Keitt wrote, "I

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22. George McDuffie, *Register of Debates* (Twentieth Congress, First Session), page 2470.

23. Van Deusen, *Economic Bases of Disunion*, page 63.

24. McDuffie, *Register of Debates* (Twentieth Congress, First Session), page 859.

25. Robert Barnwell Rhett, speech delivered at Charleston, South Carolina on 20 July 1850; quoted by Van Deusen, *Economic Bases of Disunion*, page 98.

26. John Cunningham, editorial for the Charleston *Mercury*, 18 August 1851; quoted by Van Deusen, *ibid*., page 218.

believe that the safety of the South is only in herself.'[27] James H. Hammond likewise stated in 1858, "I have no hesitation in saying that the Plantation States should discard any government that makes a protective tariff its policy."[28]

The Protectionist Roots of the Republican Party

When the tariff was temporarily lowered in 1833, Henry Clay, the Kentuckian Whig who "courted Northern popularity,"[29] vowed to "defy the South, the president, and the devil" in order to have it raised again.[30] With the demise of the old Whig party in 1856, "eastern manufacturing interests saw in the Republican party their only hope of capturing the Federal government for the cause of protection.... [P]owerful economic factors were working in the direction of an alliance between diverse partners: antislavery agitators and 'big business' in the North, though for very different purposes, were desiring the same things in terms of governmental control and party supremacy."[31] Supported by "business interests which were now weaning the Northwest away from its Southern alliance,"[32] former Whigs, such as Abraham Lincoln, held to the Hamiltonian principles of a strong centralized government and a corresponding weakening of the States, the desirability of a central banking system and a perpetual national debt, and taxpayer-funded internal improvements and Government subsidies which would mainly benefit corporations in the manufacturing North at the expense of the agricultural South. In particular, they supported the reinstitution of a high protective import tariff.

Just as John C. Calhoun had predicted in 1828, agitation of the slavery issue was thereafter seized upon by the Northern protectionists as a means to remove this persistent

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27. Laurence Keitt, letter to the *Carolina Times*, 16 July 1857; quoted by Van Deusen, *ibid*., page 102.

28. James H. Hammond, speech delivered at Charleston, South Carolina on 29 October 1858; quoted by Van Deusen, *ibid*.

29. Pollard, *Lost Cause*, page 61.

30. Henry Clay, quoted by Maurice Baxter, *Henry Clay and the American System* (Lexington, Kentucky: University of Kentucky Press, 1995), page 75.

31. Randall, *Civil War and Reconstruction*, page 145.

32. Randall, *ibid*., page 179.

Southern obstacle.[33] Those of a more moderate stripe sought to accomplish this by excluding slavery from the Territories and thereby confining and minimizing the political influence of the South, while those who adopted a more radical approach sought to drive the Southern States from the Union entirely. That slavery was merely a pretext in this sectional struggle is beyond dispute. We have already seen how former big-government Whigs were naturally attracted to the new Republican party, which Wendell Phillips admitted was a purely sectional faction "organized against the South." According to the 3 November 1860 edition of the Charleston *Mercury*, "The real causes of dissatisfaction in the South with the North, are in the unjust taxation and expenditure of the taxes by the Government of the United States, and in the revolution the North has effected in this government, from a confederated republic, to a national sectional despotism."[34] According to Thomas Hart Benton of Missouri, "[T]he exports of the South have been the basis of the Federal revenue.... Virginia, the two Carolinas, and Georgia, may be said to defray three-fourths of the annual expense of supporting the Federal Government." He stated that, as a result of unfair legislation, wealth flowed from the South to the North in "one uniform, uninterrupted, and perennial stream."[35] This economic tug-of-war had been going on between the North and South for decades and finally the sectional party which had openly avowed hostility to the South had gained control of both Congress and the White House. It should be remembered that throughout his political career, Lincoln had always identified himself as a disciple of Henry Clay in fiscal matters, and the whole country knew that upon his nomination, he had committed himself to a high tariff policy if elected President. This state of affairs sheds valuable light on why the Gulf States reacted to Lincoln's victory as they did. The complaints of the South were sometimes couched in terms of slavery and other times in terms of finances, but it is clear that self-preservation alone drove the Southern States out of the Union. In a statement issued on 25 December 1860, the South Carolina Convention summarized the South's complaint against the North as follows:

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33. Referring to a time when the high tariff would either be repealed or lowered, Calhoun predicted, "Those who now make war on our gains, would then make it on our labor. They would not tolerate, that those, who now cultivate our plantations, and furnish them with the material, and the market for the products of their arts, should, by becoming their rivals, take bread out of the mouths of their wives and children" (*Exposition and Protest*, in Lence, *Union and Liberty*, page 323). It is noteworthy that the Abolitionist movement officially commenced its operations in the North within two years of the 1833 compromise tariff bill. This war on Southern labor later took the form of "Free Soilism."

34. Charleston *Mercury*, 3 November 1860; quoted in Dwight Lowell Dumond (editor), *Southern Editorials on Secession* (New York: The Century Company, 1931), page 292.

35. Thomas Hart Benton, quoted by Raphael Semmes, *Memoirs of Service Afloat* (Baltimore, Maryland: Kelly, Piet and Company, 1869), page 60.

> Discontent and contention have moved in the bosom of the Confederacy for the last thirty-five years. During this time, South Carolina has twice called her people together in solemn convention, to take into consideration the aggressions and unconstitutional wrongs perpetrated by the people of the North on the people of the South. These wrongs were submitted to by the people of the South, under the hope and expectation that they would be final. But these hopes and expectations have proved to be void.
>
> The one great evil, from which all the other evils have flowed, is the overthrow of the Constitution. The Government is no longer the government of a Confederate Republic, but of a consolidated democracy. It is no longer a free government, but a despotism. The Revolution of 1776 turned upon one great principle — self-government and self-taxation — the criterion of self-government.
>
> The Southern States now stand in the same relation towards the Northern States, in the vital matter of taxation, that our ancestors stood toward the people of Great Britain. They are in a minority in Congress. Their representation in Congress is useless to protect them against unjust taxation; and they are taxed by the people of the North for their benefit, exactly as the people of Great Britain taxed our ancestors, in the British Parliament, for their benefit. For the last forty years, the taxes laid by the Congress of the United States, have been laid with a view of subserving the interests of the North. The people of the South have been taxed by duties on imports, not for revenue, but for an object inconsistent with revenue — to promote, by prohibitions, Northern interests in the productions of their mines and manufactures. The people of the Southern States are not only taxed for the benefit of the people of the Northern States, but, after the taxes are collected, three-fourths of them are expended in the North.[36]

John H. Reagan of Texas, who would later become Postmaster-General of the Confederate Government, expressed similar sentiments when addressing the Republican members of the House of Representatives on 15 January 1861:

> You are not content with the vast millions of tribute we pay you annually under the operation of our revenue laws, our navigation laws, your fishing bounties, and by making your people our manufacturers, our merchants, our shippers. You are not satisfied with the vast tribute we pay you to build up your great cities, your railroads, your canals. You are not satisfied with the millions of tribute we have been paying you on account of the balance of exchange which you hold against us. You are not satisfied that we of the South are almost reduced to the condition of overseers of northern capitalists. You are not satisfied with all this; but you must wage a relentless crusade against our rights and institutions....
>
> We do not intend that you shall reduce us to such a condition. But I can tell you what your folly and injustice will compel us to do. It will compel us to be free from your domination, and more self-reliant than we have been. It will compel us to assert and maintain our separate independence. It will compel us to manufacture for ourselves, to build

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36. Statement issued by the South Carolina Convention on 25 December 1860; quoted by McHenry, *Cotton States*, page lxi.

> up our own commerce, our own great cities, our own railroads and canals; and to use the tribute money we now pay you for these things for the support of a government which will be friendly to all our interests, hostile to none of them.[37]

Less than a week later, on 21 January 1861, an editorial appeared in the New Orleans *Daily Crescent* which made the same observations:

> They know that it is their import trade that draws from the people's pockets sixty or seventy millions of dollars per annum, in the shape of duties, to be expended mainly in the North, and in the protection and encouragement of Northern interests.... These are the reasons why these people do not wish the South to secede from the Union. They are enraged at the prospect of being despoiled of the rich feast upon which they have so long fed and fattened, and which they were just getting ready to enjoy with still greater gout and gusto. They are as mad as hornets because the prize slips them just as they are ready to grasp it.[38]

The Beginning of the Tariff War

Justifying the fears of the South, one of the first acts of the Republican-dominated Thirty-Seventh Congress upon the departure of the Gulf States was to pass the so-called Morrill Tariff into law on 2 March 1861. Under this tariff, which one British observer described as "a very masterpiece of folly and injustice,"[39] duties began at an average of 37% and by June of 1864 were raised to 47%,[40] making it the highest in the history of the country. True to Republican campaign promises, special preference was given to the steel industry of Pennsylvania. At the same time, the provisional Confederate Congress at Montgomery, Alabama, in accordance with the South's traditional aversion to protective tariffs and general acceptance of the free trade doctrines of Adam Smith[41] and Thomas Jefferson,[42] and in com-

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37. John H. Reagan, speech in the House of Representatives on 15 January 1861; quoted by Kenneth Stampp, *The Causes of the Civil War* (Inglewood, New Jersey: Spectrum Books, 1960), page 89.

38. New Orleans *Daily Crescent*, 21 January 1861, page 408.

39. James Spence, *Northern British Review*, February 1862, page 240.

40. Luthin, "Lincoln and the Tariff," page 628.

41. Smith, *Wealth of Nations*.

42. Jefferson, as Secretary of State in the Washington Administration, said, "Instead of embarrassing commerce under files of laws, duties, and prohibitions, it should be relieved from all its shackles in all parts of the world. Would even a single nation begin with the United States this system of free intercourse it would be advisable to begin with that nation" (quoted by McHenry, *Cotton Trade*, page 185).

pliance with the provisions of the C.S. Constitution,[43] instituted a low tariff with duties averaging 10%, the natural result of which would have been to divert most, if not all, foreign trade away from the principle Northern ports in New York and Boston to the Southern ports, particularly Charleston and New Orleans. The Boston *Transcript* of 18 March 1861 stated in this regard:

> [T]he mask has been thrown off and it is apparent that the people of the principal seceding states are now for commercial independence. They dream that the centres of traffic can be changed from Northern to Southern ports. The merchants of New Orleans, Charleston, and Savannah are possessed of the idea that New York, Boston, and Philadelphia may be shorn, in the future, of their mercantile greatness, by a revenue system verging

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43. Article I, Section 8, Clauses 1 and 3 of the Confederate Constitution reads:

> Congress shall have power... to lay and collect taxes, duties, imposts, and excises for revenue, necessary to pay the debts, provide for the common defense, and carry on the Government of the Confederate States; but no bounties shall be granted from the Treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts, and excises shall be uniform throughout the Confederate States.....
>
> [Congress shall have power] to regulate commerce with foreign nations, and among the several States, and with the Indian tribes; but neither this, nor any other clause contained in the Constitution, shall ever be construed to delegate the power to Congress to appropriate money for any internal improvement intended to facilitate commerce; except for the purpose of furnishing lights, beacons, and buoys, and other aids to navigation upon the coasts, and the improvement of harbors and the removing of obstructions in river navigation; in all which cases such duties shall be laid on the navigation facilitated thereby as may be necessary to pay the costs and expenses thereof.

Commenting on these provisions, Robert Hardy Smith, a member of the Constitutional Convention from Alabama, stated:

> Holding steadily in view the principle that the great object of the Federal Government is to perform national functions and not to aggrandize or depress sectional, or local, or individual interests, and adhering to and enforcing the doctrine that a people should be left to pursue and develop their individual thrift without direct aids or drawbacks from Government, and that internal improvements are best judged of, and more wisely and economically directed by the localities desiring them, even when they legitimately come within the scope of Federal action, and knowing that, as the regulation of commerce was one of the chief objects of creating the Government, and that under this power lurked danger of sectional legislation and lavish expenditure, the Constitution denies to Congress the right to make appropriations for any internal improvement, even though intended to facilitate commerce, except for the purpose of furnishing lights, beacons, buoys and other aids to navigation upon the coasts, and the improvement of harbors and the removing of obstructions in river navigation; and the cost and expenses of even these objects must be paid by duties levied on the navigation facilitated (*An Address to the Citizens of Alabama on the Constitution and Laws of the Confederate States of America* [Mobile, Alabama: Mobile Daily Register, 1861], pages 11-12).

on free trade.... The government would be false to its obligations if this state of things were not provided against.[44]

In the words of the New York *Times*:

The nations of Europe with whom we have the most intimate commercial relations are earnest advocates of free trade. Yet at the very moment that we most desire their sympathy and co-operation, we insult their conviction and strike the severest blow in our power at their interests. The seceding states will take instant advantage of our blunder, and will make every effort to secure their will, if not an actual recognition, by adopting a commercial policy in harmony with their own....

At home and abroad, we are already feeling the effects of our gratuitous folly. Both English and French journals are teeming with ill-natured and unfavorable remarks; with contrasts either openly stated or implied in favor of the seceding states.[45]

The New York *Evening Post* of 2 March 1861 likewise stated:

That either the revenue from duties must be collected in the ports of the rebel states, or the ports must be closed to importations from abroad, is generally admitted. If neither of these things be done, our revenue laws are substantially repealed; the sources which supply our treasury will be dried up; we shall have no money to carry on the government; the nation will become bankrupt before the next crop of corn is ripe. There will be nothing to furnish means of subsistence to the army; nothing to keep our navy afloat; nothing to pay the salaries of public officers; the present order of things must come to a dead stop.[46]

This result was also clearly seen by most of the business and financial men in the North. In their eyes, the question was no longer one of the morality of slavery or the constitutionality of secession; it was now, in the words of New York banker August Belmont, a "question of national existence and commercial prosperity."[47] Karl Marx and Friedrich Engels, who were watching the events in America from Europe with keen interest, observed, "The war between the North and the South is a tariff war. The war is further, not for any principle, does not touch the question of slavery, and in fact turns on the Northern lust for

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44. Boston *Transcript*, 18 March 1861; quoted by Stampp, *Causes of the Civil War*, page 80.

45. New York *Times*, quoted by Carpenter, *Logic of History*, page 147.

46. New York *Evening Post*, 12 March 1861; in Howard Cecil Perkins (editor), *Northern Editorials on Secession* (New York: D. Appleton and Company, 1942), Volume I, pages 598-599.

47. August Belmont, quoted by Charles Adams, *When in the Course of Human Events: Arguing the Case For Southern Secession* (Lanham, Maryland: Rowman and Littlefield Publishers, Inc., 2000), page 64.

sovereignty."[48] This was essentially the same conclusion drawn by Philip Foner in his book, *Business and Slavery*, in which he demonstrated how financially dependent Northern businessmen were upon the South being forced to remain in the Union in a subordinated condition.[49] Consequently, the *Daily Advertiser* of Newark, New Jersey boldly insisted on 2 April 1861 that Southern ports, beginning at Charleston, must be closed by military force.[50]

It is therefore easy to see what an important role Fort Sumter thereafter played in the unfolding drama. Should the secession of the South go unchallenged, and the U.S. troops be withdrawn from the fort, the tariff in the North would either have to be lowered to at least match that of the South, or the Northern States would be left to suffer financial ruin. Neither of these options was acceptable to Lincoln, who had already vowed in his Inaugural Address to enforce the Morrill Tariff at Charleston and other Southern ports. While his own Cabinet had almost unanimously advised against reinforcing the fort, Lincoln's ears were captivated by other advisors, who had assured him that "all the resolutions and speeches and declarations [of independence]... from the South were but a 'game of brag,' intended to intimidate the administrative party," and that, at the first show of force by the U.S. Government, "there would 'be nothing in it but talk.'"[51]

On 4 April 1861, Colonel John B. Baldwin of Virginia arrived in Washington, D.C. at Lincoln's behest to discuss the Peace Conference then in session in that State. According to Baldwin's sworn testimony in 1866, Lincoln's words to him during the ensuing meeting were as follows: "Mr. Baldwin, I am afraid you have come too late.... I wish you could have been here three or four days ago.... Why do you not all adjourn the Virginia convention?... [I]t is a standing menace to me, which embarrasses me very much."[52] The question which immediately comes to mind is: Why would a man who had pledged a pacific policy in his Inaugural Address view as a standing menace and a source of embarrassment a conference of States which had been convened to promote that very same policy? Robert Lewis Dabney provided the obvious answer:

> The action of the seven States... perplexed the Lincoln faction excessively. On the other hand, the greed and spite of the hungry crew, who were now grasping the power and

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48. Karl Marx and Friedrich Engels, *The Civil War in the United States* (New York: International Publishers, 1937), page 58.

49. Philip Foner, *Business and Slavery: The New York Merchants and the Irrepressible Conflict* (Chapel Hill, North Carolina: University of North Carolina Press, 1941), page 297.

50. Perkins, *Northern Editorials on Secession*, Volume I, page 602.

51. Robert Lewis Dabney, "Memoir of a Narrative Received of Colonel John B. Baldwin," *Discussions* (Mexico, Missouri: S.B. Ervin, 1897), Volume IV, page 92.

52. Lincoln, quoted by John B. Baldwin, testimony given in Washington, D.C. on 10 February 1866; in *Report of the Joint Committee on Reconstruction* (Washington, D.C.: U.S. Government Printing Office, 1866), Part II: Virginia, North Carolina, and South Carolina, pages 102, 103.

> spoils so long passionately craved, could not endure the thought that the prize should thus collapse in their hands. Hence, when the administration assembled at Washington, it probably had no very definite policy.... Colonel Baldwin supposed it was the visit, and the terrorizing of the "radical Governors," which had just decided Lincoln to adopt the violent policy. They had successfully asserted that the secession of the seven States, and the convening and solemn admonitions of State conventions in the others, formed but a system of bluster...; that the Southern States were neither willing nor able to fight for their own cause, being paralyzed by their fear of servile insurrection. Thus they had urged upon Lincoln, that the best way to secure his party triumph was to precipitate a collision. Lincoln had probably committed himself to this policy, without Seward's privity, within the last four days; and the very men whom Colonel Baldwin found in conclave with him were probably intent upon this conspiracy at the time. But when Colonel Baldwin solemnly assured Lincoln that this violent policy would infallibly precipitate the border States into an obstinate war, the natural shrewdness of the latter was sufficient to open his eyes, at least partially, and he saw that his factious counsellors, blinded by hatred and contempt of the South, had reasoned falsely; yet, having just committed himself to them, he had not manliness enough to recede. And above all, the policy urged by Colonel Baldwin would have disappointed the hopes of legislative plunder, by means of inflated tariffs, which were the real aims for which free-soil was the mask.[53]

Such was the essence of Colonel Baldwin's testimony in 1866: when it was urged upon Lincoln to issue an "appeal to the American people to settle the question in the spirit in which the Constitution was made" and to relinquish both Forts Sumter and Pickens as "a concession of an asserted right in the interest of peace," Lincoln's response was to refer "with some apprehension to the idea that his friends would not be pleased with such a step."[54] Finally, when it was suggested that the provisional Government at Montgomery be allowed to continue unmolested until the seceded States could be brought back peaceably, Lincoln replied, "And open Charleston, *etc*., as ports of entry, with their ten per cent tariff? *What then, would become of my tariff?"* (emphasis in original)[55] With that remark, Lincoln terminated the conversation and dismissed Baldwin.

The Northern Radicals Demand Coercion

Lincoln's behavior during his meeting with Baldwin was demonstrative of a man who had just been made to realize a fatal error to which he was nevertheless committed. Evidence that Lincoln had succumbed to pressure from the Northern Radicals to pursue a ruinous policy of coercion against the South, though in the main circumstantial, is nevertheless quite weighty. First of all, the "friends" whom Lincoln expected "would not be pleased" with an

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53. Dabney, "Colonel John B. Baldwin," pages 95-96.

54. Baldwin testimony, page 104.

55. Lincoln, quoted by Dabney, "Colonel John B. Baldwin," page 94.

abandonment of the forts could not have been the members of his own cabinet, for they had nearly unanimously advised that very thing. However, Lincoln had been in conference with nine Republican Governors, including Oliver Morton of Indiana and John Andrews of Massachusetts, when Baldwin arrived at the White House.[56] That these Governors were notoriously anti-Southern is a matter of record. However, there were other visitors who visited the President during those tense days. Joseph Medill, the editor of the rabidly anti-Southern Chicago *Tribune* who was dubbed "the oracle of the Protectionists in the West,"[57] recalled some years later:

> In 1864, when the call for extra troops came, Chicago revolted. Chicago had sent 22,000 and was drained. There were no young men to go, no aliens except what was already bought. The citizens held a mass meeting and appointed three men, of whom I was one, to go to Washington and ask Stanton to give Cook County a new enrollment. On reaching Washington, we went to Stanton with our statement. He refused. Then we went to President Lincoln. "I can not do it," said Lincoln, "but I will go with you to Stanton and hear the arguments of both sides." So we all went over to the War Department together. Stanton and General Frye were there, and they both contended that the quota should not be changed. The argument went on for some time, and was finally referred to Lincoln, who had been silently listening. When appealed to, Lincoln turned to us with a black and frowning face: "Gentlemen," he said, with a voice full of bitterness, "after Boston, Chicago has been the chief instrument in bringing this war on the country. The Northwest opposed the South, as New England opposed the South. It is *you*, Medill, who is largely responsible for making blood flow as it has. *You* called for war until you had it. I have given it to you. What you have asked for you have had. Now you come here begging to be let off from the call for more men, which I have made to carry on the war *you* demanded. You ought to be ashamed of yourselves. Go home and raise your 6,000 men. And you, Medill, you and your *Tribune* have had more influence than any other paper in the Northwest in making this war. Go home and send me those men I want" (emphasis in original).[58]

It was Medill who denounced "the Union as it is" as "a thing of the past, hated by every patriot, and destined never to curse an honest people, or blot the pages of history again."[59] Such was the character of the men with whom Lincoln apparently consulted to formulate his policy to "save the Union."

Another important factor in the history of this time is that the Northern States were

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56. Baldwin testimony, page 105.

57. Howard K. Beale, *The Critical Year: A Study of Andrew Johnson and Reconstruction* (New York: Harcourt, Brace and Company, 1930), page 295.

58. Joseph Medill, quoted by Ida Tarbell, *Life of Abraham Lincoln* (New York: Lincoln Memorial Association, 1900), Volume II, page 144.

59. Medill, quoted by Carpenter, *Logic of History*, page 119.

in the midst of a depression before the war broke out as a result of the banking crash of 1857. According to the record, liabilities in business failures throughout the country amounted to $291,000,000, a full 46% of which burden was borne by the cities of New York and Brooklyn.[60] In the words of James G. Randall, "The human aspects of the panic were seen in the struggles of bankrupt individuals with debts and foreclosures, in the forty thousand who were thrown out of work in New York City, in shivering crowds of city beggars, in violent hunger demonstrations, in decreased immigration, in the unrecorded misery that affected the working class, and in consequent labor unrest."[61] Of course, the Republicans blamed this economic distress on the low Democratic tariff then in place and it was the avowed purpose to raise it which had resulted in their tremendous victory throughout the North in the election of 1858.[62] Furthermore, the United States Treasury was bankrupt, and there were no available funds with which to finance a protracted war with the South. However, this would all change after the bloodshed had begun. In their book entitled *Our Nation*, Eugene C. Barker and Henry Steele Commager admitted that the war was waged by the North primarily for economic reasons:

> The War Between the North and the South aided business.... [T]he War between the North and the South caused great and rapid expansion in all forms of industry and business in the North. Farms and factories had to supply the needs of the armies. Mines and furnaces had to furnish material for building engines and rolling stock and for the rapidly lengthening railroad mileage.
>
> The discovery of new resources of oil, coal, and iron ore; the rapid expansion of our foreign commerce; and the creation of the national banking system all furnished new opportunities for speculation and for profits.[63]

Randall likewise noted that "thousands were fattening on the war and selfishly desired it to continue.... Railroad earnings were enormously increased. The earnings of the Erie Railroad, for example, rose from $5,000,000 in 1860 to $10,000,000 in 1863, while its stock rose in three years from 17% to 126%."[64] As noted above, it was also during this period that the advocates of a central bank and a large multi-generational public debt stepped onto the scene to push through their unconstitutional schemes. This will be discussed in detail in Chapter Twenty-Two.

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60. *American Annual Cyclopedia and Register of Important Events of the Year 1861* (New York: D. Appleton and Company, 1862), page 312.

61. Randall, *Civil War and Reconstruction*, page 89.

62. Luthin, "Lincoln and the Tariff," page 612.

63. Eugene C. Barker and Henry Steele Commager, *Our Nation*, (Evanston, Illinois: Row, Peterson and Company, 1942), pages 500-501.

64. Randall, *Civil War and Reconstruction*, page 627.

SUPPORTING DOCUMENT

Col. John B. Baldwin's Sworn Testimony Regarding His Interview With Abraham Lincoln on 4 April 1861

Washington, D.C., February 10, 1866

John B. Baldwin sworn and examined by Mr. Howard:

Question. You are now speaker of the Virginia house of delegates?
Answer. I am.
Question. Are you a native of Virginia?
Answer. I am.
Question. Have you resided in Virginia during the war?
Answer. Yes, sir; I have resided all my life in Staunton, Augusta county.
Question. I think you were an original Union man?
Answer. I was; the most thorough-going I ever knew.
Question. Were you a member of the so-called secession convention in Virginia?
Answer. I was.
Question. Did you attend all its sittings?
Answer. I did.
Question. Open as well as secret?
Answer. I did attend its sessions, except after the ordinance of secession had passed; I was withdrawn by other duties a good deal from the session; but I was kept advised, and aware substantially of all that passed.
Question. Did you sign that ordinance?
Answer. I did.

Question. Can you tell what has become of it, or where it is now deposited?

Answer. I have understood that it is in the city of Washington, in the possession of government, having been taken when the Union troops entered Richmond.

Question. Did you make a journey to Washington before the firing on Fort Sumter?

Answer. I did. I came here on the night of the 3d of April, 1861; I was here on the 4th day of April, 1861.

Question. Did you have an interview with President Lincoln?

Answer. I did have a private interview with him, lasting perhaps an hour.

Question. Do you feel at liberty to state what transpired at that interview?

Answer. I do sir; I know of no reason why I should not.

Question. Have the goodness to state it.

Answer. On the 3d of April, 1861, I was in the convention. I was called out by Judge Summers, a member of the convention, who informed me that there was a messenger in Richmond, sent by Mr. Seward, asking him (Summers) to come to Washington, as the President wanted to have an interview with him, and stating that if for any reason he was unable to come, he would be glad if the Union men of the convention would select and send on some communication with them. Mr. Summers told me that he and a number of other members of the convention, Union men (calling their names over), had concurred in the opinion that I was the proper man to go, and that he wanted me immediately to get ready and return with the special messenger. I consented to come. A Mr. Allen B. Magruder, who was at that time a lawyer in the city of Washington, turned out to be the messenger. We came to Washington, and arrived here about breakfast time. I went to Mr. Magruder's house. About 10 or 11 o'clock we called at the Department of State, and I was introduced to Mr. Seward. Mr. Magruder informed him that I was the gentleman selected by the members of the Virginia convention — the Union men — in accordance with his request, and that I came indorsed by them as a person authorized to speak their sentiments. Mr. Seward said he would not anticipate at all what the President desired to say to me, but would take me immediately to his house. We went to the President's house, and I was taken to the audience chamber. The President was engaged for some time; and at last Mr. Seward, when the President became disengaged, took me up and introduced me to him in a whisper, indicating, as I thought, that it was a perfectly confidential affair. As nearly as I can recollect, the language he used was, "Mr. Baldwin, of the Virginia convention." Mr. Lincoln received me very cordially, and almost immediately arose and said that he desired to have some private conversation with me; he started through into the back room, opening into the other room; but on getting in there, we found two gentlemen sitting there engaged in writing, and he seemed to think that that would not do, and passed across the hall into a corresponding small room opposite, and through that into a large front room — immediately corresponding with the private audience hall — in which there was a bed; he locked the door, and stepping around into a space behind the bed, drew up two chairs, and asked me to take a seat. Mr. Seward did not go in with us.

As I was about sitting down, said he, "Mr. Baldwin, I am afraid you have come too late."

"Too late for what?" said I.

"Said he, "I am afraid you have come too late; I wish you could have been here three or four days ago."

"Why," said I, "Mr. President, allow me to say I do not understand your remark; you sent a special messenger to Richmond— "

Question. You got the request to Mr. Summers on the 3d of April?

Answer. Yes, sir.

Question. And you started—

Answer. Within three hours.

Question. And you arrived on the morning of the 4th?

Answer. Yes; and my interview with Mr. Lincoln was about 11 o'clock that day. Said I, "I do not understand you; you sent a special messenger to Richmond, who arrived there yesterday; I returned with him by the shortest and most expeditious mode of travel known; it was physically impossible that I or any one else, answering to your summons, could have got here sooner than I have arrived; I do not understand what you mean by saying that I have come too late."

Said he, "Why do you not all adjourn the Virginia convention?

Said I, "Adjourn it! How? Do you mean *sine die*?"

"Yes," said he, "sine die; why do you not adjourn it; it is a standing menace to me, which embarrasses me very much."

Of course you will understand that I do not pretend to recollect the language at all, but this is about the substance of it. Said I, "Sir, I am very much surprised to hear you express that opinion; the Virginia convention is in the hands of Union men; we have in it a clear and controlling majority of nearly three to one; we are controlling it for conservative results; we can do it with perfect certainty, if you will uphold our hands by a conservative policy here. I do not understand why you want a body thus in the hands of Union men to be dispersed, or why you should look upon their sessions as in any respect a menace to you; we regard ourselves as co-operating with you in the objects which you express to seek; besides," said I, "I would call your attention to this view: If we were to adjourn that convention *sine die*, leaving these question unsettled in the midst of all the trouble that is on us, it would place the Union men of Virginia in the attitude of confessing an inability to meet the occasion; the result would be, that another convention would be called as soon as legislation could be put through for the purpose.

Question. Was the legislature of Virginia then in session in the same city, Richmond?

Answer. Yes, sir; that is my impression. Said I, "As soon as the necessary legislation can be gotten through, another convention would be called, and the Union men of Virginia could not, with a proper self-respect, offer themselves as members of that convention, having had the full control of one, and having adjourned without having brought about any sort of settlement of the troubles upon us. The result would be that the next convention would be exclusively under the control of secessionists, and that an ordinance of secession would be passed in less than six weeks.

"Now," said I, "Sir, it seems to me that our true policy is to hold the position that we have, and for you to uphold our hands by a conservative, conciliatory, national course. We can control the matter, and will control it if you help us. And, sir, it is but right for me to say another thing to you, that the Union men of Virginia, of whom I am one, would not be willing to adjourn that convention until we either effect some settlement of this matter or ascertain that it cannot be done. As an original proposition, the Union men of Virginia did not desire amendments to the Constitution of the United States; we were perfectly satisfied with the constitutional guarantees that we had, and thought our rights and interests perfectly safe. But circumstances have changed; seven States of the south, the cotton States, have withdrawn from us and have left us in an extremely altered condition in reference to the safeguards of the Constitution. As things stand now, we are helpless in the hands of the north. The balance of power which we had before for our protection against constitutional amendment is gone. And we think now that we of the border States who have adhered to you against all the obligations of association and sympathy with the southern States have a claim on the States of the north which is of a high and very peculiar character. You all say that you do not mean to injure us in our peculiar rights. If you are in earnest about it there can be no objection to your saying so in such an authentic form as will give us the force of constitutional protection. And we think you ought to do it, not grudgingly, not reluctantly, but in such a way as that it would be a fitting recognition of our fidelity in standing by you under all circumstances — fully, and generously, and promptly. If you will do it in accordance with what we regard as due to our position, it will give us a stand-point from which we can bring back the seceded States."

I cannot follow the conversation through; but he asked me the question, "What is your plan?"

Said I, "Mr. President, if I had the control of your thumb and forefinger five minutes I could settle the whole question."

"Well," said he, "that would seem to be a simple process."

Said I, "I can settle it as surely as that there is a God in heaven, if you just give me the control of your thumb and forefinger for five minutes. To let you understand how earnestly I believe it, as God is my judge, if I could get the control of that thumb and forefinger for five minutes, I would be willing, unless my weak flesh would fail me, that you should take me out within the next five minutes and knock me on the head on Pennsylvania avenue."

"Well," said he, "what is your plan?"

Said I, "Sir, if I were in your place I would issue a proclamation to the American people, somewhat after this style: I would state the fact that you had become President of the United States as the result of a partisan struggle partaking of more bitterness than had usually marked such struggle; that, in the progress of that struggle, there had naturally arisen a great deal of misunderstanding and misrepresentation of the motives and intentions of both sides; that you had no doubt you had been represented, and to a large extent believed, to be inimical to the institutions and interests and rights of a large portion of the United States, but that, however, you might, in the midst of a partisan struggle, have been more or less (as all men)

excited at times, occupying the position of President of the United States, you had determined to take your stand on the broad platform of the general Constitution, and to do equal and exact justice to all, without regard to party or section; and that, recognizing the fact without admitting the right, but protesting against the right, that seven States had undertaken to withdraw themselves from the Union, you had determined to appeal to the American people to settle the question in the spirit in which the Constitution was made — American fashion — by consulting the people of the United States and urge upon them to come together and settle this thing. And in order to prevent the possibility of any collision or clash of arms interfering with this effort at a pacific settlement, I would declare the purpose (not in any admission of want of right at all, but with a distinct protest of the right, to place the forces of the United States wherever in her territory you choose) to withdraw the forces from Sumter and Pickens, declaring that it was done for the sake of peace, in effort to settle this thing; and that you were determined, if the seceded States chose to make a collision, that they should come clear out of their way and do it.

"Sir," said I, "if you take that position there is national feeling enough in the seceded States themselves and all over the country to rally to your support, and you would gather more friends than any man in the country has ever had."

He said something or other, I do not recollect what, but it created the impression upon me that he was looking with some apprehension to the idea that his friends would not be pleased with such a step, and I said to him, "Mr. President, for every one of your friends whom you would lose by such a policy you would gain ten who would rally to you and to the national standard of peace and Union."

Said he rather impatiently, "That is not what I am thinking about. If I could be satisfied that I am right, and that I do what is right, I do not care whether people stand by me or not."

Said I, "Sir, I beg your pardon, for I only know of you as a politician, a successful politician; and possibly I have fallen into the error of addressing you by the motives which are generally potent with politicians, the motive of gaining friends. I thank you that you have recalled to me the higher and better motive of being right; and I assure you that, from now on, I will address you only by the motives that ought to influence a gentleman."

Question. You drew a distinction between a politician and a gentleman?

Answer. Yes, sir; he laughed a little at that. He said something about the withdrawal of the troops from Sumter on the ground of military necessity.

Said I, "That will never do, under heaven. You have been President a month to-day, and if you intended to hold that position you ought to have strengthened it, so as to make it impregnable. To hold it in the present condition of force there is an invitation to assault. Go upon higher ground than that. The better ground than that is to make a concession of an asserted right in the interest of peace."

"Well," said he, "what about the revenue? What would I do about the collection of duties?"

Said I, "Sir, how much do you expect to collect in a year?"

Said he, "Fifty or sixty millions."

"Why, sir," said I, "four times sixty is two hundred and forty. Say $250,000,000 would be the revenue of your term of the presidency; what is that but a drop in the bucket compared with the cost of such a war as we are threatened with? Let it all go, if necessary; but I do not believe that it will be necessary, because I believe that you can settle it on the basis I suggest."

He said something or other about feeding the troops at Sumter. I told him that would not do. Said I, "You know perfectly well that the people of Charleston have been feeding them already. That is not what they are at. They are asserting a right. They will feed the troops, and fight them while they are feeding them. They are after the assertion of a right. Now, the only way that you can manage them is to withdraw from the means of making a blow until time for reflection, time for influence which can be brought to bear, can be gained, and settle the matter. If you do not take this course, if there is a gun fired at Sumter — I do not care on which side it is fired — the thing is gone."

"Oh," said he, "sir, that is impossible."

Said I, "Sir, if there is a gun fired at Fort Sumter, as sure as there is a God in heaven the thing is gone. Virginia herself, strong as the Union majority in the convention is now, will be out in forty-eight hours."

"Oh," said he, "sir, that is impossible."

Said I, "Mr. President, I did not come here to argue with you; I am here as a witness. I know the sentiments of the people of Virginia, and you do not. I understand that I was to come here to give you information of the sentiments of the people, and especially of the sentiments of the Union men of the convention. I wish to know before we go any further in this matter, for it is of too grave importance to have any doubt of it, whether I am accredited to you in such a way as that what I tell you is worthy of credence."

Said he, "You come to me introduced as a gentleman of high standing and talent in your State."

Said I, "That is not the point I am on. Do I come to you vouched for as an honest man, who will tell you the truth?"

Said he, "You do."

"Then," said I, "sir, I tell you, before God and man, that if there is a gun fired at Sumter this thing is gone. And I wish to say to you, Mr. President, with all the solemnity that I can possibly summon, that if you intend to do anything to settle this matter you must do it promptly. I think another fortnight will be too late. You have the power now to settle it. You have the choice to make, and you have got to make it very soon. You have, I believe, the power to place yourself up by the side of Washington himself, as the savior of your country, or, by taking a different course of policy, to send down your name on the page of history notorious forever as a man so odious to the American people that, rather than submit to his domination, they would overthrow the best government that God ever allowed to exist. You have the choice to make, and you have, in my judgment, no more than a fortnight to make it in."

That is about as much as I can gather out of the conversation now. I went to Alexandria that night, where I had telegraphed an acceptance of an invitation to make a Union speech, and made a speech to a large audience, which, I believe, was the last Union speech made in Virginia before the war; and I went onto to Richmond and reported to these gentlemen.

Question. You received from Mr. Lincoln no letter or memorandum in writing?

Answer. Nothing whatever.

Question. No pledge? No undertaking?

Answer. No pledge, no undertaking; no offer; no promise of any sort. I went back to Mr. Seward's from the President's house that afternoon and had a long talk with him. I found Mr. Seward extremely earnest, as far as mortal man could judge from his manifestations, in the desire to settle the matter. He seemed to have a shrinking from the idea of a clash of arms, and the impression that he made upon me was, that he thought the days of philosophic statesmanship about to give way to the mailed glove of the warrior, and that he was earnestly engaged in the effort to secure peace and union, as the means of averting the military era which he thought he saw dawning upon the country. I had a good deal of interesting conversation with him that evening. I was about to state that I have reason to believe that Mr. Lincoln himself has given an account of this conversation, which has been understood — but, I am sure, misunderstood — by the persons to whom he talked, as giving the representation of it that he had offered to me, that if the Virginia convention would adjourn sine die he would withdraw the troops from Sumter and Pickens. I am as clear in my recollection as it is possible to be under the circumstances that he made no such suggestion, as I understood it, and said nothing from which I could infer it, for I was so earnest and so excited — the matter involving what I thought would give a promise of settlement to the contrary — that I am sure no opening of that sort (although I would not have thought it a practicable scheme), no overture of any sort could have escaped me. I am sure that I would have made it the foundation, if not of direct negotiation, at least of temporizing, in connexion with others. But I have reason to believe that persons have derived that impression from conversation with Mr. Lincoln. Whether Mr. Lincoln intended to convey that impression to them or not, of course I have no means of judging.

Question. Did Mr. Seward send by you any letter or memorandum in writing?

Answer. None whatever — no letter or memorandum in writing, nor any message to anybody, except his respects and compliments to Judge Summers.

Question. One object of your visit to the President was to obtain from him some assurance that he would take some step in the interest of peace, or to prevent a collision of arms?

Answer. No, sir. That was one of the objects of the interview; but my visit there was at the instance of the President himself, who, without at all indicating the purpose of conference, expressed a desire to have a conference with some gentleman who would be a recognized exponent of the Union sentiment in the Virginia convention.

Question. You entertained the hope, at that interview, of getting from him some

assurance, some encouragement, by which the collision of arms might be prevented?

Answer. That was my object and purpose earnestly.

Question. Was it not your main object and purpose?

Answer. It was the only object that I had. The object I had in going on was to meet what I regarded, and what our friends in the convention regarded, as an overture to what we had long desired — an understanding with Mr. Lincoln. We thought that if we could get into communication with him, and could convey to him a clear and honest exposition of the sentiments prevailing in Virginia, we could influence his policy in such a way as to enable us to bring about a settlement of the affair. At the time I was here I saw, and was introduced to, in the President's room, a number of governors of States. It was at the time the nine governors had the talk here with the President — the time when there was an immense outside pressure brought to bear upon the President. We thought in Virginia that if we could only present fairly to the mind of Mr. Lincoln the necessities of our situation, the difficulties with which we were surrounded, and the prospect of success on the line of policy which we could suggest, that we could accomplish something towards settling the question. I came on to Washington, not with any defined purpose at all, but with the general purpose of trying to establish a good understanding with him, and inducing him, as far as possible, to take the views which universally prevailed among Union men in the Richmond convention.

SUPPLEMENTARY ESSAY

The True Purpose of the Civil War

by Robert Lewis Dabney

We all know that the professed purpose of the war party was to preserve and restore the Union over all the States. But the disclosures made above by Colonel Baldwin of the aims of the head of that party, are sufficient to prove that the real purpose was for other than the pretense — to enlarge and perpetuate the power of his faction. This had just seized the reins of Federal power by an accident, being in fact but a minority of the American people. This people had condemned it to a righteous exclusion from power for forty years. Its leaders were weary, envious and angry with their long waiting, and hungry for the power and the spoils of office. These cunning men were fully conscious that their tenure of power, won by luck and artifice, would be precarious and brief. The old party of Federal usurpation and centralization had dubbed itself, by a strong misnomer, the Whig party. The people, at ten presidential elections, or congressional issues, had rejected their project. At length, despairing of victory by its old tactics, it had thrown itself into the arms of the later born and despicable party of the Abolitionists, who had at last succeeded in their purpose of raising, in numerous States, their designed tempest of fanaticism. Thus the older and larger party gave itself away to the younger, smaller, and more indecent one; and by this traffic the two had won in November, 1860, an apparent success, so far as to make its leader a minority President. The manipulators well knew their dangers from "the sober second thought" of the American people. It was but too probable that the elements of justice and conservation, unfortunately divided in 1860, would reunite in 1864 to restore the Constitution. Hence, "had they great wrath," because they knew their time was short. They knew that something more must be done to inflame the contest between fanaticism and conservatism, or glorying would be short.

The hasty secession of South Carolina and the six Gulf States, although justified by the avowed revolutionary sectionalism of the new party in power, gave them their coveted opportunity. The conspirators said to each other, "Now we have our game. We will inflame fanaticism and sectional enmities by the cry of Union and Rebellion, and thus precipitate a war between the States. *Inter armor silent leges*. Our war will be short; for we believe these Southern slavocrats much more boastful than valiant; and, chiefly, we will paralyze their resistance by lighting the fires of servile insurrection, plunder, arson, rape, and murder in their rear. But this short war will suffice for us, to centralize Federal power, overthrow the Constitution, fix our high tariffs and plutocratic fiscal system upon the country and secure for ourselves an indefinite tenure of power and riches." Such were precisely the counsels by which such leaders as Senator Pomeroy, Mr. Thaddeus Stevens, Governors Morton, Curtin, and Andrews, *etc*., hectored the ignorant and vacillating chief of their party into war, against the advice of real Union men North and South, and especially against the views of his own Premier, William H. Seward. This man, while the most unscrupulous of trafficers, and the chief architect of the new faction, knew well, as did all statesmen and constitutional lawyers, that the Constitution gave the Federal Government, the creature of the Federated States, no right to coerce the seceded States, its own sovereigns and creators. He was older than his supplanters in his own faction, and however unscrupulous, was too much imbued with the precedents, principles and feelings of the older and better days, to bring himself at once to the atrocity of kindling a war between the States; hence, Mr. Seward had adopted the smoother and wiser policy. He had induced his chief to make an ambiguous deliverance in his inaugural, March 4, 1861. He believed that he would be able so to direct the plans of his presidential tool as to make him adhere to the pacific policy. But he was mistaken. The more forward and heady conspirators gathered in Washington, wrested his tool out of his hand, and turned it against him.

These new advisers were aware that a Federal executive had no more constitutional or legal right of his own motion to attack a seceded State, than the poorest constable in the most obscure township. But they were in too much haste to wait for the semblance of authority from a congressional force bill, unauthorized and flimsy as such a semblance would be. Nor did they feel certain that even their rump Congress would be persuaded to enact a war against sovereign States no longer in the Federation, nor represented in their body, nor subject to their jurisdiction. The Senators and Representatives of seven States would be absent; but those of the great Union-loving Border States, North Carolina, Virginia, Maryland, Kentucky, Tennessee, Missouri, and Arkansas, would be present. Such a rump Congress might indeed include a number of the admirers of Andrew Jackson, but they would be too just and clear sighted to claim the precedent of his force bill of 1833 against South Carolina, even though they did not regard it, as true history will, as the mere expression of a tyrannical temper and of personal hatreds in that famous renegade to the principles of the party which elected him. For that force bill was directed against a State which claimed to be still in the Union, while nullifying within her own borders an unjust Federal law. It was wholly another thing for the Federal Government to declare war against seven seceded

States, no longer under their authority, but withdrawn from it by sovereign acts more formal and legal than those which had made them parties to the Union. Therefore the conspirators saw that a war must be precipitated without the semblance of law, and against law and the Constitution. By what expedient? By that of an audacious and gigantic lie! They knew that in fact every step and act of self-defense taken by the seceded States had been an act of formal, legal statehood executed by the constitutional authorities, the same, to-wit, which had first made those States members of the Federal Union. But they would impudently discard this great fact and call those actions illegal riots, the doings of insurrectionary individuals assembled against the law. They would reply upon the hot arrogance of triumphant fanaticism and the revival of passions which they themselves had "set on fire of hell," to overlook this essential difference. Thus they would seemingly bring this terrible usurpation of their President under the scope of his authority to enforce laws and suppress illegal violence. So he was made to begin his famous war proclamation of April, 1861, which made the most dreadful strife of modern times, with a stupendous falsehood. On that foul foundation rest all the subsequent crimes of coercion and reconstruction.

That this war was made, not to preserve a constitutional Union, but solely to promote the aims of a faction, is confirmed by these further facts. Its purpose was clearly betrayed by the final reply of Mr. Lincoln to Colonel Baldwin's noble appeal for conciliation: "What, then, will become of my tariff?" He might as well have said out aloud, that he was making this war, not to preserve a Union, but to enforce his projected high tariff. Next, every thoughtful man, North and South, friend or foe of the Union, knew perfectly well that the Montgomery Confederacy of seven States must be short lived if it remained alone without the border States. If I may borrow a new term of finance, it would have been the easiest thing in the world to "freeze out" this weak association. By giving them a useless independence, making them feel the inconveniences of separation, and holding peaceably and steadily before them the benefits and protection of the old, just constitutional Union. So Mr. Seward knew; and on this belief his policy was founded. So the Virginian statesman and ardent lover of the Union, Alexander H. Stewart, assured Mr. Lincoln. So Colonel Baldwin; so ex-Governor Morehead, of Kentucky. My point is then, that the seven seceded States could have been brought back with certainty by pacific means. For the Union, no war was needed. It was made solely in the interest of the Jacobin party.

Secessionists and Union men alike knew that the Montgomery Confederacy could not stand, without the accession of the great border States. But the latter were still firm friends of the Union. They judged, like the secessionist, that the abolition and free-soil movement was sectional, mischievous, insulting, and perilous; but they had calmly resolved not to make it a *casus belli*, wicked as it was. They had distinctly refused to go out of the Union on that issue. They pledged themselves to support Mr. Lincoln loyally and legally, though not the President of their choice, and to conciliate the seceded States provided the crime of coercion was forborne. But they assured Mr. Lincoln that this usurpation and crime would infallibly drive them, though reluctant, into the secession camp. This made it perfectly plain that peace meant a restored Union, while war meant disunion. But the Jacobins needed a war for their

own factious ends. There was nothing they disliked so much as a Union peaceably restored. Therefore they preferred the tactics which would insure war, and that on the most gigantic scale, rather than peace and union. Their problem was how to make sure of the spilling of blood. Thus while those patriotic and union-loving statesmen, Messrs. Stewart and Baldwin, were pleading with Mr. Lincoln not to coerce, because coercion would precipitate certain disunion and a dreadful war, they were producing upon the cunning and malignant minds of the Jacobin leaders a conclusion exactly opposite to the one they desired. Those minds said to themselves, "Just so; therefore we will coerce, because it is war which we crave, and not a righteous Union."

The history of the peace-congress affirms this explanation. It will stand in all history to the everlasting glory of Virginia, that she proposed this assemblage, as a special agency for harmonizing differences and restoring a true Union. She sent to it her wisest patriots, irrespective of party, headed by the great ex-President, John Tyler, illustrious for his experience, purity, courtesy and fairness. But the Jacobin leaders had resolved that there should be no peace; and this without waiting to see what terms of conciliation might be found. It is an historical fact, that definite instructions went forth from their head in advance, that the efforts of the Peace Congress must be made abortive. The motive was not concealed: that the partisan interests of the Jacobins were adverse to such a peace. Other leaders as Senators Chandler, of Michigan, and Wade, of Ohio, *etc*., declared with brutal frankness, that the case required blood-letting, instead of peace. Therefore, this last effort of patriotism and love for the Union was an entire failure.

The withdrawal of the seven States from Congress left the Jacobins a full working majority during the months of January and February. They had everything their own way in Congress. But every effort for peace and union made by the patriotic minority, represented by Senator Crittenden, of Kentucky, was systematically repelled. Even when the compromises proposed were transparently worthless to the South, they were refused. The final word of Jacobinism was, "No compromise at all, fair or unfair, but absolute submission, or war and disunion." The utmost pains were taken to teach the border States and the friends of the Union that they should have no terms save abject submission to such constructions as the Jacobin party might see fit to put upon a rent and outraged Constitution. The proof is complete.

Argument is scarcely needed to demonstrate that the infamous reconstruction measures were taken, not in the interest of a true Union, but of this Jacobin faction. For their architects brutally disdained to conceal their object. For instance, one of their leaders, Alban Tourgee, in his *Fools Errand*, expressly declares that the purpose of reconstruction was to elect another Jacobin President, otherwise jeopardized by the reunited Democracy, through the help of the negro suffrage. And he declares that the project was short-sighted, and destined to ultimate failure. Mr. Tourgee has here slandered his brethren. Their reconstruction measures, in their sense of them, were an entire success — and did just what they designed — helped them to elect a series of Jacobin Presidents and to fix their parties and policy upon the country. True; those measures placed the noblest white race on earth beneath the heels

of a foul minority constructed of a horde of black, semi-barbarous ex-slaves and a gang of white plunderers and renegades. It infected the State governments of the South with corruption and peculation. It injected into suffrage, in the Southern States, a spreading poison, which gives a new impulse to the corruptions of the ballot, already current among themselves, so that the disease is now remediless. But what did the Jacobins care for that? They had gained their end, more Jacobin Presidents, more class legislation, a sure reign for the plutocracy.

According to Mr. Lincoln's theory, a State could not go out of the Union, and any act of secession is *ipso facto* void and null, being but the deed of an illegal riot, and not of a legal body. Hence all the States were legally in the Union throughout and after the war. Hence, when armed resistance ended, nothing was necessary to reinstate the so-called seceding commonwealths to their full Federal status, except their submission to the chastisements and the changes laid down for them by the will of their conquerors. The subjugated States had all made that submission humbly and absolutely. Nothing should have been wanting, therefore, to reinstate them, except the witness of the Chief Executive of these facts. That witness had been borne expressly and fully by General Grant himself and the President.

Mr. Lincoln's man Friday, Andrew Johnson, now President by the accident of murder, continued to stand precisely upon his master's avowed platform. Why not? The whole coercion party professed to set on it! The war had been fought through upon that pretended platform. Why should not Andrew Johnson simply reinstate these chastened sisters in the Union, by his executive action especially, seeing they had never been out of it, could not be out of it, and had fully accepted their chastisement? But that simple course meant the following result: *The war Democrats of the North, rallying the Southern people to themselves, would elect a Democratic President!* There is the whole rationale and cause of the infamy and treason of reconstruction. And this explanation stamps the whole war, with all its butcheries and miseries as a gigantic lie; and this result has given a perfect justification to every measure of resistance taken by the States assailed. Such was the final judgment of that Union-lover and reluctant Confederate, that great Christian soldier, Robert E. Lee, as he went down with stately yet tragic steps, towards the tomb and the judgment bar of the omniscient and holy God, in whom he believed.

This essay was extracted from Robert Lewis Dabney, Discussions IV *(Mexico, Missouri: S.B. Ervin, 1897).*

CHAPTER TEN

Hostilities Commence in the Charleston Harbor

How Lincoln Manipulated Public Opinion

Such was Lincoln's dilemma: On the one hand, he was being pressured by the industrial and banking interests of the New England and Midwestern States, who were clamoring for the removal of the South as a viable competitor in the international and domestic markets. In addition to these were the Republican politicians who saw war against the South as the surest means to secure their newly obtained control of the Government. However, on the other hand, Lincoln was faced with an overwhelmingly popular anti-war sentiment among the Northern citizens. According to the 1 January 1861 edition of the Boston *Daily Advertiser*: "The people desire no war; no attack upon South Carolina; nor do they wish to see her needlessly supplied with any pretext for the beginning of hostilities."[1] The mood of the people throughout the North was so strong in favor of allowing the Southern States to depart in peace that if the Government were to make any aggressive move at all at Fort Sumter, upon which all eyes were focused, Lincoln would be denounced by "a thousand northern presses... as a provoker of war."[2] Most of the people in the North were not fooled by the conciliatory tone of Lincoln's Inaugural Address of 4 March 1861. Only a few days after the speech had been delivered, the New York *Herald* stated:

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1. Boston *Daily Advertiser*, 1 January 1861; quoted by Lunt, *Origin of the Late War*, page 405.

2. Josiah Gilbert Holland, *Life of Abraham Lincoln* (Springfield, Massachusetts: Gurdon Bill, 1866), page 294.

The possession of Forts Sumter and Pickens is the avowed intention of President Davis and his Cabinet. But when the nation turns to Washington to look for information as to the design of the military and naval preparations of the Northern government, it is met either with mysterious silence, or conflicting stories, or ambiguous utterances, like the responses of the Delphic oracles.

Now, the effect of all this mystery, so foreign to the genius of a republican government, is most disastrous to the whole country. As to the North, with its idle capitalists, surplus breadstuffs and its enterprising spirit chafing for employment, the policy of the administration is most ruinous to it. All the operations of trade and commerce and manufactures are paralyzed and fettered by uncertainty, which is more fatal to business interests than the worst reality. Merchants cannot make their calculations, and dare not invest till they have some idea of what is before them. If it be war, they will know what to do. If it be peace, they will promptly act accordingly. But suspense is death to all enterprise. So destructive to the public welfare is the conduct of the administration that the people of the North will not stand it much longer.

In the South the know-nothing, do-nothing policy of Mr. Lincoln's administration is equally obnoxious. It compels the confederacy to keep up a standing army at a terrible expense. At the lowest calculation the cost of maintaining ten thousand men for the year is five millions of dollars. The Confederate States will no longer submit to this expense without coming to blows; and the irritating, tantalizing course of our government, and their marchings and countermarchings, will probably soon drive the Cabinet at Montgomery into a solution of the difficulty, by taking the initiative and capturing the two forts in its waters held by the United States troops.

This we have no doubt is what Mr. Lincoln wants, for it would give him the opportunity of throwing upon the Southern confederacy the responsibility of commencing hostilities. But the country and posterity will hold him just as responsible as if he struck the first blow. The provocation to assault is often more culpable than the assault itself.[3]

From present appearances we know what we may expect in the future. We see that all the professions of peace uttered by Mr. Lincoln and others were mere idle talk, or else made to lull the country into a state of false security till the administration concluded its loans and was ready to strike a blow. Fort Pickens, on its lonely sandbar, may, in its ruins in years hereafter, tell of the bloody battle of Pensacola which commenced the civil war that desolated the United States in the year of our Lord 1861. Our fervent prayer is that it may not, and that those enemies of their country who cry for blood may be disappointed. But of this there seems now to be little hope.[4]

Similar sentiments likewise appeared in the Baltimore *Sun* around the same time:

The Inaugural, as a whole, breathes the spirit of mischief. It has only a conditional conservatism — that is, the lack of ability or some inexpediency to do what it would. It

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3. New York *Herald*, 6 March 1861.

4. Editorial: "The Fearful and Threatening Aspect of the Revolution," *ibid*., 8 March 1861.

> assumes despotic authority, and intimates the design to exercise that authority to any extent of war and bloodshed, qualified only by the withholding of the requisite means to the end by the American people. The argumentation of the address is puerile. Indeed, it has no quality entitled to the dignity of an argument. It is a shaky specimen of special pleading, by way of justifying the unrighteous character and deeds of the fanaticism which, lifted into power, may be guilty, as it is capable, of any atrocities. There is no Union spirit in the address, it is sectional and mischievous, and studiously withholds any sign of recognition of that equality of the States upon which the Union can alone be maintained. If it means what it says, it is the knell and requiem of the Union, and the death of hope.[5]

Lincoln's former political opponent, Illinois Democrat Stephen Douglas, had also warned the American people a month earlier that the Republican leaders who put Lincoln into office "are striving to break up the Union under the pretense of preserving it," and that "they are struggling to overthrow the Constitution while professing undying attachment to it, and a willingness to make any sacrifice to maintain it... [and] are trying to plunge the country into a cruel war as the surest means of destroying the Union upon the plea of enforcing the laws and protecting public property."[6] Such warnings were resounding throughout the North and the South. In fact, before the fall of Fort Sumter, an estimated two-thirds of the newspapers in the North "were the virtual allies of the Secessionists, their apologists, their champions."[7]

Lincoln's plan to shift these circumstances in his favor, and to put "the rebellion... in 'the wrong,'"[8] was an exercise of the treacherous ingenuity of a would-be despot. In its resolution of 15 February 1861, the Confederate Congress authorized the C.S. President to appoint "a commission of three persons" to be "sent to the Government of the United States of America, for the purpose of negotiating friendly relations between that Government and the Confederate States of America, and for the settlement of all questions of disagreement between the two Governments, upon principles of right, justice, equity, and good faith."[9] Lincoln, however, refused to see these Peace Commissioners upon their arrival at Washington, as also did William Seward, who reasoned that he could do nothing that could be inter-

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5. Baltimore *Sun*, March, 1861; quoted by Greeley, *American Conflict*, Volume I, page 428 (footnote).

6. Stephen Douglas, letter to Memphis (Tennessee) *Daily Appeal*, 2 February 1861; quoted by Edmonds, *Facts and Falsehoods*, page 152.

7. Greeley, *American Conflict*, Volume I, page 454.

8. Lincoln, quoted by Charles William Ramsdell, "Lincoln and Fort Sumter," in *The Journal of Southern History*, February-November 1937, page 286.

9. *Statutes at Large of the Provisional Government of the Confederate States of America* (Richmond, Virginia: R.M. Smith, Printer to Congress, 1864), page 92.

preted as a recognition of the Confederate States as an independent power.[10] However, Seward agreed to meet with intermediary John A. Campbell of the U.S. Supreme Court, through whom he assured the Peace Commissioners, on or around 15 March 1861, that "the order for the evacuation of Sumter had been made."[11] Five days later, when questioned why no action had been taken by the occupants of the fort to evacuate as promised, Seward "spoke of his ability to carry through his policy with confidence," and "he accounted for the delay as accidental, and not involving the integrity of his assurance that the evacuation would take place."[12] On the first day of April 1861, Seward again declared that "the President may *desire* to supply Sumter, but will not do so," and that there was "no design to reinforce Fort Sumter" (emphasis in original).[13] When rumors began to circulate about the preparation of a secret expedition to the Pensacola and the Charleston harbors, Campbell expressed his "anxiety and concern" in a letter to Seward dated the seventh of April.[14] Seward's response was as follows: "Faith as to Sumter fully kept. Wait and see."[15] Oddly, Seward's written response was omitted from the records compiled by the War Department in 1880.

Judge Campbell's personal testimony, given later that same year, sheds further light on these events:

> When I visited Governor Seward, I had not had any communication with General [Jefferson] Davis, or any member of the Executive Department of the Montgomery Government. The first knowledge I had of the demand of the Commissioners for recognition, or of Mr. Seward's embarrassment, was derived from Judge [Thomas A.] Nelson [Representative from Tennessee] and Mr. Seward. I offered to write to General Davis and ask him to restrain his commissioners. I supposed that Mr. Seward desired to prevent the irritation and complaint that would naturally follow from the rejection of the Commissioners in the South, and the reaction that their [recognition] would have at the North. He informed me that Sumter was to be evacuated, that Mr. [Thurlow] Weed [of New York] said, "This was a sharp and bitter pang, which he [Weed] was anxious might be spared to them." Mr. Seward authorised me to communicate the fact of the evacuation to Mr. Davis, and the precise object was to induce him to render his commissioners inactive. I did not anticipate having any other interview with Mr. Seward. I supposed that Sumter would be

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10. Frank Moore (editor), *The Rebellion Record: A Diary of American Events* (New York: G.P. Putnam's Sons, 1861), Volume I, page 51.

11. William H. Seward to John A. Campbell, quoted by Davis, *Rise and Fall of the Confederate Government*, Volume I, page 268.

12. Campbell, quoted by Davis, *ibid*., page 270.

13. Seward, quoted by Campbell in letter to Seward, 13 April 1861; in Davis, *ibid*., page 683.

14. Campbell to Seward, in *Official Records: Armies*, Series I, Volume IV, page 259.

15. Seward to Campbell, quoted by Johnstone, *Truth of the War Conspiracy*, page 35; Davis, *Rise and Fall of the Confederate Government*, Volume I, page 273.

> evacuated in the course of a very few days, and without any other action on my part. When upon the second and third interviews with him I found there was to be delay, I conversed with Judge Nelson as to the delicacy of my position, and it was at his suggestion and by his counsel that I agreed to be the "intermediary" until Sumter was evacuated. Neither of us doubted that the fort was to be surrendered or abandoned.... I asked Governor Seward about the evacuation of the fort. Without any verbal reply, he wrote: "The President may desire to supply Sumter, but will not do so without giving notice to Governor [Francis] Pickens." Upon reading this, I asked if the President had any design to attempt to supply Sumter. His reply contained an observation of the President. That I pass. But he said he did not believe any attempt would be made to supply Sumter, and there was no design to reinforce it. I told him if that were the case, I should not employ this language, that it would be interpreted as a design to attempt a supply, and that, if such a thing were believed in Charleston, they would bombard the fort, that they did not regard the surrender of Sumter as open to question, and when they did, they would proceed to extremities. He left the State Department, I remaining there till his return; and, on his return, he wrote these words: "I am satisfied that the Government will not undertake to supply Sumter without giving notice to Governor Pickens." This excluded the matter of desire, and with what had taken place, left the impression that if any attempt were made it would be an open, declared, and peaceful offer to supply the fort, which, being resisted by the Carolinians, the fort would be abandoned as a military necessity and to spare the effusion of blood — the odium of resistance and of the evacuation being thrown upon the late Administration and the Confederate States. Had these counsels prevailed — had the policy been marked with candour and moderation — I am not sure that even before this the fruit might have been seen ripening among the States in renewed relations of kindness and goodwill, to be followed ere long by a suitable political and civil union, adequate to the security of both sections at home and abroad. The ideas of union and a common country, as applied to all the States, are *now* simply obsolete (emphasis in original).[16]

It is often claimed by modern historians that this gross display of bad faith was not the fault of Lincoln, for Seward is alleged to have spoken on his own authority without the knowledge of his superior. However, Jefferson Davis dispelled such a claim in the following:

> The absurdity of any such attempt to disassociate the action of the President from that of his Secretary, and to relieve the former of responsibility for the conduct of the latter, is too evident to require argument or comment. It is impossible to believe that, during this whole period of nearly a month, Mr. Lincoln was ignorant of the communications that were passing between the Confederate Commissioners and Mr. Seward, through the distinguished member of the Supreme Court — still holding his seat as such — who was acting as intermediary. On one occasion, Judge Campbell informs us that the Secretary, in the midst of an important interview, excused himself for the purpose of conferring with the President before giving a final answer, and left his visitor for some time, awaiting

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16. Campbell, letter to William B. Reed of Pennsylvania,, 5 June 1861; quoted by McHenry, *Cotton Trade*, pages xiii-xv.

> his return from that conference, when the answer was given, avowedly and directly proceeding from the President.
>
> If, however, it were possible to suppose that Mr. Seward was acting on his own responsibility, and practicing a deception upon his own chief, as well as upon the Confederate authorities, in the pledges which he made to the latter, it is nevertheless certain that the principal facts were brought to light within a few days after the close of the efforts at negotiation. Yet the Secretary of State was not impeached and brought to trial for the grave offense of undertaking to conduct the most momentous and vital transactions that had been or could be brought before the Government of the United States, without the knowledge and in opposition to the will of the President, and for having involved the Government in dishonor, if not in disaster. He was not even dismissed from office, but continued to be the chief officer of the Cabinet and confidential adviser of the President, as he was afterward of the ensuing Administration, occupying that station during two consecutive terms. No disavowal of his action, no apology nor explanation, was ever made. Politically and legally, the President is unquestionably responsible in all cases for the action of any member of his Cabinet, and in this case it is as preposterous to attempt to dissever from him the moral, as it would be impossible to relieve him of the legal, responsibility that rests upon the Government of the United States for the systematic series of frauds perpetrated by its authority.[17]

On the fourth of April, Seward made the following statement to London *Times* correspondent, William Howard Russell: "It would not become the spirit of the American Government, or of the Federal system, to use armed force in subjugating the Southern States against the will of the majority of the people."[18] Six days later, Seward officially wrote to Minister to England Charles Francis Adams:

> [The President] would not be disposed to reject a cardinal dogma of theirs, namely, that the Federal Government could not reduce the seceding States to obedience by conquest, even although he were disposed to question that proposition. But in fact the President willingly accepts it as true. Only an imperial or despotic government could subjugate thoroughly disaffected and insurrectionary members of the State. This Federal Republican system of ours is, of all forms of government, the very one most unfitted for such a labour.[19]

On the eighth of April, Robert S. Chew delivered the following message to South Carolina Governor Francis W. Pickens: "I am directed by the President of the United States

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17. Davis, *Rise and Fall of the Confederate Government*, Volume I, pages 275-276.

18. Seward, quoted by William Howard Russell, *My Diary North and South* (Boston: T.O.H.P. Burnam, 1863), page 61.

19. Seward, letter to Charles Francis Adams, 10 April 1861; quoted by Pollard, *Lost Cause*, page 86; Munford, *Slavery and Secession*, page 299.

to notify you to expect an attempt will be made to supply Fort Sumter with provisions only; and that if such attempt be not resisted, no effort to throw in men, arms or ammunition, will be made, without further notice, or in case of an attack upon the Fort.'"[20] The Northern press picked up on the "provisions only" clause in Lincoln's message and widely circulated the story that the President merely wished to transport food to a helpless garrison of American soldiers "who were starving under the folds of the Stars and Stripes."[21]

At the same time all these public and private assurances of peace were being made, Lincoln was already secretly preparing to reinforce Fort Sumter. On the twenty-ninth of March, he had ordered that three ships — the *Pocahontas*, the *Pawnee*, and the *Harriet Lane* — together with three hundred men and provisions be made ready to sail for the Charleston harbor.[22] These orders were all marked private. On the first of April, he sent a message to Commandant Andrew H. Foote at Navy Yard in Brooklyn, New York to "fit out the *Powhatan* to go to sea at the earliest possible moment under sealed orders.'"[23] These instructions were confirmed with another telegram which contained these words: "You will fit out the *Powhatan* without delay. Lieutenant Porter will relieve Captain Mercer in command of her. She is bound on secret service; and you will under no circumstances communicate to the Navy Department the fact that she is fitting out."[24] In all, the so-called "Relief Squadron" consisted of eight warships, carrying twenty-six guns and one thousand, four hundred men[25] — hardly "provisions only."

The "Systematic Duplicity" of the Lincoln Adminstration

In the words of George Lunt, "The external aspect of the affair off Charleston which precipitated the war is that of a boy 'spoiling for a fight' who places a chip on the rim of his

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20. Simon Cameron to Captain Theodore Talbot, 6 April 1861; in *Official Records: Armies*, Series I, Volume I, page 245.

21. Cincinnati *Daily Commercial*, 6 May 1861; in Perkins, *Northern Editorials on Secession*, Volume II, page 826.

22. Lincoln to Cameron, in *Official Records: Armies*, Series I, Volume I, page 226; Inclosure No. 1, *ibid*., page 227.

23. Lincoln to Andrew H. Foote, in *ibid*., page 229.

24. Lincoln to Foote, in *ibid*., Series I, Volume IV, page 109. It is interesting to note that this second, and very revealing, telegram was not included in Volume I alongside the first telegram where it logically belonged, but was placed in Volume IV instead. This is but one example of the "mystifying *dis*-arrangement" of the records which Johnstone referred to as "a work of genius" (*Truth of the War Conspiracy*, page 3; emphasis in original).

25. Davis, *Rise and Fall of the Confederate Government*, Volume I, page 284.

hat and dares his competitor to knock it off."[26] In this case, Lincoln was the "boy 'spoiling for a fight.'" Upon learning of Lincoln's treachery, the Confederate Government at Montgomery authorized General G.P.T. Beauregard in Charleston to demand the surrender of Fort Sumter. The official dispatch to Major Anderson read as follows:

> Headquarters Provisional Army, C.S.A.
> Charleston, S.C., April 11, 1861, 2 P.M.
>
> Sir: The Government of the Confederate States has hitherto forborne from any hostile demonstration against Fort Sumter, in the hope that the Government of the United States, with a view to the amicable adjustment of all questions between the two Governments, and to avert the calamities of war, would voluntarily evacuate it. There was reason at one time to believe that such would be the course pursued by the Government of the United States; and, under that impression, my Government has refrained from making any demand for the surrender of the fort.
>
> But the Confederate States can no longer delay assuming actual possession of a fortification commanding the entrance of one of their harbors, and necessary to its defense and security.
>
> I am ordered by the Government of the Confederate States to demand the evacuation of Fort Sumter. My aides, Colonel Chesnut and Captain Lee, are authorized to make such demand of you. All proper facilities will be afforded for the removal of yourself and command, together with company arms and property, and all private property, to any post in the United States which you may elect. The flag which you have upheld so long and with so much fortitude, under the most trying circumstances, may be saluted by you on taking it down.
>
> Colonel Chesnut and Captain Lee will, for a reasonable time, await your answer.
>
> I am, sir, very respectfully, your obedient servant,
>
> G.T. Beauregard
> Brigadier-General commanding.[27]

When Major Anderson, who apparently was not privy to Lincoln's secret plans, failed to evacuate, the fort was fired upon and eventually fell into the hands of the Confederacy on 13 April 1861 after thirty-three hours of bombardment. After realizing that he had been used by the Lincoln Administration to lull the Confederate Commissioners into a false sense of security, Judge Campbell wrote the following words to Seward:

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26. Lunt, *Origin of the Late War*, page 485.

27. Pierre G.T. Beauregard to Robert Anderson, 11 April 1861, in *Official Records: Armies*, Series I, Volume I, page 13.

> I think no candid man will read over what I have written, and consider for a moment what is going on at Sumter, but will agree that the equivocating conduct of the Administration, as measured and interpreted in connection with these promises, is the proximate cause of the great calamity.
>
> I have a profound conviction that the telegrams of the 8th of April of General Beauregard, and of the 10th of April of General Walker, the Secretary of War, can be referred to nothing else than their belief that there has been systematic duplicity practiced on them through me. It is under an impressive sense of the weight of this responsibility that I submit to you these things for your explanation.[28]

The object of deception already accomplished, Campbell received no reply to this letter nor to that of the following week in which he reiterated his demand for an explanation.

Further evidence of the "unscrupulous cunning"[29] practiced by Lincoln was the little known fact that the *Powhatan*, under the command of Lieutenant David D. Porter, sailed under disguise. In a letter to the Secretary of the Navy, 11 May 1861, Lincoln personally assumed the responsibility "for any apparent or real irregularity... in connection with that vessel."[30] Not only was her name painted out, as Captain Montgomery C. Meigs mentioned in a letter to William Seward,[31] but she was flying the flag of Great Britain[32] "so that she deceived those who had known her."[33]

It is evident that Lincoln had begun to formulate a plan to reinforce Sumter even before his inauguration. In fact, on 12 December 1860, a full three months before he had taken the oath of office, Lincoln was already acquainting at least one of his future subordinates with his policy of usurpation when he sent the following, and characteristically secret, message to General Winfield Scott: "Please present my respects to the general, and tell him, confidentially, I shall be obliged to him to be as well prepared as he can to either hold or

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28. Campbell to Seward, 13 April 1861; quoted by Davis, *Rise and Fall of the Confederate Government*, Volume I, page 685. This letter and the one which followed it were also omitted from the records, even though they had been filed in the Confederate States archives and were delivered to the U.S. War Department for inclusion.

29. Jefferson Davis, *A Short History of the Confederate States of America* (New York: Belford, Clarke and Company, 1890), page 58.

30. Lincoln to the Secretary of the Navy, in *Official Records: Armies*, Series I, Volume I, page 406.

31. Montgomery C. Meigs to William Seward, 10 April 1861; in *ibid.*, page 369.

32. Charles H. Poor to H.A. Adams, 2 September 1862; in United States War Department, *Official Records of the Union and Confederate Navies in the War of the Rebellion* (Washington, D.C.: Government Printing Office, 1896), Series I, Volume IV, page 132.

33. David D. Porter, report of 21 April 1861; in *ibid.*, page 122.

retake the forts, as the case may require, at and after the inauguration."[34] Two weeks later, Robert Anderson, contrary to his orders of 15 November 1860,[35] mysteriously abandoned his position at Fort Moultrie and moved his command to Fort Sumter. There can be little doubt that this action, which sparked profound resentment from the South Carolinians, as well as confusion among his superiors in the War Department[36] and alarm from President Buchanan,[37] was accomplished at the urging of General Scott in response to Lincoln's December telegram. Without any pretense of lawful authority whatsoever, Lincoln was thus interfering with and undermining the official capacity of the U.S. Government as a party to a morally binding agreement which Lincoln would later ridicule in his address to Congress on 4 July 1861 as a "*quasi* armistice."[38] It should come as no surprise that Lincoln would similarly disregard another obligation to which the U.S. Government was bound — the Constitution for the United States of America. It is also noteworthy that Lincoln was considering, if not actually planning, a show of hostility against the people of South Carolina at least eight days *before* that State's secession from the Union, thereby exposing as mere subterfuge his later designation of the South Carolinians, and their fellow Southerners, as "insurrectionists." The American people would have been justly alarmed had the light of discovery revealed Lincoln's secret agenda for all to see.

Were Major Anderson's Men Really Starving?

Reference has already been made to the alleged fact that Anderson and his men had been cut off from the outside world by the Confederates and were facing starvation. The veracity of this claim is of no small consequence, since Lincoln's entire justification for the expedition to the Charleston harbor was predicated upon the necessity of supplying the garrison with "provisions only." Having been thoroughly apprized of the danger of sending mili-

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34. Lincoln, quoted by John G. Nicolay and John Hay, *Abraham Lincoln: A History* (New York: The Century Company, 1886), Volume III, page 250.

35. Lorenzo Thomas to Anderson, in *Official Records: Armies*, Series I, Volume I, page 73.

36. In a letter to Anderson, 27 December 1860, Buchanan's Secretary of War John B. Floyd wrote, "Intelligence has reached here this morning that you have abandoned Fort Moultrie, spiked your guns, burned the carriages, and gone to Fort Sumter. It is not believed, because there is no order for any such movement" (*ibid*., page 3).

37. In a meeting with Senators Jefferson Davis and R.M.T. Hunter, Buchanan stated, "I call God to witness, you gentlemen, better than anybody, *know* that this is not only without but against my orders" (quoted by General Samuel W. Crawford, *Genesis of the Civil War* [New York: J.A. Hill and Company, 1887; emphasis in original], pages 143-144).

38. Lincoln, in Richardson, *Messages and Papers of the Presidents*, Volume VII, page 3223.

tary reinforcements to the fort by his own Cabinet members, and by Major Anderson himself, Lincoln resorted to an age-old political trick:

> From immemorial time, when one group has coveted the possessions of a neighbor, or has seen fit to unloose its legions to enforce its will upon a weaker people, it has unblushingly made resort to a hoary, accepted diplomatic technique; thereupon, a puzzled world has listened to the prospective aggressor's complaint of brutal mistreatment of its nationals residing within the boundaries of the contemplated victim. When it is deemed profitable to arouse the war spirit, nations have found no method comparable to this humanitarian appeal to go to the rescue of those of their own blood.[39]

The myth of Sumter's "starving garrison" has been perpetuated with a nearly unanimous voice by Northern historians and Lincoln biographers. For example, Ida Tarbell, in her widely acclaimed work entitled *The Life of Abraham Lincoln*, wrote, "Almost the first thing brought to his attention on the morning of his first full day in office was a letter from Major Anderson, the officer in command of Fort Sumter, saying that he had but a week's provisions, and that if the place was to be reinforced so that it could be held, it would take 20,000 good and well-disciplined men to do it.... What was to be done? The garrison must not be allowed to starve."[40] The reader is invited to compare this paraphrase of Anderson with the quotation of Anderson supplied by Secretary Cameron: "I confess that I would not be willing to risk my reputation on an attempt to throw re-enforcements into this harbor within the time for our relief rendered necessary by the limited supply of our provisions, and with a view of holding possession of the same with a force of less than twenty thousand good and well-disciplined men."[41] Somehow, "limited supply of our provisions" translated into Tarbell's narrative as "a week's provisions." Another example of this loose dealing with important historical data, which is prevalent in Northern accounts of the war, is the following quotation from John T. Morse, Jr.: "On the same day [4 March 1861] there came a letter from Major Anderson.... There were shut up in the fort together a certain number of men and a certain quantity of biscuit and of pork; when the men should have eaten the biscuit and the pork, which they would probably do in about four weeks, they would have to go away. The problem thus became direct, simple, and urgent."[42] In his *Diary*, Secretary Welles likewise mentioned "certain intelligence of a distressing character from Major Anderson at Fort Sumter, stating that

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39. John Shipley Tilley, *Lincoln Takes Command* (Chapel Hill, North Carolina: The University of North Carolina Press, 1941), pages 179-180.

40. Tarbell, *Life of Lincoln*, Volume III, pages 14-15.

41. Anderson to Samuel Cooper, 28 February 1861; quoted by Cameron, *Official Records: Armies*, Series I, Volume I, page 197.

42. John T. Morse, Jr., *Abraham Lincoln* (Boston: Houghton, Mifflin and Company, 1892), Volume I, page 244.

his supplies were almost exhausted, that he could get no provisions in Charleston, and that he with his small command would be wholly destitute in about six weeks."[43]

Modern accounts of the Sumter affair have relied upon these contradictory sources to spin a fanciful tale of a "nearly hopeless" situation in which a "woe-filled" Anderson and an "undernourished" command were forced "to choose between starvation and surrender."[44] The fact of the matter, however, is that in his genuine communiqué of 28 February 1861, Anderson made no mention of "a week's provisions," (Tarbell), did not discuss "a certain quantity of biscuit and of pork" which would be exhausted "in about four weeks" (Morse), and certainly gave no indication that he and his men would be "wholly destitute in about six weeks" (Welles). To the contrary, on the twenty-fifth of February, J.G. Foster, Captain of Engineers with the Sumter garrison, wrote to General Joshua G. Totten in Washington that "the health of the command is very good, with no sickness among the officers or men of sufficient importance to take them from a single day's duty. Major Anderson is and has been well, and there is no foundation for the report of his illness."[45] Certainly, if the condition of the garrison was as desperate as it was alleged to have been a week later when Lincoln took office, Foster's letter would certainly have indicated such. Would not starvation or even undernourishment have been "of sufficient importance" to mention in his report if such were really the condition of Anderson's men? Secretary Welles also claimed that Anderson "could get no provisions in Charleston," and yet Foster contradicted this statement in his letter to Totten, the twenty-sixth of February that "our supplies and mails come from town [Charleston] as usual."[46]

Foster's testimony requires closer examination. As Jefferson Davis noted, "It should not be forgotten that, during the early occupation of Fort Sumter by a garrison the attitude of which was at least offensive, no restriction had been put upon their privilege of purchasing in Charleston fresh provisions, or any delicacies or comforts not directly tending to the supply of the means needful to hold the fort for an indefinite time."[47] A statement which appeared in the New York *Herald* of 8 March 1861 supports Davis' assertion: "The War Department today received letters from Major Anderson, but they contain nothing of especial importance. The most friendly feelings exist between him and the South Carolina authorities. Postal facilities are still open to him, and privileges of marketing, to a limited extent, con-

43. Gideon Welles, *Diary of Gideon Welles* (Boston: Houghton, Mifflin and Company, 1911), Volume I, page 4.

44. Davis, *Brother Against Brother*, pages 132-133, 150.

45. J.G. Foster to Joshua G. Totten, *Official Records: Armies*, Series I, Volume I, page 186.

46. Foster to Totten, *ibid*., page 187.

47. Davis, *Rise and Fall of the Confederate Government*, Volume I, page 289.

tinue."[48] Anderson's access to provisions and the delivery of mail to the fort was not terminated until the seventh of April — only *after* it had become known to the Confederate Government that a war expedition had been secretly launched and would soon arrive at the Charleston harbor. The historical record clearly indicates that, contrary to the propaganda put forth by Lincoln, spread by the Northern press, and then later perpetuated by Northern historians after the close of the war, Anderson and his men were by no means starving. In his report of 26 December 1860, Anderson announced that he had "one year's supply of hospital stores and about four months' supply of provisions" for his command.[49] Three days later, he wrote in a letter to Robert N. Gourdin, a prominent citizen of Charleston, "I have supplies of provisions, of all kinds, to last my command about five months, but it would add to our comfort to be enabled to make purchases of fresh meats and so on, and to shop in the city."[50]

Even though Anderson had caused resentment from the South Carolinians by transferring his command from Fort Moultrie to Fort Sumter — an act which the State authorities viewed as a breach of the pledge of the U.S. Government not to reinforce Sumter — they were still willing to attempt to pacify the situation by offering to provision the garrison now set in hostile array against them. It should be noted that on 28 December 1860, Anderson had sent this message to Adjutant General Cooper: "[The Governor] knows not how entirely the city of Charleston is in my power. I can cut his communication off from the sea, and thereby prevent the reception of supplies, and close the harbor, even at night, by destroying the lighthouses."[51] Since all of Anderson's communications with his government in Washington, D.C. had to go through the authorities in Charleston, he knew that this threat to close the Charleston harbor would be read by Governor Pickens. Nevertheless, on 19 January 1861, less than a month after this threat was made, South Carolina Secretary of War D.F. Jamison sent the following message from the Governor to Anderson: "Sir, I am instructed by his excellency the governor to inform you that he has directed an officer of the State to procure and carry over with your mails each day to Fort Sumter such supplies of fresh meat and vegetables as you may indicate."[52] Anderson's response is interesting: "I have the honor to acknowledge the receipt of your communication of this date.... I confess I am at a loss to understand the latter part of this message, as I have not represented in any quarter that we were in need of such supplies. As commandant of a military post, I can only have my troops furnished with fresh beef in the manner prescribed by law, and I am compelled, therefore, with

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48. New York *Herald*, 8 March 1861.

49. Anderson to S. Cooper, *Official Records: Armies*, Series I, Volume I, page 2.

50. Anderson, quoted by Crawford, *Genesis of the Civil War*, pages 128-129.

51. Anderson to Cooper, *Official Records: Armies*, Series I, Volume I, page 113.

52. D.F. Jamison to Anderson, *ibid*., page 144.

due thanks to his excellency, respectfully to decline his offer."[53]

Not having waited for a reply from Anderson, Secretary Jamison had arranged for "two hundred pounds of beef and a lot of vegetables" to be sent over to the fort,[54] which Anderson refused to accept. At this point, Anderson was given free access to the Charleston markets to purchase provisions at his own discretion. This amiable arrangement having been established, Anderson realized that interference from Washington would be a grave mistake and even wrote to Adjutant-General Cooper on 30 January 1861, "I do hope that no attempt will be made by our friends to throw supplies in; their doing so would do more harm than good."[55] On the seventeenth of March, Anderson indicated that he was "satisfied with the existing arrangement"[56] and on the first of April, Second Lieutenant Norman J. Hall reported to Anderson that there was "at least thirty-five days of comfortable subsistence for the command."[57] Thus, the U.S. Government's own records not only prove that Anderson's men were well-provisioned all along, but it also shows the popular caricature of the South Carolinians as "fire eaters" set to inaugurate bloodshed at the slightest provocation to be utterly false.

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53. Anderson to Jamison, *ibid*.

54. Jamison to L.M. Hatch, *ibid*., page 145.

55. Anderson to Cooper, *ibid*., page 159.

56. Anderson to Jamison, *ibid*., page 220.

57. Norman J. Hall, letter to Anderson, 1 April 1861; *ibid*., page 231.

SUPPORTING DOCUMENT

General G.P.T. Beauregard's Report on the Battle of Fort Sumter

Headquarters Provisional Army,
Charleston, S.C., April 27, 1861.

Sir: I have the honor to submit the following detailed report of the bombardment and surrender of Fort Sumter and the incidents connected therewith:

Having completed my channel defenses and batteries in the harbor necessary for the reduction of Fort Sumter, I dispatched two of my aides at 2:20 p.m., on Thursday, the 11th of April, with a communication to Major Anderson, in command of the fortification, demanding its evacuation. I offered to transport himself and command to any port in the United States he might elect, to allow him to move out of the fort with company arms and property and all private property, and to salute his flag in lowering it. He refused to accede to the demand. As my aides were about leaving Major Anderson remarked that if we did not batter him to pieces he would be starved out in a few days, or words to that effect. This being reported to me by my aides on their return with his refusal, at 5:10 p.m., I deemed it proper to telegraph the purport of his remark to the Secretary of War. In reply I received by telegraph the following instructions at 9:10 p.m.: "Do not desire needlessly to bombard Fort Sumter. If Major Anderson will state the time at which, as indicated by him, he will evacuate, and agree that in the mean time he will not use his guns against us unless ours should be employed against Fort Sumter, you are authorized thus to avoid effusion of blood. If this, or its equivalent, be refused, reduce the fort as your judgment decides to be most practicable."

At 11 p.m. I sent my aides with a communication to Major Anderson based on the foregoing instructions. It was placed in his hands at 12:45 a.m., 12th instant. He expressed

his willingness to evacuate the fort on Monday at noon if provided with the necessary means of transportation, and if he should not receive contradictory instructions from his Government or additional supplies, but he declined to agree not to open his guns upon us in the event of any hostile demonstrations on our part against his flag. This reply, which was opened and shown to my aides, plainly indicated that if instructions should be received contrary to his purpose to evacuate, or if he should receive his supplies, or if the Confederate troops should fire on hostile troops of the United States, or upon transports bearing the United States flag, containing men, munitions, and supplies designed for hostile operations against us, he would still feel himself bound to fire upon us, and to hold possession of the fort.

As, in consequence of a communication from the President of the United States to the governor of South Carolina, we were in momentary expectation of an attempt to re-enforce Fort Sumter, or of a descent upon our coast to that end from the United States fleet then lying at the entrance of the harbor, it was manifestly an imperative necessity to reduce the fort as speedily as possible, and not to wait until the ships and the fort should unite in a combined attack upon us. Accordingly my aides, carrying out my instructions, promptly refused to accede to the terms proposed by Major Anderson, and notified him in writing that our batteries would open upon Fort Sumter in one hour. This notification was given at 3:20 a.m. of Friday, the 12th instant. The signal shell was fired from Fort Johnson at 4:30 a.m. At about 5 o'clock the fire from our batteries became general. Fort Sumter did not open fire until 7 o'clock, when it commenced with a vigorous fire upon the Cummings Point iron battery. The enemy next directed his fire upon the enfilade battery on Sullivan's Island, constructed to sweep the parapet of Fort Sumter, to prevent the working of the barbette guns and to dismount them. This was also the aim of the floating battery, the Dahlgren battery, and the gun batteries at Cummings Point.

The enemy next opened on Fort Moultrie, between which and Fort Sumter a steady and almost constant fire was kept up throughout the day. These three points — Fort Moultrie, Cummings Point, and the end of Sullivan's Island, where the floating battery, Dahlgren battery, and the enfilade battery were placed — were the points to which the enemy seemed almost to confine his attention, although he fired a number of shots at Captain Butler's mortar battery, situated to the east of Fort Moultrie, and a few at Captain James' mortar batteries at Fort Johnson.

During the day (12th instant) the fire of my batteries was kept up most spiritedly, the guns and mortars being worked in the coolest manner, preserving the prescribed intervals of firing. Towards evening it became evident that our fire was very effective, as the enemy was driven from his barbette gun which he attempted to work in the morning, and his fire was confined to his casemated guns, but in a less active manner than in the morning, and it was observed that several of his guns on the barbette were disabled. During the whole of Friday night our mortar batteries continued to throw shells, but, in obedience to orders, at longer intervals. The night was rainy and dark, and as it was almost confidently expected that the United States fleet would attempt to land troops upon the islands or to throw men into Fort

Sumter by means of boats, the greatest vigilance was observed at all our channel batteries, and by our troops on both Morris and Sullivan's Islands.

Early on Saturday morning all of our batteries reopened upon Fort Sumter, which responded vigorously for a time, directing its fire specially against Fort Moultrie. About 8 o'clock a.m. smoke was seen issuing from the quarters of Fort Sumter. Upon this the fire of our batteries was increased, as a matter of course, for the purpose of bringing the enemy to terms as speedily as possible, inasmuch as his flag was still floating defiantly above him. Fort Sumter continued to fire from time to time, but at long and irregular intervals, amid the dense smoke, flying shot, and bursting shells. Our brave troops, carried away by their natural generous impulses, mounted the different batteries, and at every discharge from the fort cheered the garrison for its pluck and gallantry, and hooted the fleet lying inactive just outside the bar.

About 1:30 p.m., it being reported to me that the flag was down (it afterwards appeared that the flag-staff had been shot away), and the conflagration from the large volume of smoke being apparently on the increase, I sent three of my aides with a message to Major Anderson to the effect that seeing his flag no longer flying, his quarters in flames, and supposing him to be in distress, I desired to offer him any assistance he might stand in need of. Before my aides reached the fort the United States flag was displayed on the parapet, but remained there only a short time, when it was hauled down and a white flag substituted in its place. When the United States flag first disappeared the firing from our batteries almost entirely ceased, but reopened with increased vigor when it reappeared on the parapet, and was continued until the white flag was raised, when it ceased entirely. Upon the arrival of my aides at Fort Sumter they delivered their message to Major Anderson, who replied that he thanked me for my offer, but desired no assistance.

Just previous to their arrival Colonel Wigfall, one of my aides, who had been detached for special duty on Morris Island; had, by order of Brigadier-General Simons, crossed over to Fort Sumter from Cummings Point in an open boat, with private Gourdin Young, amidst a heavy fire of shot and shell, for the purpose of ascertaining from Major Anderson whether his intention was to surrender, his flag being down and his quarters in flames. On reaching the fort the colonel had an interview with Major Anderson, the result of which was that Major Anderson understood him as offering the same conditions on the part of General Beauregard as had been tendered him on the 11th instant, while Colonel Wigfall's impression was that Major Anderson unconditionally surrendered, trusting to the generosity of General Beauregard to offer such terms as would be honorable and acceptable to both parties. Meanwhile, before these circumstances were reported to me, and in fact soon after the aides whom I had dispatched with the offer of assistance had set out on their mission, hearing that a white flag was flying over the fort, I sent Major Jones, the chief of my staff, and some other aides, with substantially the same propositions I had submitted to Major Anderson on the 11th instant, with the exception of the privilege of saluting his flag. The Major (Anderson) replied, "it would be exceedingly gratifying to him, as well as to his command, to be permitted to salute their flag, having so gallantly defended the fort under such

trying circumstances, and hoped that General Beauregard would not refuse it, as such a privilege was not unusual." He further said he "would not urge the point, but would prefer to refer the matter again to me." The point was, therefore, left open until the matter was submitted to me.

Previous to the return of Major Jones I sent a fire engine, under Mr. M. H. Nathan, chief of the fire department, and Surgeon-General Gibbes, of South Carolina with several of my aides, to offer further assistance to the garrison at Fort Sumter, which was declined. I very cheerfully agreed to allow the salute, as an honorable testimony to the gallantry and fortitude with which Major Anderson and his command had defended their post, and I informed Major Anderson of my decision about 7½ o'clock, through Major Jones, my chief of staff.

The arrangements being completed Major Anderson embarked with his command on the transport prepared to convey him to the United States fleet lying outside the bar, and our troops immediately garrisoned the fort, and before sunset the flag of the Confederate States floated over the ramparts of Fort Sumter.

I commend in the highest terms the gallantry of every one under my command, and it is with diffidence that I will mention any corps or names for fear of doing injustice to those not mentioned, for where all have done their duty well it is difficult to discriminate. Although the troops out of the batteries bearing on Fort Sumter were not so fortunate as their comrades working the guns and mortars, still their services were equally as valuable and as commendable, for they were on their arms at the channel batteries, and at their posts and bivouacs, and exposed to severe weather, and constant watchfulness, expecting every moment and ready to repel re-enforcements from the powerful fleet off the bar, and to all the troops under my command I award much praise for their gallantry, and the cheerfulness with which they met the duties required of them. I feel much indebted to Generals R. G. M. Dunovant and James Simons and their staffs, especially Majors Evans and De Saussure, South Carolina Army, commanding on Sullivan's and Morris' Islands, for their valuable and gallant services, and the discretion they displayed in executing the duties devolving on their responsible positions. Of Lieut. Col. R. S. Ripley, First Artillery Battalion, commandant of batteries on Sullivan's Island, I cannot speak too highly, and join with General Dunovant, his immediate commander since January last, in commending in the highest terms his sagacity, experience, and unflagging zeal. I would also mention in the highest terms of praise Captains Calhoun and Hallonquist, assistant commandants of batteries to Colonel Ripley; and the following commanders of batteries on Sullivan's Island: Capt. J. R. Hamilton, commanding the floating battery and Dahlgren gun; Captains Butler, South Carolina Army, and Bruns, aide-de-camp to General Dunovant, and Lieutenants Wagner, Rhett, Yates, Valentine, and Parker.

To Lieut. Col. W. G. De Saussure, Second Artillery Battalion, commandant of batteries on Morris Island, too much praise cannot be given. He displayed the most untiring energy, and his judicious arrangements and the good management of his batteries contributed much to the reduction of Fort Sumter. To Major Stevens, of the Citadel Academy, in charge of the Cummings Point batteries, I feel much indebted for his valuable and scientific assistance, and

the efficient working of the batteries under his immediate charge. The Cummings Point batteries (iron 42 pounder and mortar) were manned by the Palmetto Guards, Captain Cuthbert, and I take pleasure in expressing my admiration of the service of the gallant captain and his distinguished company during the action.

I would also mention in terms of praise the following commanders of batteries at the point, viz.: Lieutenants Armstrong, of the Citadel Academy and Brownfield, of the Palmetto Guards; also Captain Thomas, of the Citadel Academy, who had charge of the rifled cannon, and had the honor of using this valuable weapon — a gift of one of South Carolina's distant sons to his native State — with peculiar effect. Capt. J. G. King, with his company, the Marion Artillery, commanded the mortar battery in rear of the Cummings Point batteries, and the accuracy of his shell-practice was the theme of general admiration. Capt. George S. James, commanding at Fort Johnson, had the honor of firing the first shell at Fort Sumter, and his conduct and that of those under him was commendable during the action. Captain Martin, South Carolina Army, commanded the Mount Pleasant mortar battery, and with his assistants did good service. For a more detailed account of the gallantry of officers and men, and of the various incidents of the attack on Fort Sumter, I would respectfully invite your attention to the copies of the reports of the different officers under my command, herewith inclosed.

I cannot close my report without reference to the following gentlemen: To his excellency Governor Pickens and staff, especially Colonels Lamar and Dearing, who were so active and efficient in the construction of the channel batteries; Colonels Lucas and Moore for assistance on various occasions, and Colonel Duryea and Mr. Nathan (chief of the fire department) for their gallant assistance in putting out the fire at Fort Sumter when the magazine of the latter was imminent danger of explosion; General Jamison, Secretary of War, and General S. R. Gist, adjutant-general, for their valuable assistance in obtaining and dispatching the troops for the attack on Fort Sumter and defense of the batteries; Quartermaster's and Commissary Departments, Colonel Hatch and Colonel Walker, and the ordnance board, especially Colonel Manigault, Chief of Ordnance, whose zeal and activity were untiring: The Medical Department, whose preparations had been judiciously and amply made, but which a kind Providence rendered unnecessary; the Engineers, Majors Whiting and Gwynn, Captains Trapier and Lee, and Lieutenants McCrady, Earle, and Gregorie, on whom too much praise cannot be bestowed for their untiring zeal, energy, and gallantry, and to whose labors is greatly due the unprecedented example of taking such an important work after thirty-three hours' firing without having to report the loss of a single life, and but four slightly wounded. From Major W. H. C. Whiting I derived also much assistance, not only as an engineer, in selecting the sites and laying out the channel batteries on Morris Island, but as acting assistant adjutant and inspector general in arranging and stationing the troops on said island. To the naval department, especially Captain Hartstene, one of my volunteer aides, who was perfectly indefatigable in guarding the entrance into the harbor, and in transmitting my orders; Lieut. T. B. Huger, who was also of much service, first as respecting ordnance officer of batteries, then in charge of the batteries on the south end of Morris Island; Lieutenant

Warley, who commanded the Dahlgren channel battery; also the school-ship, which was kindly offered by the board of directors, and was of much service; Lieutenant Rutledge, who was acting inspector-general of ordnance of all the batteries, in which capacity, assisted by Lieutenant Williams, C. S. A., on Morris Island, he was of much service in organizing and distributing the ammunition; Captains Childs and Jones, assistant commandant of batteries; to Lieutenant-Colonel De Saussure, Captains Winder and Allston, acting assistant adjutant and inspector general to General Simons' brigade; Captain Manigault, of my staff, attached on General Simons' staff, who did efficient and gallant services on Morris Island during the fight; Prof. Lewis R. Gibbes, of Charleston College, and his aides, for their valuable services in operating the Drummond lights established at the extensions of Sullivan's and Morris Islands. The venerable and gallant Edmund Ruffin, of Virginia, was at the Iron battery, and fired many guns, undergoing every fatigue and sharing the hardships at the battery with the youngest of the Palmettoes. To my regular staff, Major Jones, C. S. A.; Captains Lee and Ferguson, South Carolina Army, and Lieutenant Legaré, South Carolina Army, and volunteer staff, Messrs. Chisolm, Wigfall, Chesnut, Manning, Miles, Gonzales, and Pryor, I am much indebted for their indefatigable and valuable assistance night and day during the attack on Fort Sumter, transmitting in open boats my orders when called upon with alacrity and cheerfulness to the different batteries amidst falling balls and bursting shells, Captain Wigfall being the first in Sumter to receive the surrender.

I am, sir, very respectfully, your obedient servant,

G.T. Beauregard,
Brigadier-General, Commanding.Brig.
Gen. Cooper
Adjutant-General, C. S. A.

SUPPLEMENTARY ESSAY

The Beginning of the War Between the States

by Fannie Eoline Selph

The commissioners appointed by the Confederate government to negotiate a settlement of all matters of mutual interests and to establish friendly relations with the Federal Government, did not reach Washington in time to confer with the Buchanan administration, and so they waited until the incoming administration was organized and open for such business. They presented their credentials then to the Secretary of State, Mr. Seward, and explained the object of their mission. The President and Secretary refused an audience with the commissioners and appointed Mr. Justice John A. Campbell of the Supreme Court to act as intermediary.

Through Judge Campbell, the commissioners were given to understand that Secretary Seward was for peace and that Ft. Sumter would be evacuated in less than ten days. Relying on this assurance, the commissioners did not press an immediate answer to their letter.

The letter of the commissioners to Mr. Seward was written on the 12th of March. In the course of the unwarranted and embarrassing delay, Mr. Justice Nelson of New York visited the Secretary of State, Secretary of the Treasury, and the Attorney General (Messrs. Seward, Chase, and Bates) to dissuade them from undertaking to put into execution any policy of coercion. That, "during the term of the Supreme Court, he had very carefully examined the laws of the United States to enable him to attain his conclusions and that from time to time he had consulted Chief Justice Taney upon the questions, and that his conclusions were: that without very serious violations of the Constitution and statutes, coercion could not be successfully effected by the executive department." Mr. Justice Campbell said "that he had made similar examinations with the same results."

General Scott, commander-in-chief of the Federal army, advised the President that

"the fort could not be relieved and should be given up."

In the meantime, the matter was discussed in the Senate of the United States which continued in session several weeks after the inauguration of Mr. Lincoln.

Mr. Douglas of Illinois, who was not in sympathy with secession, but was devoted to the Union, made a very appealing and forceful address, on March 15th, and offered resolutions recommending the withdrawal of the garrisons from all forts within the limits of the States, except those at Key West and Dry Tortugas. In support of this resolution he said:

> We certainly cannot justify the holding of forts there, much less the recapturing of those which have been taken, unless we intend to reduce those States themselves into subjection. I take it for granted, no man will deny the proposition that whoever permanently holds Charleston and South Carolina is entitled to Fort Sumter.... Whoever holds the States in whose limits those forts are placed, is entitled to the forts themselves, unless there is something peculiar in the location of the same particular fort that makes it important to the general defense of the whole country, its commerce and interests, as in the case of Forts Taylor and Jefferson at Key West and Dry Tortugas. But Fort Sumter and other forts, in Charleston harbor; Fort Pulaski on the Savannah River; Fort Morgan and other forts in Alabama, were intended to guard the entrance to a particular harbor for local defense.

Mr. Douglas continued: "We cannot deny that there is a Southern Confederacy *de facto* in existence with its capital at Montgomery, Alabama. We may regret it. I regret it most profoundly, but I cannot deny the truth of the fact, painful and mortifying as it is.... I proclaim boldly the policy of those with whom I act — 'We are for peace.'"

The most striking protest against holding Fort Sumter with coercive intentions, however, came from Major Anderson, who was in command of the garrison.

Later, the two distinguished gentlemen, Justice Nelson and Justice Campbell, visited the Secretary of War, Mr. Seward, and urged him to reply to the commissioners and assure them of the desire of the United States Government for a friendly adjustment. Mr. Seward objected to an immediate recognition of the commissioners on account of the sentiment in the North. "The evacuation of the fort," said he, "is all they can bear now." He agreed to evacuate the fort and gave Judge Campbell the authority to so inform President Davis, which he did.

Mr. Crawford, one of the commissioners, was slow to consent to a delay in pressing the demand for recognition and only yielded when the written pledge of the Secretary, with the assurance of Judge Campbell of its genuineness, was given, that the fort would be evacuated in a few days. Hence, not only the Confederate Government but the commissioners were assured by the high authority of the Secretary of State, that Sumter would be evacuated in a few days.

Notwithstanding all these assurances, Fort Sumter continued to be occupied by the garrison commanded by Major Anderson with no evident material change since the unsuccessful attempt of the Star of the West to reinforce it during the Buchanan

administration. But the navy yard of New York was a scene of unusual activity. A squadron of eight war vessels carrying 26 guns, 2,000 men, with military supplies and provisions were being hurriedly fitted out to send to reinforce Sumter with the view of holding it, and were put to sea early in April.

After being held for 28 days under delusive promises, the hostile preparations at New York became a matter of rumor, notwithstanding the secrecy thrown around them. The commissioners addressed a letter to Mr. Seward by Judge Campbell asking for information. To this the Secretary returned answer in writing: "Faith as to Sumter fully kept. Wait and see."

This was on April 7th; the next day, April 8th, the following official notification without date or signature was received by Governor Pickens of South Carolina, not through an accredited agent, but by a subordinate employee of the State department. It was carefully divested of every attribute that could make it binding should the author see fit to repudiate it.

Mr. Chew, the messenger from the State department, on delivering it, said that "it was from the President of the United States given to him on April 6" (which was the day before Mr. Seward's assurance of "faith fully kept"). It read, "I am directed by the President of the United States to notify you to expect an attempt will be made to supply Fort Sumter with provisions only; and that if such an attempt be not resisted, no effort to throw in men, arms, or ammunition, will be made, without further notice or in case of an attack upon the fort."

Thus disappeared the last vestige of the plighted faith and pacific pledges of the Federal Government.

The commissioners from the Confederate Government were never recognized and Judge Campbell was not given the notice to be delivered to them. The commissioners were kept in the dark the entire time, dependent on rumors and the press for information as to the real purposes of the Federal Government.

It is needless to say that Judge Campbell was deeply wounded at such treatment and he addressed two letters to Secretary Seward asking for an explanation that was due him, but no reply was ever made to either. Later he resigned from the Supreme bench.

It was here that Major Anderson had cause to be deeply wounded and he also addressed the Adjutant General of the U.S. Army, in which he mentioned having received a letter from the Secretary of War, which surprised him, following and contradicting as it did the assurances Mr. Crawford telegraphed he was "authorized" to make. "I trust," said he, "this matter will be put in a correct light at once, as a movement made now when the South has been erroneously informed that none such would be attempted, would produce disastrous results throughout our country."

Major Anderson further disapproved of the movements of the Washington Government as being inexpedient as well as disastrous and hoped it could be recalled.

The commissioners of course returned to their homes.

The usual course of navigation had been carefully computed by the Federal Government and the vessels were timed to reach Fort Sumter about the date selected for delivering

the notification to Governor Pickens, so that Sumter would be in possession of the reinforcements. But a violent tempest on the sea delayed the squadron, which gave the Confederate Government time to act, Governor Pickens having notified them by telegram.

General G.T. Beauregard had a command of 6,000 volunteers and with batteries erected was ready to meet the situation. Having been ordered by the Confederate Government, General Beauregard demanded the evacuation of the fort. After considerable correspondence between the two, in which Major Anderson refused to evacuate (having been notified by his government to hold and defend it), General Beauregard opened the bombardment.

The engagement lasted 32 hours and though the firing was terrific at times, not a life was lost on either side. It is known in history as "the bloodless battle."

A strikingly brave incident occurred just then. Ex-Senator Louis T. Wigfall of Texas, seeing the flames, went under fire of the cannon in an open boat and climbing through one of the embrasures, asked for Major Anderson and insisted on his giving up a hopeless defense, assuring him that General Beauregard would grant him liberal terms.

Upon this, Major Anderson offered to surrender. He sent his sword to General Beauregard but it was returned to him. He was allowed to retire with all the honors of war. He was allowed to carry off all private and military property. There was no surrender of prisoners or property, and he was allowed to fire a salute to the flag. General Beauregard was not conducting a warfare. He simply wanted the possession of the fort which was the lawful property of South Carolina and necessary to her protection and defense.

One of the guns burst in firing the salute to the flag, which killed one man and wounded another. This occurred the next day after the battle when they were leaving the fort and by their own gun.

In their version of the incident the Federal Government maintained that "the South fired the first gun," which Mr. Lincoln asserted, "was unnecessary as the garrison was defenseless and he was only sending food to the brave, hungry men there."

The Southern authorities maintained the position that "if the brave men in the fort were hungry, the Federal authorities had no one to blame but themselves. Those men had been kept there four weeks contrary to the judgment and advice of the Commander-in-Chief of the Federal army, General Scott, against the advice of his wisest statesmen, and against the judgment of the commander of the fort. Eight war vessels carrying 26 guns and 2,000 soldiers with a supply of munitions of war in sight of the fort with the challenge that 'they would reinforce and provision Sumter peaceably if permitted or by force if necessary,' was the real declaration of war and the cause which forced the 'South to fire the first gun'" (Jefferson Davis, *The Rise and Fall of the Confederate Government*).

The telegraphic announcement that "the flag had been fired on," and that Sumter had fallen, enabled the agitators to inflame the minds of the people of the Northern States. A cry was raised by them for a maintenance of the Union.

On the pleas that "the flag had been fired on," Mr. Lincoln issued a proclamation calling for 75,000 troops. Congress was called to convene in a extra session on July 4th.

Virginia, Arkansas, North Carolina, and Tennessee did not secede until after the call for 75,000 troops by Lincoln to coerce the seven seceded States back into the Union. They were included in the call, but they all with no uncertain terms, refused to comply with what they termed a "diabolical violation of the Constitution and usurpation of power." The Constitution invested such power alone in Congress and beyond the jurisdiction of the executive. And again all the combined authority of all three branches of the Government did not have the power to attack a State.

These four States had decided to remain in the Union, hoping thereby that some influence could yet be brought to bear to avert war. This call, however, changed their purpose, seeing the inevitable ahead, and they, too, seceded — Virginia, April 17th; Arkansas, May 6th; North Carolina, May 20th, and Tennessee, June 8th.

The preceding essay was extracted from Fannie Eoline Selph, The South in American Life and History *(Nashville, Tennessee: McQuiddy Printing Company, 1928).*

CHAPTER ELEVEN

Lincoln Circumvents the Constitution and the Laws

The North Mobilizes Against the South

> The forts in the South were partnership property; and each State was an equal party in ownership. The Federal government was only a general agent of the real partners — the States — which composed the Union. The forts were designed to protect the States, and in case of withdrawal of a State the forts went with the State.
>
> South Carolina could not deprive New York of her forts, nor could New York deprive South Carolina of hers. The seceding States were perfectly willing to settle matters in a friendly way. They were striving only to resume the powers they had delegated.[1]

Such was sound reasoning. South Carolina had freely ceded property in Charleston Harbor to the federal Government in 1805, upon the express condition that "the United States... within three years... repair the fortifications now existing thereon or build such other forts or fortifications as may be deemed most expedient by the Executive of the United States on the same, and keep a garrison or garrisons therein." Failure to comply with this condition on the part of the Government would render "this grant or cession... void and of no effect."[2] The State then appointed commissioners and paid for the land to be surveyed out of its own

1. Horton, *History of the Great Civil War*, pages 71-72.

2. *The Statutes at Large of South Carolina* (Columbia, South Carolina: A.S. Johnston, 1836), Volume V, page 501.

treasury.[3] Work on Fort Sumter did not begin until 1829 and had still not been completed by 1860. Unfinished and unoccupied for over thirty years, the terms of the cession were clearly not fulfilled. Consequently, the fort was never the property of the United States Government, as Lincoln claimed in his first Inaugural Address, and, upon secession from the Union, the only duty which South Carolina owed, either legally or morally, to the other States was "adequate compensation... for the value of the works and for any other advantage obtained by the one party, or loss incurred by the other."[4] In the words of Stephen Douglas:

> We certainly cannot justify the holding of forts there, much less the recapturing of those which have been taken, unless we intend to reduce those States themselves into subjection. I take it for granted, no man will deny the proposition that whoever permanently holds Charleston and South Carolina is entitled to Fort Sumter.... Whoever holds the States in whose limits those forts are placed, is entitled to the forts themselves, unless there is something peculiar in the location of the same particular fort that makes it important to the general defense of the whole country, its commerce and interests, as in the case of Forts Taylor and Jefferson at Key West and Dry Tortugas. But Fort Sumter and other forts, in Charleston harbor; Fort Pulaski on the Savannah River; Fort Morgan and other forts in Alabama, were intended to guard the entrance to a particular harbor for local defense.[5]

Such being the case, the occupation of Fort Sumter by U.S. troops was technically an act of invasion and the Confederate forces in Charleston were wholly justified in firing upon them when it became evident that Lincoln intended to use military force against the State. However, taking into account the scheming mindset of those in possession of political power at the North, the destruction of Fort Sumter was "a political blunder almost incredible, a disaster to southern hopes more serious than the loss of many battles," for in doing so, the Confederate Government "did for the Lincoln administration what it could not do for itself — set and solidify the wavering and divided spirit of the North."[6] During a Cabinet meeting on 9 April 1861, Jefferson Davis' Secretary of State Robert Toombs had argued against the assault, warning, "The firing on that fort will inaugurate a civil war greater than any the world has ever seen. Mr. President, if this is true, it is suicide, it is murder, and will lose us every friend at the North. You will wantonly strike a hornet's nest which extends from mountains to ocean; and legions, now quiet, will swarm out and sting us to death. It is unnecessary,

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3. *Congressional Globe* (Thirty-Sixth Congress, Second Session), 13 December 1860, page 86.

4. Davis, *Rise and Fall of the Confederate Government*, Volume I, page 211.

5. Stephen Douglas, speech in the Senate on 15 March 1861; *Congressional Globe* (Thirty-Sixth Congress, Second Session), page 1459.

6. Robert Selph Henry, *The Story of the Confederacy* (New York: Garden City Publishing Company, 1931), pages 19, 33.

it puts us in the wrong. It is fatal."[7] Toombs' prediction could not have been more accurate. As one Northern periodical observed a few years after the Sumter incident, "The eyes of the whole nation were turned on Fort Sumter. One day a fleet of United States vessels appeared off the bar of Charleston, and the first gun was fired on the fortress. In one day, the whole North declared for war. The peace men were overborne; and, henceforth there was nothing heard of but vengeance, subjugation, and, if need be, extermination and annihilation, for the rebels who had dared fire upon the American flag."[8] Lincoln, who made up in political savvy what he lacked in personal integrity, could not have been handed a more golden opportunity by the Confederates. As he told his old friend Senator Orville H. Browning of Illinois, "The plan succeeded. They attacked Sumter — it fell, and thus did more service than it otherwise could."[9] Presidential secretaries and Lincoln biographers John G. Nicolay and John Hay admitted that the episode was ordered so that "the rebellion should be put in the wrong."[10] Even the Pittsburg *Daily Gazette* acknowledged that "Lincoln used Fort Sumter to draw [the Confederates'] fire," and that Jefferson Davis and his subordinates "ran blindly into the trap."[11]

In a speech delivered in the Senate on 2 March 1861, Joseph Lane of Oregon warned of Lincoln's policy to "inveigle the people of the North into civil war, by masking the design in smooth and ambiguous terms."[12] Such was precisely what happened the following month. The general public in the North, ignorant as to who had really initiated the hostilities, was masterfully led by Lincoln to view the capture of Fort Sumter as the unprovoked attack upon the United States Government which he had previously left in the hands of the Southern States in his first Inaugural Address. In his address to Congress on 4 July 1861, Lincoln complained:

> It is thus seen that the assault upon and reduction of Fort Sumter was in no sense a matter of self-defense on the part of the assailants. They well knew that the garrison in the fort could by no possibility commit aggression upon them. They knew — they were expressly notified — that the giving of bread to the few brave and hungry men of the garrison was all which would on that occasion be attempted, unless themselves, by resisting so much, should provoke more. They knew that this government desired to keep the garrison

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7. Robert Toombs, quoted by Burton J. Hendrick, *Statesmen of the Lost Cause: Jefferson Davis and His Cabinet* (New York: The Literary Guild of America, Inc., 1939), page 106.

8. *Chamber's Journal*, 5 December 1863; quoted by Adams, *Course of Human Events*, page 17.

9. Lincoln, quoted by Orville H. Browning, *Diary* (Springfield, Illinois: Illinois State Historical Library, 1933; edited by Theodore C. Pease and James G. Randall), entry for 3 July 1861.

10. Nicolay and Hay, *Abraham Lincoln: Complete Works*, Volume IV, page 44.

11. Pittsburgh (Pennsylvania) *Daily Gazette*, 18 April 1861.

12. Joseph Lane, *Congressional Globe* (Thirty-Sixth Congress, Second Session), page 1347.

> in the fort, not to assail them, but merely to maintain visible presence, and thus to preserve the Union from actual and immediate dissolution — trusting, as hereinbefore stated, to time, discussion, and the ballot-box for final adjustment.[13]

Of course, Lincoln failed to inform his audience not only of the secret expeditions to Pensacola and Charleston — that it was in response to these acts of war that the Confederates opened fire on Anderson's troops — but also that he had steadfastly refused to entertain any discussion of peace or "final adjustment" with either Colonel Baldwin or the Confederate peace commissioners and that he had "spurned and treated with contempt" the petitions of many people in the Northern States who "begged and implored... to be heard before matters were brought to a blood extreme."[14] Addressing an assembly of Evangelical Lutherans on 13 May 1862, Lincoln further spoke hypocritically of "the sword forced into our hands," and as late as his second Inaugural Address in March of 1865, he was still publicly laying the blame for the conflict at the feet of the Confederacy, while claiming for himself the role of a reluctant defender of an endangered Union.

Although Lincoln knew little of honorable statesmanship, he, like all tyrants throughout history, understood the basest instincts of men and how to channel human depravity to suit the purposes of his party. What thereafter ensued throughout the North cannot be described in any other terms than the mania of a deluded and surging mob. Raw emotion and fanatical hatred of the South was touted as patriotism, while calm reflection and appeals to reason were taken as evidence of treason:

> ...[T]he cry for the "flag," and for the "Union," was all an hypocrisy and a cheat on the part of the Black Republicans. They had been long known as enemies of the Union, and as despisers of the flag of our country....
>
> The war was gotten up with as much trick and skill in management as a showman uses to get the populace to visit his menagerie. Our whole country was placarded all over with war posters of all colors and sizes. Drums were beating and bands playing at every corner of the streets. Nine-tenths of all the ministers of the Gospel were praying and preaching to the horrible din of the war-music, and the profane eloquence of slaughter.
>
> There was little chance for any man to exercise his reason, and if he attempted such a thing he was knocked down and sometimes murdered. If an editor ventured to appeal to the Constitution, his office was either destroyed by the mob, or his paper suspended by "the order of the Government."
>
> ...The historian of these shameful and criminal events needs no other proof that the managers of the war knew that they were perpetrating a great crime than the fact that they refused to allow any man to reason or speak in opposition to their action. The cause of truth and justice always flourishes most with all the reasoning that argument and controversy can give it. Whenever men attempt to suppress argument and free speech, we may

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13. Lincoln, in Richardson, *Messages and Papers of the Presidents*, Volume VII, page 3223.

14. New York *Express*, 15 April 1861; quoted by Rutherford, *Truths of History*, page 9.

be sure that they know their cause to be a bad one.[15]

It was not until the end of the war that the truth about who was really responsible for the Fort Sumter affair began to come to light, but by then it was too late — the scheme to destroy the constitutional Union had succeeded.

"We Are Coming, Father Abraham"

> Of all other forms of despotism, the Stratocratic is the most odious and intolerable. Indeed there is no other despotism but that which is sustained by military force and power; for without this security to sustain and protect rulers in their outrageous acts their tyranny would not be endured for a single day. Hence the first step towards establishing a despotism, is to raise a subservient army.[16]

The Northern psyche having been drugged and swept away by the war mania of the day, tens of thousands of volunteers responded to Lincoln's proclamation of 15 April 1861 calling for 75,000 militia to put down what was referred to therein as "combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by law."[17] Lincoln's words were carefully chosen, for it was his intention to thereby bring the proclamation under the Act of Congress of 1795, which authorized the President to call out the *posse comitatus* when Congress was not in session for the purpose of putting down insurrection within a State.[18] He was too shrewd of a politician to openly declare at this point that he was waging a war upon entire States. The formerly pro-secession Republicans, who had literally only days before the fall of Fort Sumter defended a State's right to leave the Union in peace, willingly followed Lincoln's lead in declaring the actions of South Carolina and the infant Confederacy as "rebellion," "insurrection," and "levying war on the United States."[19]

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15. Horton, *History of the Great Civil War*, pages 113-114.

16. Dennis A. Mahony, *Prisoner of State* (New York: G.W. Carleton and Company, 1863), pages 246-247.

17. Lincoln, in Richardson, *Messages and Papers of the Presidents*, Volume VII, pages 3214-3215.

18. *Statutes at Large of the United States*, Volume I, page 424.

19. Wendell Phillips was a prime example of this sudden change of position. In a speech delivered on 20 January 1861, he rejoiced at the news of the secession of the Gulf States, but, less than three months later, he was an ardent opponent of disunion: "From 1843 to 1861, I was a Disunionist, and sought to break this Union, convinced that disunion was the only righteous path, and the best one for the white man and the black.... Sumter changed the whole question. After that, peace and justice both forbade disunion" (letter to the New York *Tribune*, 16 August 1862; in *Speeches, Lectures, and*

However, what Lincoln did not know — or deliberately disregarded — was the history behind the statute upon which the legality of his actions depended. The Whiskey Rebellion of 1794 had erupted in Pennsylvania during the Administration of George Washington when a protest among the local farmers against a Federal liquor tax had grown into an armed revolt spanning four counties. In response, Congress passed legislation authorizing Washington to put down the insurrection by drafting the militia of the adjoining States into the service of the United States. The following year, Congress enacted the statute to which Lincoln turned, but with the stipulation that the use of the militia was limited to thirty days after the beginning of the next session of Congress.

President Buchanan had previously considered the same statute as grounds for action against South Carolina, but had rightly determined that, since it applied to insurrections within and against the government of a State in the Union, it was utterly inapplicable to a State that had *withdrawn* from the Union — even if that withdrawal could be proven to be unconstitutional.[20] He further explained, "Under the act of 1795, the President is precluded from acting even upon his own personal and absolute knowledge of the existence of such an insurrection. Before he can call forth the militia for its suppression, he must first be applied to for this purpose by the appropriate State authorities, in the manner prescribed by the Constitution."[21] Thus, Buchanan clearly saw what his successor apparently did not: that it was utter foolishness to command the citizens of a seceded State to "disperse and retire peaceably to their respective abodes." Even more foolish was it to so command, as Lincoln did, an entire lawfully-constituted and independent country, as were the Confederate States of America at the time of his first proclamation. Although he attempted to avoid recognition of the Confederacy, Lincoln perhaps inadvertently did so in his second proclamation of the nineteenth of April when he announced a blockade of Southern ports "in pursuance of the laws of the United States, and of the law of Nations."[22] As Thaddeus Stevens pointed out in the House of Representatives, under International Law, a nation could only institute a blockade against another nation; to blockade the Confederacy was therefore tantamount to granting its status as a "belligerent Power."[23] Although Lincoln was unimpressed by this fact, and persisted throughout the war in referring to the Confederate States as "insurgent," Stevens and the Radical Republicans would later use the premise of this second proclamation as the legal

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Letters, pages 465-466).

20. Harold Hyman, *A More Perfect Union* (New York: Charles Scribner's Sons, 1973), pages 60-61.

21. James Buchanan, *Mr. Buchanan's Administration on the Eve of the Rebellion* (New York: D. Appleton and Company, 1866), page 154.

22. *Official Records: Navies*, Volume 122, pages 89-90; New York *Times*, 20 May 1861; New York *Herald*, 20 May 1861.

23. Stevens, *Congressional Globe*, 9 December 1862, page 50.

basis for the subjugation of the South as a "conquered enemy" during Reconstruction.[24]

The thirty-day limit of the 1795 Act, of course, was a serious impediment to Lincoln's war policy. If he had called Congress into immediate special session, as Washington had done during the Whiskey Rebellion, the military force he needed to defeat the Confederacy would have had to disperse by the first of July. Not wanting to so tie his own hands, and expecting the conflict to be short-lived, Lincoln purposefully postponed the special session of Congress until noon of the fourth of July. Thus, for at least two and a half months, Lincoln waged a war against the South for which he, in his lawful capacity as President of the United States, had no constitutional authority. Lincoln attempted to evade this fact by claiming that his proclamation was issued "by virtue of the power in me vested by the Constitution and laws," but it is clear that the Constitution expressly reserves to Congress the power "to provide for calling forth the Militia [of the several States] to execute the Laws of the Union, suppress Insurrection and repel Invasions."[25] The President, whether in his civil or military capacity, has no such "war power" under the Constitution to coerce seceding States, as Lincoln claimed.[26] Furthermore, "insurrection" has no meaning constitutionally if not in reference to the laws and authority of a sovereign State. It is true that the general Government may intervene to quell insurrection, or "domestic violence," within a State, but this force is to be exerted only "on application of the legislature, or of the executive (when the legislature cannot be convened)" — that is, the legislature or executive of the afflicted State itself, not by an independent determination of the President. Such was the case with Washington himself in 1794, who had only called upon the militias of the adjoining States to aid in the suppression of the Whiskey Rebellion after being requested to do so by Thomas Mifflin, the Governor of Pennsylvania, whose State was thus afflicted. There was no such request made of Lincoln by the Governors of any of the seceded States. Furthermore, this provision is inseparably connected to the duty of the United States to guarantee to each of their sister States "a republican Form of Government."[27] Lincoln's invasion of the South certainly did not have this objective in view, but rather the *destruction* of republican government within the departed States. Every Southerner thereafter killed by Lincoln's unlawful army was an act of murder for which he should have been personally charged and found guilty:

> It is both unconstitutional and murderous to kill even the enemies of the Government except by authority of law, and in the manner which the law prescribes. If a man who is not an enlisted soldier or sailor in the service of the United States, should kill even a rebel, that man would commit by the act, a murder, just as much as he would do who

24. See Chapter Eighteen.

25. U.S. Constitution, Article I, Section 8, Clause 15.

26. Lincoln, in Richardson, *Messages and Papers of the Presidents*, Volume VII, page 3222.

27. U.S. Constitution, Article IV, Section 4.

> would kill a felon under sentence of death, if the person performing the act had not the authority and command of the proper Court to do it. Hence to kill even an enemy legitimately, it must be done by authority of law; and hence too the making of war in this country by mere Executive edict, instead of by the authority of Congress, is one of the most flagitious acts of usurpation of power, and in its exercise, one of the greatest crimes against the Nation and mankind, which was ever committed by mortal man.[28]

Lincoln Suspends the Writ of Habeas Corpus

On 27 January 1838, an obscure politician spoke the following words before the Young Men's Lyceum of Springfield, Illinois:

> Let every American, every lover of liberty, every well-wisher to his posterity, swear by the blood of the Revolution never to violate in the least particular the laws of the country, and never to tolerate their violation by others. As the patriots of '76 did to the support of the Declaration of Independence, and so to the support of the Constitution and laws, let every American pledge his life, his property, and his sacred honor — let every man remember that to violate the law is to trample on the blood of his fathers, and to tear the charter of his own and children's liberty. Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap; let it be taught in schools, in seminaries, and in colleges; let it be written in primers, in spelling books, and in almanacs; let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And, in short, let it become the political religion of the nation.[29]

The speaker, of course, was none other than Abraham Lincoln. However, what Lincoln said and what Lincoln did were often entirely different things. He had gotten a taste of despotic power and he was not about to allow sentiment or principle, even those he once articulated himself, to prevent him from wielding it as he saw fit. This tyrannical characteristic was most clearly seen in his suspension of the writ of *habeas corpus* from Washington, D.C. to Philadelphia on 27 April 1861. This suspension would be extended throughout the entire North the following year. By definition, *habeas corpus* is "the name given to a variety of writs... having for their object to bring a party before a court or judge.... The primary function of the writ is to release from unlawful imprisonment.... The office of the writ is not to determine the prisoner's guilt or innocence, and the only issue it presents is whether the prisoner is restrained of his liberty by due process."[30] This writ had its origin in Section 39

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28. Mahony, *Prisoner of State*, pages 24-25.

29. Lincoln, speech delivered at Springfield, Illinois on 27 January 1838; in Nicolay and Hay, *Lincoln: Complete Works*, Volume I, page 35.

30. *Black's Law Dictionary* (Sixth Edition), page 709.

of the Magna Charta of 1215 which reads: “No freeman shall be taken, or imprisoned, or dispossessed, or outlawed, or banished, or in any way destroyed; nor will we pass upon him, nor commit him, but by the lawful judgment of his peers, or by the law of the land.” As such it was a prominent feature of English jurisprudence for centuries before it was eventually written into the American Constitution. According to William Blackstone:

> Of great importance to the public is the preservation of this personal liberty.... [C]onfinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of arbitrary government; and yet sometimes, when the state is in real danger, even this may be a necessary measure. But the happiness of our constitution is, that it is not left to the executive power to determine when the danger of state is so great, as to render this measure expedient. For the parliament only, or legislative power, whenever it sees proper, can authorize the crown, by suspending the *habeas corpus* act for a short and limited time.[31]

Nothing in the history of American jurisprudence justified Lincoln in his suspension of *habeas corpus* and the legal consensus up to that time, with the exception of his own Attorney-General, Edward Bates[32] and a Philadelphia lawyer named Horace Binney,[33] was that such an act by the Executive would be unconstitutional.[34] John Marshall, who served as Chief Justice of the Supreme Court from 1801 to 1836, wrote in *ex parte Bollman and Swarthout*, “If at any time the public safety should require the suspension of the powers vested by this [*habeas corpus*] act in the Courts of the United States, it is for the legislature

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31. William Blackstone, *Commentaries on the Laws of England* (Chicago, Illinois: University of Chicago Press, 1979), Volume III, pages 129, 138.

32. Edward Bates, opinion, 5 July 1861; in *Official Records: Armies*, Series II, Volume II, pages 20-30. Bates’ argument merely echoed those of Lincoln himself in his address to Congress of the previous day. After making the astonishing admission that he did not fully understand Article I, Section 9, Clause 2 of the Constitution, in which the suspension of the writ of *habeas corpus* is provided for, Bates wrote: “...[T]he Constitution declares that the privilege thereof shall not be suspended except when in cases of rebellion or invasion the public safety may require it. But the Constitution is silent as to who may suspend it when the contingency happens” (*ibid*., pages 27-28). This argument will be rebutted below.

33. Horace Binney, *The Privilege of the Writ of Habeas Corpus Under the Constitution* (Philadelphia, Pennsylvania: C. Sherman, Son and Company, 1862). Binney’s specious argument was that the inclusion of the *habeas corpus* clause in Article I of the Constitution was merely an afterthought on the part of the Committee on Style and that the framers did not thereby intend that its suspension be limited exclusively to the discretion of Congress.

34. Mark E. Neely, Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York: Oxford University Press, 1991), page 188 (footnote).

to say so. That question depends upon political considerations, on which the legislature is to decide."[35] Joseph Story, who also served on the Supreme Court from 1811 to 1845, wrote, "It would seem as the power is given to Congress to suspend the writ of *habeas corpus* in cases of rebellion or invasion, that the right to judge whether the exigency had arisen must exclusively belong to that body."[36] Caleb Cushing of Massachusetts, who served in Congress from 1834 to 1843 and then as U.S. Attorney-General under Franklin Pierce, had likewise declared that "the right to suspend the writ of *habeas corpus*, and also that of judging when the exigency has arisen, *belongs exclusively to Congress*" (emphasis in original).[37]

The aged Chief Justice Roger B. Taney took the very same position in his *ex parte Merryman* opinion of 26 May 1861. John Merryman, a member of the Maryland State Legislature and a vocal advocate of secession, had been arrested at two o'clock on the morning of the previous day and imprisoned at Fort McHenry in Baltimore under orders of General George Cadwallader without indictment or arraignment. When Taney issued a writ of *habeas corpus* in Merryman's behalf, Cadwallader refused to obey it, stating that he had been authorized by the President to suspend the writ at his own discretion. In the resulting opinion, Taney wrote that in so authorizing Cadwallader, Lincoln had "exercised a power which he does not possess under the Constitution" — a power which belongs exclusively to the Legislative Branch of the Government:

> The clause in the Constitution which authorizes the suspension of the privilege of the writ of *habeas corpus* is in the ninth section of the first article.
>
> This article is devoted to the legislative department of the United States, and has not the slightest reference to the Executive department. It begins by providing, "that all legislative powers therein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." And after prescribing the manner in which these two branches of the legislative department shall be chosen, it proceeds to enumerate specifically the legislative powers which it thereby grants, and legislative powers which it expressly prohibits; and, at the conclusion of this specification, a clause is inserted giving Congress, "the power to make all laws which may be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any department or office thereof."
>
> ...[T]he great importance which the framers of the Constitution attached to the privilege of the writ of *habeas corpus* to protect the liberty of the citizen is proved by the fact that its suspension, except in cases of invasion and rebellion, is first in the list of prohibited powers — and even in these cases the power is denied, and its exercise prohibited, unless the public safety shall require it.

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35. *Ex parte Bollman* (1807), 4 Cranch., 75.

36. Story, *Commentaries on the Constitution*, Volume II, pages 212-215.

37. Caleb Cushing, quoted by Mahony, *Prisoner of State*, page 87.

It is true that in the cases mentioned, Congress is of necessity the judge of whether the public safety does or does not require it; and their judgment is conclusive. But the introduction of these words is a standing admonition to the legislative body of the danger of suspending it, and of the extreme caution they should exercise before they give the Government of the United States such power over the liberty of a citizen.

It is the second article of the Constitution that provides for the organization of the Executive Department, and enumerates the powers conferred on it and prescribes its duties. And if the high power over the liberty of the citizens now claimed was intended to be conferred on the President, it would undoubtedly be found in plain words in this article. But there is not a word in it that can furnish the slightest ground to justify the exercise of the power....

The only power, therefore, which the President possesses, where the "life, liberty or property" of a private citizen is concerned, is the power and duty prescribed in the third section of the second article, which requires "that he shall take care that the laws shall be faithfully executed." He is not authorized to execute them himself, or through agents or officers, civil or military, appointed by himself, but he is to take care that they be faithfully carried into execution, as they are expounded and adjudged by the coordinate branch of the Government to which that duty is assigned by the Constitution. It is thus made his duty to come in aid of the judicial authority, if it shall be resisted by a force too strong to be overcome without the assistance of the executive arm; but in exercising this power he acts in subordination to judicial authority, assisting it to execute its process and enforce its judgments. With such provisions in the Constitution, expressed in language too clear to be misunderstood by any one, I can see no ground whatever for supposing that the President, in any emergency, or in any state of things, can authorize the suspension of the privilege of the writ of *habeas corpus*, or the arrest of a citizen, except in aid of the judicial power. He certainly does not faithfully execute the laws, if he takes upon himself legislative power, by suspending the writ of *habeas corpus*, and the judicial power also, by arresting and imprisoning a person without due process of law....

In such a case, my duty was too plain to be mistaken. I have exercised all the power which the Constitution and laws confer upon me, but that power has been resisted by a force too strong for me to overcome. It is possible that the officer [General Cadwallader] who has incurred this grave responsibility may have misunderstood his instructions, and exceeded the authority intended to be given him; I shall, therefore, order all the proceedings in this case, with my opinion, to be filed and recorded in the Circuit Court of the United States for the district of Maryland, and direct the Clerk to transmit a copy, under seal, to the President of the United States. It will then remain for that high officer, in fulfilment of his constitutional obligation to "take care that the laws be faithfully executed," to determine what measures he will take to cause the civil process of the United States to be respected and enforced.[38]

Although this opinion is viewed today as a masterpiece of constitutional interpretation, Taney was excoriated unmercifully by the Northern press for using "the powers of his

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38. *Ex parte Merryman* (Circuit Court, District Maryland, 1861), 17 Fed. Cas. 144 (Number 9487).

office to serve the cause of traitors." According to Greeley's New York *Tribune*, "When treason stalks... let decrepit Judges give place to men capable of detecting and crushing it.... No judge whose heart was loyal to the Constitution would have given such aid and comfort to public enemies."[39] Lincoln's own response to Taney was to issue a warrant for his arrest. The warrant was handed to Ward Hill Lamon, who was the U.S. Marshal for the District of Columbia, with the instructions to "use his own discretion about making the arrest unless he should receive further orders."[40] Although Lamon wisely left the warrant unexecuted, Taney nevertheless informed his fellow Supreme Court justices that he expected to soon join Merryman in prison.[41] Meanwhile, the writ for Merryman's release was completely ignored and he remained in prison without a trial, along with several of his fellow State legislators whom Lincoln also viewed as threats to his regime.

Lincoln's contempt for the laws of his country and for the faithful discharge of his Executive duty in relation to them, was openly expressed in his 4 July 1861 address to Congress in which he criticized "the extreme tenderness of the citizen's liberty" which, in his opinion, practically rendered the writ of *habeas corpus* a relief "more of the guilty than of the innocent."[42] He went on to justify his illegal actions with sophistry worthy more of a John Lackland or an Edward Longshanks than a President of the American Republic:

> Soon after the first call for militia it was considered a duty to authorize the Commanding General in proper cases, according to his discretion, to suspend the privilege of the writ of *habeas corpus*, or, in other words, to arrest and detain without resort to the ordinary processes and forms of law such individuals as he might deem dangerous to the public safety. This authority has purposely been exercised but very sparingly. Nevertheless, the legality and propriety of what has been done under it are questioned, and the attention of the country has been called to the proposition that one who is sworn to "take care that the laws be faithfully executed" should not himself violate them. Of course some consideration was given to the questions of power and propriety before this matter was acted upon. The whole of the laws which were required to be faithfully executed were being resisted and failing of execution in nearly one-third of the States. Must they be allowed to finally fail of execution, even had it been perfectly clear that by the use of the means necessary to their execution some single law... should to a very limited extent be violated? To state the question more directly, Are all the laws *but one* to go unexecuted, and the Government itself go to pieces lest that one be violated? Even in such a case,

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39. New York *Tribune*, quoted by Charles Warren, *The Supreme Court in United States History* (Boston: Little, Brown and Company, 1924), Volume II, pages 368-374. The reader should note that this was the same Horace Greeley who, in December of 1860, had repeatedly asserted the Southern States' right to secede from the Union.

40. Hyman, *More Perfect Union*, page 84.

41. Adams, *Course of Human Events*, page 48.

42. Lincoln, in Richardson, *Messages and Papers of the Presidents*, Volume VII, page 3226.

> would not the official oath be broken if the Government should be overthrown when it was believed that disregarding the single law would tend to preserve it? (emphasis in original)[43]

In other words, Lincoln proposed that it was possible to violate his oath to "preserve, protect, and defend the Constitution of the United States"[44] for the alleged greater good of coercing seceded States back into the Union — a duty which neither the Constitution nor any of its framers had delivered into his hands. Thomas Jefferson had likened the Constitution to a great chain specifically designed to bind down the general Government and limit its powers only to those enumerated therein.[45] It is therefore a blatant absurdity to assert, as did Lincoln, that even one link of this chain could be broken and the whole still maintain its strength and integrity. Indeed, a chain broken in but one place is broken entirely and henceforth utterly worthless to the fulfillment of its intended purpose. We will see in the next chapter just how useless the Constitution had become to the victims of Lincoln's Administration in the North throughout the duration of the war.

He continued:

> Now it is insisted that Congress, and not the Executive, is vested with this power; but the Constitution itself is silent as to which or who is to exercise this power; and as the provision was plainly made for a dangerous emergency, it can not be believed the framers of the instrument intended that in every case the danger should run its course until Congress could be called together, the very assembling of which might be prevented, as was intended in this case, by the rebellion.
>
> No more extended argument is now offered, as an opinion at some length will probably be presented by the Attorney-General. Whether there shall be any legislation upon the subject, and, if any, what, is submitted entirely to the better judgment of Congress.[46]

Lincoln's reasoning here was incorrect. By inserting the clause relating to the suspension of the writ of *habeas corpus* in Article I, the framers clearly expressed their intent that this dangerous power be placed in the hands of the law-making arm of the Government only. It should be remembered that the architects of the American system were former English subjects who were well aware of the historical struggle in the mother country between the liberties of the people and an executive authority ever-zealous for absolute power. Fresh from a war to gain their independence from just such a power, it would seem incredible that they would then write into the organic law of their new Republic a provision which would have

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43. Lincoln, in Richardson, *ibid*., pages 3225-3226.

44. U.S. Constitution, Article II, Section 1, Clause 8.

45. Kentucky Resolutions, 10 November 1798.

46. Lincoln, in Richardson, *Messages and Papers of the Presidents*, Volume VII, page 3226.

opened the door to executive tyranny on American soil:

> ...[I]t should be borne in mind that if there were no apprehensions of the assumption and exercise of arbitrary power, there would be no necessity of the writ of *habeas corpus* as a remedial measure of security or protection. Hence, what can be more absurd than to assume or presume that it should be left in the control of the power which was designed to be restrained by the constitutional provision of the *habeas corpus* to set aside that restraint at its own will and pleasure. What would be thought of the man who, to guard and secure his valuable treasure from the incursions of burglars, would first put on his doors and windows such fastenings as should defy the most expert thief in gaining an entrance, and then leave the key in the door, by which there was nothing more left for the thief to do than turn the key, walk in, and secure the treasure? Not less absurd than the conduct of such a man would have been than that of those who formed the Federal Constitution, if they designed that after securing to themselves and to their posterity the privileges and rights of person which came down to them from their British ancestors, they should place it in the power of their rulers to deprive them of these privileges and rights.[47]

Why Congress Was Not Immediately Convened

The President's duty is indeed to "take care that the laws be faithfully executed," but to draw from this the conclusion that he may, in the absence of Congress, execute laws of his own making is contrary to the clear wording of the Constitution. If, in his judgment, "extraordinary occasions," such as invasion or rebellion, require a special session of Congress, the President is empowered by the Constitution to "convene both Houses,"[48] whose duty it would thereafter be to determine what legislation or public announcements are warranted by the circumstances. Having decided that a rebellion threatened the Union when Fort Sumter fell into Confederate hands on the thirteenth of April, Lincoln's paramount duty was to call Congress into immediate special session. Instead, he chose to postpone that convening for nearly three months, during which time he usurped Legislative powers by calling forth 75,000 volunteers, increasing the regular Army and Navy beyond their peace-time size, and, in essence, declaring war on the Southern States by blockading their ports. The Constitution granted him none of these powers. With Virginia, North Carolina, Tennessee, and Arkansas having previously decided against secession and in favor of the Union, Lincoln was faced with a strong anti-war sentiment in not only those States, but the Border States of Delaware, Missouri, and Kentucky as well, all of which combined would have produced a united Democratic obstacle in Congress which might have proven difficult to overcome and potentially disastrous to his predetermined war policy. Having already been warned on the fourth

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47. Mahony, *Prisoner of State*, pages 53-54.

48. U.S. Constitution, Article II, Section 3.

of April by Colonel Baldwin that Virginia would be lost to the Union should any aggression commence at Fort Sumter,[49] Lincoln's actions had to have been undertaken with full knowledge of the result: a walk-out of the Senators and Representatives from the remaining Southern States, leaving only a handful of Northern Democrats in either House which could be easily overawed by the Republican majority.

It was this rump Legislative body before which Lincoln stood on 4 July 1861, seeking a stamp of approval for, not only his military invasion of the Southern States, but his invasion of the rights of the Northern people as well. In his address, he attempted to justify his unconstitutional acts with the following words: "These measures, whether strictly legal or not, were ventured upon under what appeared to be a popular demand and public necessity, trusting then as now that Congress would readily ratify them."[50] The resolution which he introduced for ratification read in part as follows: "*Be It Resolved* by the Senate and House of Representatives of the United States in Congress assembled: *that* all the extraordinary acts, proclamations, and orders herein before mentioned be and the same are approved, and declared to be in all respects legal and valid to the same, and with the same effect as if they had been issued and done under the previous and express authority and direction of the Congress of the United States" (emphasis in original).[51]

There was, of course, no "popular demand" for war until Fort Sumter was fired upon, for up until that time, a majority of the people of the North, including members of Lincoln's own party, opposed coercive measures against the Southern States. Even taking into consideration the overwhelming response to his proclamation of 15 April 1861, Lincoln was still not justified in the arrest and imprisonment of those who did not support his war policies. The First Amendment to the Constitution guarantees the right of free speech, even when the country is in distress. Furthermore, since seven States had exercised their reserved right to secede from the Union and to establish a new government according to the expressed will of their people, there was no "insurrection," or "treason against the United States," and therefore no "public necessity" which required any extra-constitutional actions on the part of the Executive. However, with the reins of the Government having been firmly seized by Lincoln and the Republicans, and with political dissenters already being arrested and imprisoned, in most cases, without trial in a court of law, the Democrat members of Congress had

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49. Baldwin, testimony, page 104.

50. Lincoln, in Richardson, *Messages and Papers of the Presidents*, Volume VII, page 3225.

51. Nearly a full seventy-two years later, on 9 March 1933, Franklin Delano Roosevelt followed the example of his predecessor in declaring unconstitutional war against the American people and then asking Congress to validate his actions after the fact. The substance of Lincoln's resolution is now codified, with a few minor modifications, in Title 12, *United States Code*, Section 95b and grants virtually unlimited power to the President of the United States to circumvent the Constitution whenever he declares the existence of a national emergency. This will be discussed in Chapter Twenty-Four.

little choice at this point but to acquiesce to his desires:

> The nominal Congress was for five years under the most carefully ordered duress, the most exacting espionage, the most complete terror ever exercised over any deliberative body invested with law-making powers. From the opening of the war until the conclusion of peace, Congress was surrounded with soldiers — menaced by an army, whose bristling bayonets gleaming in the sunlight, flashed upon the windows of the Capitol, and fell upon the eyes of this terrified body. The legislation was dictated by the commander-in-chief of the army, who acted in advance of all legislation. The bold men of the opposition were in perpetual danger of assassination or death by the slow torture of the prison. Mobs were organized in every part of the country, and members of Congress were in danger for every word spoken in conflict with the policy of the President, and were imprisoned at his will....
>
> In its legislation, the President neither consulted or awaited the action of Congress, but anticipated it; and accepted the ratification of their own debasement with avidity. In all of this imbecile, terrified body, there was no man who dared prefer articles of impeachment against the President for his crimes, or call in question his actions. The mover of impeachment would have been imprisoned and destroyed....
>
> Such was the terror over the Congress, that its members acted as though their powers were derived from the President, and with disgraceful servility, these miserable slaves and tools of tyrants for five years, day after day, recorded the edicts of the army. This Congress represented nobody, was phrenzied by the scent of blood like a herd of wild buffaloes stamping the ground and rending the air with their hideous lowing. Having lost their reason, these Congressmen gave vent to the most loathsome forms of passion to hide the shame of their degradation.
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> A body of men dazzled by the gleaming sabre, ready to be turned at any moment upon them, looking at the vacant seats of members of their body, imprisoned for the legitimate exercise of their Constitutional rights, were under such duress as utterly incapacitated them for independent legislation. Their attempt at law-making was a broad farce, exciting ridicule and disgust, rather than merriment. No act of such a body of legislators can bind the conscience of the people; any more than a deed of trust made under duress can bind the forced grantors, though the body of the deed should declare that it was their voluntary act and deed.[52]

With this picture of a subjugated Legislature before us, it requires little imagination to discern why Lincoln was so confident that his unlawful actions would be so "readily" ratified by the Congress. However, as noted by James Randall, such was not his usual practice: "Lincoln, in fact, seemed to prefer a legislative recess; he regarded Congress often as an embarrassment. More commonly he went his way in what he conceived to be the executive sphere, assuming large powers to himself, justifying his actions by a liberal interpretation of presidential authority, rather than seeking legislation to put powers into the President's

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52. Henry Clay Dean, *Crimes of the Civil War and Curse of the Funding System* (Baltimore, Maryland: J. Wesley Smith and Brothers, 1869), pages 72-74.

hands." Most of what Lincoln did was "performed in disregard of the legislative branch."[53]

Lincoln's Disregard For the Constitution

In acting as he did, Lincoln had neither a legal nor historical foundation upon which to stand. First of all, the framers of the Constitution themselves clearly denounced the military coercion of a sovereign State, even if that State was acting unconstitutionally. In answer to a proposal in the Constitutional Convention on 29 May 1787 to grant to the federal Government the power "to call forth the force of the Union against any member of the Union failing to fulfil its duty under the articles thereof," James Madison said:

> The more I reflect on the use of force, the more I doubt the practicability, the justice, and the efficacy of it, when applied to people collectively, and not individually. A Union of the States containing such an ingredient seems to provide for its own destruction. The use of force against a State would look more like a declaration of war than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. I hope that such a system will be framed as might render this resource unnecessary....[54]

Two weeks later, it was proposed by William Patterson of New Jersey that "if any State, or any body of men in any State, shall oppose or prevent the carrying into execution such acts and treaties, the Federal Executive shall be authorized to call forth the power of the Confederated States, or so much thereof as shall be necessary to enforce and compel an obedience to such acts, or an observation of such treaties."[55] Again, this proposal was voted down and the subject of coercion was not raised again in the Convention. Even Alexander Hamilton was opposed to such a measure:

> It has been observed, to coerce States is one of the maddest projects ever devised. A failure of compliance will never be confined to a single State. This being the case, can we suppose it wise to hazard a civil war? Suppose Massachusetts or any large State should refuse, and Congress should attempt to compel them, would they not have influence to procure assistance, especially from those States which are in the same situation as themselves? What picture does this idea present to our view? A complying State at war with a non-complying State, Congress marching the troops of one State into the bosom of another — this State collecting auxiliaries, and forming, perhaps, a majority against its Federal

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53. Randall, *Civil War and Reconstruction*, page 387.

54. James Madison, in James Madison (editor), *Journal of the Federal Convention* (Chicago, Illinois: Albert, Scott and Company, 1893), Volume I, page 241.

55. William Patterson, in Madison, *ibid.*, page 571.

> head. Here is a nation at war with itself. Can any reasonable man be well-disposed towards a Government which makes war and carnage the only means of supporting itself — a Government that can exist only by the sword?[56]

If the power to coerce a State was thus denied to Congress, to which the Constitution gave the authority to make war, how much less is the President, who is destitute of that authority apart from congressional approval, authorized to raise troops upon his own initiative for the purpose of invading a State and compelling its submission? During the crisis with South Carolina in 1833, when Andrew Jackson was threatening military force against the State for its resistance to the "Tariff of Abomination," Daniel Webster went on record denying the President's constitutional authority to do precisely what Lincoln would do in 1861: "The President has no authority to blockade Charleston; the President has no authority to employ military force, till he shall be required to do so by civil authorities. His duty is to cause the laws to be executed. His duty is to support the civil authority."[57] Jeremiah Sullivan Black, whose distinguished legal career included service as Chief Justice of the Pennsylvania Supreme Court, then as Attorney-General and Secretary of State under Buchanan, and finally as reporter to the U.S. Supreme Court during the first two years of the Lincoln Administration, denied the right of the Executive to exercise the powers which Lincoln had grown fond of, but he went even further to deny that the Constitution anywhere authorized the federal Government to prosecute a war against seceding States:

> Whether Congress has the constitutional right to make war against one or more States, and require the Executive of the Federal Government to carry it on by means of force to be drawn from the other States, is a question for Congress itself to consider. It must be admitted that no such power is expressly given; nor are there any words in the Constitution which imply it. Among the powers enumerated in Article I, section 8, is that, "to declare war, grant letters of marque and reprisal, and to make rules concerning captures on land and water." This certainly means nothing more than the power to commence and carry on hostilities against the foreign enemies of the nation. Another clause in the same section gives Congress the power "to provide for calling forth the militia," and to use them within the limits of a State. But this power is so restricted by the words which immediately follow, that it can be exercised only for one of the following purposes: 1. To execute the laws of the Union, that is, to aid the Federal officers in the performance of their regular duties. 2. To suppress insurrection against the States, but this is confined by Article IV, section 4, to cases in which the State herself shall apply for assistance against her own people. 3. To repel invasion of a State by enemies who come from abroad to assail her in her own territory. All these provisions are to protect the States, not to authorize an attack

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56. Alexander Hamilton, in Elliott, *Debates in the Several State Conventions*, Volume II, pages 232-233.

57. Webster, quoted by Alexander Hamilton Stephens, *A Constitutional View of the War Between the States* (Philadelphia, Pennsylvania: National Publishing Company, 1868), Volume II, page 404.

> by one part of the country upon another; to preserve their peace, and not lunge them into civil war. Our forefathers do not seem to have thought that war was calculated to "form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." There was undoubtedly a strong and universal conviction among the men who framed and ratified the Constitution that military force would not only be useless but pernicious as a means of holding the States (Union) together.
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> If it be true that war cannot be declared, nor a system of general hostilities carried on by the Central Government against a State, then it seems to follow that an attempt to do so would *ipso facto* be an expulsion of such State from the Union. And if Congress shall break up the Union by unconstitutionally putting strife and enmity and armed hostility between different sections of the country, instead of the "domestic tranquility" which the Constitution was meant to insure, will not all the States be absolved from their Federal obligations? Is any portion of the people bound to contribute their money or their blood to carry on a contest like that?
>
> The right of the Central Government to preserve itself in its whole constitutional vigor by repelling a direct and positive aggression upon its property or its officers cannot be denied. But this is a totally different thing from an offensive war to punish the people for the political misdeeds of their State government, or to prevent a threatened violation of the Constitution, or to enforce an acknowledgment that the Government of the United States is supreme. The States are colleagues of one another, and if some of them shall conquer the rest and hold them as subjugated provinces, it would totally destroy the whole theory upon which they are now connected.[58]

Not surprisingly, Black was forced to resign from his position not long after writing the above words. Lincoln was a man with a mission who did not intend to let history, court, or Constitution stand in his way. His willingness to ignore or explain away clear constitutional limitations in order to implement his own policies was made evident on numerous other occasions as well. One more illustration will suffice here: When Lincoln took office in March of 1861, the United States Treasury was completely bankrupt, the growth of the country's money supply being at a scant 1% after having fallen to a negative 4% in the economic crash of 1857. The reader will clearly see here the economic background of Lincoln's insistence in his first Inaugural Address upon the collection of federal revenues in the seceded States, and why the war spirit was so suddenly roused by the Northern press once the Confederate Government instituted its 10% tariff — a tariff which was over 30% lower than the Morrill Tariff pushed through the U.S. Congress following the departure of the first seven Southern States.

General Donn Piatt related how a plan was concocted by a New England financier named Amasa Walker to replenish the depleted Treasury by issuing Coupon Treasury Notes,

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58. Jeremiah Sullivan Black, opinion, 20 November 1860; quoted by Greeley, *American Conflict*, Volume I, pages 371-372; *American Annual Cyclopedia and Register of Important Events of the Year 1861* (New York: D. Appleton and Company, 1862).

which drew 7.5 percent semi-annual interest payments, were convertible after three years into six percent 5-20 and 10-40 gold-bearing bonds, and which, by Act of Congress, were exempted from taxation. This national debt, which later was admitted to be "a first mortgage on the property of the country" and claimed to be "the only bond of union,"[59] would be funded by pledging the property and future labor of the American people. When this plan was presented to Lincoln, he was delighted. However, when then-Secretary of the Treasury Salmon Portland Chase first learned of the scheme, he immediately dismissed it, saying, "[T]here is one little obstacle in the way, that makes the plan impracticable, and that is the Constitution." Chase's concerns were relayed to the President, to which Lincoln responded, "[G]o back to Chase and tell him not to bother himself about the Constitution. Say that I have that sacred instrument here at the White House, and I am guarding it with great care." When Chase would not relent, Lincoln called a conference with him and related the following story:

> Chase... down in Illinois, I was held to be a pretty good lawyer.... This thing reminds me of a story I read in a newspaper the other day. It was of an Italian captain, who run his vessel on a rock and knocked a hole in her bottom. He set his men to pumping, and he went to prayers before a figure of the Virgin in the bow of the ship. The leak gained on them. It looked at last as if the vessel would go down with all on board. The captain, at length, in a fit of rage, at not having his prayers answered, seized the figure of the Virgin and threw it overboard. Suddenly the leak stopped, the water was pumped out, and the vessel got safely into port. When docked for repairs, the statue of the Virgin Mary was found stuck head-foremost in the hole....
>
> ...Chase, I don't intend precisely to throw the Virgin Mary overboard, and by that I mean the Constitution, but I will stick it into the hole if I can.

Lincoln went on to say, "These rebels are violating the Constitution to destroy the Union; I will violate the Constitution if necessary, to save the Union; and I suspect, Chase, that our Constitution is going to have a rough time of it before we get done with this row."[60] In his 8 April 1864 letter to Albert G. Hodges, an attorney from Frankfurt, Kentucky, he expressed the same sentiment: "I felt that measures, otherwise unconstitutional, might become lawful by becoming indispensable to the preservation of the Constitution through the preservation of the Union."[61]

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59. Salmon Chase, quoted by Dean, *Crimes of the Civil War*, page 191.

60. Donn Piatt, *Memories of Men Who Saved the Union* (New York: Belford, Clarke and Company, 1887), pages 106-107; Piatt, "Salmon P. Chase," *North American Review* (1886), Volume CXLIII, pages 606-607; James Bryce, *The American Commonwealth* (London and New York: Macmillan Company, 1891), Volume I, page 289; Gamaliel Bradford, *The Lesson of Popular Government* (New York: Harper and Brothers, 1899), Volume II, page 390.

61. Lincoln, letter to Albert G. Hodges, 8 April 1864; quoted in James Bryce, *The American Commonwealth* (New York: MacMillan and Company, 1895), Volume I, page 388.

To claim, as Lincoln did, that a constitutional Union of States may be preserved by violating the organic law which created that Union was patently absurd. Even if it be granted that his arguments against the right of secession were true, Lincoln's actions and the acquiescence therein by the Northern Congress would have justified the Southern States in considering the bond between themselves and the Northern States to be severed. Daniel Webster had pointed out scarcely a decade before, "How absurd it is to suppose that, when different parties enter into a compact for certain purposes, either can disregard any one provision, and expect, nevertheless, the other to observe the rest! ...[I]f the Northern States refuse, willfully and deliberately, to carry into effect [a] part of the Constitution... and Congress provides no remedy, the South would no longer be bound to observe the compact. A bargain can not be broken on one side, and still bind the other side."[62]

Of course, when speaking of the "preservation of the Union," Lincoln was deceptively taking a term that had an accepted historical meaning and injecting into it a completely new definition without informing his audience of the switch. Thus, the "Union," which the Constitution itself described as, and the majority of Americans would have understood to be, the relationship existing *between* the several States, was, in Lincoln's mind, an entity which existed *over* the several States — a central Government which could exist apart from both the States and the Constitution: "Every man thinks he has a right to live and every government thinks it has a right to live. Every man when driven to the wall by a murderous assailant will override all laws to protect himself, and this is called the great right of self-defense. So every government, when driven to the wall by a rebellion, will trample down a constitution before it will allow itself to be destroyed. This may not be constitutional law, but it is fact."[63]

Lincoln apparently also did not seem to realize that his office as President was created by the Constitution and therefore could not exist independently of that document. To claim to still hold the office and exercise the authority of President of the United States after having set aside the Constitution is equivalent to a man who attempts to lift himself up by the seat of his own pants. Any one who imagines that he can accomplish this impossible feat is a danger not only to himself but to those over whom he exercises authority; he certainly is not fit to lead or represent a free people and is deserving more of their vilification and impeachment than of their approbation and support:

> In relation to States, he [the President] is a mere individual as other citizens are; no more. The fact of Mr. Abraham Lincoln being President of the United States does not change his relation as an individual to other individuals, much less to the States of the

62. Webster, quoted by George Ticknor Curtis, *Life of Daniel Webster* (New York: D. Appleton and Company, 1870), Volume II, pages 518-519. Webster was referring specifically to the North's disregard of the fugitive slave clause in the Constitution, but his remarks were equally applicable to any other provision of that document.

63. Lincoln, quoted by Sydney G. Fisher, "The Suspension of Habeas Corpus During the War of the Rebellion," *Political Science Quarterly* (1888), Volume III, page 485.

> Union. As President he is invested with certain authority in law, but beyond this investment of authority, he has no more rightful power to interfere with the acts of individuals, much less of States, than has any of the victims whom he subjected by arbitrary power to the constraints of his will. He is President by the Constitution, and as such has authority conferred on him by the Constitution, no more, and when he disregards the Constitution, he disregards the only source of his authority and power, and subjects himself not only to impeachment in his official character, but to such personal consequences as both the laws contemplate and as those who may be outraged and injured in person and property by his despotic assumptions and arbitrary exercise of power choose to inflict....[64]

The Radicals' Hatred for the Constitution

The rallying cry of those who seek to usurp power and to destroy an established system of law and order is invariably *"Vox populi vox Dei"* — "The voice of the people is the voice of God." As we have seen, this was precisely the maxim to which Lincoln appealed when he stood before Congress and spoke of the "popular demand" for war. However, as Francis Lieber wrote, "everything depends upon the question, who are 'the people'":

> The doctrine *Vox populi vox Dei* is essentially unrepublican, as the doctrine that the people may do what they list under the constitution, above the constitution, and against the constitution, is an open avowal of disbelief in self-government.... Woe to the country in which political hypocrisy first calls the people almighty, then teaches that the voice of the people is divine, then pretends to take a mere clamor for the true voice of the people, and lastly gets up the desired clamor. The consequences are fearful and invariably unfitting for liberty....
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> However indistinct the meaning of the maxim may be, the idea intended to be conveyed and the imposing character of the saying, have, nevertheless, contributed to produce in some countries a general inability to remain in the opposition — that necessary element of civil liberty. A degree of shame seems there to be attached to a person that does not swim with the broad stream. No matter what flagrant contradictions may take place, or however sudden the changes may be, there seems to exist in every one a feeling of discomfort, until he has joined the general current. To differ from the dominant party or the ruling majority, appears almost like daring to contend with a deity, or a mysterious, yet irrevocable destiny. To dissent is deemed to be malcontent; it seems more than rebellious, it seems traitorous; and this feeling becomes ultimately so general, that it seizes the dissenting individuals themselves. They become ashamed, and mingle with the rest. Individuality is destroyed, manly character degenerates, and the salutary effect of parties is forfeited. He that clings to his convictions is put in ban as unnational, and as an enemy to the people. Then arises a man of personal popularity. He ruins the institutions; he bears down everything before him; yet he receives the popular acclaim, and the voice of the people

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64. Mahony, *Prisoner of State*, pages 102-103.

being the voice of God, it is deemed equally unnational and unpatriotic to oppose him.[65]

John C. Calhoun had also similarly predicted what would happen if a Northern faction such as the Republican party ever managed to gain control of the federal Government, "[T]he Constitution will be viewed by the majority... as shackles on their power. To them it will have no value as the means of protection. As a majority they require none. Their number and strength, and not the Constitution, are their protection."[66] While Democratic leaders were calling for a return to "the Union as it was and the Constitution as it is," the leaders and spokesmen of the party which had gained the majority in both chambers of Congress, and had successfully installed Abraham Lincoln as their political puppet in the Executive office, contemned the Constitution as "a mistake,"[67] the "superstition" of the people,[68] a "sheep skin government" deserving no respect and "the foundation of our troubles,"[69] and by members of Lincoln's own Cabinet as "a paper kite"[70] and "the rotten ground rail of a Virginia abstraction."[71] It was Seward's opinion that "this Constitution is to us at the North a great danger [because] the Southerners are using it as a shield...."[72] Wendell Phillips had likewise declared in a speech in Boston in May of 1849, "We are disunionists.... we would get rid of this Union.... We confess that we intend to trample underfoot the Constitution of this country. Daniel Webster says, 'You are a law-abiding people;' that the glory of New England is,

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65. Lieber, *Civil Liberty and Self Government*, pages 405, 414, 415-416. Francis Lieber was a German-born immigrant to the United States who taught history and political economics at Columbia College in New York City in 1857. He was the author of *Instructions for the Government of the Armies of the United States in the Field*, otherwise known as the *Lieber Code,* which was commissioned by Lincoln to give some semblance of legality to his unlawful war policies and was published by the U.S. Adjutant General's Office in 1863 as General Orders No. 100. It thereafter served as the foundation of all international conventions on warfare, such as the Hague Conventions, *etc*.

It is strange indeed that Lincoln would have entrusted such a task to a man holding these truly republican views and stranger still that Lieber would have accepted such a commission from a man who not only ruined the republican institutions of the country and bore down everything before him, but who also persecuted with despotic ferocity all who opposed him.

66. John C. Calhoun, letter to James H. Hamilton, 28 August 1832; in Richard K. Cralle (editor), *The Works of John C. Calhoun* (New York: Appleton and Company, 1853), Volume VI, page 187.

67. Wendell Phillips, quoted by Edmonds, *Facts and Falsehoods*, page 145.

68. Horace Greeley, quoted by Carpenter, *Logic of History*, page 93.

69. Henry Ward Beecher, quoted by Carpenter, *ibid*., pages 93, 121.

70. Seward, quoted by Donn Piatt, *Men Who Saved the Union*, page 136.

71. Edwin Stanton, quoted by Piatt, *ibid.*, page 69.

72. Seward, quoted by Piatt, *ibid.,* page 137.

'that it is a law-abiding community.' Shame on it, if this be true; even if the religion of New England sinks as low as its statute-book. *But I say, we are not a law-abiding community.* God be thanked for it" (emphasis in original).[73] Phillips, though not a politician, was nevertheless warmly embraced by the Republicans in Washington, D.C. and even was welcomed onto the floor of the Senate by Vice President Hannibal Hamlin — a high courtesy paid to very few private citizens.[74]

Further evidence of the Republicans' intent to destroy the constitutional Union is seen in how they reacted to the following resolutions introduced in the House of Representatives on 5 January 1862 by Ohio Democrat Clement Laird Vallandigham:

> *Resolved*, That the Union as it was must be restored, and maintained, one and indivisible, forever, under the Constitution as it is, the 5th Article, providing for amendments, included....
>
> *Resolved*, That whoever shall propose, by Federal authority to extinguish any of the States of this Union, or to declare any of them extinguished, and to establish territorial governments within the same, will be guilty of a high crime against the Constitution and the Union.
>
> *Resolved*, That whoever shall affirm that it is competent for this House, or any other authority, to establish a Dictatorship in the United States, thereby superceding, or suspending the constitutional authorities of the Union, and shall proceed to make any move towards the declaring of a Dictator, will be guilty of a high crime against the Constitution and the Union, and Public Liberty.[75]

No more sound constitutional principles could have been enunciated than these, and yet Republican Owen Lovejoy of Illinois immediately moved to place the resolutions on the table, which was essentially equivalent to their rejection. Lovejoy's motion was upheld by a vote of 78 to 50 — all the votes in the affirmative being cast by Republicans. The reader is invited to compare the Vallandigham resolutions to the speech which was shortly thereafter delivered in the House by Martin F. Conway of Kansas:

> Sir, I am not in favor of restoring the Constitutional relations of the slaveholders to the Union, nor of the war to that end. On the contrary, I am utterly, and forever opposed to both. I am not in favor of the Union as it exists to-day. I am in favor of recognizing the loyal states as the American nation, based as they are on the principle of freedom for all,

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73. Phillips, quoted by McCabe, *Fanaticism and Its Results*, pages 17-18; Matthew Carey, Jr., *The Democratic Speaker's Handbook* (Cincinnati, Ohio: Miami Printing and Publishing, 1868), pages 72-73. "Matthew Carey, Jr." was a pseudonym used by Augustus R. Cazauran.

74. Carpenter, *Logic of History*, page 106.

75. Vallandigham, resolutions presented in the House of Representatives on 5 January 1862; quoted by Carpenter, *ibid*., pages 87-88.

> without distinction of race, color, or condition. I believe it to be the manifest destiny of the American nation to ultimately control the American continent on this principle. I conceive, therefore, that the true object of this war is to revolutionize the national Government, by resolving the North into the nation, and the South into a distinct public body, leaving us in a position to recognize the latter as a separate state. I believe the direction of the war to any other end is a perversion of it, calculated to subvert the very object it was designed to effect.

Conway went on to state, "I have never allowed myself to indulge in that superstitious idolatry of the Union so prevalent among simple but honest people, nor that political cant about the Union so prevalent among the dishonest ones. I have simply regarded it as a form of government, to be valued in proportion to its merits as an instrument of national prosperity and power."[76] In other words, the Union was useful to the Republican party as long as it suited their purposes, but it was a thing to be cast aside in favor of revolution if it stood in their way. Thaddeus Stevens was even more blunt:

> This talk of restoring the Union as it was, and under the Constitution as it is, is one of the absurdities which I have heard repeated until I have become sick of it. There are many things which make such an event impossible. *This Union never shall, with my consent, be restored under the Constitution as it is!...*
>
> The Union as it was, and the Constitution as it is — *God forbid it!* We must conquer the Southern States, and hold them as conquered provinces (emphasis in original).[77]

As we shall see in the next chapter, the Democrat Vallandigham was arrested by Lincoln's orders and imprisoned for his views in favor of restoring the Union on a constitutional foundation, whereas the Republicans Conway and Stevens were applauded by their colleagues for their anti-Union sentiments and ignored by the President. If all this is not sufficient proof that Lincoln's talk of "preserving the Union" was mere political rhetoric, then there is no truth to the biblical maxim, "The tree is known by his fruit" (Matthew 12:33).

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76. Martin F. Conway, quoted by Carpenter, *ibid.*, pages 96-97.

77. Thaddeus Stevens, *Congressional Globe* (Thirty-Seventh Congress, Third Session), 9 December 1862, pages 50-51.

SUPPORTING DOCUMENT

Abraham Lincoln's Address to Congress in Special Session

Congressional Globe — 4 July 1861

Fellow-Citizens of the Senate and House of Representatives:

Having been convened on an extraordinary occasion, as authorized by the Constitution, your attention is not called to any ordinary subject of legislation.

At the beginning of the present Presidential term, four months ago, the functions of the Federal Government were found to be generally suspended within the several States of South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Florida, excepting only those of the Post-Office Department.

Within these States all the forts, arsenals, dockyards, custom-houses, and the like, including the movable and stationary property in and about them, had been seized and were held in open hostility to this Government, excepting only Forts Pickens, Taylor, and Jefferson, on and near the Florida coast, and Fort Sumter, in Charleston Harbor, South Carolina. The forts thus seized had been put in improved condition, new ones had been built, and armed forces had been organized and were organizing, all avowedly with the same hostile purpose.

The forts remaining in the possession of the Federal Government in and near these States were either besieged or menaced by warlike preparations, and especially Fort Sumter was nearly surrounded by well-protected hostile batteries, with guns equal in quality to the best of its own and outnumbering the latter as perhaps ten to one. A disproportionate share of the Federal muskets and rifles had somehow found their way into these States, and had been seized to be used against the Government. Accumulations of the public revenue lying within them had been seized for the same object. The Navy was scattered in distant seas,

leaving but a very small part of it within the immediate reach of the Government. Officers of the Federal Army and Navy had resigned in great numbers, and of those resigning a large proportion had taken up arms against the Government. Simultaneously and in connection with all this the purpose to sever the Federal Union was openly avowed. In accordance with this purpose, an ordinance had been adopted in each of these States declaring the States respectively to be separated from the National Union. A formula for instituting a combined government of these States had been promulgated, and this illegal organization, in the character of Confederate States, was already invoking recognition, aid, and intervention from foreign powers.

Finding this condition of things and believing it to be an imperative duty upon the incoming Executive to prevent, if possible, the consummation of such attempt to destroy the Federal Union, a choice of means to that end became indispensable. This choice was made, and was declared in the inaugural address. The policy chosen looked to the exhaustion of all peaceful measures before a resort to any stronger ones. It sought only to hold the public places and property not already wrested from the Government and to collect the revenues, relying for the rest on time, discussion, and the ballot box. It promised a continuance of the mails at Government expense to the very people who were resisting the Government, and it gave repeated pledges against any disturbance to any of the people or any of their rights. Of all that which a President might constitutionally and justifiably do in such a case, everything was forborne without which it was believed possible to keep the Government on foot.

On the 5th of March, the present incumbent's first full day in office, a letter of Major Anderson, commanding at Fort Sumter, written on the 28th of February and received at the War Department on the 4th of March, was by that Department placed in his hands. This letter expressed the professional opinion of the writer that reenforcements could not be thrown into that fort within the time for his relief rendered necessary by the limited supply of provisions, and with a view of holding possession of the same, with a force of less than 20,000 good and well-disciplined men. The opinion was concurred in by all the officers of his command, and their memoranda on the subject were made inclosures of Major Anderson's letter. The whole was immediately laid before Lieutenant-General Scott, who at once concurred with Major Anderson in opinion. On reflection, however, he took full time, consulting with other officer, both of the Army and the Navy, and at the end of four days came reluctantly, but decidedly, to the same conclusion as before. He also stated at the same time that no such sufficient force was then at the control of the Government or could be raised and brought to the ground within the time when the provisions in the fort would be exhausted. In a purely military point of view this reduced the duty of the Administration in the case to the mere matter of getting the garrison safely out of the fort.

It was believed, however, that to so abandon that position under the circumstances would be utterly ruinous; that the *necessity* under which it was to be done would not be fully understood; that by many it would be construed as a part of a *voluntary* policy; that at home it would discourage the friends of the Union, embolden its adversaries, and go far to insure to the latter a recognition abroad; that, in fact, it would be our national destruction consum-

mated. This could not be allowed. Starvation was not yet upon the garrison, and ere it would be reached *Fort Pickens* might be reenforced. This last would be a clear indication of *policy*, and would better enable the country to accept the evacuation of Fort Sumter as a military *necessity*. An order was at once directed to be sent for the landing of the troops from the steamship *Brooklyn* into Fort Pickens. This order could not go by land but must take the longer and slower route by sea. The first return news from the order was received just one week before the fall of Fort Sumter. The news itself was that the officer commanding the *Sabine*, to which vessel the troops had been transferred from the *Brooklyn*, acting upon some *quasi* armistice of the late Administration (and of the existence of which the present Administration, up to the time the order was dispatched, had only too vague and uncertain rumors to fix attention), had refused to land the troops. To now reenforce Fort Pickens before a crisis would be reached at Fort Sumter was impossible, rendered so by the near exhaustion of provisions in the latter-named fort. In precaution against such a conjuncture the Government had a few days before commenced preparing an expedition, as well adapted as might be, to relieve Fort Sumter, which expedition was intended to be ultimately used or not, according to circumstances. The strongest anticipated case for using it was now presented, and it was resolved to send it forward. As had been intended in this contingency, it was also resolved to notify the governor of South Carolina that he might expect an attempt would be made to provision the fort, and that if the attempt should not be resisted there would be no effort to throw in men, arms, or ammunition without further notice, or in case of an attack upon the fort. This notice was accordingly given, whereupon the fort was attacked and bombarded to its fall, without even awaiting the arrival of the provisioning expedition.

It is thus seen that the assault upon and reduction of Fort Sumter was in no sense a matter of self-defense on the part of the assailants. They well knew that the garrison in the fort could by no possibility commit aggression upon them. They knew — they were expressly notified — that the giving of bread to the few brave and hungry men of the garrison was all which would on that occasion be attempted, unless themselves, by resisting so much, should provoke more. They knew that this Government desired to keep the garrison in the fort, not to assail them, but merely to maintain visible possession, and thus to preserve the Union from actual and immediate dissolution, trusting, as hereinbefore stated, to time, discussion, and the ballot box for final adjustment; and they assailed and reduced the fort for precisely the reverse object — to drive out the visible authority of the Federal Union, and thus force it to immediate dissolution. That this was their object the Executive well understood; and having said to them in the inaugural address, "You can have no conflict without being yourselves the aggressors," he took pains not only to keep this declaration good, but also to keep the case so free from the power of the ingenious sophistry as that the world should not be able to misunderstand it. By the affair at Fort Sumter, with its surrounding circumstances, that point was reached. Then and thereby the assailants of the Government began the conflict of arms, without a gun in sight or in expectancy to return their fire, save only the few in the fort, sent to that harbor years before for their own protection, and still ready to give that protection in whatever was lawful. In this act, discarding all else, they have forced upon the

country the distinct issue, "Immediate dissolution or blood."

And this issue embraces more than the fate of these United States. It presents to the whole family of man the question whether a constitutional republic, or democracy — a government of the people by the same people — can or can not maintain its territorial integrity against its own domestic foes. It presents the question whether discontented individuals, too few in numbers to control administration according to organic law in any case, can always, upon the pretenses made in this case, or on any other pretenses, or arbitrarily without any pretense break up their government, and thus practically put an end to free government upon the earth. It forces us to ask, Is there in all republics this inherent and fatal weakness? Must a government of necessity be too *strong* for the liberties of its own people, or too *weak* to maintain its own existence?

So viewing the issue, no choice was left but to call out the war power of the Government and so to resist force employed for its destruction by force for its preservation.

The call was made, and the response of the country was most gratifying, surpassing in unanimity and spirit the most sanguine expectation. Yet none of the States commonly called slave States, except Delaware, gave a regiment through regular State organization. A few regiments have been organized within some others of those States by individual enterprise and received into the Government service. Of course the seceded States, so called (and to which Texas had been joined about the time of the inauguration), gave no troops to the cause of the Union. The border States, so called, were not uniform in their action, some of them being almost *for* the Union, while in others, as Virginia, North Carolina, Tennessee, and Arkansas, the Union sentiment was nearly repressed and silenced. The course taken in Virginia was the most remarkable, perhaps the most important. A convention elected by the people of that State to consider this very question of disrupting the Federal Union was in session at the capital of Virginia when Fort Sumter fell. To this body the people had chosen a large majority of *professed* Union men. Almost immediately after the fall of Sumter many members of that majority went over to the original disunion minority, and with them adopted an ordinance for withdrawing the State from the Union. Whether this change was wrought by their great approval of the assault upon Sumter or their great resentment at the Government's resistance to that assault is not definitely known. Although they submitted the ordinance for ratification to a vote of the people, to be taken on a day then somewhat more than a month distant, the convention and the legislature (which was also in session at the same time and place), with leading men of the State not members of either, immediately commenced acting as if the State were already out of the Union. They pushed military preparations vigorously forward all over the State. They seized the United States armory at Harpers Ferry and the navy-yard at Gosport, near Norfolk. They received — perhaps invited — into their State large bodies of troops, with their warlike appointments, from the so-called seceded States. They formally entered into a treaty of temporary alliance and cooperation with the so-called "Confederate States," and sent members to their congress at Montgomery; and, finally, they permitted the insurrectionary government to be transferred to their capital at Richmond.

The people of Virginia have thus allowed this giant insurrection to make its nest with-

in her borders, and this Government has no choice left but to deal with it *where* it finds it; and it has the less regret, as the loyal citizens have in due form claimed its protection. Those loyal citizens this Government is bound to recognize and protect, as being Virginia.

In the border States, so called — in fact, the Middle States — there are those who favor a policy which they called "armed neutrality;" that is, an arming of those States to prevent the Union forces passing one way or the disunion the other over their soil. This would be disunion completed. Figuratively speaking, it would be the building of an impassable wall along the line of separation, and yet not quite an impassable one, for, under the guise of neutrality, it would tie the hands of the Union men and freely pass supplies from among them to the insurrectionists, which it could not do as an open enemy. At a stroke it would take all the trouble off the hands of secession, except only what proceeds from the external blockade. It would do for the disunionists that which of all things they most desire — feed them well and give them disunion without a struggle of their own. It recognizes no fidelity to the Constitution, no obligation to maintain the Union; and while very many who have favored it are doubtless loyal citizens, it is, nevertheless, very injurious in effect.

Recurring to the action of the Government, it may be stated that at first a call was made for 75,000 militia, and rapidly following this a proclamation was issued for closing the ports of the insurrectionary districts by proceedings in the nature of blockade. So far all was believed to be strictly legal. At this point the insurrectionists announced their purpose to enter upon the practice of privateering.

Other calls were made for volunteers to serve three years unless sooner discharged, and also for large additions to the Regular Army and Navy. These measures, whether strictly legal or not, were ventured upon under what appeared to be a popular demand and a public necessity, trusting then, as now, that Congress would readily ratify them. It is believed that nothing has been done beyond the constitutional competency of Congress.

Soon after the first call for militia it was considered the duty to authorize the Commanding General in proper cases, according to his discretion, to suspend the privilege of the writ of *habeas corpus*, or, in other words, to arrest and detain without resort to the ordinary processes and forms of law such individuals as he might deem dangerous to the public safety. This authority has purposely been exercised but very sparingly. Nevertheless, the legality and propriety of what has been done under it are questioned, and the attention of the country has been called to the proposition that one who is sworn to "take care that the laws be faithfully executed" should not himself violate them. Of course some consideration was given to the questions of power and propriety before this matter was acted upon. The whole of the laws which were required to be faithfully executed were being resisted and failing of execution in nearly one-third of the States. Must they be allowed to finally fail of execution, even had it been perfectly clear that by the use of the means necessary to their execution some single law, made in such extreme tenderness of the citizen's liberty that practically it relieves more of the guilty than of the innocent, should to a very limited extent be violated? To state the question more directly, Are all the laws *but one* to go unexecuted, and the Government itself go to pieces lest that one be violated? Even in such a case, would not the official oath be

broken if the Government should be overthrown when it was believed that disregarding the single law would tend to preserve it? But it was not believed that this question was presented. It was not believed that any law was violated. The provision of the Constitution that "the privilege of the writ of *habeas corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it" is equivalent to a provision — is a provision — that such privilege may be suspended when, in cases of rebellion or invasion, the public safety *does* require it. It was decided that we have a case of rebellion and that the public safety does require the qualified suspension of the privilege of the writ which was authorized to be made. Now it is insisted that Congress, and not the Executive, is vested with this power; but the Constitution itself is silent as to which or who is to exercise the power; and as the provision was plainly made for a dangerous emergency, it can not be believed the framers of the instrument intended that in every case the danger should run its course until Congress could be called together, the very assembling of which might be prevented, as was intended in this case, by the rebellion.

No more extended argument is now offered, as an opinion at some length will probably be presented by the Attorney-General. Whether there shall be any legislation upon the subject, and, if any, what, is submitted entirely to the better judgment of Congress.

The forbearance of this Government had been so extraordinary and so long continued as to lead some foreign nations to shape their action as if they supposed the early destruction of our National Union was probable. While this on discovery gave the Executive some concern, he is now happy to say that the sovereignty and rights of the United States are now everywhere practically respected by foreign powers, and a general sympathy with the country is manifested throughout the world.

The reports of the Secretaries of the Treasury, War, and the Navy will give the information in detail deemed necessary and convenient for your deliberation and action, while the Executive and all the Departments will stand ready to supply omissions or to communicate new facts considered important for you to know.

It is now recommended that you give the legal means for making this contest a short and a decisive one; that you place at the control of the Government for the work at least 400,000 men and $400,000,000. That number of men is about one-tenth of those of proper ages within the regions where apparently *all* are willing to engage, and the sum is less than a twenty-third part of the money value owned by the men who seem ready to devote the whole. A debt of $600,000,000 now is a less sum per head than was the debt of our Revolution when we came out of that struggle, and the money value in the country now bears even a greater proportion to what it was *then* than does the population. Surely each man has as strong a motive *now* to *preserve* our liberties as each had then to *establish* them.

A right result at this time will be worth more to the world than ten times the men and ten times the money. The evidence reaching us from the country leaves no doubt that the material for the work is abundant, and that it needs only the hand of legislation to give it legal sanction and the hand of the Executive to give it practical shape and efficiency. One of the greatest perplexities of the Government is to avoid receiving troops faster than it can

provide for them. In a word, the people will save their Government if the Government itself will do its part only indifferently well.

It might seem at first thought to be of little difference whether the present movement at the South be called "secession" or "rebellion." The movers, however, well understand the difference. At the beginning they knew they could never raise their treason to any respectable magnitude by any name which implies *violation* of law. They knew their people possessed as much of moral sense, as much of devotion to law and order, and as much pride in and reverence for the history and Government of their common country as any other civilized and patriotic people. They knew they could make no advancement directly in the teeth of these strong and noble sentiments. Accordingly, they commenced by an insidious debauching of the public mind. They invented an ingenious sophism, which, if conceded, was followed by the perfectly logical steps through all the incidents to the complete destruction of the Union. The sophism itself is that any State of the Union may *consistently* with the National Constitution, and therefore *lawfully* and *peacefully*, withdraw from the Union without the consent of the Union or of any other State. The little disguise that the supposed right is to be exercised only for just cause, themselves to be the sole judge of its justice, is too thin to merit any notice.

With rebellion thus sugar coated they have been drugging the public mind of their section for more than thirty years, and until at length they have brought many good men to a willingness to take up arms against the Government the day *after* some assemblage of men have enacted the farcical pretense of taking their State out of the Union who could have been brought to no such thing the day *before*.

This sophism derives much, perhaps the whole, of its currency from the assumption that there is some omnipotent and sacred supremacy pertaining to a *State* — to each State of our Federal Union. Our States have neither more nor less power than that reserved to them in the Union by the Constitution, no one of them ever having been a State *out* of the Union. The original ones passed into the Union even *before* they cast off their British colonial dependence, and the new ones each came into the Union directly from a condition of dependence, excepting Texas; and even Texas, in its temporary independence, was never designated a State. The new ones only took the designation of States on coming into the Union, while that name was first adopted for the old ones in and by the Declaration of Independence. Therein the "United Colonies" were declared to be "free and independent States;" but even then the object plainly was not to declare their independence of *one another* or of the *Union*, but directly the contrary, as their mutual pledge and their mutual action before, at the time, and afterwards abundantly show. The express plighting of faith by each and all of the original thirteen in the Articles of Confederation, two years later, that the Union shall be perpetual is most conclusive. Having never been States, either in substance or in name, *outside* of the Union, whence this magical omnipotence of "State rights," asserting a claim of power to lawfully destroy the Union itself? Much is said about the "sovereignty" of the States, but the word even is not in the National Constitution, nor, as is believed, in any of the State constitutions. What is a "sovereignty" in the political sense of the term? Would it be far wrong to

define it "a political community without a political superior"? Tested by this, no one of our States, except Texas, ever was a sovereignty; and even Texas gave up the character on coming into the Union, by which act she acknowledged the Constitution of the United States and the laws and treaties of the United States made in pursuance of the Constitution to be for her the supreme law of the land. The States have their status in the Union, and they have no other legal status. If they break from this, they can only do so against law and by revolution. The Union, and not themselves separately, procured their independence and their liberty. By conqest or purchase the Union gave each of them whatever of independence and liberty it has. The Union is older than any of the States, and, in fact, it created them as States. Originally some dependent colonies made the Union, and in turn the Union threw off their old dependence and made them States, such as they are. Not one of them ever had a State constitution independent of the Union. Of course it is not forgotten that all the new States framed their constitutions before they entered the Union, nevertheless dependent upon and preparatory to coming into the Union.

Unquestionably the States have the powers and rights reserved to them in and by the National Constitution; but among these surely are not included all conceivable powers, however mischievous or destructive, but at most such only as were known in the world at the time as governmental powers; and certainly a power to destroy the Government itself had never been known as a governmental — as a merely administrative power. This relative matter of national power and State rights, as a principle, is no other than the principle of *generality* and *locality*. Whatever concerns the whole should be confided to the whole — to the General Government — while whatever concerns *only* the State should be left exclusively to the State. This is all there is of original principle about it. Whether the National Constitution in defining boundaries between the two has applied the principle with exact accuracy is not to be questioned. We are all bound by that defining without question.

What is now combated is the position that secession is *consistent* with the Constitution — is *lawful* and *peaceful*. It is not contended that there is any express law for it, and nothing should ever be implied as law which leads to unjust or absurd consequences. The nation purchased with money the countries out of which several of these States were formed. Is it just that they shall go off without leave and without refunding? The nation paid very large sums (in the aggregate, I believe, nearly a hundred millions) to relieve Florida of the aboriginal tribes. Is it just that she shall now be off without consent or without making any return? The nation is now in debt for money applied to the benefit of these so-called seceding States in common with the rest. Is it just either that creditors shall go unpaid or the remaining States pay the whole? A part of the present national debt was contracted to pay the old debts of Texas. Is it just that she shall leave and pay no part of this herself?

Again: If one State may secede, so may another; and when all shall have seceded none is left to pay the debts. Is this quite just to creditors? Did we notify them of this sage view of ours when we borrowed their money? If we now recognize this doctrine by allowing the seceders to go in peace, it is difficult to see what we can do if others choose to go or to extort terms upon which they will promise to remain.

The seceders insist that our Constitution admits of secession. They have assumed to make a national constitution of their own, in which of necessity they have either *discarded* or *retained* the right of secession, as they insist its exists in ours. If they have discarded it, they thereby admit that on principle it ought not to be in ours. If they have retained it, by their own construction of ours they show that to be consistent they must secede from one another whenever they shall find it the easiest way of settling their debts or effecting any other selfish or unjust object. The principle itself is one of disintegration, and upon which no government can possibly endure.

If all the States save one assert the power to *drive* that one out of the Union, it is presumed the whole class of seceder politicians would at once deny the power and denounce the act as the greatest outrage upon State rights. But suppose that precisely the same act, instead of being called "driving one out," should be called "the seceding of the others from that one," it would be exactly what the seceders claim to do, unless, indeed, they make the point that the one, because it is a minority, may rightfully do what the others, because they are a majority, may not rightfully do. These politicians are subtle and profound on the rights of minorities. They are not partial to that power which made the Constitution and speaks from the preamble, calling itself "we, the people."

It may well be questioned whether there is to-day a majority of the legally qualified voters of any State, except, perhaps South Carolina, in favor of disunion. There is much reason to believe that the Union men are the majority in many, if not in every other one, of the so-called seceded States. The contrary has not been demonstrated in any one of them. It is ventured to affirm this even of Virginia and Tennessee; for the result of an election held in military camps, where the bayonets are all on one side of the question voted upon, can scarcely be considered as demonstrating popular sentiment. At such an election all that large class who are at once *for* the Union and *against* coercion would be coerced to vote against the Union.

It may be affirmed without extravagance that the free institutions we enjoy have developed the powers and improved the condition of our whole people beyond any example in the world. Of this we now have a striking and an impressive illustration. So large an army as the Government has now on foot was never before known without a soldier in it but who had taken his place there of his own free choice. But more than this, there are many single regiments whose members, one and another, possess full practical knowledge of all the arts, sciences, professions, and whatever else, whether useful or elegant, is known in the world; and there is scarcely one from which there could not be selected a President, a Cabinet, a Congress, and perhaps a court, abundantly competent to administer the Government itself. Nor do I say this is not true also in the army of our late friends, now adversaries in this contest; but if it is, so much better the reason why the Government which has conferred such benefits on both them and us should not be broken up. Whoever in any section proposes to abandon such a government would do well to consider in deference to what principle it is that he does it; what better he is likely to get in its stead; whether the substitute will give, or be intended to give, so much of good to the people. There are some foreshadowings on this

subject. Our adversaries have adopted some declarations of independence in which, unlike the good old one penned by Jefferson, they omit the words "all men are created equal." Why? They have adopted a temporary national constitution, in the preamble of which, unlike our good old one signed by Washington, they omit "We, the people," and substitute "We, the deputies of the sovereign and independent States." Why? Why this deliberate pressing out of view the rights of men and the authority of the people?

This is essentially a people's contest. On the side of the Union it is a struggle for maintaining in the world that form and substance of government whose leading object is to elevate the condition of men; to lift artificial weights from all shoulders; to clear the paths of laudable pursuit for all; to afford all an unfettered start and a fair chance in the race of life. Yielding to partial and temporary departures, from necessity, this is the leading object of the Government for whose existence we contend.

I am most happy to believe that the plain people understand and appreciate this. It is worthy of note that while in this the Government's hour of trial large numbers of those in the Army and Navy who have been favored with the offices have resigned and proved false to the hand which had pampered them, not one common soldier or common sailor is known to have deserted his flag.

Great honor is due to those officers who remained true despite the example of their treacherous associates; but the greatest honor and most important fact of all is the unanimous firmness of the common soldiers and common sailors. To the last man, so far as known, they have successfully resisted the traitorous efforts of those whose commands but an hour before they obeyed as absolute law. This is the patriotic instinct of plain people. They understand without an argument that the destroying the Government which was made by Washington means no good to them.

Our popular Government has often been called an experiment. Two points in it our people have already settled — the successful *establishing* and the successful *administering* it. One still remains — its successful *maintenance* against a formidable internal attempt to overthrow it. It is now for them to demonstrate to the world that those who can fairly carry an election can also suppress a rebellion; that ballots are the rightful and peaceful successors of bullets, and that when ballots have fairly and constitutionally decided there can be no successful appeal back to bullets; that there can be no successful appeal except to ballots themselves at succeeding elections. Such will be a great lesson of peace, teaching men that what they can not take by an election neither can they take it by a war; teaching all the folly of being the beginners of a war.

Lest there be some uneasiness in the minds of candid men as to what is to be the course of the Government toward the Southern States *after* the rebellion shall have been suppressed, the Executive deems it proper to say it will be his purpose then, as ever, to be guided by the Constitution and the laws, and that he probably will have no different understanding of the powers and duties of the Federal Government relatively to the rights of the States and the people under the Constitution than that expressed in the inaugural address.

He desires to preserve the Government, that it may be administered for all as it was

administered by the men who made it. Loyal citizens everywhere have the right to claim this of their government, and the government has no right to withhold or neglect it. It is not perceived that in giving it there is any coercion, or conquest, or any subjugation in any just sense of those terms.

The Constitution provides, and all the States have accepted the provision, that "the United States shall guarantee to every State in this Union a republican form of government." But if a State may lawfully go out of this Union, having done so it may also discard the republican form of government; so that to prevent its going out is an indispensable *means* to the *end* of maintaining the guaranty mentioned; and when an end is lawful and obligatory the indispensable means to it are also lawful and obligatory.

It was with the deepest regret that the Executive found the duty of employing the war power in defense of the Government forced upon him. He could not perform this duty or surrender the existence of the Government. No compromise by public servants could in this case be a cure; not that compromises are not often proper, but that no popular government can long survive a marked precedent that those who carry an election can only save the government from immediate destruction by giving up the main point upon which the people gave the election. The people themselves, and not their servants, can safely reverse their own deliberate decisions.

As a private citizen the Executive could not have consented that these institutions shall perish; much less could he in betrayal of so vast and so sacred a trust as these free people had confided to him. He felt that he had no moral right to shrink, nor even to count the chances of his own life, in what might follow. In full view of his great responsibility he has so far done what he has deemed his duty. You will now, according to your own judgment, perform yours. He sincerely hopes that your views and your action may so accord with his as to assure all faithful citizens who have been disturbed in their rights of a certain and speedy restoration to them under the Constitution and the laws.

And having thus chosen our course, without guise and with pure purpose, let us renew our trust in God and go forward without fear and with manly hearts.

ABRAHAM LINCOLN.

SUPPORTING DOCUMENT

Clement Vallandigham's Response to Lincoln's Address to Congress

Congressional Globe — 10 July 1861

Mr. Chairman, in the Constitution of the United States, which the other day we swore to support, and by the authority of which we are here assembled now, it is written, "All legislative powers herein granted shall be vested in a Congress of the United States." It is further written, also, that the Congress to which all legislative powers granted, are thus committed: "Shall make no law abridging the freedom of speech or of the press." And, it is yet further written, in protection of Senators and Representatives, in that freedom of debate here, without which there can be no liberty that: "For any speech or debate in either House they shall not be questioned in any other place."

Holding up the shield of the Constitution, and standing here in the place, and with the manhood of a Representative of the people, I propose to myself, to-day, the ancient freedom of speech used within these walls, though with somewhat more, I trust, of decency and discretion than have sometimes been exhibited here. Sir, I do not propose to discuss the direct question of this civil war in which we are engaged. Its present prosecution is a foregone conclusion; and a wise man never wastes his strength on a fruitless enterprise. My position shall, at present, for the most part, be indicated by my votes, and by the resolutions and motions which I may submit. But there are many questions incident to the war and to its prosecution, about which I have somewhat to say now.

Mr. Chairman, the President, in the message before us, demands the extraordinary loan of $400,000,000 — an amount nearly ten times greater than the entire public debt, State and Federal, at the close of the Revolution, in 1783, and four times as much as the total

expenditures during the three years' war with Great Britain, in 1812.

Sir, that same Constitution which I again hold up, and to which I give my whole heart, and my utmost loyalty, commits to Congress alone the power to borrow money, and to fix the purposes to which it shall be applied, and expressly limits army appropriations to the term of two years. Each Senator and Representative, therefore, must judge for himself, upon his conscience and his oath, and before God and the country, of the justice and wisdom and policy of the President's demand; and whenever this House shall have become but a mere office wherein to register the decrees of the Executive, it will be high time to abolish it. But I have a right, I believe, sir, to say that, however gentlemen upon this side of the Chamber may differ finally as to the war, we are yet firmly and inexorably united in one thing, at least, and that is in the determination that our own rights and dignities and privileges, as the Representatives of the people, shall be maintained in their spirit, and to the very letter. And, be this as it may, I do know that there are some here present who are resolved to assert, and to exercise these rights with becoming decency and moderation, certainly, but, at the same time, fully, freely, and at every hazard.

Sir, it is an ancient and wise practice of the English Commons, to precede all votes of supplies by an inquiry into abuses and grievances, and especially into any infractions of the Constitution and the laws by the Executive. Let us follow this safe practice. We are now in Committee of the Whole *on the State of the Union*; and in the exercise of my right and my duty as a Representative, and availing myself of the latitude of debate allowed here, I propose to consider *the present State of the Union*, and supply, also, some few of the many omissions of the President in the message before us. Sir, he has undertaken to give us information of the state of the Union, as the Constitution requires him to do; and it was his duty, as an honest Executive, to make that information full, impartial, and complete, instead of spreading before us a labored and lawyerly vindication of his own course of policy — a policy which has precipitated us into a terrible and bloody revolution. He admits the fact; he admits that, to-day, we are in the midst of a general civil war, not now a mere petty insurrection, to be suppressed in twenty days by a proclamation and a *posse comitatus* of three months' militia.

Sir, it has been the misfortune of the President, from the beginning, that he has totally and wholly under-estimated the magnitude and character of the revolution with which he had to deal, or surely he never would have ventured upon the wicked and hazardous experiment of calling thirty millions of people to arms among themselves, without the counsel and authority of Congress. But when, at last, he found himself hemmed in by the revolution, and this city in danger, as he declares, and waked up thus, as the proclamation of the 15th of April proves him to have waked up, to the reality and significance of the movement, why did he not forthwith assemble Congress, and throw himself upon the wisdom and patriotism of the Representatives of the States and of the people, instead of usurping powers which the Constitution has expressly conferred upon us? Ay, sir, and powers which Congress had but a little while before, repeatedly and emphatically refused to exercise, or to permit him to exercise? But I shall recur to this point again.

Sir, the President, in this message, has undertaken also to give us a summary of the

causes which have led to the present revolution. He has made out a case — he might, in my judgment, have made out a much stronger case — against the secessionists and disunionists of the South. All this, sir, is very well, as far as it goes. But the President does not go back far enough, nor in the right direction. He forgets the still stronger case against the abolitionists and disunionists of the North and West. He omits to tell us that secession and disunion had a New England origin, and began in Massachusetts, in 1804, at the time of the Louisiana purchase; were revived by the Hartford convention, in 1814, and culminated, during the war with Great Britain, in sending commissioners to Washington to settle the terms for a peaceable separation of New England from the other States of the Union. He forgets to remind us and the country, that this present revolution began forty years ago, in the vehement, persistent, offensive, most irritating and unprovoked agitation of the slavery question in the North and West, from the time of the Missouri controversy, with some short intervals, down to the present hour. Sir, if his statement of the case be the whole truth, and wholly correct, then the Democratic party, and every member of it, and the Whig party, too, and its predecessors, have been guilty, for sixty years, of an unjust, unconstitutional, and most wicked policy in administering the affairs of the Government.

But, sir, the President ignores totally the violent and long-continued denunciation of slavery and slaveholders, and especially since 1835 — I appeal to Jackson's message for the date and proof — until at last a political anti-slavery organization was formed in the North and West, which continued to gain strength year after year, till, at length, it had destroyed and usurped the place of the Whig party, and finally obtained control of every free State in the Union, and elected himself, through free State votes alone, to the Presidency of the United States. He chooses to pass over the fact that the party to which he thus owes his place and his present power of mischief, is wholly and totally a sectional organization; and, as such, condemned by Washington, by Jefferson, by Jackson, Webster, and Clay, and by all the founders and preservers of the Republic, and utterly inconsistent with the principles, or with the peace, the stability, or the existence even, of our Federal system. Sir, there never was an hour, from the organization of this sectional party, when it was not predicted by the wisest men and truest patriots, and when it ought not to have been known by every intelligent man in the country, that it must, sooner or later, precipitate a revolution, and the dissolution of the Union. The President forgets already that, on the 4th of March, he declared that the platform of that party was "a law unto him," by which he meant to be governed in his administration; and yet that platform announced that whereas there were two separate and distinct kinds of labor and forms of civilization in the two different sections of the Union, yet that the entire national domain, belonging in common to all the States, should be taken, possessed, and held by one section alone, and consecrated to that section which, by mere numerical superiority, had chosen the President, and now has, and for some years past has had, a majority in the Senate, as from the beginning of the Government it had also in the House. He omits, too, to tell the country and the world — for he speaks, and we all speak now, to the world, and to posterity — that he himself, and his prime minister, the Secretary of State, declared, three years ago, and have maintained ever since, that there was an "irrepressible conflict" between

the two sections of this Union; that the Union could not endure part slave and part free; and that the whole power and influence of the Federal Government must henceforth be exerted to circumscribe and hem in slavery within its existing limits.

And now, sir, how comes it that the President has forgotten to remind us, also, that when the party thus committed to the principle of deadly hate and hostility to the slave institutions of the South, and the men who had proclaimed the doctrine of the irrepressible conflict, and who, in the dilemma or alternative of this conflict, were resolved that "the cotton and rice fields of South Carolina, and the sugar plantations of Louisiana, should ultimately be tilled by free labor," had obtained power and place in the common Government of the States, the South, except one State, chose first to demand solemn constitutional guarantees for protection against the abuse of the tremendous power and patronage and influence of the Federal Government, for the purpose of securing the great end of the sectional conflict, before resorting to secession or revolution at all? Did he not know — how could he be ignorant — that, at the last session of Congress, every substantive proposition for adjustment and compromise, except that offered by the gentleman from Illinois [Mr. Kellogg] — and we all know, how it was received — came from the South? Stop a moment, and let us see.

The Committee of Thirty-three was moved for in this House by a gentleman from Virginia, the second day of the session, and received the vote of every Southern Representative present, except only the members from South Carolina, who declined to vote. In the Senate, the committee of thirteen was proposed by a Senator from Kentucky [Mr. Powell], and received the silent acquiescence of every Southern Senator present. The Crittenden propositions, too, were submitted also by another Senator from Kentucky [Mr. Crittendon], now a member of this House; a man, venerable for his years, loved for his virtues, distinguished for his services, honored for his patriotism; for four and forty years a Senator, or in other public office; devoted from the first hour of his manhood to the Union of these States; and who, though he himself proved his courage fifty years ago, upon the battlefield against the foreign enemies of his country, is now, thank God, still for compromise at home, to-day. Fortunate in a long and well-spent life of public service and private worth, he is unfortunate only that he has survived a Union, and, I fear, a Constitution, younger than himself.

The border States propositions, also, were projected by a gentleman from Maryland, not now a member of this House, and presented by a gentleman from Tennessee [Mr. Etheridge], now the Clerk of this House. And yet all these propositions, coming thus from the South, were severally and repeatedly rejected by the almost united vote of the Republican party in the Senate and the House. The Crittenden propositions, with which Mr. Davis, now President of the Confederate States, and Mr. Toombs, his Secretary of State, both declared, in the Senate, that they would be satisfied, and for which every Southern Senator and Representative voted — never, on any occasion, received one solitary vote from the Republican party in either House.

The Adams or Corwin amendment, so-called — reported from the Committee of Thirty-three, and the only substantive amendment proposed from the Republican side — was but a bare promise that Congress should never be authorized to do what no sane man ever

believed Congress would attempt to do — abolish slavery in the States where it exists; and yet, even this proposition, moderate as it was, and for which every Southern member present voted — except one — was carried through this House by but one majority, after long and tedious delay, and with the utmost difficulty — sixty-five Republican members, with the resolute and determined gentleman from Pennsylvania [Mr. Hickman] at their head, having voted against it and fought against it to the very last.

And not this only, but, as a part of the history of the last session, let me remind you that bills were introduced into this House, proposing to abolish and close up certain Southern ports of entry; to authorize the President to blockade the Southern coast, and to call out the militia, and accept the services of volunteers — not for three years merely — but without any limit as to either numbers or time, for the very purpose of enforcing the laws, collecting the revenue, and protecting the public property — and were passed, vehemently and earnestly, in this House, *prior to the arrival of the President in this city*, and were then — though seven States had seceded, and set up a government of their own — voted down, postponed, thrust aside, or in some other way disposed of, sometimes by large majorities in this House, till, at last, Congress adjourned without any action at all. Peace, then, seemed to be the policy of all parties.

Thus, sir, the case stood, at twelve o'clock on the 4th of March last, when, from the eastern portico of this capitol, and in the presence of twenty thousand of his countrymen, but enveloped in a cloud of soldiery, which no other American President ever saw, Abraham Lincoln took the oath of office to support the Constitution, and delivered his inaugural — a message, I regret to say, not written in the direct and straightforward language which becomes an American President and an American statesman, and which was expected from the plain, blunt, honest man of the North-west — but with the forked tongue and crooked counsel of the New York politician leaving thirty millions of people in doubt whether it meant peace or war. But, whatever may have been the secret purpose and meaning of the inaugural, practically, for six weeks, the policy of peace prevailed; and they were weeks of happiness to the patriot, and prosperity to the country. Business revived; trade returned; commerce flourished. Never was there a fairer prospect before any people. Secession in the past, languished, and was spiritless, and harmless; secession in the future, was arrested, and perished. By overwhelming majorities, Virginia, Kentucky, North Carolina, Tennessee, and Missouri — all declared for the old Union, and every heart beat high with hope that, in due course of time, and through faith and patience and peace, and by ultimate and adequate compromise, every State could be restored to it. It is true, indeed, sir, that the Republican party, with great unanimity, and great earnestness and determination, had resolved against all conciliation and compromise. But, on the other hand, the whole Democratic party, and the whole Constitutional-Union party, were equally resolved that there should be no civil war, upon any pretext: and both sides prepared for an appeal to that great and final arbiter of all disputes in a free country — the people.

Sir, I do not propose to inquire, now, whether the President and his Cabinet were sincere and in earnest, and meant, really, to persevere to the end in the policy of peace; or

whether, from the first, they meant civil war, and only waited to gain time till they were fairly seated in power, and had disposed, too, of that prodigious horde of spoilsmen and office-seekers which came down, at the first, like an avalanche upon them. But I do know that the people believed them sincere, and cordially ratified and approved of the policy of peace — not as they subsequently responded to the policy of war, in a whirlwind of passion and madness — but calmly and soberly, and as the result of their deliberate and most solemn judgment; and believing that civil war was absolute and eternal disunion, while secession was but partial and temporary, they cordially indorsed, also, the proposed evacuation of Sumter, and the other forts and public property within the seceded States. Nor, sir, will I stop, now, to explore the several causes which either led to a change in the apparent policy, or an early development of the original and real purposes of the Administration. But there are two which I can not pass by. And the first of these was *party necessity*, or the clamor of politicians, and especially of certain wicked, reckless, and unprincipled conductors of a partisan press. The peace policy was crushing out the Republican party. Under that policy, sir, it was melting away like snow before the sun. The general election in Rhode Island and Connecticut, and municipal elections in New York and in the western States, gave abundant evidence that the people were resolved upon the most ample and satisfactory Constitutional guarantees to the South, as the price of a restoration of the Union. And then it was, sir, that the long and agonizing howl of defeated and disappointed politicians came up before the Administration. The newspaper press teemed with appeals and threats to the President. The mails groaned under the weight of letters demanding a change of policy; while a secret conclave of the Governors of Massachusetts, New York, Ohio, and other States, assembled here, promised men and money to support the President in the irrepressible conflict which they now invoked. And thus it was, sir, that the necessities of a party in the pangs of dissolution, in the very hour and article of death, demanding vigorous measures, which could result in nothing but civil war, renewed secession, and absolute and eternal disunion were preferred and hearkened to before the peace and harmony and prosperity of the whole country.

But there was another and yet stronger impelling cause, without which this horrid calamity of civil war might have been postponed, and, perhaps, finally averted. One of the last and worst acts of a Congress which, born in bitterness and nurtured in convulsion, literally did those things which it ought not to have done, and left undone those things which it ought to have done, was the passage of an obscure, ill-considered, ill-digested, and unstatesmanlike high protective tariff act, commonly known as "The Morrill Tariff." Just about the same time, too, the Confederate Congress, at Montgomery, adopted our old tariff of 1857, which we had rejected to make way for the Morrill act, fixing their rate of duties at five, fifteen, and twenty per cent. lower than ours. The result was as inevitable as the laws of trade are inexorable. Trade and commerce — and especially the trade and commerce of the West — began to look to the South. Turned out of their natural course, years ago, by the canals and railroads of Pennsylvania and New York, and diverted eastward at a heavy cost to the West, they threatened now to resume their ancient and accustomed channels — the water-courses — the Ohio and the Mississippi. And political association and union, it was

well known, must soon follow the direction of trade and interest. The city of New York, the great commercial emporium of the Union, and the North-west, the chief granary of the Union, began to clamor now, loudly, for a repeal of the pernicious and ruinous tariff. Threatened thus with the loss of both political power and wealth, or the repeal of the tariff, and, at last, of both, New England — and Pennsylvania, too, the land of Penn, cradled in peace — demanded, now, coercion and civil war, with all its horrors, as the price of preserving either from destruction. Ay, sir, Pennsylvania, the great key-stone of the arch of the Union, was willing to levy the whole weight of her iron upon that sacred arch, and crush it beneath the load. The subjugation of the South — ay, sir, the *subjugation* of the South! — I am not talking to children or fools; for there is not a man in this House fit to be a Representative here, who does not know that the South can not be forced to yield obedience to your laws and authority again, until you have conquered and subjugated her -- the subjugation of the South, and the closing up of her ports — first, by force, in war, and afterward, by tariff laws, in peace — was deliberately resolved upon by the East. And, sir, when once this policy was begun, these self-same motives of waning commerce, and threatened loss of trade, impelled the great city of New York, and her merchants and her politicians and her press — with here and there an honorable exception — to place herself in the very front rank among the worshipers of Moloch. Much, indeed, of that outburst and uprising in the North, which followed the proclamation of the 15th of April, as well, perhaps, as the proclamation itself, was called forth, not so much by the fall of Sumter — an event long anticipated — as by the notion that the "insurrection," as it was called, might be crushed out in a few weeks, if not by the display, certainly, at least, by the presence of an overwhelming force.

These, sir, were the chief causes which, along with others, led to a change in the policy of the Administration, and, instead of peace, forced us, headlong, into civil war, with all its accumulated horrors.

But, whatever may have been the causes or the motives of the act, it is certain that there was a change in the policy which the Administration meant to adopt, or which, at least, they led the country to believe they intended to pursue. I will not venture, now, to assert, what may yet, some day, be made to appear, that the subsequent acts of the Administration, and its enormous and persistent infractions of the Constitution, its high-minded usurpations of power, formed any part of a deliberate conspiracy to overthrow the present form of Federal-republican government, and to establish a strong centralized Government in its stead. No, sir; whatever their purposes now, I rather think that, in the beginning, they rushed, heedlessly and headlong into the gulf, believing that, as the seat of war was then far distant and difficult of access, the display of vigor in re-enforcing Sumter and Pickens, and in calling out seventy-five thousand militia, upon the firing of the first gun, and above all, in that exceedingly happy and original conceit of commanding the insurgent States to "disperse in twenty days," would not, on the one hand, precipitate a crisis, while, upon the other, it would satisfy its own violent partisans, and thus revive and restore the failing fortunes of the Republican party.

I can hardly conceive, sir, that the President and his advisers could be guilty of the

exceeding folly of expecting to carry on a general civil war by a mere *posse comitatus* of three-months militia. It may be, indeed, that, with wicked and most desperate cunning, the President meant all this as a mere entering-wedge to that which was to rive the oak asunder; or, possibly, as a test, to learn the public sentiment of the North and West. But however it may be, the rapid secession and movements of Virginia, North Carolina, Arkansas, and Tennessee, taking with them, as I have said, elsewhere, four millions and a half of people, immense wealth, inexhaustible resources, five hundred thousand fighting men, and *the graves of Washington and Jackson*, and bringing up, too, in one single day, the frontier from the Gulf to the Ohio and the Potomac, together with the abandonment, by the one side, and the occupation, by the other, of Harper's Ferry and the Norfolk navy-yard; and the fierce gust and whirlwind of passion in the North, compelled either a sudden waking-up of the President and his advisers to the frightful significancy of the act which they had committed, in heedlessly breaking the vase which imprisoned the slumbering demon of civil war, or else a premature but most rapid development of the daring plot to foster and promote secession, and then to set up a new and strong form of government in the States which might remain in the Union.

But, whatever may have been the purpose, I assert here, to-day, as a Representative, that every principal act of the Administration since has been a glaring usurpation of power, and a palpable and dangerous violation of that very Constitution which this civil war is professedly waged to support. Sir, I pass by the proclamation of the 15th of April, summoning the militia — not to defend this capital — there is not a word about the capital in the proclamation, and there was then no possible danger to it from any quarter, but to retake and occupy forts and property a thousand miles off — summoning, I say, the militia to suppress the so-called insurrection. I do not believe, indeed, and no man believed in February last, when Mr. Stanton, of Ohio, introduced the bill to enlarge the act of 1795, that that act ever contemplated the case of a general revolution, and of resistance by an organized government. But no matter. The militia thus called out, with a shadow, at least, of authority, and for a period extending one month beyond the assembling of Congress, were amply sufficient to protect the capital against any force which was then likely to be sent against it — and the event has proved it — and ample enough, also, to suppress the outbreak in Maryland. Every other principal act of the Administration might well have been postponed, and ought to have been postponed, until the meeting of Congress; or, if the exigencies of the occasion demanded it, Congress should forthwith have been assembled. What if two or three States should not have been represented, although even this need not have happened; but better this, a thousand times, than that the Constitution should be repeatedly and flagrantly violated, and public liberty and private right trampled under foot. As for Harper's Ferry and the Norfolk navy-yard, they rather needed protection against the Administration, by whose orders millions of property were wantonly destroyed, which was not in the slightest danger from any quarter, at the date of the proclamation.

But, sir, Congress was not assembled at once, as Congress should have been, and the great question of civil war submitted to their deliberations. The Representatives of the States

and of the people were not allowed the slightest voice in this, the most momentous question ever presented to any government. The entire responsibility of the whole work was boldly assumed by the Executive, and all the powers required for the purposes in hand were boldly usurped from either the States or the people, or from the legislative department; while the voice of the judiciary, that last refuge and hope of liberty, was turned away from with contempt.

Sir, the right of blockade — and I begin with it — is a belligerent right, incident to a state of war, and it can not be exercised until war has been declared or recognized; and Congress alone can declare or recognize war. But Congress had not declared or recognized war. On the contrary, they had, but a little while before, expressly refused to declare it, or to arm the President with the power to make it. And thus the President, in declaring a blockade of certain ports in the States of the South, and in applying to it the rules governing blockades as between independent powers, violated the Constitution.

But if, on the other hand, he meant to deal with these States as still in the Union, and subject to Federal authority, then he usurped a power which belongs to Congress alone — the power to abolish and close up ports of entry; a power, too, which Congress had, also, but a few weeks before, refused to exercise. And yet, without the repeal or abolition of ports of entry, any attempt, by either Congress or the President, to blockade these ports, is a violation of the spirit, if not of the letter, of that clause of the Constitution which declares that "no preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another."

Sir, upon this point I do not speak without the highest authority. In the very midst of the South Carolina nullification controversy, it was suggested, that in the recess of Congress, and without a law to govern him, the President, Andrew Jackson, meant to send down a fleet to Charleston and blockade the port. But the bare suggestion called forth the indignant protest of Daniel Webster, himself the arch enemy of nullification, and whose brightest laurels were won in the three years' conflict in the Senate Chamber, with its ablest champions. In an address, in October, 1832, at Worcester, Massachusetts, to a National Republican convention — it was before the birth, or christening, at least of the Whig party — the great expounder of the Constitution, said:

> We are told, sir, that the President will immediately employ the military force, and at once blockade Charleston. A military remedy — a remedy by direct belligerent operation, has thus been suggested, and nothing else has been suggested, as the intended means of preserving the Union. Sir, there is no little reason to think that this suggestion is true. We can not be altogether unmindful of the past, and, therefore, we can not be altogether unapprehensive for the future. For one, sir, I raise my voice, beforehand, against the unauthorized employment of military power, and against superseding the authority of the laws, by an armed force, under pretense of putting down nullification. *The President has no authority to blockade Charleston*.

Jackson! Jackson, sir! the great Jackson! did not dare to do it without authority of

Congress; but our Jackson of to-day, the little Jackson at the other end of the avenue, and the mimic Jacksons around him, do blockade, not only Charleston harbor, but the whole Southern coast, three thousand miles in extent, by a single stroke of the pen.

"The President has no authority to employ military force till he shall be duly required" — Mark the word: "*required* so to do by law and civil authorities. His duty is to cause the laws to be executed. His duty is to support *the civil authority*."

As in the Merryman case, forsooth; but I shall recur to that hereafter:

> His duty is, if the laws be resisted, to employ the military force of the country, if necessary, for their support and execution; *but to do all this in compliance only with law and with decisions of the tribunals*. If, by any ingenious devices, those who resist the laws escape from the reach of judicial authority, as it is now provided to be exercised, it is entirely competent to *Congress* to make such new provisions as the exigency of the case may demand.

Treason, sir, rank treason, all this to-day. And, yet, thirty years ago, it was true Union patriotism and sound constitutional law! Sir, I prefer the wisdom and stern fidelity to principle of the fathers.

Such was the voice of Webster, and such too, let me add, the voice, in his last great speech in the Senate, of the Douglas whose death the land now mourns.

Next after the blockade, sir, in the catalogue of daring executive usurpations, comes the proclamation of the 3d of May, and the orders of the War and Navy Departments in pursuance of it — a proclamation and usurpation which would have cost any English sovereign his head at any time within the last two hundred years. Sir, the Constitution not only confines to Congress the right to declare war, but expressly provides that "Congress (not the President) shall have power to raise and support armies;" and to "provide and maintain a navy." In pursuance of this authority, Congress, years ago, had fixed the number of officers, and of the regiments, of the different kinds of service; and also, the number of ships, officers, marines, and seamen which should compose the navy. Not only that, but Congress has repeatedly, within the last five years, refused to increase the regular army. More than that still: in February and March last, the House, upon several test votes, repeatedly and expressly refused to authorize the President to accept the service of volunteers for the very purpose of protecting the public property, enforcing the laws, and collecting the revenue. And, yet, the President, of his own mere will and authority, and without the shadow of right, has proceeded to increase, and has increased, the standing army by twenty-five thousand men; the navy by eighteen thousand; and has called for, and accepted the services of, forty regiments of volunteers for three years, numbering forty-two thousand men, and making thus a grand army, or military force, raised by executive proclamation alone, without the sanction of Congress, without warrant of law, and in direct violation of the Constitution, and of his oath of office, of eighty-five thousand soldiers enlisted for three and five years, and already in the field. And, yet, the President now asks us to support the army which he has thus raised, to ratify his usurpations by a law *ex post facto*, and thus to make ourselves parties to our own

degradation, and to his infractions of the Constitution. Meanwhile, however, he has taken good care not only to enlist the men, organize the regiments, and muster them into service, but to provide, in advance, for a horde of forlorn, worn-out, and broken-down politicians of his own party, by appointing, either by himself, or through the Governors of the States, major-generals, brigadier-generals, colonels, lieutenant-colonels, majors, captains, lieutenants, adjutants, quarter-masters, and surgeons, without any limit as to numbers, and without so much as once saying to Congress, "By your leave, gentlemen."

Beginning with this wide breach of the Constitution, this enormous usurpation of the most dangerous of all powers — the power of the sword — other infractions and assumptions were easy; and after public liberty, private right soon fell. The privacy of the telegraph was invaded in the search after treason and traitors; although it turns out, significantly enough, that the only victim, so far, is one of the appointees and especial pets of the Administration. The telegraphic dispatches, preserved under every pledge of secrecy for the protection and safety of the telegraph companies, were seized and carried away without search-warrant, without probable cause, without oath, and without description of the places to be searched, or of the things to be seized, and in plain violation of the right of the people to be secure in their houses, persons, *papers*, and effects, against unreasonable searches and seizures. One step more, sir, will bring upon us search and seizure of the public mails; and, finally, as in the worst days of English oppression — as in the times of the Russells and the Sydneys of English martyrdom — of the drawers and secretaries of the private citizen; though even then tyrants had the grace to look to the forms of the law, and the execution was judicial murder, not military slaughter. But who shall say that the future Tiberius of America shall have the modesty of his Roman predecessor, in extenuation of whose character it is written by the great historian, *avertit occulos, jussitque scelera non spectavit*.

Sir, the rights of property having been thus wantonly violated, it needed but a little stretch of usurpation to invade the sanctity of the person; and a victim was not long wanting. A private citizen of Maryland, not subject to the rules and articles of war — not in a case arising in the land or naval forces, nor in the militia, when in actual service — is seized in his own house, in the dead hour of the night, not by any civil officer, nor upon any civil process, but by a band of armed soldiers, under the verbal orders of a military chief, and is ruthlessly torn from his wife and his children, and hurried off to a fortress of the United States — and that fortress, as if in mockery, the very one over whose ramparts had floated that star-spangled banner immortalized in song by the patriot prisoner, who, "by dawn's early light," saw its folds gleaming amid the wreck of battle, and invoked the blessings of heaven upon it, and prayed that it might long wave "o'er the *land of the free*, and the home of the brave."

And, sir, when the highest judicial officer of the land, the Chief Justice of the Supreme Court, upon whose shoulders, "when the judicial ermine fell, it touched nothing not as spotless as itself," the aged, the venerable, the gentle, and pure-minded Taney, who, but a little while before, had administered to the President the oath to support the Constitution, and to execute the laws, issued, as by law it was his sworn duty to issue, the high prerogative

writ of *habeas corpus* — that great writ of right, that main bulwark of personal liberty, commanding the body of the accused to be brought before him, that justice and right might be done by due course of law, and without denial or delay, the gates of the fortress, its cannon turned towards, and in plain sight of the city, where the court sat, and frowning from its ramparts, were closed against the officer of the law, and the answer returned that the officer in command has, by the authority of the President, *suspended* the writ of *habeas corpus*. And thus it is, sir, that the accused has ever since been held a prisoner without due process of law; without bail; without presentment by a grand jury; without speedy, or public trial by a petit jury, of his own State or district, or any trial at all; without information of the nature and cause of the accusation; without being confronted with the witnesses against him; without compulsory process to obtain witnesses in his favor; and without the assistance of counsel for his defense. And this is our boasted American liberty? And thus it is, too, sir, that here, here in America, in the seventy-third year of the Republic, that great writ and security of personal freedom, which it cost the patriots and freemen of England six hundred years of labor and toil and blood to extort and to hold fast from venal judges and tyrant kings; written in the great charter of Runnymede by the iron barons, who made the simple Latin and uncouth words of the times, *nullus liber homo*, in the language of Chatham, worth all the classics; recovered and confirmed a hundred times afterward, as often as violated and stolen away, and finally, and firmly secured at last by the great act of Charles II, and transferred thence to our own Constitution and laws, has been wantonly and ruthlessly trampled in the dust. Ay, sir, that great writ, bearing, by a special command of Parliament, those other uncouth, but magic words, *per statutum tricessimo primo Caroli secundi regis*, which no English judge, no English minister, no king or queen of England, dare disobey; that writ, brought over by our fathers, and cherished by them, as a priceless inheritance of liberty, an American President has contemptuously set at defiance. Nay, more, he has ordered his subordinate military chiefs to suspend it at their discretion! And, yet, after all this, he cooly comes before this House and the Senate and the country, and pleads that he is only preserving and protecting the Constitution; and demands and expects of this House and of the Senate and the country their thanks for his usurpations; while, outside of this capitol, his myrmidons are clamoring for impeachment of the Chief Justice, as engaged in a conspiracy to break down the Federal Government.

Sir, however much necessity — the tyrant's plea — may be urged in extenuation of the usurpations and infractions of the President in regard to public liberty, there can be no such apology or defense for his invasions of private right. What overruling necessity required the violation of the sanctity of private property and private confidence? What great public danger demanded the arrest and imprisonment, without trial by common law, of one single private citizen, for an act done weeks before, openly, and by authority of his State? If guilty of treason, was not the judicial power ample enough and strong enough for his conviction and punishment? What, then, was needed in his case, but the precedent under which other men, in other places, might become the victims of executive suspicion and displeasure?

As to the pretense, sir, that the President has the Constitutional right to suspend the

writ of *habeas corpus*, I will not waste time in arguing it. The case is as plain as words can make it. It is a legislative power; it is found only in the legislative article; it belongs to Congress only to do it. Subordinate officers have disobeyed it; General Wilkinson disobeyed it, but he sent his prisoners on for judicial trial; General Jackson disobeyed it, and was reprimanded by James Madison; but no President, nobody but Congress, ever before assumed the right to suspend it. And, sir, that other pretense of necessity, I repeat, can not be allowed. It had no existence in fact. The Constitution can not be preserved by violating it. It is an offense to the intelligence of this House, and of the country, to pretend that all this, and the other gross and multiplied infractions of the Constitution and usurpations of power were done by the President and his advisors out of pure love and devotion to the Constitution. But if so, sir, then they have but one step further to take, and declare, in the language of Sir Boyle Roche, in the Irish House of Commons, that such is the depth of their attachment to it, that they are prepared to give up, not merely a part, but the whole of the Constitution, to preserve the remainder. And yet, if indeed this pretext of necessity be well founded, then let me say, that a cause which demands the sacrifice of the Constitution and of the dearest securities of property, liberty, and life, can not be just; at least, it is not worth the sacrifice.

Sir, I am obliged to pass by for want of time, other grave and dangerous infractions and usurpations of the President since the 4th of March. I only allude casually to the quartering of soldiers in private houses without the consent of the owners, and without any manner having been prescribed by law; to the subversion in a part, at least, of Maryland of her own State Government and of the authorities under it; to the censorship over the telegraph, and the infringement, repeatedly, in one or more of the States, of the right of the people to keep and to bear arms for their defense. But if all these things, I ask, have been done in the first two months after the commencement of this war, and by men not military chieftains, and unused to arbitrary power, what may we not expect to see in three years, and by the successful heroes of the fight? Sir, the power and rights of the States and the people, and of their Representatives, have been usurped; the sanctity of the private house and of private property has been invaded; and the liberty of the person wantonly and wickedly stricken down; free speech, too, has been repeatedly denied; and all this under the plea of necessity. Sir, the right of petition will follow next -- nay, it has already been shaken; the freedom of the press will soon fall after it; and let me whisper in your ear, that there will be few to mourn over its loss, unless, indeed, its ancient high and honorable character shall be rescued and redeemed from its present reckless mendacity and degradation. Freedom of religion will yield too, at last, amid the exultant shouts of millions, who have seen its holy temples defiled, and its white robes of a former innocency trampled now under the polluting hoofs of an ambitious and faithless or fanatical clergy. Meantime national banks, bankrupt laws, a vast and permanent public debt, high tariffs, heavy direct taxation, enormous expenditures, gigantic and stupendous peculation, anarchy first, and a strong government afterward — no more State lines, no more State governments, and a consolidated monarchy or vast centralized military despotism must all follow in the history of the future, as in the history of the past they have, centuries ago, been written. Sir, I have said nothing, and have time to say nothing now, of the immense

indebtedness and the vast expenditures which have already accrued, nor of the folly and mismanagement of the war so far, nor of the atrocious and shameless peculations and frauds which have disgraced it in the State governments and the Federal Government from the beginning. The avenging hour for all these will come hereafter, and I pass by them now.

I have finished now, Mr. Chairman, what I proposed to say at this time upon the message of the President. As to my own position in regard to this most unhappy civil war, I have only to say that I stand to-day just where I stood upon the 4th of March last; where the whole Democratic party, and the whole Constitutional Union party, and a vast majority, as I believe, of the people of the United States stood too. I am for peace, speedy, immediate, honorable *peace*, with all its blessings. Others may have changed — I have not. I question not their motives nor quarrel with their course. It is vain and futile for them to question or to quarrel with me. My duty shall be discharged — calmly, firmly, quietly, and regardless of consequences. The approving voice of conscience void of offense, and the approving judgment which shall follow "after some time be past," these, God help me, are my trust and my support.

Sir, I have spoken freely and fearlessly to-day, as became an American Representative and an American citizen; one firmly resolved, come what may, not to lose his own Constitutional liberties, nor to surrender his own Constitutional rights in the vain effort to impose these rights and liberties upon ten millions of unwilling people. I have spoken earnestly, too, but yet not as one unmindful of the solemnity of the scenes which surround us upon every side to-day. Sir, when the Congress of the United States assembled here on the 3rd of December, 1860, just seven months ago, the Senate was composed of sixty-six Senators, representing the thirty-three States of the Union, and this House of two hundred and thirty-seven members — every State being present. It was a grand and solemn spectacle — the ambassadors of three and thirty sovereignties and thirty-one millions of people, the mightiest republic on earth, in general Congress assembled. In the Senate, too, and this House, were some of the ablest and most distinguished statesmen of the country; men whose names were familiar to the whole country — some of them destined to pass into history. The new wings of the capitol had then but just recently been finished, in all their gorgeous magnificence, and, except a hundred marines at the navy-yard, not a soldier was within forty miles of Washington.

Sir, the Congress of the United States meets here again to-day; but how changed the scene! Instead of thirty-four States, twenty-three only, one less than the number forty years ago, are here, or in the other wing of the capitol. Forty-six Senators and a hundred and seventy-three Representatives constitute the Congress of the now United States. And of these, eight Senators and twenty-four Representatives, from four States only, linger here yet as deputies from that great South which, from the beginning of the Government, contributed so much to mold its policy, to build up its greatness, and to control its destinies. All the other States of that South are gone. Twenty-two Senators and sixty-five Representatives no longer answer to their names. The vacant seats are, indeed, still here; and the escutcheons of their respective States look down now solemnly and sadly from these vaulted ceilings. But the

Virginia of Washington and Henry and Madison, of Marshall and Jefferson, of Randolph and Monroe, the birthplace of Clay, the mother of States and of Presidents; the Carolinas of Pinckney and Sumter and Marion, of Calhoun and Macon; and Tennessee, the home and burial-place of Jackson; and other States, too, once most loyal and true, are no longer here. The voices and the footsteps of the great dead of the past two ages of the Republic linger still — it may be in echo — along the stately corridors of this capitol; but their descendants, from nearly one-half of the States of the Republic, will meet with us no more within these marble halls. But in the parks and lawns, and upon the broad avenues of this spacious city, seventy thousand soldiers have supplied their places; and the morning drum-beat from a score of encampments, within sight of this beleaguered capitol, give melancholy warning to the Representatives of the States and of the people, that *amid arms the laws are silent*.

Sir, some years hence — I would fain hope some months hence, if I dare — the present generation will demand to know the cause of all this; and, some ages hereafter, the grand and impartial tribunal of history will make solemn and diligent inquest of the authors of this terrible revolution.

CHAPTER TWELVE
The Reign of Terror in the Northern States

The Political Prisoners of Lincoln's Regime

The contest for ages has been to rescue liberty from the grasp of executive power. On the long list of champions of human freedom, there is not one name dimmed by the reproach of advocating the extension of Executive authority. On the contrary, the uniform and steady purpose of all such champions has been to limit and restrain it. Through all the history of the contest for liberty, Executive power has been regarded as a lion that must be caged. So far as being the object of enlightened, popular trust; so far as being considered the natural protection of popular right, it has been dreaded as the great object of danger.

Our security is our watchfulness of Executive power. It was the construction of this department which was infinitely the most difficult in the great work of erecting our government. To give to the Executive such power as should make it useful, and yet not dangerous; efficient, independent, strong, and yet prevent it from sweeping away everything by its military and civil power, by the influence of patronage and favor; this, indeed, was difficult. They who had this work to do saw this difficulty, and we see it. If we would maintain our system, we should act wisely, by using every restraint, every guard the Constitution has provided — when we and those who come after us, have done all we can do, and all they can do, it will be well for us and them, if the Executive, by the power of patronage and party, shall not prove an overmatch for all other branches of Government. I will not acquiesce in the reversal of the principles of all just ideas of Government. I will not degrade the character of popular representation. I will not blindly confide, when all my experience admonishes to be jealous. I will not trust Executive power, vested in a single magistrate, to keep the vigils of liberty. Encroachment must be resisted at every step, whether the consequence be prejudicial or not, if there be an illegal exercise of power, it must be resisted in the proper manner. We are not to wait till great mischief comes; till the Government is overthrown, or liberty itself put in extreme jeopardy. We would be unwor-

thy sons of our fathers were we so to regard questions affecting freedom.[1]

In contrast to these historically accepted principles, William Whiting made the following astonishing claim in his 1862 work entitled *The War Powers of the President*: "The powers conveyed in this 18th clause of Art. I., Sect. 8 [of the Constitution], are of vast importance and extent. It may be said that they are, in one sense, unlimited and discretionary. They are more than imperial...."[2] As we have seen, it was under woefully false pretenses that Lincoln invoked these so-called Executive "war powers" to meet the exigencies of a declared "insurrection" with "the exercise of belligerent rights"[3] without the consent of Congress, and, while his "fellow countrymen" were thereafter embroiled in a bloodbath which his own party had planned and instigated, he was able to quietly dismantle the Union created under the Constitution and replace it with a consolidated military government, or a "temporary dictatorship,"[4] in which the "supreme law" would be nothing short of his own will.[5] It was this fact that was announced by Republican E.C. Ingersoll in a public speech in 1862:

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1. Daniel Webster, quoted by Carpenter, *Logic of History*, pages 121-122.

2. William Whiting, *The War Powers of the President* (Boston: John L. Shorey, 1862), page 29. Whiting was a lawyer from Boston who served as Solicitor General for the War Department from 1862 to 1865. His book, *War Powers of the President*, was written as an apologetic for Lincoln's unconstitutional suspension of the writ of *habeas corpus*. Of course, Whiting's thesis failed from the outset because Article I, Section 8 of the Constitution, to which he traced these alleged Executive "war powers," begins with these words: "The Congress shall have Power...."

3. William E. Birkhimer, LL.B., *Military Government and Martial Law* (Kansas City, Missouri: Franklin Hudson Publishing Company, 1914), page 48. William Birkhimer was a Major-General in the U.S. Army and was detailed by the U.S. War Department as Acting Judge-Advocate of the Department of the Columbia. His book is considered to be *the* authoritative textbook on the subject. Before the second edition was published in 1914, Judge-Advocate General George B. Davis wrote in a letter to the author, San Francisco, Calif., July 1, 1904: "The original work is the most complete treatise on the subject in the English language, and embodies the views which prevail in Anglo-Saxon countries on the subject of martial law and military occupation." Davis went on: "I hope the revision will appear in the near future, so that the work can be used in the instruction of officers of the Army in connection with the government of occupied territory and the restoration of order in communities in which military force has been employed with a view to secure the execution of the laws." Birkhimer fell ill when the manuscript for the second edition was delivered to the printer, so Major Daniel H. Boughton, U.S. Army, LL.B, head of the Law Department of the Infantry and Cavalry School and Staff College, took upon himself the task of revising and correcting the proof-sheets and preparing the index.

4. United States Senate, *A Brief History of Emergency Powers in the United States: A Working Paper* (Special Committee on National Emergencies and Delegated Emergency Powers, 93rd Congress, 2nd Session; Washington, D.C.: U.S. Government Printing Office, July, 1974), page 15.

5. Birkhimer, *Military Government*, page 54.

> The President, in such a time, I believe, is clothed with power as full as that of the Czar of Russia.... If it be necessary, perhaps it is just as well for the people to become familiar with this power, and the right of its exercise, now as at any other time. If the President should determine that in order to crush the rebellion the Constitution itself should be suspended during the rebellion, I believe he has the right to do it.[6]

According to Lincoln's Attorney-General, Edward Bates, the Fourth Amendment protection against unreasonable seizure did not extend to "political arrests." Whereas the purpose of "judicial arrests" was "to secure the presence of the accused so that he may be tried for an alleged crime before a civil court," "political arrests" in "disordered times" were "subject to the somewhat broad and as yet undefined discretion of the President as political chief of the nation." This latter species of arrest were said to be "beyond the reach of the judicial officers and subject only to the political power of the President, who may at his discretion dispose of the prisoners by orders addressed to his subordinate officers either civil or military."[7] Since, as Bates had declared in his 5 July 1861 opinion, the President "must of necessity be the sole judge both of the exigency which requires him to act and of the manner in which it is most prudent for him to employ the powers intrusted to him,"[8] what was being erected was nothing less than an unaccountable Executive dictatorship in which the liberties of American citizens and other residents in the country were subjected entirely to the political whim of one man. As seen in the previous chapter, Lincoln had been routinely suspending *habeas corpus* in individual cases as he saw fit since 27 April 1861. This action filled the military forts and other prisons along the Atlantic seaboard with Americans from every social class, including several Maryland Legislators, whom Lincoln suspected would vote to take their State out of the Union. Later that year, three British subjects — Charles Green, Andrew Low, and an unnamed Irishman — were likewise arrested and imprisoned for several months at Fort Lafayette for refusing to take an oath of allegiance to the U.S. Government. The report of the British Imperial Parliament of 10 February 1862 related the treatment of these prisoners as follows:

> The House would remember that on Friday last [Earl John Russell] made some remarks on the case of an Englishman in America who had been taken into custody and sent to prison under the warrant of Mr. Seward. Since Friday he had received further information in reference to similar cases, but they were if possible worse than the one he then mentioned. He understood that at this moment there were no less than three British subjects who had been for four or five months confined in Lafayette prison, and they had

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6. E.C. Ingersoll, excerpt from a speech delivered at Bryan Hall, Chicago, Illinois in 1862; quoted by Carpenter, *Logic of History*, page 101; Edmonds, *Facts and Falsehoods*, page 193.

7. Bates, letter to Simon Cameron, 30 December 1861; in *Official Records: Armies*, Series II, Volume II, pages 182-183.

8. Bates, 5 July 1861 opinion; *ibid*., page 25.

> been detained there without any charge of any sort or kind having been made against them. There had been no inquiry made into their cases. An inquiry had been asked for, but it had been refused unless they first consented to take the oath of allegiance to the Government of the United States....
>
> The state of this prison was very bad. In it were confined twenty-three political prisoners, and two-thirds of them were placed in irons. From this prison the light and air were excluded, the ventilation was imperfect and the atmosphere was oppressive and intolerable. The prisoners were deprived of the decencies of life, and the water supplied to them was foul and for some purposes it was salt.[9]

When Lord Richard Lyons, the British Minister, complained of these outrages to Secretary of State Seward, he received the following reply: "My Lord, I can touch the bell at my right hand and order the arrest of a man in Ohio; I can again touch the bell and order the arrest of a man in New York, and no power on earth save that of the President can release them."[10] This claimed power was enlarged in Lincoln's proclamation of 24 September 1862, in which he declared that "all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of disloyal practices... shall be subject to martial law, and liable to trial and punishment by courts-martial or military commission."[11] This proclamation was mainly intended to stem the tide of dissent in the North arising from another of his proclamations — the Emancipation Proclamation — which was issued in its preliminary form just two days previously.

Two days later, on the twenty-sixth of September, the office of Provost Marshal General was created within the War Department and given the authority to arrest all those suspected of such "disloyal practices."[12] Lincoln's proclamation, and the subsequent creation of what amounted to a military police force under himself as Commander-in-Chief, was aimed primarily at one class of Americans — the Northern Democrats (Copperheads) who had ever opposed the war policy of the Lincoln Administration. For example, the Democrats of Harrisburg, Pennsylvania had issued the following press release just prior to the fall of Fort Sumter:

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9. Report of the British Imperial Parliament in relation to the arrest of British subjects in America, 10 February 1862; *ibid*., pages 213-214.

10. Seward, statement to Lord Richard Lyons, 6 January 1862; quoted by Charles Chauncey Burr, "Political History of William H. Seward," *The Old Guard* (New York: Van Evrie, Horton and Company, 1866), Volume IV, page 224. See also *Official Records: Armies*, Series II, Volume II, pages 214-215.

11. Lincoln, quoted by Benjamin Robbins Curtis, *Executive Power* (Boston: Little, Brown and Company, 1862), page vi.

12. Curtis, *ibid*., page vii.

> If this Administration wickedly plunges the country into civil war, it will be a war between the Republican party and the Southern states.... In such a conflict the Northern Democrats can have no sympathy with the Government.... If the Administration is bent upon having a fight... they created the difficulty and their partisans must carry on the war. Northern Democrats can never shoulder a musket or pull a trigger against those whose rights they conscientiously believe have been trampled upon. If this be treason, it is treason against the Chicago platform, and on behalf of the majority of the American people; treason for the Union, and against its enemies. If this is treason, make the most of it.[13]

Regardless of a complete lack of constitutional authority to do so, Lincoln and his Provost Marshals arrested and imprisoned an estimated 38,000 political prisoners[14] — "representatives of the liberal professions, of the bar, the press and judicature, and many of the best classes of American society"[15] — who were denied a trial before an impartial jury of their peers, as guaranteed by the Sixth Amendment, and subjected to the farce of a trial before a military tribunal, if they were granted the benefit of a trial at all. In mid-Nineteenth Century America, supposedly the model to the rest of the world of republican government, many subsequently languished in such places of misery as the aforementioned Lafayette and Old Capitol prisons without ever knowing the nature of the charges against them.[16] In this, Lincoln commanded what even the ancient Roman civil code, at the height of the Empire, would not allow. In Rome and her provinces, a citizen could not be punished or imprisoned who had not been charged for a specific crime, who had not been allowed to confront his accusers face-to-face with the opportunity to answer for himself, and who had not been properly condemned by lawful judicial process.[17] As noted by James Randall:

> In the treatment of "disloyal" practices the government under Lincoln carried its authority far beyond the normal restraints of civil justice. To put the subject in its legal setting one must remember that in Anglo-Saxon jurisprudence there is the fundamental conception of the "rule of law" — the concept that government itself is under the law, that it must not be arbitrary, and that its agents are punishable or liable to damages if they wrongfully invade private rights. Against this concept there is the doctrine of "military necessity" with its maxim "necessity knows no law." Those who assume that the whole subject of governmental restraint in time of war can be dismissed by repeating such

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13. Harrisburg (Pennsylvania) *Patriot Union*, 9 April 1861.

14. John J. Lalor (editor), *Cyclopedia of Political Science, Political Economy, and of the Political History of the United States* (Chicago, Illinois: Rand McNally, 1881), Volume II, pages 432-434.

15. *Official Records: Armies*, Series II, Volume II, page 214.

16. John A. Marshall, *American Bastile* (Philadelphia, Pennsylvania: Thomas W. Hartley and Company, 1881); Mahoney, *Prisoner of State*.

17. Acts 16:37-38, 19:38-39, 25:16, 25:27.

maxims are unaware of much of the nation's legal history. A government at war, according to a long line of American precedent and interpretation, must restrain itself in various ways. It must not overstep international law; it must not violate treaties; it must keep within what are called the "laws of war"; it must not ignore certain rights of enemy citizens when conducting a regime of military occupation; it must not destroy civil rights among its own people.[18]

Congress Rubber-Stamps Executive Tyranny

On 3 March 1863, the Republican-dominated Congress passed an *ex post facto* Act "relating to *habeas corpus* and regulating judicial proceedings in certain cases," which provided that "during the present rebellion, the President of the United States, whenever, in his judgment, the public safety may require it, is authorized to suspend the privilege of the writ of *habeas corpus* in any case throughout the United States, or any part thereof."[19] The purpose of this Act, according to Radical Republican James G. Blaine, was to "confirm to the President by law the right which he had of his own power been exercising."[20]Concurrent with the Habeas Corpus Act was another which indemnified the President for any prior illegal acts and further relieved him from legal liability for any future arrests.[21] Lincoln issued yet another proclamation on the fifteenth of September to the effect that "the writ of *habeas corpus* is suspended throughout the United States... and that this suspension shall continue throughout the duration of such rebellion, or until this proclamation shall, by a subsequent one, to be issued by the President of the United States, be modified or revoked."[22] The proclamation authorized the arrest of all "aiders and abettors of the enemy," defining such a person as "he... who seeks to exalt the motives, character, and capacity of armed traitors; to magnify their resources, *etc*.," and "he who overrates the success of our adversaries or underrates our own, and he who seeks false causes of complaint against our government, or inflames party spirit among ourselves and gives to the enemy that moral support which is more valuable to them than regiments of soldiers or millions of dollars."[23] Of course, the U.S. marshals and police officers empowered by this proclamation were left to their own discretion as to what constituted "exalting the motives" of the Southern people and

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18. Randall, *Civil War and Reconstruction*, pages 387-388.

19. *Statutes at Large*, Volume XII, page 735. Following the war, this Act was ruled unconstitutional by the Supreme Court in *The Justices v. Murray* (1869), 76 U.S. 274.

20. Blaine, *Twenty Years of Congress*, Volume I, page 455.

21. Franklin Pierce, *Federal Usurpation* (New York: D. Appleton and Company, 1908), page 47.

22. Lincoln, quoted by Carpenter, *Logic of History*, page 254.

23. Lincoln, quoted by Pierce, *Federal Usurpation*, page 48.

"overrating their success."

An objection to this rubber-stamping by Congress of the President's illegal acts was raised by thirty-six Democrats in the House who pointed out that the legislation "purports to confirm and make valid by act of Congress arrests and imprisonments which were not only not warranted by the Constitution of the United States but were in palpable violation of its express prohibitions."[24] When it was requested that this protest be entered into the *House Journal*, Thaddeus Stevens, another radical Republican, moved to lay the request on the table, and the motion carried by a vote of 75 to 41; all votes in the affirmative were cast by Republicans.[25] Undeterred, Indiana Democrat Henry W. Harrington introduced the following resolutions on the seventeenth of December in opposition to the previous Habeas Corpus Act:

> Whereas the Constitution of the United States provides: "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it"; and whereas such provision is contained in the portion of the Constitution defining legislative powers; and not in the provisions defining executive powers, and whereas the Constitution further provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated," *etc*.; and whereas the Thirty-Seventh Congress did by act claim to confer upon the President of the United States the power at his will and pleasure to suspend the privilege of the writ of *habeas corpus* throughout the United States without limitation or conditions; and whereas the President of the United States, by proclamation, has assumed to suspend such privileges of the citizen in the loyal States; and whereas the people of such States have been subjected to arbitrary arrests without process of law, and to unreasonable searches and seizures, and have been denied the right to a speedy trial and investigation, and have languished in prisons at the arbitrary pleasure of the Chief Executive and his military subordinates;
>
> Now therefore, *Resolved, by the House of Representatives of the United States*, That no power is delegated by the Constitution of the United States, either to the legislative or executive branch, to suspend the privilege of the writ of *habeas corpus* in any State loyal to the Constitution and Government not invaded, and in which the civil and judicial power are in full operation.
>
> 2. *Resolved*, That Congress has no power under the Constitution to delegate to the President of the United States the authority to suspend the privilege of the writ of *habeas corpus*, and imprison at his pleasure, without process of law or trial, the citizens of the loyal States.
>
> 3. *Resolved*, That the assumption of the right by the executive of the United States to deprive the citizens of such loyal States of the benefits of the writ of *habeas corpus*, and to imprison them at his pleasure, without process of law, is unworthy the progress of the age, is consistent only with a despotic power unlimited by constitutional obligations, and

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24. Blaine, *Twenty Years of Congress*, Volume I, pages 455-456.

25. Blaine, *ibid*., page 456.

> is wholly subversive of the elementary principles of freedom upon which the Government of the United States and of the several States, is based.
>
> 4. *Resolved*, That the Judiciary Committee is instructed to prepare and report a bill to this House protecting the rights of the citizens in the loyal States, in strict accordance with the foregoing provisions of the Constitution of the United States.[26]

These resolutions were immediately attacked by the Republicans in the House and were thereafter rejected by a majority vote of 90 to 67; predictably, all votes in the negative were cast by Republicans.[27]

Why Lincoln Favored Courts-Martial

Having thus established himself as a military dictator, Lincoln naturally favored summary courts-martial over constitutional courts because such proceedings "are not based on the written law,"[28] and such courts are "not to be bound... by common-law rules,"[29] and are "in great degree devoid of the technicalities which characterize the proceedings of ordinary courts."[30] Daniel Webster had pointed out a generation before Lincoln's ascension to power that "military courts are organized to convict,"[31] and they may do so on the most frivolous of pretenses, if any pretense at all. Furthermore, it was the belief of the Republicans in power that "there is no place within the boundaries of the republic where the court martial may not take the place of civil courts and thrust aside the laws," and that "the generals in command, subject to the President, are the only judges of the necessity of the time and occasion when such court martial or order may be properly issued, and no civil court can interfere."[32] Colonel Henry Bertram of the 20th Wisconsin Volunteers added to this belief the threat that "those who complain so loudly and so lithely about the suspension of the writ of *habeas corpus* and the institution of martial law in time of actual rebellion, ought themselves to be *suspended between heaven and earth by a few yards of hemp well adjusted around their necks"* (emphasis in original).[33]

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26. Resolutions submitted to the House of Representatives by Henry W. Harrington on 17 December 1863; quoted by Carpenter, *Logic of History*, page 255.

27. Carpenter, *ibid*.

28. Birkhimer, *Military Government*, page 526.

29. Birkhimer, *ibid*., page 539.

30. Birkhimer, *ibid*., page 534.

31. Daniel Webster, quoted by Edmonds, *Facts and Falsehoods*, page 211.

32. Janesville (Wisconsin) *Gazette*, 9 June 1863.

33. Henry Bertram, *Wisconsin State Journal*, 18 April 1863.

On 16 May 1863, a convention of Democrats assembled in Albany, New York to protest the arbitrary arrest of Clement Vallandigham who had been speaking publicly against the Lincoln regime since July of 1861.[34] The resolutions produced by this convention opened with an affirmation of the loyalty of the Democratic party to the alleged purpose of the war to "preserve the Union," and they went on to exhort the Administration to "be true to the Constitution... [to] recognize and maintain the rights of the States and the liberties of the citizen... [and to] everywhere outside of the lines of necessary military occupation and the scenes of insurrection, exert all its powers to maintain the supremacy of the civil over military law." The resolutions went on to state:

> *Resolved*, That in view of these principles we denounce the recent assumption of a military commander to seize and try a citizen of Ohio, Clement L. Vallandigham, for no other reason than words addressed to a public meeting, in criticism of the course of the Administration, and in condemnation of the military orders of that general.
>
> *Resolved*, That this assumption of power by a military tribunal, if successfully asserted, not only abrogates the right of the people to assemble and discuss the affairs of Government, the liberty of speech and of the press, the right of trial by jury, the law of evidence, and the privilege of *habeas corpus*, but it strikes a fatal blow at the supremacy of law, and the authority of the State and Federal constitutions.
>
> *Resolved*, That the Constitution of the United States — the supreme law of the land — has defined the crime of treason against the United States to consist "only in levying war against them, or adhering to their enemies, giving them aid and comfort;" and has provided that "no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court." And it further provides that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury; except in cases arising in the land and naval forces, or in the militia, when in actual service in time of war or public danger;" and further, that "in all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial, by an impartial jury of the State and district wherein the crime was committed."[35]

Lincoln, of course, was unimpressed by the logic of these resolutions and simply justified his actions as follows:

> ...[T]hese provisions of the Constitution have no application to the case we have in hand, because the arrests complained of were not made for treason — that is, not for the treason defined in the Constitution.... The arrests were made on totally different grounds, and the proceedings following accorded with the grounds of the arrests....
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> Yet thoroughly imbued with a reverence for the guaranteed rights of individuals,

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34. See Vallandigham's response to Lincoln, 10 July 1861.

35. *The American Annual Cyclopedia and Register of Important Events of the Year 1863* (New York: D. Appleton and Company, 1870), Volume III, pages 799-800.

> I was slow to adopt the strong measures which by degrees I have been forced to regard as being within the exceptions of the Constitution, and as indispensable to the public safety. Nothing is better known to history than that courts of justice are utterly incompetent to such cases. Civil courts are organized chiefly for trials of individuals, or, at most, a few individuals acting in concert, and this in quiet times, and on charges of crimes well defined in the law.... Again, a jury too frequently has at least one member more ready to hang the panel than to hang the traitor. And yet, again, he who dissuades one man from volunteering, or induces one soldier to desert, weakens the Union cause as much as he who kills a Union soldier in battle. Yet this dissuasion or inducement may be so conducted as to be no defined crime of which any civil court would take cognizance.
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> Ours is a case of rebellion... and the provision of the Constitution that "the privilege of the writ of *habeas corpus* shall not be suspended unless when in case of rebellion or invasion the public safety may require it," is the provision which specially applies to our present case. This provision plainly attests the understanding of those who made the Constitution that ordinary courts of justice are inadequate to "cases of rebellion" — attests their purpose that, in such cases, men may be held in custody whom the courts, acting on ordinary rules, would discharge. *Habeas corpus* does not discharge men who are proved to be guilty of defined crime; and its suspension is allowed by the Constitution on purpose that men may be arrested and held who cannot be proved to be guilty of defined crime, "when, in case of rebellion or invasion, the public safety may require it." This is precisely our present case — a case of rebellion, wherein the public safety does require the suspension. Indeed, arrests by process of courts and arrests in cases of rebellion do not proceed altogether upon the same basis.... In the latter case arrests are made not so much for what has been done, as for what probably would be done. The latter is more for the preventive and less for the vindictive than the former. In such cases the purposes of men are much more easily understood than in cases of ordinary crime. The man who stands by and says nothing when the peril of his Government is discussed cannot be misunderstood. If not hindered, he is sure to help the enemy; much more if he talks ambiguously — talks for his country with "buts" and "ifs" and "ands."
>
> ...[T]he Constitution is not, in its application, in all respects the same, in cases of rebellion or invasion involving the public safety, as it is in times of profound peace and public security.[36]

In other words, any man who did not openly and unconditionally pledge his allegiance to the Lincoln Administration and its unconstitutional war against the Southern people and its usurpation of the rights of the Northern people, was guilty of this newly defined "treason" and subject to arrest without warrant and imprisonment without trial in a lawful court. The outrage of the Democrats was certainly justified:

> The President not only admits that citizens have been deprived of their liberty on mere partisan conjectures of their possible intentions, but he confesses that these conjectures have had nothing to rest upon. "The man who stands by and says nothing when the

36. Lincoln, *ibid*., pages 800-802.

> peril of his government is discussed, cannot be misunderstood." Was anything so extraordinary ever before uttered by the chief magistrate of a free country? Men are torn from their homes and immured in bastiles for the shocking crime of — *silence!* Citizens of the model republic of the world are not only punished for speaking their opinions, but are plunged into dungeons for holding their tongues! When before, in the annuls of tyranny, was silence ever punished as a crime?...
>
> Few among us ever expected to live to see such things done; and nobody, we are sure, to see them so unblushingly *confessed*. What must be Mr. Lincoln's appreciation of the public sentiment of the world, when he thus comes before the country with a paper containing statements which sound more like the last dying speech and conversation of a tyrant than like the justification of the elected ruler of a free people?
>
> The courts, of course, cannot punish this dreadful crime of "standing by and saying nothing." Mr. Lincoln admits this, and assigns a very good reason: "Because," says he, "the arrests complained of were not made for treason — that is, not *the* treason defined in the Constitution." It is a tolerably safe position, that silence, "to stand by and say nothing," is not "*the* treason defined in the Constitution"; it is a treason which our fathers never thought of providing against; they guaranteed free speech, but they never imagined that free silence could ever stand in need of protection. So far from silence being "the treason defined in the Constitution," it is "*a* treason" invented by Abraham Lincoln. It was reserved for him, in the last half of the enlightened nineteenth century, to hit upon this refinement, which had escaped the acuteness of all preceding tyrants (emphasis in original).[37]

Another of the men thus arrested by Lincoln's minions was Francis Key Howard, the editor of the Baltimore *Exchange* and grandson of the author of the national anthem, who described his imprisonment at Fort McHenry in the following words:

> When I looked out in the morning, I could not help being struck by an odd and not pleasant coincidence. On that day forty-seven years before my grandfather, Mr. F.S. Key, then prisoner on a British ship, had witnessed the bombardment of Fort McHenry. When on the following morning the hostile fleet drew off, defeated, he wrote the song so long popular throughout the country, the *Star-Spangled Banner*. As I stood upon the very scene of that conflict, I could not but contrast my position with his, forty-seven years before. The flag which he had then so proudly hailed, I saw waving at the same place over the victims of as vulgar and brutal a despotism as modern times have witnessed.[38]

As pointed out by General Benjamin Butler, "[D]uring the whole War of the Rebellion the government was rarely ever aided by the decisions of the Supreme Court, but usually was impeded and disturbed by them." Therefore, one of the reasons Lincoln sus-

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37. New York *World*, quoted by Carpenter, *Logic of History*, pages 222-223.

38. Francis Key Howard, quoted by Marshall, *American Bastile*, pages 645-646.

pended *habeas corpus* was "in order to relieve himself from the [Court's] rulings...."[39] As was discussed in the previous chapter, Lincoln even signed an order to arrest the eminent and aged Chief Justice Roger Taney himself for his bold declaration in *Ex parte Merryman* that "the president has exercised a power which he does not possess under the Constitution." Former Supreme Court Justice Benjamin Robbins Curtis' liberty was also imperiled when he wrote a critique of Lincoln's Emancipation Proclamation in 1862 entitled *Executive Power*:

> When the Constitution says that the President shall be the commander-in-chief of the army and navy of the United States... does it mean that he shall possess military power and command over all citizens of the United States; that, by military edicts, he may control all citizens, as if enlisted in the army and navy, or in the militia called into actual service of the United States? Does it mean that he may make himself a legislator, and enact penal laws governing the citizens of the United States, and erect tribunals, and create offices to enforce his penal edicts upon citizens?...
>
> He is general-in-chief; but can a general-in-chief disobey any law of his own country? When he can, he superadds to his rights as a commander the powers of a usurper; and that is military despotism....
>
> Whence, then, do these edicts spring? They spring from the assumed power to extend martial law over the whole territory of the United States; a power, for the exercise of which by the President, there is no warrant whatever in the Constitution; a power which no free people could confer upon an executive officer, and remain a free people. For it would make him the absolute master of their lives, their liberties, and their property, with power to delegate his mastership to such satraps as he might select, or as might be imposed on his credulity, or his fears. Amidst the great dangers which encompass us, in our struggles to encounter them, in our natural eagerness to lay hold of efficient means to accomplish our vast labors, let us beware how we borrow weapons from the armory of arbitrary power. They cannot be wielded by the hands of a free people. Their blows will finally fall upon themselves.[40]

The Lincoln Regime Persecutes the Churches

Lincoln and his military satraps even dared lay their hands upon the churches in the North and in the occupied portions of the South. One example of many was the arrest of J.R.

39. Butler, *Butler's Book*, page 1009.

40. Curtis, *Executive Power*, pages 23, 30. Curtis' expose of the unconstitutionality of Lincoln's Emancipation Proclamation is especially interesting in light of the fact that, not only did he view the war against the Southern States as justified, but he had also been the author of one of the two dissenting opinions in the 1857 *Scott v. Sandford* case before resigning from the Supreme Court. See also Arthur M. Schlesinger, Jr., *The Imperial Presidency* (Boston: Houghton Mifflin Company, 1973), page 59.

Stewart, a clergyman of Saint Paul's Episcopal Church in Alexandria, Virginia on 9 February 1862 by the order of the State Department in Washington, D.C. The alleged ground of the arrest was that Stewart refused to pray for the President of the United States;[41] his congregation was also accused of "habitual mockery of the Stars and Stripes and their insolent bearing toward Union citizens and U.S. soldiers."[42] However, the true purpose, as revealed by the perpetrators of the crime, was "to intimidate and compel the clergy of the Border States to withdraw the support and consolation of the Christian religion from a stricken people, who fled to it as their only hope, and who used it to strengthen themselves to great endurance."[43]

The account of the arrest, which should be sufficient to arouse the indignation of any Christian people, is as follows: Stewart, who was known to privately dissent from the war policies of the Lincoln Administration, made it known in a letter to the State Department that "being an American citizen, he could not allow the State to dictate to the Church what petition should be asked of the Great King," and that "it would be better to die than to allow the Church to be used as a political tool."

A communion sermon was preached which alluded to the historical fact that all things held most dear by his congregation were "blood-bought," the most sacred of which was the atoning death of the Lord Jesus Christ which they would henceforth celebrate. In Stewart's audience were two Government agents, who were assigned to take note of anything that could be used as a pretense for his arrest. When the sermon had been thus illustrated, one of the agents spoke to the other: "All precious things are 'blood-bought'; that means that freedom is blood-bought; it means the Magna Charta is blood-bought; it is aimed at the President's proclamation. Write it down as treason. Damn the priests! I intend to make them preach and pray my way. We'll see which has the longest sword, their master, or ours!" To this, the second agent added, "If I break this fellow down, all the rest will cave in."

Soldiers from the Eighth Illinois Cavalry, under the command of Captain John Farnsworth, were then ordered by the State Department to invade the church on the following Sunday, surround the minister as he prayed, and compel him by sabres thrust against his breast to speak only as commanded. Ignoring the martial throng about him, Stewart began his prayer: "From all evil and mischief; from all sedition, privy conspiracy...." The congregation responded, "Good Lord, deliver us."

"Bless all Christian rulers and magistrates," Stewart continued, "and give them grace to execute justice and maintain truth." At this point, the officer in charge of the unruly mob wrested the Bible from the minister's hands and threw it to the ground shouting, "You are a traitor! in the name and by the authority of the President of the United States, I arrest you!" Stewart calmly stood, faced the officer, and motioning to his congregation, he said, "Let

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41. S.W. Morton to F.W. Seward, 9 February 1862; *Official Records: Armies*, Series 2, Volume II, page 213.

42. Morton to William H. Seward, 12 February 1862; *ibid.*, pages 217-218.

43. Marshall, *American Bastile*, pages 92-93.

these go, take me; but before I yield myself up to you, I summon you to appear before the bar of the King of kings, to answer the charge of interrupting his ambassador, while in the house of God, and in the discharge of his duty."[44]

Stewart was then escorted to prison by two armed sergeants, while the young females of his family were seized and dragged through the streets to the delight of the gathered mobs of "loyal" citizens. The office of the newspaper which reported these atrocities was subsequently burned to the ground, as was that of the religious journal, *The Southern Churchman*. Stewart was finally exiled from his home, and spent the duration of the war ministering to the wounded and dying on the battlefields, and in the prisons and hospitals. Such monstrous acts of tyranny were all perpetrated with the full knowledge and direction of Lincoln's Administration, and were commenced by the finger of William Seward as it nonchalantly touched the infamous "little bell."

We close this chapter with the following warning from Stephen D. Carpenter — a warning which went largely unheeded by his contemporaries:

> From the foregoing evidence... we cannot escape the general conclusion that it is the purpose of those in power and those who control the Administration, to plunge us into despotism — to finally destroy this old Union, and to build up a government on its ruins, in accordance with the early motives of a privileged aristocracy, or limited monarchy. The Union as it was, we need never look for again. So the despots in power tell us, and if they can prevent it, that fabric of free government reared by the combined wisdom and through the mutual sacrifice of a race of heroes and statesmen, will never be permitted again to shed the luster of its glory on a people that will soon lament the entire loss of liberty....
>
> Our government is undergoing a revolution at the North as well as at the South. The party in power... have put themselves on record in favor of a different government from that of our fathers. They spit upon and deride the Constitution. But they knew they could not change this government to that of a military despotism, except by and through the means of military power. Hence, they have stricken down the civil and erected the military standard. We are now virtually under martial law. We can exercise no civil functions that do not suit the pleasure of the Military Dictator. This is the land-mark we have reached to-day. No man can deny this fact, and if this power is not exercised in *every* particular, it only shows that the historian was correct when he asserted as a general maxim that "new born despotism is both timid and cautious, and seldom reaches its altitude at one bound, but chooses rather to approach it by slow but sure degrees." It is a shrewd *policy* to allow the people for a while some of their rights, lest a counter revolution might be inconvenient and troublesome (emphasis in original).[45]

44. Marshall, *ibid*., page 94.

45. Carpenter, *Logic of History*, page 241.

SUPPORTING DOCUMENT

Ex Parte Merryman
Maryland Circuit Court (1861)

The application in this case for a writ of *habeas corpus* is made to me under the 14th Section of the Judiciary Act of 1789, which renders effectual for the citizen the constitutional privilege of the *habeas corpus*. That Act gives to the Courts of the United States, as well as to each Justice of the Supreme Court, and to every District Judge, power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment. The petition was presented to me in Washington, under the impression that I would order the prisoner to be brought before me there, but as he was confined in Fort McHenry, in the City of Baltimore, which is in my circuit I resolved to hear it at the latter City, as obedience to the writ, under such circumstances, would not withdraw Gen. Cadwalader, who had him in charge, from the limits of his military command.

The petition presents the following case: The petitioner resides in Maryland, in Baltimore County. While peaceably in his own house, with his family, he was, at two o'clock on the morning of the 25th of May, 1861, arrested by an armed force, professing to act under military orders. He was then compelled to rise from his bed, taken into custody and conveyed to Fort McHenry, where he is imprisoned by the commanding officer, without warrant from any lawful authority.

The commander of the Fort, Gen. George Cadwalader, by whom he is detained in confinement, in his return to the writ, does not deny any of the facts alleged in the petition. He states that the prisoner was arrested by order of Gen. Keim, of Pennsylvania, and conducted as a prisoner to Fort McHenry by his order, and placed in his (Gen. Cadwalader's) custody, to be there detained by him as a prisoner.

A copy of the warrant, or order, under which the prisoner was arrested, was de-

manded by his counsel and refused. And it is not alleged in the return that any specific act, constituting an offense against the laws of the United States, has been charged against him, upon oath; but he appears to have been arrested upon general charges of treason and rebellion, without proof, and without giving the names of the witnesses, or specifying the acts which, in the judgment of the military officer, constituted these crimes. And having the prisoner thus in custody, upon these vague and unsupported accusations, he refuses to obey the writ of *habeas corpus* upon the ground that he is duly authorized by the President to suspend it.

The case, then, is simply this: A military officer, residing in Pennsylvania, issues an order to arrest a citizen of Maryland, upon vague and indefinite charges, without any proof, so far as appears. Under this order his house is entered in the night, he is seized as a prisoner, conveyed to Fort McHenry, and there kept in close confinement. And when a *habeas corpus* is served on the commanding officer, requiring him to produce the prisoner before a Justice of the Supreme Court, in order that he may examine into the legality of the imprisonment, the answer of the officer is, that he is authorized by the President to suspend the writ of *habeas corpus* at his discretion, and, in the exercise of that discretion suspends it in this case, and on that ground refuses obedience to the writ.

As the case comes before me, therefore, I understand that the President not only claims the right to suspend the writ of habeas corpus himself, at his discretion, but to delegate that discretionary power to a military officer, and to leave it to him to determine whether he will or will not obey judicial process that may be served upon him.

No official notice has been given to the Courts of Justice, or to the public, by proclamation, or otherwise, that the President claimed this power, and had exercised it in the manner stated in the return. And I certainly listened to it with some surprise, for I had supposed it to be one of those points of constitutional law upon which there is no difference of opinion, and that it was admitted on all hands that the privilege of the writ could not be suspended except by act of Congress.

When the conspiracy of which Aaron Burr was the head became so formidable, and was so extensively ramified to justify, in Mr. Jefferson's opinion, the suspension of the writ, he claimed on his part no power to suspend it, but communicated his opinion to Congress, with all the proofs in his possession, in order that Congress might exercise its discretion upon the subject, and determine whether the public safety required it. And in the debate which took place upon the subject, no one suggested that Mr. Jefferson might exercise the power himself, if, in his opinion, the public safety required it.

Having, therefore, regarded the question as too plain and too well settled to be open to dispute, if the commanding officer had stated that upon his own responsibility, and in the exercise of his own discretion he refused obedience to the writ, I should have contented myself with referring to the clause in the Constitution, and to the construction it received from every jurist and statesman of that day, when the case of Burr was before them. But being thus officially notified that the privilege of the writ has been suspended under the orders and by the authority of the President, and believing, as I do, that the President has

exercised a power which he does not possess under the Constitution, a proper respect for the high office he fills requires me to state plainly and fully the grounds of my opinion, in order to show that I have not ventured to question the legality of this act without a careful and deliberate examination of the whole subject.

The clause in the Constitution which authorizes the suspension of the privilege of the writ of *habeas corpus* is in the ninth section of the first article.

This article is devoted to the legislative department of the United States, and has not the slightest reference to the Executive department. It begins by providing, "that all legislative powers therein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." And after prescribing the manner in which these two branches of the legislative department shall be chosen, it proceeds to enumerate specifically the legislative powers which it thereby grants, and legislative powers which it expressly prohibits; and, at the conclusion of this specification, a clause is inserted giving Congress, "the power to make all laws which may be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any department or office thereof."

The power of legislation granted by this latter clause is by its words carefully confined to the specific objects before enumerated. But as this limitation was unavoidably somewhat indefinite, it was deemed necessary to guard more effectually certain great cardinal principles essential to the liberty of the citizen, and to the rights and equality of the States, by denying to Congress, in express terms, any power of legislating over them. It was apprehended, it seems, that such legislation might be attempted under the pretext that it was necessary and proper to carry into execution the powers granted; and it was determined that there should be no room to doubt, where rights of such vital importance were concerned, and, accordingly, this clause is immediately followed by an enumeration of certain subjects to which the powers of legislation shall not extend; the great importance which the framers of the Constitution attached to the privilege of the writ of *habeas corpus* to protect the liberty of the citizen is proved by the fact that its suspension, except in cases of invasion and rebellion, is first in the list of prohibited powers — and even in these cases the power is denied, and its exercise prohibited, unless the public safety shall require it.

It is true that in the cases mentioned, Congress is of necessity the judge of whether the public safety does or does not require it; and their judgment is conclusive. But the introduction of these words is a standing admonition to the legislative body of the danger of suspending it, and of the extreme caution they should exercise before they give the Government of the United States such power over the liberty of a citizen.

It is the second article of the Constitution that provides for the organization of the Executive Department, and enumerates the powers conferred on it and prescribes its duties. And if the high power over the liberty of the citizens now claimed was intended to be conferred on the President, it would undoubtedly be found in plain words in this article. But there is not a word in it that can furnish the slightest ground to justify the exercise of the power.

The article begins by declaring that the Executive power shall be vested in a President of the United States of America, to hold his office during the term of four years — and then proceeds to prescribe the mode of election, and to specify in precise and plain words the powers delegated to him and the duties imposed upon him. And the short term for which he is elected, and the narrow limits to which his power is confined, show the jealousy and apprehensions of future danger which the framers of the Constitution felt in relation to that department of the Government, and how carefully they withheld from it many of the powers belonging to the Executive branch of the English Government, which were considered as dangerous to the liberty of the subject — and conferred (and that in clear and specific terms,) those powers only which were deemed essential to secure the successful operation of the Government.

He is elected, as I have already said, for the brief term of four years, and is made personally responsible, by impeachment, for malfeasance in office; he is, from necessity, and the nature of his duties, the Commander-in-Chief of the army and navy, and of the militia, when called into actual service; but no appropriation for the support of the army can be made by Congress for a longer term than two years, so that it is in the power of the succeeding House of Representatives to withhold the appropriation for its support, and thus disband it, if, in their judgment, the President used, or designed to use it for improper purposes. And although the militia, when in actual service, is under his command, yet the appointment of the officers is reserved to the States, as a security against the use of the military power for purposes dangerous to the liberties of the people, or the rights of the States.

So too, his powers in relation to the civil duties and authority necessarily conferred on him are carefully restricted, as well as those belonging to his military character. He cannot appoint the ordinary officers of government, nor make a treaty with a foreign nation or Indian tribe, without the advice and consent of the Senate, and cannot appoint even inferior officers, unless he is authorized by an act of Congress to do so. He is not empowered to arrest any one charged with an offence against the United States, and whom he may, from the evidence before him, believe to be guilty; nor can he authorize any officer, civil or military, to exercise this power, for the fifth article of the amendments to the Constitution expressly provides that no person "shall be deprived of life, liberty or property, without due process of law," that is, judicial process.

And even if the privilege of the writ of *habeas corpus* were suspended by act of Congress, and a party not subject to the rules and articles of war were afterwards arrested and imprisoned by regular judicial process, he could not be detained in prison, or brought to trial before a military tribunal, for the article in the amendments to the Constitution immediately following the one above referred to (that is, the sixth article) provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have

the assistance of counsel for his defence.

The only power, therefore, which the President possesses, where the "life, liberty or property" of a private citizen is concerned, is the power and duty prescribed in the third section of the second article, which requires "that he shall take care that the laws shall be faithfully executed." He is not authorized to execute them himself, or through agents or officers, civil or military, appointed by himself, but he is to take care that they be faithfully carried into execution, as they are expounded and adjudged by the coordinate branch of the Government to which that duty is assigned by the Constitution. It is thus made his duty to come in aid of the judicial authority, if it shall be resisted by a force too strong to be overcome without the assistance of the executive arm; but in exercising this power he acts in subordination to judicial authority, assisting it to execute its process and enforce its judgments. With such provisions in the Constitution, expressed in language too clear to be misunderstood by any one, I can see no ground whatever for supposing that the President, in any emergency, or in any state of things, can authorize the suspension of the privilege of the writ of *habeas corpus*, or the arrest of a citizen, except in aid of the judicial power. He certainly does not faithfully execute the laws, if he takes upon himself legislative power, by suspending the writ of *habeas corpus*, and the judicial power also, by arresting and imprisoning a person without due process of law. Nor can any argument be drawn from the nature of sovereignty, or the necessity of government, for self-defence in times of tumult and danger. The Government of the United States is one of delegated and limited powers; it derives it existence and authority altogether from the Constitution, and neither of its branches, executive, legislative or judicial, can exercise any of the powers of government beyond those specified and granted; for the tenth article of the Amendments to the Constitution, in express terms, provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

Indeed, the security against imprisonment by executive authority, provided for in the fifth article of the Amendments to the Constitution, which I have before quoted, is nothing more than a copy of a like provision in the English Constitution, which had been firmly established before the Declaration of Independence. Blackstone, in his *Commentaries* (1 Bl. Comm. 137) states it in the following words: "To make imprisonment lawful, it must be either by process of law from the courts of judicature, or by warrant from some legal officer having authority to commit to prison." The people of the United Colonies, who had themselves lived under its protection, while they were British subjects, were well aware of the necessity of this safeguard for their personal liberty. And no one can believe that, in framing a government intended to guard still more efficiently the rights and liberties of the citizen, against executive encroachment and oppression, they would have conferred on the President a power which the history of England had proved to be dangerous and oppressive in the hands of the crown; and which the people of England had compelled it to surrender, after a long and obstinate struggle on the part of the English Executive to usurp and retain it.

The right of the subject to the benefit of the writ of *habeas corpus*, it must be recol-

lected, was one of the great points in controversy, during the long struggle in England between arbitrary government and free institutions, and must therefore have strongly attracted the attention of the statesmen engaged in framing a new and, as they supposed, a freer government than the one which they had thrown off by the revolution. From the earliest history of the common law, if a person were imprisoned, no matter by what authority, he had a right to the writ of *habeas corpus*, to bring his case before the King's Bench; and if no specific offence were charged against him in the warrant of commitment, he was entitled to be forthwith discharged; and if any offense were charged which was bailable in its character, the Court was bound to set him at liberty on bail. The most exciting contests between the Crown and the people of England, from the time of Magna Charta, were in relation to the privilege of this writ, and they continued until the passage of the statute of 31 Charles II., commonly known as the great *habeas corpus* act.

This statute put an end to the struggle, and finally and firmly secured the liberty of the subject against the usurpation and oppression of the executive branch of the Government. It nevertheless conferred no new right upon the subject, but only secured a right already existing; for, although the right could not justly be denied, there was often no effectual remedy against its violation. Until the statute of 13 William III., the Judges held their offices at the pleasure of the King, and the influence which he exercised over timid, time-serving and partisan judges, often induced them, upon some pretext or other, to refuse to discharge the party, although entitled by law to his discharge, or delayed their decision, from time to time, so as to prolong the imprisonment of persons who were obnoxious to the King for their political opinions, or had incurred his resentment in any other way.

The great and inestimable value of the *habeas corpus* act of the 31st Charles II. is, that it contains provisions which compel courts and judges, and all parties concerned, to perform their duties promptly, in the manner specified in the statute.

A passage in Blackstone's *Commentaries*, showing the ancient state of the law on this subject, and the abuses which were practised through the power and influence of the crown, and a short extract from Hallam's *Constitutional History*, stating the circumstances which gave rise to the passage of this statute, explain briefly, but fully, all that is material to this subject.

Blackstone, in his *Commentaries on the Laws of England* (3rd vol., 133, 134), says:

> To assert an absolute exemption from imprisonment in all cases is inconsistent with every idea of law and political society, and in the end would destroy all civil liberty by rendering its protection impossible. But the glory of the English law consists in clearly defining the times, the causes and the extent, when, wherefore and to what degree, the imprisonment of the subject may be lawful. This it is which induces the absolute necessity of expressing upon every commitment the reason for which it is made, that the court, upon a *habeas corpus*, may examine into its validity, and according to the circumstances of the case, may discharge, admit to bail or remand the prisoner.
>
> And yet early in the reign of Charles I. the Court of King's Bench, relying on some arbitrary precedents (and those perhaps misunderstood) determined that they would not,

> upon a *habeas corpus*, either bail or deliver a prisoner, though committed without any cause assigned, in case he was committed by the special command of the King or by the Lords of the Privy Council. This drew on a Parliamentary inquiry, and produced the Petition of Right — 3 Charles I. — which recites this illegal judgment, and enacts that no freeman hereafter shall be so imprisoned or detained. But when, in the following year, Mr. Selden and others were committed by the Lords of the Council, in pursuance of his Majesty's special command, under a general charge of "notable contempts, and stirring up sedition against the King and the Government," the judges delayed for two terms (including also the long vacation) to deliver an opinion how far such a charge was bailable; and when at length they agreed that it was, they however annexed a condition of finding sureties for their good behavior, which still protracted their imprisonment, the Chief Justice, Sir Nicholas Hyde, at the same time, declaring that "if they were again remanded for that cause, perhaps the court would not afterwards grant a *habeas corpus*, being already made acquainted with the cause of the imprisonment." But this was heard with indignation and astonishment by every lawyer present, according to Mr. Selden's own account of the matter, whose resentment was not cooled at the distance of four and twenty years.

It is worthy of remark, that the offenses charged against the prisoner in this case, and relied on as a justification for his arrest and imprisonment, in their nature and character, and in the loose and vague manner in which they are stated, bear a striking resemblance to those assigned in the warrant for the arrest of Mr. Merryman. And yet, even at that day, the warrant was regarded as such a flagrant violation of the rights of the subject that the delay of the timeserving judges to set him at liberty, upon the *habeas corpus* issued in his behalf, excited the universal indignation of the bar. The extract from Hallam's *Constitutional History* is equally impressive and equally in point. It is in vol. 4, p. 14:

> It is a very common mistake, and that not only among foreigners, but many from whom some knowledge of our Constitutional laws might be expected, to suppose that this statute of Charles II. enlarged in a great degree our liberties, and forms a sort of epoch in their history. But though a very beneficial enactment, and eminently remedial in many cases of illegal imprisonment, it introduced no new principle, nor conferred any right upon the subject. From the earliest records of the English law, no freeman could be detained in prison, except upon a criminal charge or conviction, or for a civil debt. In the former case it was always in his power to demand of the Court of King's Bench a writ of *habeas corpus ad subjiciendum*, directed to the person detaining him in custody, by which he was enjoined to bring up the body of the prisoner, with the warrant of commitment, that the Court might judge of its sufficiency, and remand the party, admit him to bail, or discharge him, according to the nature of the charge. This writ issued of right, and could not be refused by the court. It was not to bestow an immunity from arbitrary imprisonment, which is abundantly provided for in Magna Charta (if indeed it is not more ancient), that the statute of Charles II. was enacted, but to cut off the abuses by which the government's lust of power, and the servile subtlety of the crown lawyers, had impaired so fundamental a privilege.

While the value set upon this writ in England has been so great, that the removal of the abuses which embarrassed its employment has been looked upon as almost a new grant of liberty to the subject, it is not to be wondered at, that the continuance of the writ thus made effective should have been the object of the most jealous care. Accordingly, no power in England short of that of Parliament can suspend or authorize the suspension of the writ of *habeas corpus*. I quote again from Blackstone (1 Bl. Comm. 136):

> But the happiness of our Constitution is, that it is not left to the executive power to determine when the danger of the State is so great as to render this measure expedient. It is the Parliament only or legislative power that, whenever it sees proper, can authorize the crown by suspending the *habeas corpus* for a short and limited time, to imprison suspected persons without giving any reason for so doing.

If the President of the United States may suspend the writ, then the Constitution of the United States has conferred upon him more regal and absolute power over the liberty of the citizen, than the people of England have thought it safe to entrust to the Crown; a power which the Queen of England cannot exercise at this day, and which could not have been lawfully exercised by the sovereign even in the reign of Charles the First.

But I am not left to form my judgment upon this great question, from analogies between the English Government and our own, or the commentaries of English jurists, or the decisions of English courts, although upon this subject they are entitled to the highest respect, and are justly regarded and received as authoritative by our courts of justice. To guide me to a right conclusion, I have the *Commentaries on the Constitution of the United States* of the late Mr. Justice Story, not only one of the most eminent jurists of the age, but for a long time one of the brightest ornaments of the Supreme Court of the United States; and also the clear and authoritative decision of that Court itself, given more than half a century since, and conclusively establishing the principles I have above stated. Mr. Justice Story, speaking, in his *Commentaries*, of the *habeas corpus* clause in the Constitution, says (3 Story, Comm. Const. section 1336):

> It is obvious that cases of a peculiar emergency may arise, which may justify, nay, even require, the temporary suspension of any right to the writ. But as it has frequently happened in foreign countries, and even in England, that the writ has, upon various pretexts and occasions, been suspended, whereby persons apprehended upon suspicion have suffered a long imprisonment, sometimes from design, and sometimes because they were forgotten, the right to suspend it is expressly confined to cases of rebellion or invasion, where the public safety may require it. A very just and wholesome restraint, which cuts down at a blow a fruitful means of oppression, capable of being abused, in bad times, to the worst of purposes. Hitherto, no suspension of the writ has ever been authorized by congress, since the establishment of the Constitution. It would seem, as the power is given to congress to suspend the writ of *habeas corpus* in cases of rebellion or invasion, that the right to judge whether the exigency had arisen must exclusively belong to that body.

And Chief Justice Marshall, in delivering the opinion of the Supreme Court in the case of *Ex parte Bollman and Swartwout*, uses this decisive language, in 4 Cranch (8 U. S.) 95:

> It may be worthy of remark, that this act [speaking of the one under which I am proceeding] was passed by the first congress of the United States, sitting under a Constitution which had declared "that the privilege of the writ of *habeas corpus* should not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." Acting under the immediate influence of this injunction, they must have felt, with peculiar force, the obligation of providing efficient means, by which this great constitutional privilege should receive life and activity; for if the means be not in existence, the privilege itself would be lost, although no law for its suspension should be enacted. Under the impression of this obligation, they give to all the courts the power of awarding writs of *habeas corpus*.

And again on page 101:

> If at any time, the public safety should require the suspension of the powers vested by this act in the Courts of the United States, it is for the legislature to say so. That question depends on political considerations, on which the legislature is to decide; until the legislative will be expressed, this court can only see its duty, and must obey the laws.

I can add nothing to these clear and emphatic words of my great predecessor.

But the documents before me show, that the military authority in this case has gone far beyond the mere suspension of the privilege of the writ of *habeas corpus*. It has, by force of arms, thrust aside the judicial authorities and officers to whom the Constitution has confided the power and duty of interpreting and administering the laws, and substituted a military government in its place, to be administered and executed by military officers. For, at the time these proceedings were had against John Merryman, the District Judge of Maryland, the commissioner appointed under the act of Congress, the District Attorney and the Marshal, all resided in the city of Baltimore, a few miles only from the home of the prisoner. Up to that time, there had never been the slightest resistance or obstruction to the process of any Court or judicial officer of the United States in Maryland, except by the military authority.

And if a military officer, or any other person, had reason to believe that the prisoner had committed any offence against the laws of the United States, it was his duty to give information of the fact and the evidence to support it, to the District Attorney; it would then have become the duty of that officer to bring the matter before the District Judge or Commissioner, and if there was sufficient legal evidence to justify his arrest, the Judge or Commissioner would have issued his warrant to the Marshal to arrest him; and upon the hearing of the case, would have held him to bail, or committed him for trial, according to the character of the offense, as it appeared in the testimony, or would have discharged him immediately, if there was not sufficient evidence to support the accusation. There was no danger of any obstruction or resistance to the action of the civil authorities, and therefore no reason what-

ever for the interposition of the military.

Yet, under these circumstances, a military officer, stationed in Pennsylvania, without giving any information to the District Attorney, and without any application to the judicial authorities, assumes to himself the judicial power in the District of Maryland; undertakes to decide what constitutes the crime of treason or rebellion; what evidence (if indeed he required any) is sufficient to support the accusation and justify the commitment; and commits the party, without a hearing, even before himself, to close custody, in a strongly garrisoned fort, to be there held, it would seem, during the pleasure of those who committed him.

The Constitution provides, as I have before said, that "no person shall be deprived of life, liberty or property, without due process of law." It declares that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." It provides that the party accused shall be entitled to a speedy trial in a court of justice.

These great and fundamental laws, which Congress itself could not suspend, have been disregarded and suspended, like the writ of *habeas corpus*, by a military order, supported by force of arms. Such is the case now before me, and I can only say that if the authority which the Constitution has confided to the judiciary department and judicial officers, may thus, upon any pretext or under any circumstances, be usurped by the military power, at its discretion, the people of the United States are no longer living under a government of laws, but every citizen holds life, liberty and property at the will and pleasure of the army officer in whose military district he may happen to be found.

In such a case, my duty was too plain to be mistaken. I have exercised all the power which the Constitution and laws confer upon me, but that power has been resisted by a force too strong for me to overcome. It is possible that the officer who has incurred this grave responsibility may have misunderstood his instructions, and exceeded the authority intended to be given him; I shall, therefore, order all the proceedings in this case, with my opinion, to be filed and recorded in the Circuit Court of the United States for the district of Maryland, and direct the Clerk to transmit a copy, under seal, to the President of the United States. It will then remain for that high officer, in fulfilment of his constitutional obligation to "take care that the laws be faithfully executed," to determine what measures he will take to cause the civil process of the United States to be respected and enforced.

SUPPLEMENTARY ESSAY

Magna Charta: The Foundation of American Liberties

by John A. Marshall

Personal or civil liberty is that boon which man values most among the inestimable gifts of God, his Creator. In the proper enjoyment of it, he stands forth in the image of his Maker, self-reliant and strong. Take from him this inherent natural right — through the forms of government or law — by subjugation or force — by tyranny or prerogative — and he is a mere machine, worked by the hand of power.

It is equally true that the prosperity and superiority of the State or Nation having the elements of personal or civil liberty or freedom incorporated in the formation of the society which constitutes it, is in proportion to the extent of the civil privileges, immunities, and franchises. When a State properly enjoys liberty, its progress is the more rapid and stable. When the liberties of the people are abused and degraded, the State retrogrades.

The proper *uses* of liberty, in a free government where emulation receives encouragement and support, stimulate the citizen, and produce culture, refinement, art, science, invention, learning, eloquence, oratory, statesmanship, and religion, in the highest degree. No other form of government advances the virtues and interests of the people to such superiority and pre-eminence. It invites competition — it is the lever of progress — it is the friend of ambition. Hence, when the whole people — like the individual man — are inspired with a pure, patriotic, and instinctive love of liberty, the State be great, illustrious, and mighty.

The citizen of a free State has no superior, in point of liberty or in point of law. The humblest citizen is entitled to the same rights and privileges, and the same protection, to which the highest magistrate is entitled. The law in a free government is no respecter of persons, nor does it make any distinction, in so far as liberty is concerned.

In a free government, the Constitution throws around the citizen certain safeguards

or protections to his liberty. It gives him the right to trial by jury. It secures him against unreasonable searches and seizures. It protects him against arrest, except on oath made by a responsible person. If maliciously arrested or falsely imprisoned, he has his redress or action against the informant or magistrate for trespass or false imprisonment. "Every restraint upon a man's liberty," says Kent, "is, in the eye of the law, an imprisonment, wherever may be the place, or whatever may be the manner in which the restraint is effected." Even words may constitute an imprisonment, if they impose a restraint upon a person, and he submits.

He, then, who, possessing the power, robs the citizen of his liberty, even for an hour — yea, for a moment — without the sanction of law, or deprives him of the right to all the immunities of the law, commits a crime against the interests of the State, which time cannot expiate. By his example, the people are made reckless of their liberties and their allegiance to the State. Blackstone says:

> Of so great importance to the public is the preservation of personal liberty, that, if once it were left in the power of any, the highest magistrate, to imprison arbitrarily whoever he or his officers thought proper, there would soon be an end of all other rights and immunities. To bereave a man of his life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole kingdom; *but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of arbitrary power.*

The highest aim of the magistrate in a free government should be to protect and defend, and not destroy, the liberty of the citizen. Even when the State is in danger, it is the province of the Legislature, and not of the magistrate, to protect it against external or internal foes.

In a free and elective system of government, as in the United States, where a written Constitution has been adopted, the different branches of government are so well marked out and defined, and the duties and offices of each are so independent and distinct, that under no possible circumstances can usurpations in any, or the encroachments of one upon the other, be excused. Any usurpation whatever, in either branch, leads to anarchy, demoralization, and finally disruption. The blow may not be aimed at, but it strikes into the very heart of liberty.

Hence the absolute necessity of keeping the liberties of the people pure and immaculate, and free from infringement, by the makers, the administrators, and the expounders of the laws.

In order to protect and increase the power and prolong the independence of the State, the liberties of the people must be fostered, guarded, and secured. "It" (liberty), says Burke, "is not only a private blessing of the first order, but the vital spring or energy of the State itself, which has just so much life and vigor as there is liberty in it."

To protect liberty, the streams of legislation, administration, and justice must be kept clear, from the fountain-head even unto the mouth. Usurpations and encroachments upon the rights and liberties of the citizen are as deleterious to the tranquility and welfare of the State

as the unbridled, unrestrained, and licentious abuse of them by the citizen.

These prefatory remarks are made merely to remind the general reader of his constitutional rights. Of late, the civic rights of the citizen have been abridged. It remains to be seen whether he will maintain them. The permanence and stability of the government rest entirely with the citizen. It is for him to say how long free government will exist in our country.

Although free government may be traced back to a period of about three thousand years, it is not my intention to allude to the experiments in establishing it beyond the adoption of Magna Charta, in which may be found the vital principles on which it is based. The political rights which we enjoy under our Constitution may be said to be derived directly from that document.

Yet, it is proper to say here, that the principles of liberty enunciated and the privileges granted by the Magna Charta, many of which had been digested in a code of laws by Alfred, were not confined exclusively to the Anglo-Saxons; for almost at the same era, upon the election of King Christopher II. of Denmark, he was obliged to sign a charter granting nearly the same privileges and immunities as were contained in the Magna Charta, among which were that no man should be imprisoned, or deprived of life, liberty, or property, without public trial and conviction according to law; and that no law should be made or altered without the consent of the Parliament, composed of the best men of the kingdom, to be held annually by Wyborg.

And it may be said, that in Northern Europe, as well as in England, at the time of the granting of the Great Charter, the German tribes generally, and the Danes, were inspired by the same spirit of liberty which was enkindled in the hearts of the Anglo-Saxons, their descendants.

From the time of the granting of the municipal privileges and personal rights, as contained in Magna Charta, signed by King John on the 15th of June, 1215, but which was not really established until "after the contests of near a whole century," for during that time, "it is computed," says Hume, "that about thirty confirmations of the charter were at different times required of several kings, and granted by them in full Parliament," the people of England have been jealous of their personal liberties and watchful of their civic rights.

Since that period, the genius of the English people has been strongly and invariably in favor of liberty, while royal prerogative, until the accession of William and Mary, inclined as violently towards arbitrary power.

The Magna Charta laid the foundation for a Constitution, which has engrafted in it all the attributes and securities of personal liberty, and stands a monument of enlightened statesmanship, worthy the pride and admiration of the English people.

After the expulsion of the kings, the Romans, being careful of their liberties, erected and dedicated a temple to the Goddess of Liberty, and it was then esteemed an honor to call oneself a Roman citizen — *Civis Romanus*.

In our own country, there was a time when the proudest appellation a man could bear was that of American citizen. "I am an American citizen," implied liberty and safety —

protection and justice. Then, the national shield was, indeed, a shield with arms — a shield which defended the citizen against every act of tyranny and usurpation — a shield which guarded him on land and sea, at home and abroad. Then, personal liberty was a citizen's birthright. Then, free speech was unshackled. Then, Mr. Webster could exclaim:

> It [free speech] is a homebred right — a fireside privilege. It has ever been enjoyed in every house, cottage, and cabin in the nation. It is not to be drowned in controversy. It is as undoubted as the right to breathing the air and walking on the earth. It is a right to be maintained in peace and in war. It is a right which cannot be invaded without destroying constitutional liberty. Hence, this right should be guarded and protected by the freemen of this country with a jealous care, unless they are prepared for chains and anarchy.

What are the protections of the law now?

When the arteries which convey the life-blood from the heart of the Constitution to all parts of its body once become paralyzed, the most skillful treatment can never restore it to its original vigor and healthful condition. A partial recovery may be effected, but the disease remains.

Oppressive and illegal acts by one Administration may be adopted as established precedents for similar encroachments by succeeding ones; and who can gainsay the right? *Surely, not the people, when they not only encourage, but are accessories in the wrong*. Therefore, without a proper and conscientious regard for the majesty of the law, and the observance of personal rights, there is no security for permanence in free government.

From the organization of the Government, until the administration of the late Mr. Lincoln, we know of no case in which an American citizen was arrested without warrant, imprisoned without charge preferred, and released, after months and years of incarceration, without trial; although he who will take the trouble to turn over the leaves of American history will discover that, in many cases, there was not only imaginary, but *real "disloyalty"* among citizens, dangerous to the common interests of the Government, during former Administrations.

Educated in the principles of republicanism, intelligent beyond comparison, and heretofore governed by conservative magistrates, whose wisdom, experience, and characters commanded respect and confidence — a people who had always supported the Government with alacrity, unselfish devotion, and fidelity, was unprepared to be obliged to submit, without redress, except by physical resistance, to an arbitrary and tyrannical prerogative, unrestrained by law, reason, or justice.

The Administration of Mr. Lincoln having been ushered into existence under the banner of universal freedom, it was to be expected, from the enlightened condition of the age, and the conservative and patriotic disposition of the people in the "loyal" States, that the Government would be administered in accordance with the promised reforms. In this, however, the people were disappointed. Legislative enactments were unrestrained by constitutional provisions. The President assumed *quasi* plenary power, to make and enforce laws without the interference, assistance, or aid of the legislative or judicial branches of Govern-

ment; and, in a word, drew around his individual person — all the powers of government, Municipal, State, and National, which he enforced through his *obsequious* Secretaries. Consolidation of interests, and centralization of power, were complete. The Government was the President — the President was the Government.

But we forbear to criticise. We present facts. Let them speak. *Let the people answer*. No words we could use would bring relief to the harrowed feeling of, or redress the wrongs perpetrated upon, *thousands* of unoffending citizens, by their unwarranted incarceration in American Bastiles during the Administration of the late President Lincoln. We contemplate the cruelties, oppressions, persecutions, and imprisonments, committed during that long night of political despotism, with alarm. We shudder for the future of the country, when we take a retrospect of the late past.

If a truthful presentation of the facts, as contained in this volume, will in anytime prevent in the future a repetition of the wrongs and crimes committed against the rights and liberties of the people, *in the name of liberty*, then our highest ambition has been satisfied. To prevent flagitious wrongs from being committed against the constitutional rights of individuals is the duty of every good citizen in a free State. Liberty is too valuable a privilege, and, as we have endeavored to demonstrate, has been to costly an inheritance, to be bartered away for the gratification of personal or political animosity.

The preceding essay was extracted from John A. Marshall, American Bastile *(Philadelphia, Pennsylvania: Thomas W. Hartley and Company, 1881).*

CHAPTER THIRTEEN
The Course of the War is Changed

The Role of Slavery in the Conflict

The foremost myth perpetuated by modern history revisionists is that the War of 1861 was fought by the North with the view of freeing the Southern slaves and extending to them social and political equality, and by the South in the interest of extending the institution of slavery and continuing the oppression of the Black race. Such a view completely ignores the many factors other than slavery which accumulated to bring on the conflict. In July of 1864, when asked by Colonel James F. Jacques, self-appointed peace envoy for the North, and James R. Gilmore, a Northern journalist, how the war could be stopped, Confederate President Jefferson Davis replied:

> I tried all in my power to avert this war. I saw it coming, and for twelve years I worked night and day to prevent it, but I could not. The North was mad and blind; it would not let us govern ourselves, and so the war came, and now it must go on till the last man of this generation falls in his tracks, and his children seize the musket and fight our battle, *unless you acknowledge our right to self-government.* We are not fighting for slavery. We are fighting for Independence, and that, or extermination, we *will* have....
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> ...[Slavery] never was an essential element. It was only a means of bringing other conflicting elements to an earlier culmination. It fired the musket which was already capped and loaded. There are essential differences between the North and the South, that will, however this war may end, make them two nations.... (emphasis in original)[1]

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1. Davis, quoted in Rhodes, *History of the United States*, Volume IV, page 575.

In the preface to his monumental work entitled *The Rise and Fall of the Confederate Government*, Davis again stated:

> Another great perversion of truth has been the arraignment of the men who participated in the formation of the Confederacy and who bore arms in its defense, as the instigators of a controversy leading to disunion. Sectional issues appear conspicuously in the debates of the Convention which framed the Federal Constitution, and its many compromises were designed to secure an equilibrium between the sections, and to preserve the interests as well as the liberties of the several States. African servitude at that time was not confined to a section, but was numerically greater in the South than in the North, with a tendency to its continuance in the former and cessation in the latter. It therefore thus early presents itself as a disturbing element, and the provisions of the Constitution, which were known to be necessary for its adoption, bound all the States to recognize and protect that species of property. When at a subsequent period there arose in the Northern States an antislavery agitation, it was a harmless and scarcely noticed movement until political demagogues seized upon it as a means to acquire power. Had it been left to pseudo-philanthropists and fanatics, most zealous where least informed, it never could have shaken the foundations of the Union and have incited one section to carry fire and sword into the other.[2]

These assertions are substantiated by the fact that the vast majority of those who fought in the Southern armies, especially in Virginia, were not slaveholders and had no personal interest in either the continuance or extension of slavery. As Beverley B. Munford documented in 1909, the United States census for the year 1860 fixed the White population of Virginia at 1,047,299 and the number of slaveholders in that State at only 52,128 — a total percentage of slaveholders at just under five percent.[3] In his *American Nation* series, French Ensor Chadwick added, "Of the 52,128 slaveholders in Virginia, one-third held but one or two slaves; half held one to four; there were but one hundred and fourteen persons in the whole state who owned as many as a hundred each, and this out of a population of over a million whites."[4]

In addition to the census data, we also have the personal testimony of the Southern soldiers themselves. Major Robert Stiles, who served for four years under General Robert

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2. Davis, *Rise and Fall of the Confederate Government*, Volume I, page vi.

3. Munford, *Slavery and Secession*, page 125.

4. French Ensor Chadwick, *Causes of the Civil War* (New York: Harper and Brothers Publishers, 1906), page 33. It should also be remembered that Virginia had the largest population of slaves out of all the slave States, which calls into question the assertion in Mississippi's "Declaration of the Immediate Causes which Induce and Justify the Secession of the State of Mississippi from the Federal Union" that the position of the people of that State was "thoroughly identified with the institution of slavery — the greatest material interest of the world" (see "Declarations of the Causes of Secession of the Southern States").

Edward Lee, testified, "Why did they [Southerners] volunteer? For what did they give their lives?... Surely, it was not for slavery they fought. The great majority of them had never owned a slave, and had little or no interest in the institution. My own father, for example, had freed his slaves long years before."[5] Confederate veteran Randolph H. M'Kim wrote:

> I was a soldier in Virginia in the campaigns of Lee and Jackson, and I declare I never met a Southern soldier who had drawn his sword to perpetuate slavery. Nor was the dissolution of the Union or the establishment of the Southern Confederacy the supreme issue in the mind of the Southern soldier. What he had chiefly at heart was the preservation of the supreme and sacred right of self-government. The men who made up the Southern armies were not fighting for their slaves when they cast all in the balance — their lives, their fortunes, and their sacred honor — and endured the hardships of the march and the camp and the perils and sufferings of the battle field. Besides, it was a very small minority of the men who fought in the Southern armies who were financially interested in the institution of slavery.[6]

Likewise, Dr. Hunter McGuire, medical director under General Thomas Jonathan Jackson, wrote, "The Stonewall Brigade of the Army of Northern Virginia was a fighting organization. I knew every man in it, for I belonged to it for a long time; and I know that I am in proper bounds when I assert, that there was not one soldier in thirty who owned or ever expected to own a slave."[7]

As the war dragged on into its fourth year, the Confederate authorities at Richmond even considered abolishing the institution in exchange for Europe's recognition of the Southern Confederacy. One month before the collapse of the Government, the Confederate Congress, at the request of General Lee, authorized the recruitment of three hundred thousand slaves into the army, promising them their freedom for their service.[8] This, if defeat had not stymied the measure, would have been the virtual death of slavery in the Southern States. In the words of the Jackson *Mississippian*, "Let not slavery prove a barrier to our independence. If it is found in the way — if it proves an insurmountable object of the achievement of our liberty and separate nationality, away with it! Let it perish!"[9]

Considering the claim that the North fought the war to free the slaves and the South fought to hold them in bondage, would not the fact that there were only two hundred

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5. Robert Stiles, *Four Years Under Marse Robert* (New York: The Neale Publishing Company, 1904), page 49.

6. Randolph H. M'Kim, "Injustice to the South," *Gray Book*, pages 36-37.

7. McGuire and Christian, *Confederate Cause and Conduct*, page 22.

8. Richard Shenkman, *Legends, Lies, and Myths of American History* (New York William Morrow and Company, 1988), page 127.

9. Jackson *Mississippian*, quoted by Emory M. Thomas, *The Confederacy as a Revolutionary Experience* (Englewood Cliffs, New Jersey: Prentice-Hall, 1971), page 119.

thousand slaveholders in the Southern army as opposed to three hundred and fifteen thousand in the Northern army[10] — the percentage in the latter being over fifty percent higher than in the former — stand as an insurmountable obstacle to its acceptance as truth? What is such a claimant to do with the additional fact that the commanding General of the Southern army, Robert Edward Lee, was not a slaveholder and was vocal in his denunciation of the institution as a "great evil,"[11] while the commanding General of the Northern army, Ulysses S. Grant, was not only a slaveholder by marriage, but also left his wife's slaves under her control until they were ultimately freed by the ratification of the Thirteenth Amendment after the close of hostilities[12] — an amendment written, incidentally, by a *Southern* man?[13] One would have to admit, based on these facts alone, that something is seriously amiss in the accounts of the causes of the war which have since been popularized by Northern historians and propagandists.

However, we are not left to draw mere inferences from the above facts. Lincoln himself had stated in 1858 that "all the States have the right to do exactly as they please about all their domestic relations, including that of slavery...."[14] In keeping with this sentiment, he clearly stated in his first Inaugural Address that he had no intention of fighting a war against slavery: "I have no purpose directly or indirectly to interfere with the institution

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10. Rutherford, *Truths of History*, page 14.

11. Although Lee was not an Abolitionist of the radical New England stripe, he was nevertheless an advocate of gradual emancipation, as was also Jefferson Davis. During the war, Lee was interviewed by Herbert C. Saunders of London on the subject of slavery and other matters concerning the South. Saunders' recollections of the conversation were in part as follows: "On the subject of slavery, he assured me that he had always been in favour of the emancipation of the negroes, and that in Virginia the feeling had been strongly inclining in the same direction, till the ill-judged enthusiasm (amounting to rancour) of the abolitionists in the North had turned the Southern tide of feeling in the other direction" (Herbert C. Saunders, quoted by Robert E. Lee, Jr., *Recollections and Letters of General Robert E. Lee* [Garden City, New York: Garden City Publishing Company, 1924], page 231).

12. Grant's wife, Julia, stated that she owned four slaves "up to" the Emancipation Proclamation (*Personal Memoirs of Julia Dent Grant* [G.P. Putnam's Sons, 1975]), pages 82-83. It is interesting that she did not actually say they were *freed* by the Proclamation — which would correspond to the fact that the Proclamation did not apply in Missouri, under which jurisdiction the property was held. Since slavery was still legal in that State throughout the war, clear legal documentation was necessary for manumission. No such court record of manumission exists, although there is documentation of Grant himself freeing his one slave in 1859. It seems possible that Julia's statement was inserted in her memoirs in an attempt to alleviate the contradiction of her husband having fought "against slavery" while being himself a slaveholder by marriage.

13. The author of the original bill was John Brooks Henderson of Missouri, a slave State.

14. Lincoln, speech delivered at Jonesboro, Illinois on 15 September 1858; in Johannsen, *Lincoln-Douglas Debates*, page 131.

of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so." The following amendment had been previously passed by a strong majority in the House of Representatives on 28 February 1861 and two days later in the Senate: "That no amendment shall be made to the Constitution which will authorize or give Congress power to abolish or interfere within any State with the domestic institutions thereof, including that of persons held to labour or servitude by the laws of said State."[15] This amendment, written by Thomas Corwin, a Northern Congressman who would later serve as Lincoln's minister to Mexico, and approved by a Republican-dominated Congress,[16] would likely have become the Thirteenth Amendment to the Constitution had Virginia, Arkansas, Tennessee, and North Carolina not seceded following Lincoln's unlawful proclamation of 15 April 1861. Noting the congressional passage of this amendment in protection of slavery, Lincoln said in his Inaugural Address, "I have no objection to its being made express and irrevocable." Under Lincoln's direction, William Seward made the following statement in a diplomatic circular intended for the courts of Europe:

> The condition of slavery in the several States will remain just the same.... The rights of the States, and the condition of every human being in them, will remain subject to exactly the same laws and form of administration, whether the revolution shall succeed or whether it shall fail. Their constitutions and laws and customs, habits and institutions in either case will remain the same. It is hardly necessary to add to this incontestable statement the further fact that the new President, as well as the citizens through whose suffrages he has come into the administration, has always repudiated all designs whatever, and wherever imputed to him and them, of disturbing the system of slavery as it is existing under the Constitution and laws. The case, however, would not be fully presented were I to omit to say that any such effort on his part would be unconstitutional, and all his acts in that direction would be prevented by the judicial authority, even though they were assented to by Congress and the people.[17]

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15. *Congressional Globe* (Thirty-Sixth Congress, Second Session), pages 1284-1285.

16. According to James G. Blaine:

> This [amendment] was adopted [in the House] by a vote of 133 to 65. It was numbered as the thirteenth amendment to the Federal Constitution, and would have made slavery perpetual in the United States, so far as any influence or power of the National Government could affect it. It intrenched slavery securely in the organic law of the land, and elevated the privilege of the slaveholder beyond that of the owner of any other species of property. It received the votes of a large number of Republicans who were then and afterwards prominent in the councils of the party....
>
> When the proposition reached the Senate, it was adopted by a vote of 24 to 12, precisely the requisite two-thirds.... Only twelve out of the twenty-five Republican senators voted in the negative (*Twenty Years of Congress*, Volume I, page 266).

17. William Seward, letter to U.S. Ambassador to France William L. Dayton, 22 April 1861; quoted by Pollard, *Lost Cause*, page 217.

In addition, the following Joint Resolution was passed in the House of Representatives on 22 July 1861 and three days later in the Senate — long after the departure of the eleven Southern States:

> *Resolved*, That the present deplorable civil war has been forced upon the country by the disunionists of the Southern States now in revolt against the constitutional Government and in arms around the capital; that in this national emergency Congress, banishing all feeling of mere passion or resentment, will recollect only its duty to the whole country; that this war is not prosecuted upon our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution and all laws made in pursuance thereof and to preserve the Union, with all the dignity, equality, and rights of the several States unimpaired; and that as soon as these objects are accomplished the war ought to cease.[18]

It was under these assurances that the majority of the Northern soldiers took up arms in the war against the South. As pointed out by George Lunt, "A war simply for the abolition of slavery would not have enlisted a dozen regiments at the North."[19] In fact, even such a prominent Northern figure as General Grant was reported as having said, "The sole object of this war is to restore the Union. Should I become convinced it has any other object, or that the Government designs using its soldiers to execute the wishes of the Abolitionists, I pledge you my honor as a man and a soldier I would resign my commission and carry my sword to the other side."[20] We also have the dispatch of Lincoln's first Secretary of War, Simon Cameron, to General Benjamin Butler in the occupied city of New Orleans: "It is the desire of the President that all existing rights in all the States be fully respected and maintained. The war now prosecuted on the part of the Federal Government is a war for the Union, and for the preservation of all constitutional rights of States, and the citizens of the States in the Union."[21] Finally, we again quote the words of Lincoln himself:

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18. *Statutes at Large*, Volume XIV, page 814. Senator John C. Breckinridge of Kentucky was one of five who voted against this resolution and the only one who did so out of distrust of the sincerity of its supporters rather than on the basis of a mere objection to the wording of the document. In his opposition speech, Breckinridge accused his Republican colleagues of prosecuting "not only a war of subjugation, but a war of extermination," and he predicted that such a war would "be the grave of constitutional liberty upon this continent" (*Congressional Globe*, 25 July 1861, page 261). In this and subsequent chapters, the reader will have opportunity to see just how prophetic were these words.

19. Lunt, *Origin of the Late War*, page 432.

20. Ulysses S. Grant, quoted by Carey, Jr., *Democratic Speaker's Handbook*, page 33.

21. Simon Cameron to Benjamin F. Butler, 8 August 1861; quoted in *Harper's Weekly*, 24 August 1861, page 531; *Congressional Record* (Thirty-Seventh Congress, First Session), page 83.

> My paramount object in this struggle is to save the Union, and is *not* either to save or to destroy slavery. If I could save the Union without freeing *any* slave, I would do it; and if I could save it by freeing *all* the slaves, I would do it; and if I could save it by freeing some and leaving others alone, I would also do that. What I do about slavery and the colored race, I do because I believe it would help to save the Union, and what I forebear, I forbear because I do *not* believe it would help save the Union (emphasis in original).[22]

The Radicals Seek a Revolution

For the first year and a half of the conflict, Lincoln steadfastly refused to reconsider his position against interfering with slavery in the South. On 6 March 1862, he expressed his opposition to a proclamation of emancipation, recommending instead the remuneration for slaves by appropriation from Congress. In a letter transmitted to Congress, he wrote, "...[I]n my judgment, gradual and not sudden emancipation is better for all. In the mere financial or pecuniary view, any member of Congress, with the census tables and the Treasury reports before him, can readily see for himself how very soon the current of expenditure of the war would purchase, at a fair valuation, all the slaves in any named state." He again affirmed his oft-repeated conviction that the general Government lacked any authority "to interfere with slavery within state limits," and insisted that his plan of gradual emancipation with remuneration left "the absolute control of the subject in each case to the state and its people immediately interested."[23]

What then induced Lincoln to change his policy and to finally agree to issue a proclamation of emancipation? That it was done for political expediency, and not for principle, is evident from the facts. The Radical Republican element in Congress and in key positions of authority throughout the North had long protested against the Joint Resolution of 24 July 1861, which denied that the war was being prosecuted for the purpose of destroying slavery in the South. Republican Representative Martin F. Conway of Kansas had denounced this "save the Union" policy with these words:

> I cannot see that the policy of the Administration... tends, in the smallest degree, to an anti-slavery result. The principle governing it is, that the constitutional Union, as it existed prior to the rebellion, remains intact; that the local laws, usages, and institutions of the seceded States are to be sedulously respected, unless necessity in military operations should otherwise demand. There is not, however, the most distant intimation of giving actual freedom to the slave in any event....
>
> The wish of the masses of our people is to conquer the seceded States to the

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22. Lincoln, letter to Horace Greeley, 22 August 1862; quoted by John G. Nicolay, *A Short Life of Abraham Lincoln* (New York: The Century Company, 1911), page 336.

23. Lincoln, quoted by Carpenter, *Logic of History*, page 175; Rhodes, *History of the United States*, Volume III, page 631.

> authority of the Union, and hold them as subject provinces. Whether this will ever be accomplished no one can, of course, confidently foretell; but, in my judgment, until this purpose is avowed, and the war assumes its true character, it is a mere juggle, to be turned this way or that — for slavery or against it — as the varying accidents of the hour may determine....
>
> Eight hundred thousand strong men, in the prime of life, sober and industrious, are abstracted from the laboring population of the country to consume and be a tax upon those who remain to work.... Nearly two million dollars per day will hardly more than suffice to cover existing expenditures; and in one year and a half our national debt, if the war continues, will amount to $900,000,000.
>
> This is the immense sacrifice we are making for freemen and the Union; and yet it is all to be squandered on a subterfuge and cheat! For one, I shall not vote another dollar or a man for the war until it assumes a different standing, and tends directly to an anti-slavery result.[24]

Thaddeus Stevens of Pennsylvania likewise stated in the House, "Sir, I can no longer agree that this Administration is pursuing a wise policy.... Its policy ought to be to order our army, wherever they go, to free the slaves, to enlist them, to arm them, to discipline them as they have been enlisted, armed and disciplined everywhere else, and as they can be here, and set them shooting their masters, if they will not submit to this Government. Call that savage if you please."[25] J.M. Ashley, another Republican from Ohio, said, "In my judgment, an enduring peace can be secured only by conquering the rebels, confiscating their property, and emancipating their slaves."[26]

The hue and cry raised by the Radicals in favor of using the war to revolutionize the Government and to forever remove the possibility of a restoration of the Union on a constitutional foundation was becoming deafening. The *North American*, a Republican newspaper published in Philadelphia, openly declared, "This war has already shown the absurdity of a government of limited powers; it has shown that the power of every government ought to be and must be unlimited."[27] Nathaniel Prentiss Banks, who had been Governor of Massachusetts in 1856 and later became a general in the Northern army, dreamed of "a time when this Constitution shall not be in existence — when we shall have an absolute military dictatorial Government, transmitted from age to age, with men at its head who are made rulers by military commission, or who claim an hereditary right to govern those over whom they are

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24. Martin F. Conway, speech delivered in the House of Representatives on 12 December 1862; in *Congressional Globe* (Thirty-Seventh Congress, First Session), pages 83, 86, 87.

25. Thaddeus Stevens, speech delivered in the House on 5 July 1862; *ibid.,* (Thirty-Seventh Congress, Second Session), page 3127.

26. J.M. Ashley, speech delivered in the House on 23 May 1862; quoted by Carpenter, *Logic of History*, page 91.

27. *North American*, quoted by Horton, *History of the Great Civil War*, page 126.

placed." He also expressed a hope that "when this war is over... there will be no longer New Yorkers, Pennsylvanians, Virginians, *etc*., but we shall all be simply Americans."[28] Simon Cameron, Lincoln's first Secretary of War, voiced the same views.[29] Thus, the old consolidationist faction was beginning to show its hand, and, in its struggle to destroy Jeffersonian republicanism once and for all, the Constitution and those who defended it were the prime targets of its wrath.

Alexander Hamilton, the father of this faction, had ridiculed the Constitution as a "frail and worthless fabric,"[30] and his ideological descendants did not differ from him in this sentiment. Influential Abolitionist Wendell Phillips called the Constitution "a mistake" and demanded that it be torn in pieces. "Our aim is disunion, breaking up of the states," he said. "...[O]ur work cannot be done under our institutions.... [The Republican party] is the first sectional party ever organized in this country.... The Republican party is a party of the North pledged against the South."[31] The Chicago *Tribune*, a leading Republican organ, declared, "The Union as it was will never bless the vision of any pro-slavery fanatic or secession sympathizer, and it never ought to! It is a thing of the past, hated by every patriot, and destined never to curse an honest people, or blot the pages of history again!"[32] James Henry Lane, a Republican Senator from Kansas, said, "I would like to live long enough to see every white man in South Carolina in hell, and the negroes inheriting their territory."[33] Horace Greeley, who had previously defended the right of the Southern States to depart in peace, became one of the leading advocates of their destruction: "...[W]e mean to *conquer* them, not merely to *defeat*, but to *conquer*, to *subjugate them*. But when the rebellious traitors are overwhelmed in the field, and scattered like leaves before an angry wind, *it must not to be to return to peaceful and contented homes!* They must find poverty at their firesides, *and see privation in the anxious eyes of mothers, and the rags of children.* The whole coast of the South, from the Delaware to the Rio Grande, *must be a solitude"* (emphasis in original).[34]

Thaddeus Stevens, who was quoted above, also openly called for an abandonment of the Constitution and a policy of subjugation of the Southern people:

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28. Nathaniel Prentice Banks, quoted by Carpenter, *Logic of History*, page 122; Horton, *History of the Great Civil War*, page 58.

29. Horton, *ibid*.

30. Hamilton, letter to Gouverneur Morris, 27 February 1802; in Henry Cabot Lodge (editor), *The Works of Alexander Hamilton* (New York: G.P. Putnam's Sons, 1886), Volume VIII, page 591.

31. Wendell Phillips, quoted by Carpenter, *Logic of History*, pages 100, 101.

32. Chicago *Tribune*, quoted by Carpenter, *ibid*., page 119.

33. James Henry Lane, quoted by Carpenter, *ibid*.

34. New York *Tribune*, 1 May 1861; quoted by Pollard, *Lost Cause*, page 85 (footnote).

> This talk of restoring the Union as it was, and under the Constitution as it is, is one of the absurdities which I have heard repeated until I have become sick of it. There are many things which make such an event impossible. This Union never shall, with my consent, be restored under the Constitution as it is!...
>
> The Union as it was, and the Constitution as it is — God forbid it! We must conquer the Southern States and hold them as conquered provinces.[35]

A conspiracy was also formed by the Northern Radicals to depose Lincoln and replace him with John C. Fremont if he would not acquiesce to their demands to change the war into a crusade for the utter destruction of slavery and Southern culture. On 16 September 1862, less than a week before the preliminary Emancipation Proclamation was wrung from the President's pen, the following telegraph was sent from Washington:

> Most astounding disclosures have been made here to-day, by letters and verbal communications, from prominent politicians, showing that a vast conspiracy has been set on foot by the radicals of the Fremont faction to depose the present administration, and place Fremont at the head of a provisional government; in other words, to make him military dictator. One of these letters asserts that one feature of this conspiracy is the proposed meeting of the governors of the northern states to request President Lincoln to resign, to enable them to carry out their scheme.... From other well informed sources it is learned that the fifty thousand independent volunteers proposed to be raised under the auspices of the New York National Union Defence Committee were intended to be a nucleus for the organization of the Fremont conspiracy.... This startling disclosure is vouched for by men of high repute in New York and other northern states. It is the last card of those who have been vainly attempting to drive the President into the adoption of their own peculiar policy.[36]

In this historical context, it should be obvious that the "Great Emancipator" acted much more in the interest of saving his own job than in the interest of the slaves when he finally issued the Emancipation Proclamation. Ward H. Lamon, who was a close associate of Lincoln's throughout the war, wrote from first-hand experience of the President's views on the welfare of the Blacks:

> None of Mr. Lincoln's public acts, either before or after he became President, exhibit any special tenderness for the African race, or commiseration of their lot. On the contrary, he invariably, in words and deeds, postponed the interest of the negro to the interest of the whites. When from political and military considerations he was forced to declare the

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35. Stevens, *Congressional Globe* (Thirty-Seven Congress, Third Session), 9 December 1862, page 51.

36. Government dispatch sent on 16 September 1862; quoted by Carpenter, *Logic of History*, pages 113-114.

> freedom of the enemy's slaves, he did so with avowed reluctance; he took pains to have it known he was in no wise affected by sentiment. He never at any time favored the admission of negroes into the body of the electors of his State, or in the States of the South. He claimed that those negroes set free by the army were poor spirited, lazy and slothful; that they could only be made soldiers by force, and would not be ever willing laborers at all; that they seemed to have no interest in the cause of their own race, but were as docile in the service of the rebellion as the mule that ploughed the fields or drew the baggage trains. As a people, Lincoln thought negroes would only be useful to those who were at the same time their masters, and the foes of those who sought their good. He wanted the negro protected as women and children are. He had no notion of extending the privilege of governing to the negro. Lincoln always contended that the cheapest way of getting rid of the negro was for the Nation to buy the slaves and send them out of the country.[37]

Did Lincoln Really Free the Slaves?

Section 11 of the Act of Congress of 17 July 1862 made it clear that "the President may employ, organize, and use as many persons of African descent as he pleases to suppress the rebellion, and use them as he judges for the public welfare." It was this power to seize the property of belligerents that lay behind Lincoln's much-celebrated, but little understood, Emancipation Proclamation:

> 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, containing, among other things, the following, to wit:
>
> "That on the first day of January, A.D. 1863, all persons held as slaves within any State or designated part of a State the people whereof shall then be in rebellion against the United States shall be then, thenceforward, and forever free; and the executive government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.
>
> "That the executive will on the 1st day of January aforesaid, by proclamation, designate the States and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State or the people thereof shall on that day be in good faith represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such States shall have participated shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State and the people thereof are not then in rebellion against the United States."
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> 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

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37. Ward H. Lamon, *Life of Abraham Lincoln* (Boston: James R. Osgood and Company, 1872), page 334.

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 suppressing said rebellion, do, on this 1st day of January, A.D. 1863, and in accordance with my purpose so to do, publicly proclaimed for the full period of one hundred days from the first day 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 the following, to wit:

Arkansas, Texas, Louisiana (except the parishes of St. Bernard, Palquemines, Jefferson, St. John, St. Charles, St. James, Ascension, Assumption, Terrebone, Lafourche, St. Mary, St. Martin, and Orleans, including the city of New Orleans), Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia (except the forty-eight counties designated as West Virginia, and also the counties of Berkeley, Accomac, Northhampton, Elizabeth City, York, Princess Anne, and Norfolk, including the cities of Norfolk and Portsmouth), and which excepted parts are for the present left precisely as if this proclamation were not issued.

And by virtue of the power 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.

And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defence; 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, stations, and other places, and to man vessels of all sorts in said service.

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.[38]

Lincoln scholar James G. Randall wrote, "So famous has this proclamation become, and so encrusted with tradition, that a correct historical conception of its actual effect is rarely found in the voluminous literature which the subject has evoked. The stereotyped picture of the emancipator suddenly striking the shackles from millions of slaves by a stroke of the

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38. Regarding this concluding invocation, Mildred Lewis Rutherford wrote:

> On January 1, 1863, the second writing of the Emancipation Proclamation was read. The members of the Cabinet noticed that the name of God was not mentioned in it, and reminded the President that such an important document should recognize the name of Deity. Lincoln said he had overlooked that fact and asked the Cabinet to assist him in preparing a paragraph recognizing God. Chief Justice Chase prepared it: "I invoke the considerate judgment of mankind and the gracious favor of Almighty God." It was accepted without a change (*Truths of History*, page 76).

presidential pen is altogether inaccurate."[39] The reader will notice that, not only did this document refer exclusively to the slaves "within any State or designated part of a State the people whereof shall then be in rebellion against the United States" — leaving slavery completely untouched in the border States[40] and in those parts of the Confederacy already occupied by Northern troops — but it did so "as a fit and necessary war measure for suppressing said rebellion."[41] It was Lincoln's belief that "the Constitution invests its commander-in-chief with the law of war in time of war"[42] and that he therefore had "a right to take any measure which may best subdue the enemy."[43] Not departing from the stated conviction of his first Inaugural Address that he had "no lawful right" to "interfere with the institution of slavery in the States where it exists," he admitted that the issuance of the Proclamation had "no constitutional or legal justification, except as a military measure."[44]

That the edict had no justification whatsoever was the view of Democrats throughout the North, who denounced it as a "gigantic usurpation" as "unwarrantable in military [and] civil law," and predicted that it would only serve to "protract the war indefinitely."[45] Former Supreme Court Justice Benjamin Robbins Curtis also criticized the Proclamation on the same legal grounds:

> This proclamation... by an executive decree, proposes to repeal and annul valid

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39. Randall, *Civil War and Reconstruction*, page 490.

40. That the Proclamation did not end the institution of slavery is proven by the fact that the Fugitive Slave Act of 1850, to which the Northern States had objected so vehemently, was not repealed until 28 June 1864 — only ten months before General Lee's surrender at Appomattox (*Statutes at Large*, Volume XIII, page 200). Under the terms of this Act, runaway slaves who came within the lines of the Northern armies were routinely restored to their masters throughout most of the war. Those slaves whose masters could not be located were assigned to the Quartermaster's Department to be used as laborers. The reader may easily verify this with a perusal of the indices of the *Official Records* under the heading "slaves and slave property."

41. Lincoln had chosen his words very carefully, for being a lawyer, he knew not only that "martial law is dominant military rule springing out of necessity" (Birkhimer, *Military Government*, page 427), but also would have been familiar with the maxim *necessitas non habet legem* — "necessity has no law" (*Black's Law Dictionary* [Saint Paul, Minnesota: West Publishing Company, 1991; Sixth Edition], page 1030).

42. Lincoln, letter to James C. Conkling, 26 August 1863; quoted by Curtis, *Executive Power*, page 17.

43. Lincoln, in Nicolay and Hay, *Lincoln: Complete Works*, Volume II, page 397.

44. Lincoln, in Nicolay and Hay, *ibid*., pages 402-403.

45. Arthur Charles Cole, *The Era of the Civil War, 1848-1870* (Springfield, Illinois: Illinois Centennial Commission, 1919), page 300.

State laws which regulate the domestic relations of their people. Such is the mode of operation of the decree....

It must be obvious to the meanest capacity, that if the President of the United States has an *implied* constitutional right, as commander-in-chief of the army and navy in time of war, to disregard any one positive prohibition of the Constitution, or to exercise any one power not delegated to the United States by the Constitution, because, in his judgment, he may thereby "best subdue the enemy," he has the same right, for the same reason, to disregard each and every provision of the Constitution, and to exercise all power, *needful, in his opinion*, to enable him "best to subdue the enemy."

It has never been doubted that the power to abolish slavery within the States was not delegated to the United States by the Constitution, but was reserved to the States. If the President, as commander-in-chief of the army and navy in time of war, may, by an executive decree, exercise this power to abolish slavery in the States, which power was reserved to the States, because he is of opinion that he may thus "best subdue the enemy," what other power, reserved to the States or to the people, may not be exercised by the President, for the same reason, that he is of the opinion that he may thus best subdue the enemy?...

The necessary result of this interpretation of the Constitution is, that, in time of war, the President has any and all power, which he may deem it necessary to exercise, to subdue the enemy; and that... every right reserved to the States or the people, rests merely upon executive discretion.

But the military power of the President is derived solely from the Constitution; and it is as sufficiently defined there as his purely civil power. These are its words: "The President shall be the Commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States."

This is his military power. He is the general-in-chief; and as such, in prosecuting war, may do what generals in the field are allowed to do within the sphere of their actual operations, *in subordination to the laws of the their country, from which alone they derive their authority* (emphasis in original).[46]

The above legal defects notwithstanding, Lincoln's Proclamation did not actually accomplish what many people believe it did. The editors of the New York *World* made the following observations:

The President has purposely made the proclamation inoperative in all places where we have gained a military footing which makes the slaves accessible. He has proclaimed emancipation only where he has notoriously no power to execute it. The exemption of the accessible parts of Louisiana, Tennessee, and Virginia renders the proclamation not merely futile, but ridiculous....

Immediate practical effect it has none; the slaves remaining in precisely the same condition as before. They still live on the plantations, tenant their accustomed hovels, obey the command of their master... eating the food he furnishes and doing the work he requires

46. Curtis, *Executive Power*, pages 15, 18-19, 21-22.

> precisely as though Mr. Lincoln had not declared them free....
>
> The proclamation is issued as a war measure, as an instrument for the subjugation of the rebels. But that cannot be a means of military success which presupposes the same... success as the condition of its own existence.... A war measure it clearly is not, inasmuch as the previous success of the war is the thing that can give it validity.[47]

British foreign minister and observer of the war, Earl John Russell, likewise commented in a letter dated 17 January 1863:

> The Proclamation of the President of the United States... appears to be of a very strange nature. It professes to emancipate all slaves in places where the United States authorities cannot exercise any jurisdiction... but it does not decree emancipation... in any States, or parts of States, occupied by federal troops... and where, therefore, emancipation... might have been carried into effect.... There seems to be no declaration of a principle adverse to slavery in this proclamation. It is a measure of war, and a measure of war of a very questionable kind.[48]

Lincoln's Secretary of State Seward expressed his own disgust for the Proclamation when he bitterly complained, "We show our sympathy with slavery by emancipating slaves where we cannot reach them, and holding them in bondage where we can set them free."[49] Seward also feared that the Proclamation would be viewed as "the last measure of an exhausted government" and "our last shriek in retreat."[50] One week before the original Proclamation was issued, Lincoln himself expressed his fears that such an edict would be as ineffective toward its alleged purpose of emancipation as "the Pope's bull against the comet." He went on to reason:

> Would my word free the slaves, when I cannot even enforce the Constitution in the rebel states? Is there a single court, or magistrate, or individual that would be influenced by it there? And what reason is there to think it would have any greater effect upon the slaves than the late law of Congress, which I approved, and which offers protection and freedom to the slaves of rebel masters who come within our lines? Yet I cannot learn that that law has caused a single slave to come over to us. And suppose they could be induced by a proclamation of freedom from me to throw themselves upon us, what would we do with them? How can we feed and care for such a multitude? Gen. Butler wrote me a few days since that he was issuing more rations to the slaves who have rushed to him than to

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47. New York *World*, 7 January 1863; quoted by Randall, *Civil War and Reconstruction*, page 491.

48. Earl John Russell, letter to British consul Lord Richard Lyons, 17 January 1863; in Henry Wheaton (W.B. Lawrence, editor), *Elements of International Law* (Boston: Little, Brown and Company, 1863), page 37.

49. Seward, quoted by Piatt, *Memories of the Men Who Saved the Union*, page 150.

50. Seward, quoted by Rhodes, *History of the United States*, Volume IV, page 72.

all the white troops under his command. They eat, and that is all.[51]

Near the end of the war, Lincoln's doubts as to the validity of the Proclamation had not subsided: "A question might be raised whether the proclamation was legally valid. It might be urged, that it only aided those that came into our lines, and that it was inoperative as to those who did not give themselves up; or that it would have no effect upon the children of slaves born hereafter; in fact, it would be urged that it did not meet the evil."[52]

The Real Purpose of the Proclamation

If the true purpose of the Emancipation Proclamation was not to emancipate, what then did its author really have in mind when he issued it to the world? It should be kept in mind that the first two years of the war were not going well for the North. Nearly every major engagement — from the first Battle of Manassas in July of 1861 to the Battle of Fredericksburg in December of 1862 — had been a decisive Confederate victory. Even the bloodiest battle ever fought on American soil — the Battle of Sharpsburg (Antietam) — ended in a stalemate for both sides. The public credit of the North was plummeting in proportion to the rising discontent among the Northern people with Lincoln's war policy. According to James Randall, "Many urged that the South was ready for a reasonable peace and that it was only the obstinacy of the Lincoln administration which prolonged the war...."[53] The pro-war Radicals, on the other hand, openly criticized Lincoln for what they considered to be his incompetence as a military commander-in-chief. The cost of the war had escalated to an astronomical $1 million per day,[54] and, with no end in sight, even Lincoln himself admitted that the Government at Washington was at "the end of [its] rope" militarily.[55] Moreover, Great Britain had pledged its neutrality on 13 May 1861, which had the effect of granting the Southern Confederacy *de facto* belligerent status under international law — a status the Lincoln Government was zealous to deny the Confederate Government. The other European powers had followed England's example. James Spence's outstanding defense of the South and the constitutional right of secession, entitled *The American Union*, had been pub-

51. Lincoln, speech delivered on 15 September 1862; quoted in *Blackwood's Magazine*, 1 November 1862, pages 640, 642; Nicolay and Hay, *Lincoln: Complete Works*, Volume II, page 234.

52. Lincoln, speech delivered on 31 January 1865; in Nicolay and Hay, *ibid.*, Volume II, pages 633-634.

53. Randall, *Civil War and Reconstruction*, page 315.

54. Samuel Sullivan Cox, speech in the House of Representatives on 15 December 1862; in *Congressional Globe* (Thirty-Seventh Congress, Third Session), page 95.

55. Lincoln, quoted in Paul M. Angle (editor), *The American Reader* (New Brunswick, New Jersey: Rutgers University Press, 1947), page 407.

lished in London in early 1862 and the British press, which reflected the views of English society, was decidedly pro-Southern. As Confederate diplomats were also being sent throughout Europe and Mexico in the hopes of soliciting full-scale recognition of the South as an independent member of the "family of nations," and as the North continued to fail militarily, the world generally refused to accept Lincoln's claim that the conflict was merely a "police action" against a domestic insurrection, seeing it rather for what it really was — a struggle "for empire on the side of the North and for independence on that of the South...."[56] With the number of American dead reaching horrendous heights, Minister Russell had expressed his opinion that the time had come for Great Britain to offer "mediation... with a view to the recognition of the independence of the Confederates,'[57] and that, in the event of a failure to mediate between the two belligerents, England should on her own part recognize the South.

Thus, in the words of Frank Lawrence Owsley, "[T]he South almost realized its ambitions of drawing England in upon its side."[58] Lincoln knew that if such occurred, it would mean disaster for the Northern cause and probably war with England. Therefore, first and foremost, the Proclamation was a specious piece of propaganda, carefully designed to influence the anti-slavery European nations to side with the North rather than the South. In the 13 August 1862 issue of the New York *Tribune*, the editors reasoned thusly:

> The liberal sentiment of Christendom would be fixed and intensified on the side of the Union by such a decree. At present, any champion of the rebel cause, who rises to speak in Parliament or elsewhere, begins by solemnly asseverating that slavery has nothing to do with the contest — that the North is fighting for slavery as well as the South, and quoting our dispatches, resolves and speeches to sustain that position. A decree of emancipation would effectively quelch that falsehood.... No foreign country but Dahomey would venture to side with the Davis Confederacy, if it were made clear that it was fighting for slavery, while we were fighting against it.[59]

Lincoln may also have had another and more sinister end in mind for his own "bull against the comet." Although he had spent many years and had delivered countless speeches in denial of any affinity for the philosophies and tactics of the South-hating Abolitionists of the North, Lincoln appeared to have had caved in to pressure and come full circle to employ their most cherished weapon — servile insurrection — "as a punishment for the seceding

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56. London *Times*, 7 November 1861, page 6.

57. Russell, quoted by Ephraim D. Adams, *Great Britain and the American Civil War* (London, England: Longmans, Green, and Company, 1925), Volume II, page 38.

58. Frank Lawrence Owsley, *King Cotton Diplomacy: Foreign Relations of the Confederate States of America* (Chicago, Illinois: University of Chicago Press, 1931), page 59.

59. New York *Tribune*, 13 August 1862; quoted by Carpenter, *Logic of History*, page 155.

States."[60]

Slave uprisings were not unheard of in the Nineteenth Century. In fact, by the time the Republicans came to power in the United States, the revolutionary doctrines of the French Revolution had generated no less than eighty such insurrections in the Caribbean alone. For example, when agitation began in the Constituent Assembly in 1791 for the abolition of slavery in the French colonies, an Abolitionist by the name of Jacques-Pierre Brissot, leader of The Society of Friends of Blacks, instigated the slaves of St. Domingo to organize an insurrection. They responded on the 31st of October, by raping, torturing, and slaughtering Whites by the thousands:

> In an instant twelve hundred coffee and two hundred sugar plantations were in flames: the buildings, the machinery, the farm offices, reduced to ashes; the unfortunate proprietors hunted down, murdered or thrown into the flames by infuriated negroes. The horrors of a servile war universally appeared. The unchained African signalized his ingenuity by the discovering of new and unheard-of modes of torture. An unhappy planter was sawed asunder between two boards; the horrors inflicted on the women exceeded anything known even in the annals of Christian ferocity. Upon the indulgent master young and old, rich and poor, the wrongs of an oppressed race were indiscriminately wreaked. Crowds of slaves traversed the country with the heads of white children affixed on their pikes; they served as the standards of these furious assemblages. In a few instances only, the humanity of the negro character resisted the savage contagion of the time; and some faithful slaves, at the hazard of their own lives, fed in caves their masters or their children, whom they had rescued from destruction.[61]

The worst of these insurrections had occurred when Napoleon issued a proclamation in 1801 emancipating the slaves throughout Haiti, and declaring them to be "all alike free and equal before God and the Republic." A British naval officer, who witnessed the ensuing uprising, described what the Blacks did to their former masters: "Some they shot having tied them from fifteen to twenty together. Some they pricked to death with their bayonets, and others they tortured in such a manner too horrid to describe." Napoleon sent in 45,000 troops to restore order, but in the end, 20,000 Whites had been massacred by rampaging Blacks.[62]

That Lincoln was well aware of these catastrophes cannot be honestly disputed. He also could not have been ignorant of the Denmark Vesey conspiracy of 1825, in which the perpetrator, a free Black, had appealed to the Old Testament in an effort to convince the slaves of Charleston, South Carolina to rise up to sack the city and murder its White inhabit-

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60. Rhodes, *History of the United States*, Volume IV, page 344; see also Gideon Welles, *Diary of Gideon Welles* (Boston: Houghton, Mifflin and Company, 1911), Volume II, pages 277-278.

61. Archibald Allison, *The History of Europe From the Commencement of the French Revolution to the Restoration of the Bourbons* (London: Eilliam Blackwood, 1848), Volume I, pages 120-121.

62. Robert Heinl and Nancy Heinl, *Written in Blood: The Story of the Haitian People, 1492-1971* (Boston: Houghton Mifflin Company, 1978), pages 125-130.

ants in cold blood,[63] or of the Southampton, Virginia insurrection of 1831, in which fifty-seven Whites, most of whom were women and children, were slain in their sleep by a mob of Blacks led by a hallucinating slave preacher named Nat Turner.[64] He was certainly aware of John Brown's botched plans in 1859 to incite a massive slave uprising throughout the South, and he was also aware of the incendiary Helper book which had been endorsed two years before that by the Republicans in Congress, most notable among whom was his own Secretary of State, William Seward. It should be remembered that, with the male population of the South largely absent, the plantations during the war were, for the most part, left in the hands of women, children, and the elderly, as well as vast numbers of their slaves. That Lincoln hoped for and fully expected these slaves to respond to his Proclamation by rising up in violent revolt against the nearly defenseless families of Southern soldiers, thus requiring them to quit the field and return home to quell domestic insurrection, was suspected by many observers. It was such an agenda that was denounced by Horatio Seymour, Governor of New York and staunch Unionist:

> The scheme for an immediate emancipation and general arming of the slaves throughout the South is a proposal for the butchery of women and children, for scenes of lust and rapine, arson and murder, unparalleled in the history of the world. Its effect would not be confined to the walls of cities, but there would be a widespread scene of horror over the vast expanse of great States, involving alike the loyal and the seditious. Such malignity and cowardice would invoke the interference of civilized Europe. History tells of the fires kindled in the name of religion, of atrocities committed under the pretext of order or liberty; it is now urged that scenes bloodier than the world has yet witnessed shall be enacted in the name of philanthropy.[65]

The editors of the London *Herald* saw the Proclamation in the same light:

> Another symptom of increasing ferocity — a new source of frightful crime, on the one side, and provocation to horrible vengeance on the other, is disclosed in the demand made in New York for the Abolitionist Proclamation. So far as its nominal purpose goes, this would be as futile as Mr. Lincoln's other edicts. Before he can emancipate the Southern negroes, he must conquer the South. But the demand is not made with a view to the real liberation of the slaves. It is meant to diminish the rebel army, by calling away many officers and men to the defense of their homes. The object is not negro emancipation, but servile insurrection — not the manumission of slaves, but the subornation of atrocities, such as those at Cawnpore and Meireut against women and children of Southern families.
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> For the negro the Northerners care nothing, except as a possible weapon in their

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63. Koger, *Black Slaveowners*, pages 160-186.

64. Theodore M. Whitfield, *Slavery Agitation in Virginia, 1829-1832* (Baltimore, Maryland: The Johns Hopkins Press, 1930), pages 10, 59-61.

65. Horatio Seymour, quoted by *Blackwood's Magazine*, 1 November 1862, page 644.

> hands, by which the more safely and effectually to wreak a cruel and cowardly vengeance on the South. Inferior in every respect to the Sepoys, the negro race would, if once excited to rebellion, outdo them in acts of carnage, as they would fall below them in military courage. They may be useful as assassins and incendiaries; as soldiers against the dominant race, they would be utterly worthless.... These new Abolitionists do not conceal their motives; they have not the decency to pretend conviction; they seek, avowedly, nothing but an instrument of vengeance on their enemy, and an instrument so dastardly, involving the commission of outrages so horrible, that even a government which employs a Mitchell and a Butler must shrink from such a load of infamy.[66]

This anticipated slaughter of White Southerners was justified by the Radical Northern leaders and by the Northern press as an exigency of the war. Charles Sumner, in a speech delivered at Faneuil Hall in Boston, said of the Southern people, "When they rose against a paternal government they set an example of insurrection which has carried death to innumerable firesides. They cannot complain, if their slaves, with better reason, follow it. According to an old law, bloody inventions return to plague the inventor."[67] According to the *North American Review* of Boston, "It may be that the slaves thus armed will commit some atrocities. We shall regret it. But we repeat, this war has been forced upon us.... We hesitate not to say, that it will be better, immeasurably better, that the rebellion should be crushed, even with the incidental consequences attendant on a servile insurrection, than that the hopes of the world in the capacity of mankind to maintain free institutions should expire with American liberty."[68] Likewise, the New York *Courier and Enquirer* advised that "the negroes be let loose on the whites, men, women and children indiscriminately...."[69]

Lincoln held similar views. Not only had he previously denounced as "seditious" a resolution introduced before the outbreak of the war by Stephen Douglas that those inciting the insurrection of slaves should be punished,[70] but he also declared that he would not urge "objections of a moral nature in view of possible consequences of insurrection and massacre at the South."[71] The reader is invited to compare these expressed sentiments with the rather hollow admonition in his Proclamation to Southern slaves to "to abstain from all violence, unless in necessary self-defence." In addition, the following dispatch was issued five months

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66. London *Herald*, quoted by Carpenter, *Logic of History*, page 171.

67. Charles Sumner, *The Works of Charles Sumner* (Boston: Lee and Shepherd, 1880), Volume VII, page 226.

68. "The Character of the Rebellion," *North American Review*, October 1862, pages 532-533.

69. New York *Courier and Enquirer*, quoted by Ashe, *Invasion of the Southern States*, page 35.

70. Nicolay and Hay, *Lincoln: Complete Works*, Volume I, page 611.

71. Lincoln, quoted in Staunton (Virginia) *Spectator*, 7 October 1862, page 2; Nicholay and Hay, *Lincoln: Complete Works*, Volume II, page 234.

later from Washington, D.C.:

> Washington, D.C.
> May 19, 1863
>
> General: A plan has been formed for a simultaneous movement to sever the rebel communications throughout the whole South, which has been sent to some General in each military department in the seceded States, in order that they may act in concert and thus secure success.
>
> The plan is to induce the Blacks to make a simultaneous movement of rising, on the night of the 1st of August next, over the entire States in rebellion, to arm themselves with any and every kind of weapon that may come to hand, and commence operations by burning all the railroad and country bridges, and tear up railroad tracks, and to destroy telegraph lines, *etc*., and then take to the woods, swamps, or the mountains, where they may emerge as occasion may offer for provisions and for further depredations. No blood is to be shed except in self-defense.... This is the plan in substance, and if we can obtain a concerted movement at the time named it will doubtless be successful.
>
> The main object of this letter is to state the time for the rising that it may be simultaneous over the whole South. To carry out the plan in the department in which you have the command, you are requested to select one or more intelligent contrabands, and, after telling them the plan and the time (night of the 1st of August), you will send them into the interior of the country within the enemy's lines and where the slaves are numerous, with instructions to communicate the plan and the time to as many intelligent slaves as possible, and requesting of each to circulate it far and wide over the country, so that we may be able to make the rising understood by several hundred thousand slaves by the time named.
>
> When you have made these arrangements, please enclose this letter to some other General commanding in the same department with yourself, some one whom you know or believe to be favorable to such movement, and he, in turn, is requested to send it to another, and so on until it has traveled the entire round of the Department, and each command and post will in this way be acting together in the employment of negro slaves to carry the plan into effect.
>
> In this way, the plan will be adopted at the same time and in concert over the whole South, and yet no one of all engaged in it will learn the names of his associates, and will only know the number of Generals acting together in the movement. To give the last information, and before enclosing this letter to some other General, put the numeral "1" after the word "approved" at the bottom of the sheet:
>
> And when it has gone the rounds of the Department, the person last receiving it will please enclose it to my address, that I may then know and communicate that this plan is being carried out at the same time.
>
> Yours respectfully, your obedient servant,
> Augustus S. Montgomery.[72]

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72. Augustus S. Montgomery, dispatch dated 19 May 1863; in *Official Records: Armies*, Series I, Volume LI, Part II, page 736.

This nefarious plot was aborted when the above dispatch fell into the hands of the Confederate authorities in Louisiana on the eighteenth of July. Again, the reader should take notice of the hollow admonition that "no blood is to be shed except in self-defense." It is difficult to imagine how "several hundred thousand" Negro slaves, their minds full of Abolitionist propaganda, their hearts thereby stirred to hatred for their Southern masters, and, in addition, armed with "any and every kind of weapon," could have been restrained by mere words on a page from shedding blood. That there never was a widespread uprising of the Southern slaves during the war can be attributed, of course, to the merciful and over-ruling Providence of God. However, from a temporal standpoint, the general unwillingness of the slaves to revolt in the absence of their male masters and to engage in the sort of atrocities hoped for by the Radical Republicans, can only be explained by the mutual feeling of friendship that existed between Whites and Blacks in the old South.[73] These politicians, inflamed with sectional hatred, never understood how such a close relationship could exist between master and slave. To them, Southern planters were all "Simon Legrees," guilty of wickedly scourging or otherwise mistreating their slaves, and the Southern Blacks were all "Uncle Toms," groaning for deliverance from an intolerable labor system as did the Israelites under Egyptian bondage. The Republicans viewed emancipation as a holy crusade against *the* social evil of the Nineteenth Century, even though they had no love for the Negroes themselves, and, as Lincoln would proclaim in his second Inaugural Address, "two hundred and fifty years of unrequitted toil" had to be atoned for by the blood of the Southern people. It was this irrational animosity, and its ultimate expression in the Emancipation Proclamation, that made a peaceful reunion of the States an impossibility. Jefferson Davis noted, "It has established a state of things which can lead to but one of three consequences — the extermination of the slaves, the exile of the whole white population of the Confederacy, or absolute and total separation of these States from the United States."[74] As we shall see, all three of these consequences were partially realized in the decade following the war which has commonly been called the Reconstruction era.

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73. See Chapter Six.

74. Jefferson Davis, speech delivered to the C.S. Congress on 12 January 1863; in Pollard, *Lost Cause*, page 360.

SUPPORTING DOCUMENT

John C. Breckinridge's Speech in the Senate

Congressional Globe — 25 July 1861

Mr. President, I do not propose to detain the Senate for more than a few minutes. I cannot vote for this resolution, because I do not agree with the statement of facts contained in it. I do not propose to argue it at any length, nor to interfere with the purposes of the Senate in the passage of the resolution.

The first statement of fact is, that "the present deplorable civil war has been forced upon the country by the disunionists of the southern States now in revolt against the constitutional Government, and in arms around the capital." I do not intend to go into the antecedents of this unhappy difficulty. My own opinion is, that there have been errors upon both sides; my own opinion is, that these sectional Federal difficulties might have been settled last winter; my opinion is, that the present condition of affairs is due principally to the absolute refusal of the majority in this Chamber to agree to any proposition of adjustment, as I have taken occasion to state, and tried to show heretofore; and I think to that persistent and obstinate refusal, more than to any other cause, is due the present condition of public affairs.

I do not consider that the rupture which took place in the harbor of Charleston, the firing upon the *Star of the West*, and the collision at Fort Sumter, justified the proceedings which took place upon the part of the President of the United States, that have made one blaze of war from the Atlantic to the western borders of the Republic. I do not believe that he had a right to take that step which produced this war, and to call, under executive authority alone, the largest armies into the field ever assembled on the continent, and the largest fleet ever collected in American harbors. I believe that after that difficulty, which was then a local one, there was still an opportunity for considerate and thoughtful men, who desired to preserve the Constitution and Union of their country, in the border slaveholding States,

and in the conservative portion of the northern States, to mediate and produce a settlement; and it might have been done, but for the proceedings of the President of the United States and his constitutional advisers.

I believe, therefore, that, first, the gentlemen who represented the majority in this Chamber and the House of Representatives were responsible for the failure to produce a just and reasonable settlement; and secondly, the President of the United States is chiefly responsible for the broad, general war that is upon us.

The resolution proceeds: "That in this national emergency, Congress, banishing all feeling of mere passion and resentment, will recollect only its duty to the whole country." I do not think the Congress of the United States has recollected only its duty to the whole country. I think the Congress of the United States — perhaps, sir, I have no right to speak of the other House in my place here; but I believe that the Senate of the United States is influenced to a considerable degree by those considerations which do not touch the interests of the whole country, and that to some extent it is influenced by passion and resentment.

"That this war is not prosecuted upon our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor for the purpose of overthrowing or interfering with the rights and established institutions of those States." I think, sir, that this war is prosecuted, according to the purposes of a majority of those who are managing the legislation that leads to its prosecution, for objects of subjugation. I believe that, unless those States which have seceded from the Federal Union lay down their arms and surrender at discretion, the majority in Congress will hear to no terms of settlement, and that those who may attempt to mediate will speak to the winds. I believe, therefore, that the war, in the sense and spirit entertained by these gentlemen, is a war of subjugation. The eminent Senator from Ohio [Mr. Sherman], not less conservative than a majority of the organization with which he is connected, went so far, in the warmth of his feelings, the other day, as to declare that, unless the people of certain States in the South yielded willing obedience, he would depopulate them and people them over again. That I call not only a war of subjugation, but a war of extermination.

"...nor for the purpose of overthrowing or interfering with the rights or established institution of those States." On the day before yesterday, I think, sir, an amendment offered by the Senator from Illinois [Mr. Trumbell] to one of the general bills before the Senate received the vote of an overwhelming majority of this body, which declared that any person held to service or labor who should be employed to aid the rebellion in any form should be discharged from service or labor. These were the general vague terms of that proposition. I think I have the very words. Now what have the President of the United States, and the Secretary of the Treasury, and his other advisers, construed to mean by aiding and promoting? The furnishing of provisions and raising of supplies they construe to be aiding and promoting. They have even cut off from the Union people of the southern States the very necessaries of life. Quinine for the sick, medical stores for women and for children, the old and feeble and the young have been cut off from those States by an act of executive usurpation. A cordon has been drawn around them; they have been environed, blockaded, and even the necessaries of life and those medical necessaries which are essential to the sick cut off,

alike from the Unionists and disunionists, from all; and that because they would be used in an indirect way for aiding and promoting this resistance to the Federal Government.

I consider that amendment passed by a vote of the Senate, so far as the vote of this Senate can go, a general act of emancipation. I should like to know if those held to service or labor who are employed as agricultural laborers in the South in raising cotton, in raising corn and other products, which are used by the mass of the population, cannot readily be considered by a rampant and fanatic spirit as being employed in aiding the rebellion. Certainly as readily as every means of subsistence can be cut off from that whole country by the act of the Executive, approved by the legislative department of the Government.

The resolution proceeds: "But to defend and maintain the supremacy of the Constitution, and all laws made in pursuance thereof..." The conduct of the war up to this time has not been characterized by any purpose to maintain the supremacy of the Constitution; on the contrary, it has been deliberately trampled under foot in every step of the procedure. I have undertaken to show, and other gentlemen have undertaken to show, that the Constitution has been deliberately, frequently, and flagrantly violated. We have heard violent, denunciatory, stirring speeches made in opposition; but we have heard no arguments to meet those we have had the honor to adduce before the Senate. While they stand unanswered, I maintain that the war, in its inception and in its progress, is not to maintain the Constitution, but is in derogation of that instrument. It is not enough to tell me that it has been violated in the first instance by others. The adhering States of this Union have the right to demand that the Constitution shall be the measure of Federal action; and the violation of the Constitution (conceding the point) by any number of individuals, or any number of States, does not justify the Federal Government, in opposition to the rights of loyal and adhering States, in violating that instrument, which is the bond of their connection with the Federal Government and the measure of their allegiance to it. Then, sir, in my opinion, it is not to defend and maintain the Constitution.

"...and to preserve the Union, with all the dignity, equality, and rights of the several States unimpaired." I believe, sir, in point of fact, that if this war continues, the equality and dignity and rights of the several States will not be preserved unimpaired, either of those which have withdrawn or of those that remain. I believe the prosecution of this war for twelve months, if waged successfully, will be the grave of constitutional liberty upon this continent. That is my humble judgment. I believe it is no remedy for the present difficulties. I believe, when you array ten or twelve million people on one side, and some eighteen or nineteen million people on the other, and when you put aside the Constitution of your country, and they wage war like two nations, it is a war of subjugation, and it will terminate in the conquest of one or the other; and however it may terminate, be equally disastrous to both.

I am quite aware, sir, that I stand here, in uttering these opinions, almost alone. They are my opinions. I am responsible for them in my place, and under the Constitution of my country have a right to utter them in my place. I know that the rampant spirit of passion is abroad over the land, and I know there are many here and elsewhere who have staked their all upon inflaming it, and keeping it inflamed to the frenzy point. The day is not yet, but it

draws nigh, when a terrible accountability will be rendered by those who are plunging their country into the vortex of ruin, under the pretense of maintaining the Constitution and the laws. Peace, sir, peace is what we want for the restoration of the Federal Union and the preservation of constitutional liberty.

I will not, however, be drawn into a further discussion of the resolution. I simply rose to express, in brief, the reason why I cannot vote for it.

SUPPLEMENTARY ESSAY

Executive Power

by Benjamin Robbins Curtis

No citizen can be insensible to the vast importance of the late proclamations and orders of the President of the United States. Great differences of opinion already exist concerning them. But whatever those differences of opinions may be, upon one point all must agree. They are assertions of transcendent executive power.

There is nothing in the character or conduct of the chief magistrate, there is nothing in his present position in connection with these proclamations, and there is nothing in the state of the country, which should prevent a candid and dispassionate discussion either of their practical tendencies, or of the source of power from whence they are supposed to spring.

The President, on all occasions, has manifested the strongest desire to act cautiously, wisely, and for the best interests of the country. What is commonly called his proclamation of emancipation, is, from its terms and from the nature of the case, only a declaration of what, at its date, he believed might prove expedient, within yet undefined territorial limits, three months hence, thirty days after the next meeting of Congress, and within territory not at present subject even to our military control. Of course such an executive declaration as to his future intentions, must be understood by the people to be liable to be modified by events, as well as subject to such changes of views, respecting the extent of his own powers, as a more mature, and possibly a more enlightened consideration may produce.

In April, 1861, the President issued his proclamation, declaring that he would treat as pirates all person who should cruise, under the authority of the so-called Confederate States, against the commerce of the United States. But subsequent events induced him, with general acquiescence, to exchange them as prisoners of war. Not from any fickleness of purpose; but because the interests of the country imperatively demanded this departure from

his proposed course of action.

In like manner, it is not to be doubted by any one who esteems the President honestly desirous to do his duty to the country, under the best lights possible, that when the time for his action on his recent proclamations and orders shall arrive, it will be in conformity with his own wishes, that he should have those lights which are best elicited in this country by temperate and well-considered public discussion; discussion, not only of the practical consequences of the proposed measures, but of his own constitutional power to decree and execute them.

The Constitution has made it incumbent on the President to recommend to Congress such measures as he shall deem necessary and expedient. Although Congress will have been in session nearly thirty days before any executive action is proposed to be taken on this subject of emancipation, it can hardly be supposed that this proclamation was intended to be a recommendation to them. Still, in what the President may perhaps regard as having some flavor of the spirit of the Constitution, he makes known to the people of the United States his proposed future executive action; certainly not expecting or desiring that they should be indifferent to such a momentous proposal, or should fail to exercise their best judgments, and afford their best counsels upon what so deeply concerns themselves.

Our public affairs are in a condition to render unanimity, not only in the public councils of the nation, but among the people themselves, of the first importance. But the President must have been aware, when he issued these proclamations, that nothing approaching towards unanimity upon their subjects could be attained, among the people, save through their public discussion. And as his desire to act in accordance with the wisest and best settled and most energetic popular sentiment cannot be doubted, we may justly believe that executive action has been postponed, among other reasons, for the very purpose of allowing time for such discussion.

And, in reference to the last proclamation, and the orders of the Secretary of War, intended to carry it into practical effect, though their operation is immediate, so far as their express declarations can make them so, they have not yet been practically applied to such an extent, or in such a way, as not to allow it to be supposed that the grounds upon which they rest are open for examination.

However this may be, these are the subjects in which the people have vast concern. It is their right, it is their duty, to themselves and to their posterity, to examine and to consider and to decide upon them; and no citizen is faithful to his great trust if he fail to do so, according to the best light he has, or can obtain. And if, finally, such examination and consideration shall end in diversity of opinion, it must be accepted as justly attributable to the questions themselves, or to the men who have made them.

It has been attempted by some partisan journals to raise the cry of "disloyalty" against any one who should question these executive acts. But the people of the United States know that loyalty is not subserviency to a man, or to a party, or to the opinion of newspapers; but that it is an honest and wise devotion to the safety and welfare of our country, and to the great principles which our constitution of government embodies, by which alone that safety

and welfare can be secured. And, when those principles are put in jeopardy every truly loyal man must interpose, according to his ability, or be an unfaithful citizen.

This is not a government of men. It is a government of laws. And the laws are required by the people to be in conformity with their will, declared by the Constitution. Our loyalty is due to that will. Our obedience is due to those laws; and he who would induce submission to other laws, springing from sources of power not originating in the people, but in casual events, and in the mere will of the occupants of places of power, does not exhort us to loyalty, but to a desertion of our trust.

That they whose principles he questions have the conduct of public affairs; that the times are most critical; that public unanimity is highly necessary; while these facts afford sufficient reasons to restrain all opposition upon any personal or party grounds, they can afford no good reason — hardly a plausible apology — for failure to oppose usurpation of power, which, if acquiesced in and established, must be fatal to a free government.

The war in which we are engaged is a just and necessary war. It must be prosecuted with the whole force of this government till the military power of the South is broken, and they submit themselves to their duty to obey, and our right to have obeyed, the Constitution of the United States as "the supreme law of the land." But with what sense of right can we subdue them by arms to obey the Constitution as the supreme law of *their* part of the land, if we have ceased to obey it, or failed to preserve it, as the supreme law of *our* part of the land?

I am a member of no political party. Duties, inconsistent, in my opinion, with the preservation of any attachments to a political party, caused me to withdraw from all such connections many years ago, and they have never been resumed. I have no occasion to listen to the exhortations, now so frequent, to divest myself of party ties, and disregard party objects, and act for my country. I have nothing but my country for which to act, in any public affair; and solely because I have that yet remaining, and know not but it may be possible, from my studies and reflections, to say something to my countrymen which may aid them to form right conclusions in these dark and dangerous times, I now, reluctantly, address them.

I do not propose to discuss the question whether the first of these proclamations of the President, if definitively adopted, can have any practical effect on the unhappy race of persons to whom it refers; nor what its practical consequences would be upon them and upon the white population of the United States, if it should take effect; nor through what scenes of bloodshed, and worse than bloodshed, it may be we should advance to those final conditions; nor even the lawfulness, in any Christian or civilized sense, of the use of such means to attain *any* end.

If the entire social condition of nine millions of people has, in the providence of God, been allowed to depend upon the executive decree of one man, it will be the most stupendous fact which the history of the race has exhibited. But, for myself, I do not yet perceive that this vast responsibility is placed upon the President of the United States. I do not yet see that it depends upon his executive decree whether a servile war shall be invoked to help twenty millions of the white race to assert the rightful authority of the Constitution and laws of their

country over those who refuse to obey them. *But I do see that this proclamation asserts the power of the Executive to make such a decree.*

I do not yet perceive how it is that my neighbors and myself, residing remote from armies and their operations, and where all the laws of the land may be enforced by constitutional means, should be subjected to the possibility of military arrest and imprisonment, and trial before a military commission, and punishment at its discretion for offences unknown to the law; a possibility to be converted into a fact at the mere will of the President, or of some subordinate officer, clothed by him with this power. *But I do perceive that this executive power is asserted.*

I am quite aware that in times of great public danger, unexpected perils, which the legislative power have failed to provide against, may imperatively demand instant and vigorous executive action, passing beyond the limits of the laws; and that, when the Executive has assumed the high responsibility of such a necessary exercise of mere power, he may justly look for indemnity to that department of the government which alone has the rightful authority to grant it — an indemnity which should be always sought and accorded *upon the clearest admission of legal wrong*, finding its excuse in the exceptional case which made that wrong absolutely necessary for the public safety.

But I find no resemblance between such exceptional cases and the substance of these proclamations and these orders. They do not relate to exceptional cases — they establish a system. They do not relate to some instant emergency — they cover an indefinite future. They do not seek for excuses — they assert powers and rights. They are general rules of action, applicable to the entire country, and to every person in it; or to great tracts of country and to the social condition of their people; and they are to be applied whenever and wherever and to whomsoever the President, or any subordinate officer whom he may employ, may choose to apply them.

Certainly these things are worthy of the most deliberate and searching examination. Let us, then, analyze these proclamations and orders of the President; let us comprehend the nature and extent of the powers they assume. Above all, let us examine that portentous cloud of the military power of the President, which is supposed to have overcome us and the civil liberties of the country, pursuant to the will of the people, ordained in the Constitution because *we are in a state of war*.

And first, let us understand the nature and operation of the proclamation of emancipation, as it is termed; then, let us see the character and scope of the other proclamation, and the orders of the Secretary of War, designed to give it practical effect, and having done so, let us examine the asserted source of these powers.

The proclamation of emancipation, if taken to mean what in terms it asserts, is an executive decree that on the first day of January next, all persons held as slaves within such States and parts of States as shall then be designated, shall cease to be lawfully held to service, and may by their own efforts, and with the aid of the military power of the United States, vindicate their lawful right to their personal freedom.

The persons who are the subjects of this proclamation are held to service by the laws

of the respective States in which they reside, enacted by State authority, as clear and unquestionable, under our system of government, as any law passed by any State on any subject. This proclamation, then, by an executive decree, proposes to repeal and annul valid State laws which regulate the domestic relations of their people. Such is the mode of operation of the decree.

The next observable characteristic is that this executive decree holds out this proposed repeal of State laws as a threatened *penalty* for the continuance of a governing majority of the people of each State, or part of a State, in rebellion against the United States. So that the President hereby assumes to himself the power to denounce it as a punishment against the entire people of a State that the valid laws of that State which regulate the domestic condition of its inhabitants shall become null and void at a certain future date by reason of the criminal conduct of a governing majority of its people.

This penalty, however, it should be observed, is not to be inflicted on those persons who have been guilty of treason. The freedom of *their* slaves was already provided for by the act of Congress, recited in a subsequent part of the proclamation. It is not, therefore, as a punishment of guilty persons that the commander-in-chief decrees the freedom of slaves. It is upon the slaves of loyal persons, or of those who, from their tender years, or other disability, cannot be either disloyal or otherwise, that the proclamation is to operate, if at all; and it is to operate to set them free, in spite of the valid laws of their States, because a majority of the legal voters do not send representatives to Congress.

Now it is easy to understand how persons held to service under the laws of these States, and how the army and navy under the orders of the President, may overturn these valid laws of the States, just as it is easy to imagine that any law may be *violated by physical force*. But I do not understand it to be the purpose of the President to incite a part of the inhabitants of the United States to rise in insurrection against valid laws; but that by virtue of some power which he possesses, he proposes to annul those laws, so that they are no longer to have any operation.

The second proclamation, and the orders of the Secretary of War which follow it, place every citizen of the United States under the direct military command and control of the President. They declare and define new offences not known to any law of the United States. They subject all citizens to be imprisoned upon a military order, at the pleasure of the President, when, where, and so long as he, or whoever is acting for him, may choose. They hold the citizen to trial before a military commission appointed by the President, or his representative, for such acts or omissions as the President may think proper to decree to be offences; and they subject him to such punishment as such military commission may be pleased to inflict. They create new offices, in such number, and whose occupants are to receive such compensation as the President may direct; and the holders of these offices, scattered through the States, but with a chief inquisitor at Washington, are to inspect and report upon the loyalty of the citizens, with a view to the above described proceedings against them, when deemed suitable by the central authority.

Such is a plain and accurate statement of the nature and extent of the powers asserted

in these executive proclamations.

What is the source of these vast powers? Have they any limit? Are they derived from, or are they utterly inconsistent with the Constitution of the United States? The only supposed source or measure of these vast powers appears to have been designated by the President, in his reply to the address of the Chicago clergymen, in the following words: "Understand, I raise no objection against it on legal or constitutional grounds; for, *as commander-in-chief of the army and navy, in time of war, I suppose I have a right to take any measure which may best subdue the enemy."* This is a clear and frank declaration of the opinion of the President respecting the origin and extent of the power he supposes himself to possess; and, so far as I know, *no source of these powers other than the authority of commander-in-chief in time of war, has ever been suggested.*

There has been much discussion concerning the question whether the power to suspend the "privilege of the writ of *habeas corpus*" is conferred by the Constitution on Congress, or on the President. The only judicial decisions which have been made upon this question have been adverse to the power of the President. Still, very able lawyers have endeavored to maintain — perhaps to the satisfaction of others — have maintained, that the power to deprive a particular person of the "privilege of the writ," is an executive power. For while it has been generally, and, so far as I know, universally admitted, that Congress alone can suspend a law, or render it inoperative, and consequently that Congress alone can prohibit the courts from issuing the writ, yet that the executive might, in particular cases, suspend or deny the privilege which the writ was designed to secure. I am not aware that any one has attempted to show that under this grant of power to suspend "the privilege of the writ of *habeas corpus*," the President may annul the laws of States, create new offences unknown to the laws of the United States, erect military commissions to try and punish them, and then, by a sweeping decree, suspend the writ of *habeas corpus* as to all persons who shall be "arrested by any military authority." I think he would make a more bold than wise experiment on the credulity of the people, who should attempt to convince them that this power is found in the *habeas corpus* clause of the Constitution. No such attempt has been, and I think none such will be made. And therefore I repeat, that no other source of this power *has ever been suggested* save that described by the President himself, as belonging to him as commander-in-chief.

It must be obvious to the meanest capacity, that if the President of the United States has an *implied* constitutional right, as commander-in-chief of the army and navy in time of war, to disregard any one positive prohibition of the Constitution, or to exercise any one power not delegated to the United States by the Constitution, because, in his judgment, he may thereby "best subdue the enemy," he has the same right, for the same reason, to disregard each and every provision of the Constitution, and to exercise all power *needful, in his opinion*, to enable him "best to subdue the enemy."

It has never been doubted that the power to abolish slavery within the States was not delegated to the United States by the Constitution, but was reserved to the States. If the President, as commander-in-chief of the army and navy in time of war, may, by an executive

decree, exercise this power to abolish slavery in the States, which power was reserved to the States, because he is of opinion that he may thus "best subdue the enemy," what other power, reserved to the States or to the people, may not be exercised by the President, for the same reason, that he is of opinion he may thus best subdue the enemy? And if so, what distinction can be made between powers not delegated to the United States at all, and powers which, though thus delegated, are conferred by the Constitution upon some department of the government other than the executive? Indeed, the proclamation of September 24, 1862, followed by the orders of the War Department, intended to carry it into practical effect, are manifest assumptions by the President of the powers delegated to the Congress and to the judicial department of the government. It is a clear and undoubted prerogative of Congress alone to define all offences and to affix to each some appropriate and not cruel or unusual punishment. But this proclamation and these orders create new offences, not known to any law of the United States. At the same time, they may include, among many other things, acts which are offences against the laws of the United States, among others, treason. Under the Constitution and laws of the United States, except in cases arising in the land or naval forces, every person charged with an offence is expressly required to be proceeded against, and tried by the judiciary of the United States and a jury of his peers; and he is required by the Constitution to be punished in conformity with some act of Congress applicable to the offence proved, enacted before its commission. But this proclamation and these orders remove the accused from the jurisdiction of the judiciary; they substitute a report, made by some deputy provost marshal, for the presentment of a grand jury; they put a military commission in place of a judicial court and jury required by the Constitution; and they apply the discretion of the commission and the President, fixing the degree and kind of punishment, instead of the law of Congress fixing the penalty of the offence.

It no longer remains to be suggested that if the ground of action announced by the President be tenable, he *may*, as commander-in-chief of the army and navy, use powers not delegated to the United States by the Constitution; or *may* use powers by the Constitution exclusively delegated to the legislative and the judicial departments of the government. These things have been already done, so far as the proclamations and orders of the President can effect them.

It is obvious that if no private citizen is protected in his liberty by the safeguards thrown around him by the express provisions of the Constitution, but each and all of those safeguards may be disregarded to subject him to military arrest upon the report of some deputy provost marshal, and imprisonment at the pleasure of the President, and trial before a military commission and punishment at its discretion, because the President is of opinion that such proceedings "may best subdue the enemy," then all members of either house of Congress, and every judicial officer is liable to be proceeded against as a "disloyal person" by the same means and in the same way. So that, under this assumption concerning the implied powers of the President as commander-in-chief in time of war, if the President shall be of opinion that the arrest and incarceration, and trial before a military commission, of a judge of the United States for some judicial decision, or of one or more members of either

house of Congress for words spoken in debate, is "a measure which may best subdue the enemy," there is then conferred on him by the Constitution the rightful power so to proceed against such judicial or legislative officer.

This power is certainly not found in any express grant of power made by the Constitution to the President, nor even in any delegation of power made by the Constitution of the United States to any department of the government. It is claimed to be found solely in the fact that he is the commander-in-chief of its army and navy, charged with the duty of subduing the enemy. And to this end, as he understands it, he is charged with the duty of using, not only those great and ample powers which the Constitution and laws and the self-devotion of the people in executing them, have placed in his hands, but charged with the duty of using powers which the people have reserved to the States, or to themselves; and is permitted to break down those great constitutional safeguards of the partition of governmental powers, and the immunity of the citizen from mere executive control, which are at once both the end and the means of free government.

The necessary result of this interpretation of the Constitution is, that, in time of war, the President has any and all power which he may deem it necessary to exercise to subdue the enemy; and that every private and personal right of individual security against mere executive control, and every right reserved to the States or the people, rests merely upon executive discretion. But the military power of the President is derived solely from the Constitution; and it is as sufficiently defined there as his purely civil power. These are its words: "The President shall be the Commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States." This is his military power. He is the general-in-chief; and as such, in prosecuting war, may do what generals in the field are allowed to do within the sphere of their actual operations, *in subordination to the laws of their country from which they derive their authority*.

When the Constitution says that the President shall be the commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States, does it mean that he shall possess military power and command over all citizens of the United States; that, by military edicts, he may control all citizens, as if enlisted in the army or navy, or in the militia called into the actual service of the United States? Does it mean that he may make himself a legislator and enact penal laws governing the citizens of the United States, and erect tribunals, and create offices to enforce his penal edicts upon citizens? Does it mean that he may, by a prospective executive decree, repeal and annul the laws of the several States, which respect subjects reserved by the Constitution for the exclusive action of the States and the people? The President is the commander-in-chief of the army and navy, not only by force of the Constitution, but under and subject to the Constitution, and to every restriction therein contained, and to every law enacted by its authority, as completely and clearly as the private in the ranks.

He is general-in-chief; but can a general-in-chief *disobey any law of his own country?* When he can, he superadds to his *rights* as commander the *powers* of a usurper; and that is

military despotism. In the noise of arms have we become deaf to the warning voices of our fathers, to take care that the military shall always be subservient to the civil power? Instead of listening to these voices, some persons now seem to think that it is enough to silence objection, to say, true enough, there is no civil right to do this or that, but it is a military act. They seem to have forgotten that every military act is to be tested by the Constitution and laws of the country under whose authority it is done. And that under the Constitution and laws of the United States, no more than under the government of Great Britain, or under any free or any settled government, the mere authority to command an army is not an authority to disobey the laws of the country.

The framers of the Constitution thought it wise that the powers of the commander-in-chief of the military forces of the United States should be placed in the hands of the chief magistrate. But the powers of commander-in-chief are in no degree enhanced or varied by being conferred upon the same officer who has important civil functions. If the Constitution had provided that a commander-in-chief should be appointed by Congress, his powers would have been the same as the military powers of the President now are. And what would be thought by the American people of an attempt by a general-in-chief, to legislate by his decrees, for the people and the States?

Besides, all the powers of the President are executive merely. He cannot make a law. He cannot repeal one. He can only execute the laws. He can neither make, nor suspend, nor alter them. He cannot even make an article of war. He may govern the army, either by general or special orders, but only in subordination of the Constitution and laws of the United States, and the articles of war enacted by the legislative power.

The time has certainly come when the people of the United States *must* understand, and *must* apply those great rules of civil liberty, which have been arrived at by the self-devoted efforts of thought and action of their ancestors, during seven hundred years of struggle against arbitrary power. If they fail to understand and apply them, if they fail to hold every branch of their government steadily to them, who can imagine what is to come out of this great and desperate struggle? The military power of eleven of these States being destroyed — what then? What is to be their condition? What is to be *our* condition?

Are the great principles of free government to be used and consumed as means of war? Are we not wise enough and strong enough to carry on this war to a successful military end without submitting to the loss of any one great principle of liberty? We are strong enough. *We are wise enough*, if the people and their servants will but understand and observe the just limits of military power.

What, then, are those limits? They are these. There is military law; there is martial law. *Military* law is that system of laws enacted by the legislative power for the government of the army and navy of the United States, and of the militia when called into actual service of the United States. It has no control whatever over any person or any property of any citizen. It could not even apply to the teamsters of an army, save by force of express provisions of the laws of Congress, making such persons amenable thereto. The persons and the property of private citizens of the United States are as absolutely exempted from the control

of military law as they are exempted from the control of the laws of Great Britain.

But there is also *Martial law*. What is this? It is the will of a military commander operating without any restraint, save his judgment, upon the lives, upon the property, upon the entire social and individual condition of all over whom this law extends. But, under the Constitution of the United States, *over whom does such law extend?*

Will any one be bold enough to say, in view of the history of our ancestors and ourselves, that the President of the United States can extend such law as that over the entire country, or over any defined geographical part thereof, save in connection with some particular military operations which he is carrying on there? Since Charles I. lost his head, there has been no king in England who could make such law, in that realm. And where is there to be found in our history, or our constitutions, either State or national, any warrant for saying that a President of the United States has been empowered by the Constitution to extend martial law over the whole country, and to subject thereby to his military power every right of every citizen? He has no such authority.

In time of war, a military commander, whether he be the commander-in-chief, or one of his subordinates, must possess and exercise powers both over the persons and the property of citizens which do not exist in time of peace. But he possesses and exercises such powers, not in spite of the Constitution and laws of the United States, or in derogation from their authority, *but in virtue thereof and in strict subordination thereto*. The general who moves his army over private property in the course of his operations in the field, or who impresses into the public service means of transportation, or subsistence, to enable him to act against the enemy, or who seizes persons within his lines as spies, or destroys supplies in immediate danger of falling into the hands of the enemy, uses authority unknown to the Constitution and laws of the United States in time of *peace*; but not unknown to that Constitution and those laws in time of *war*. The power to declare war includes the power to use the customary and necessary means effectually to carry it on. As Congress may institute a state of war, it may legislate into existence and place under executive control the means for its prosecution. And, in time of war without any special legislation, not the commander-in-chief only, but every commander of an expedition, or of a military post, is lawfully empowered by the Constitution and laws of the United States to do whatever is necessary, and is sanctioned by the laws of war, to accomplish the lawful objects of his command. But it is obvious that this implied authority must find early limits somewhere. If it were admitted that a commanding general in the field might do whatever in his discretion might be necessary to subdue the enemy, he could levy contributions to pay his soldiers; he could force conscripts into his service; he could drive out of the entire country all persons not desirous to aid him — in short, he would be the absolute master of the country for the time being.

No one has ever supposed — no one will now undertake to maintain — that the commander-in-chief, in time of war, has any such lawful authority as this. What, then, is his authority over the persons and property of citizens? I answer, that, over all persons enlisted in his forces he has military power and command; that over all persons and property *within the sphere of his actual operations in the field*, he may lawfully exercise such restraint and

control as the successful prosecution of his particular military enterprise may, in his honest judgment, absolutely require; and upon such persons as have committed offences against any article of war, he may, through appropriate military tribunals, inflict the punishment prescribed by law. *And there his lawful authority ends*.

The military power over citizens and their property is a power to *act*, not a power to prescribe rules for *future* action. It springs from present pressing emergencies, and is limited by them. It cannot assume the functions of the statesman or legislator, and make provision for future or distant arrangements by which persons or property may be made subservient to military uses. It is the physical force of an army in the field, and may control whatever is so near as to be actually reached by that force in order to remove obstructions to its exercise.

But when the military commander controls the persons or property of citizens, who are beyond the sphere of his actual operations in the field when he makes laws to govern their conduct, he becomes a legislator. Those laws may be made actually operative; obedience to them may be enforced by military power; their purpose and effect may be solely to recruit or support his armies, or to weaken the power of the enemy with whom he is contending. *But he is a legislator still*; and whether his edicts are clothed in the form of proclamations, or of military orders, by whatever name they may be called, they are laws. If he have the legislative power, conferred on him by the people, it is well. If not, he usurps it.

He has no more lawful authority to hold all the *citizens* of the entire country, outside of the sphere of his actual operations in the field, amenable to his military edicts, than he has to hold all the *property* of the country subject to his military requisitions. He is not the military commander of the *citizens* of the United States, but of its *soldiers*.

Apply these principles to the proclamations and orders of the President. They are not designed to meet an existing emergency in some particular military operation in the field; they prescribe future rules of action touching the persons and property of citizens. They are to take effect, not merely within the scope of military operations in the field, or in their neighborhood, but throughout the entire country, or great portions thereof. Their subject-matter is not military offences, or military relations, but civil offences, and domestic relations; the relation of master and servant; the offences of "disloyalty, or treasonable practices." Their purpose is not to meet some existing and instant military emergency, but to provide for distant events, which may or may not occur; and whose connections, if they should coincide with any particular military operations, are indirect, remote, casual, and possible merely.

It is manifest that in proclaiming these edicts, the President is not acting under the authority of military law; first, because military law extends only over the persons actually enlisted in the military service; and second, because these persons are governed by laws enacted by the legislative power. It is equally manifest that he is not acting under that implied authority which grows out of particular actual military operations; for these executive decrees do not spring from the special emergencies of any particular military operations and are not limited to any field in which any such operations are carried on.

Whence, then, do these edicts spring? They spring from the assumed power to extend

martial law over the whole territory of the United States; a power, for the exercise of which by the President, there is no warrant whatever in the Constitution; a power which no free people could confer upon an executive officer, and remain a free people. For it would make him the absolute master of their lives, their liberties, and their property, with power to delegate his mastership to such satraps as he might select, or as might be imposed on his credulity, or his fears. Amidst the great dangers which encompass us, in our struggles to encounter them, in our natural eagerness to lay hold of efficient means to accomplish our vast labors, let us beware how we borrow weapons from the armory of arbitrary power. They cannot be wielded by the hands of a free people. Their blows will finally fall upon themselves.

Distracted councils, divided strength, are the very earliest effects of an attempt to use them. What lies beyond no patriot is now willing to attempt to look upon.

A leading and influential newspaper, while expressing entire devotion to the President and approbation of his proclamation of emancipation, says, "The Democrats talk about 'unconstitutional acts.' Nobody pretends that this act is constitutional, and nobody cares whether it is or not." I think too well of the President to believe he has done an act involving the lives and fortunes of millions of human beings, and the entire social condition of a great people, without *caring* whether it is conformable to that Constitution which he has, many times, sworn to support.

Among all the causes of alarm which now distress the public mind, there are few more terrible to reflecting men than the tendency to lawlessness which is manifesting itself in so many directions. No stronger evidence of this could be afforded than the open declaration of a respectable and widely circulated journal that "nobody cares" whether a great public act of the President of the United States is in conformity with, or is subversive of the supreme law of the land — the only basis upon which the government rests; that our public affairs have become so desperate, and our ability to retrieve them by the use of honest means is so distrusted, and our willingness to use other means so undoubted, that our great public servants may themselves break the fundamental laws of the country and become usurpers of vast powers not intrusted to them, in violation of their solemn oaths of office; and "nobody cares."

It is not believed that this is just to the people of the United States. They do *care*, and the President *cares*, that he and all other public servants should obey the Constitution. Partisan journals, their own honest and proper desire to support the President — on whose wisdom and firmness they rely to relieve their country from its evils and dangers — and the difficulties which the mass of the people encounter in forming opinions on questions of constitutional law, may prevent them, for a limited time, from arriving at a just judgment of such questions, *or of the vast practical effects dependent on them.*

But the people of the United States do not expect national concord to spring from usurpations of power; or national security from the violation of those great principles of public liberty which are the only possible foundation in this country of private safety and of public order. Their instincts demand a purer and more comprehensive statesmanship than that which seizes upon unlawful expedients, because they may possibly avert for the moment

some threatening danger, at the expense of the violation of great principles of free government, or of the destruction of some necessary safeguard of individual security.

It is a subject of discussion in the public journals whether it is the intention of the Executive to use the powers asserted in the last proclamation and in the orders of the Secretary of War to suppress free discussion of political subjects. I have confidence in the purity and the patriotism both of the President and of the Secretary of War. I fear no such present application of this proclamation and these orders by them. But the execution of such powers must be intrusted to subordinate agents, and it is of the very essence of arbitrary power that it should be in hands which can act promptly and efficiently, and unchecked by forms. These great powers must be confided to persons actuated by party, or local or personal feelings and prejudices; or, what would often prove as ruinous to the citizen actuated by a desire to commend their vigilance to their employers, and by a blundering and stupid zeal in their service.

But it is not this or that particular application of power which is to be considered. It is the existence of the power itself, and the uses of which it is susceptible while following out the principle on which it has been assumed. The uses of power, even in despotic monarchies, are more or less controlled by usages and customs, or in other words, public opinion. In good hands, and in favorable times, despotic power is not commonly allowed to be felt to be oppressive; and, always, the forms of a free government, which has once existed, so far as is practicable, are carefully and speciously preserved. But a wise people does not trust its condition and rights to the happy accident of favorable times or good hands. It is jealous of power. It knows that of all earthly things, it is that thing most likely to be abused; and when it affects a nation, most destructive by its abuse. They will rouse themselves to consider what is the power claimed; what is its origin; what is its extent; what uses may be made of it in dangerous times, and by men likely to be produced in such times — and while they will trust their public servants, and will pour out their dearest blood like water to sustain them in their honest measures for their country's salvation, they will demand of those servants obedience to their will, as expressed in the fundamental laws of the government, to the end that there shall not be added to all the sufferings and losses they have uncomplainingly borne, that most irreparable of all earthly losses — the ruin of the principles of their free government.

What then is to be done? Are we to cease our utmost efforts to save our country, because its chief magistrate seems to have fallen, for the time being, into what we believe would be fatal errors if persisted in by him and acquiesced in by ourselves? Certainly not. Let the people but be right, and no President can long be wrong; nor can he effect any fatal mischief if he should be.

The sober second thought of the people has yet a controlling power. Let this gigantic shadow which has been evoked out of the powers of the commander-in-chief once be placed before the people, so that they can see clearly its proportions and its mien, and it will dissolve and disappear like the morning cloud before the rising sun.

The people yet can and will take care, by legitimate means, without disturbing any principle of the Constitution, or violating any law, or relaxing any of their utmost efforts for

their country's salvation, that their will, embodied in the Constitution, shall be obeyed. If it needs amendment, they will amend it themselves. They will suffer nothing to be added to it, or taken from it, by any other power than their own. If they should, neither the government itself, nor any right under it, will any longer be theirs.

The preceding essay was extracted from Benjamin Robbins Curtis, Executive Power *(Boston: Little, Brown and Company, 1862).*

CHAPTER FOURTEEN

The Effects of the Emancipation Proclamation

Northern Soldiers Begin to Desert

It had been predicted that the issuance of the Emancipation Proclamation would swell the ranks of the Northern army with fresh recruits. However, the opposite proved to be the result. In a private letter to Vice President Hannibal Hamlin, Lincoln expressed his disappointment with the effects of the edict:

> While I hope something from this proclamation, my expectations are not so sanguine as are those of some friends. The time for its effect southward has not come; but northward the effect should be instantaneous. It is six days old and while commendation in newspapers and by distinguished individuals is all that a vain man could wish, the stocks have declined and troops come forward more slowly than ever. This looked squarely in the face is not very satisfactory. We have fewer troops in the field at the end of six days than we had at the beginning — the attrition among the old, outnumbering the addition by the new. The North responds to the proclamation sufficiently in breath; but breath alone kills no rebels. I wish I could write more cheerfully.[1]

Instead of raising the level of morale among the troops, Lincoln found himself faced with an increase of discontent in his armies as a direct result of the Emancipation Proclamation. According to Alexander K. McClure, "[B]latant disloyalty... was heard in many places

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1. Lincoln, letter to Hannibal Hamlin, 28 September 1862; in Basler, *Collected Works of Lincoln*, Volume V, pages 439-440.

throughout the North."[2] General Joseph Hooker had said in October of 1862, "Let it be understood that if this is a war for emancipation of the Negro, instead of a war in defense of the Constitution, three quarters of the army would lay down their arms."[3] This is exactly what began to occur when the proclamation was issued. Again the words of Hooker: "At that time, perhaps, a majority of the officers, especially those high in rank, were hostile to the policy of the Government in the conduct of the war. The Emancipation Proclamation had been published a short time before, and a large element of the army had taken sides against it, declaring that they would never have embarked in the war had they anticipated this action of the Government."[4] Likewise, Ida Tarbell stated, "Many and many a man deserted in the winter of 1862-63 because of the Emancipation Proclamation. The soldiers did not believe that the President had the right to issue it and they refused to fight. Lincoln knew, too, that the Copperhead agitation had reached the army, and that hundreds of them were being urged by parents and friends hostile to the Administration to desert."[5]

The *Official Records* substantiate these statements. General George McClellan wrote that "the States of the North are flooded with deserters and absentees. One corps of this army has 13,000 men present and 15,000 absent."[6] On 23 September 1862, General George Meade reported that over 8,000 men, including 250 officers, had deserted, noting that "this terrible and serious evil seems to pervade the whole body."[7] When General Hooker assumed command of the Army of the Potomac from General Ambrose Burnside, he found the number of deserters to be 2,922 commissioned officers and 81,964 non-commissioned officers and privates.[8] In his report to the Congressional Committee on the Conduct of the War, Hooker stated, "At the time the army was turned over to me, desertions were at the rate of about two hundred a day. So anxious were parents, wives, brothers and sisters, to relieve their kindred, that they filled the express trains with packages of citizens' clothing to assist them in escap-

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2. Alexander K. McClure, *Abraham Lincoln and Men of War Times* (Philadelphia, Pennsylvania: Times Publishing, 1892), page 228.

3. Joseph Hooker, quoted in *North American Review*, October 1862, page 529.

4. Hooker, quoted by G.F.R. Henderson, *Stonewall Jackson and the American Civil War* (New York: Longmans, Green and Company, 1902), Volume II, page 411.

5. Ida M. Tarbell, *McClure's Magazine*, January 1893, page 165.

6. George McClellan, *Official Records: Armies*, Volume XIX, part II, page 365.

7. George Meade, *ibid*., page 348.

8. Henderson, *Stonewall Jackson*, Volume II, page 411.

ing from service."[9] In all, an estimated 200,000 soldiers deserted from the Northern armies.[10] Those who did not desert often proved to be a hindrance in the field. Writing from his headquarters at Hilton Head, South Carolina, Major-General David Hunter complained of being "saddled with pro-slavery generals in whom I have not the least confidence...."[11]

Enlistments had also fallen to such a low rate following the issuance of the Emancipation Proclamation that Lincoln was compelled to resort to conscription in July of 1863 in order to continue the war. In his book, *Crimes of the Civil War*, Henry Clay Dean described the scenes that followed:

> When drafted, men were driven from home at the point of the bayonet, black and white chained together like felons.... The pitiful cries of children, clinging to their father, whose face they were looking upon for the last time; the plaintive appeal of the poor woman frantically begging the release of her husband, never moved a muscle in the brazen faces of the hardened wretches engaged in this nefarious business....
>
> The conscription bill was the finishing stroke of the bloody crime of usurpation, and wrought an entire change in our institutions. It was the first attempt in our history to work a complete despotism....
>
> The whole military strength subject to draft was duly recorded and examined, either before or after the conscription.... The names of men were cast into the lottery of death, which dealt out its unwelcome tickets to nearly every household. The reigning spirit of fraud forced itself into the Provost Marshal's office, and took entire possession of the draft. Provost Marshals amassed immense fortunes, through agencies of exemption, which contracted to free the citizens from the fatal draft of the conscript wheel. This, like all other villainies of the Departments, was reduced to a clearly-defined system. Tickets intended for political enemies, or military victims, or those who had not been able to buy themselves off, were written and dried with ordinary blotting paper, whilst the tickets intended for political friends were heavily sanded on a full, heavy hand of ink. The sand remaining on the paper, made them readily distinguishable from the other tickets on the slightest touch.... Such was the villainy and revenge that ruled the chances of death in the horrible conscription which forced unwilling men to perpetrate the awful crime of murder against brave men who were defending their homes from conflagration, their beds from violation, and their hearths from the stain of innocent blood.[12]

The unconstitutional and despotic Conscription Act resulted in a surge of discontent

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9. Hooker, quoted by Henderson, *ibid*.

10. Gary Gallagher, *The Confederate War* (Cambridge, Massachusetts: Harvard University Press, 1997), page 67.

11. David Hunter to Henry Halleck, 23 March 1863; in *Official Records: Armies*, Series I, Volume XIV, page 431.

12. Dean, *Crimes of the Civil War*, pages 99, 100, 101.

among the Northern people, including a massive anti-draft riot in New York city. The details in brief of this horrific event are as follows:

> Many citizens in New York woke up on Sunday morning to find their names in Lincoln's army list, for every man was declared a soldier from the moment his name was drawn, and liable to be shot as a deserter if he got out of the way.
>
> The pent-up wrath of the people now broke out. The war had always been unpopular in New York city, and when the first announcement was made, that the people were resisting the draft, the greatest excitement occurred. The abolitionists were terribly frightened. A good many ran away from the city. Others hid themselves. The drafted men first destroyed the enrolling offices, burning them to the ground, and came very near killing Kennedy, the police superintendent.
>
> Like all popular outbreaks of this kind, it ran into every form of riot and outrage. The popular feeling seemed to regard with peculiar hatred the negro, as if he were the cause of the war and all the trouble resulting from it, while in fact it was the abolitionists and not the negro who were responsible.
>
> The rioters burnt down the Negro Orphan Asylum, hung negroes to the lamp posts, and sometimes threw them into the docks. Boys particularly seemed to be engaged in the rioting. The writer of this was all through the city at all times of the day and night, during the continuance of the trouble. On one occasion he saw a crowd, and asked a little boy what it meant. "Oh, it is nothing but a dead nigger," was the reply. This shows how callous to human suffering even children may become in times of war and bloodshed.[13]

Such was an example of the true effects of Lincoln's supposedly humanitarian proclamation. Although the culpability of these lawless rioters cannot be ignored, the Lincoln Administration nevertheless bore the main burden of guilt for having provided the example to be followed in throwing off all restraint of law and order.

How Lincoln Secured His Re-Election

In addition to its negative effect on the troops, and on the people of the North in general, there were also political repercussions for Lincoln as a result of his proclamation. Lincoln's biographers, Nicolay and Hay, added that "there were great losses in the elections in consequence of the Emancipation Proclamation,"[14] and Albert Bushnell Hart said that "one of the effects... was an increase of the Democratic vote in Ohio and in Indiana, and the

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13. Horton, *History of the Great Civil War*, pages 317-318.

14. John Nicolay and John Hay, *Abraham Lincoln: A History* (New York: The Century Company, 1886), Volume II, page 261.

consequent election of many Democratic members of Congress."[15] In his *History of the United States*, James Ford Rhodes stated:

> In October and November elections took place in the principal States, with the results that New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, and Wisconsin, all of which except New Jersey had cast their electoral votes for Lincoln, declared against the party in power. A new House of Representatives was chosen, the Democrats making conspicuous gains in the States mentioned. The same ratio of gain extended to the other States would have given them the control of the next House — a disaster from which the Administration was saved by New England, Michigan, Iowa, and the Border Slave States. The elections came near being what the steadfast Republican journal, the New York *Times*, declared them to be, "A vote of want of confidence in the President." Since the elections followed so closely upon the Proclamation of Emancipation, it is little wonder that the Democrats declared that the people protested against Lincoln's surrender to the radicals, which was their construction of the change of policy from a war for the Union to a war for the Negro. Many writers have since agreed with them in this interpretation of the result. No one can doubt that it was a contributing force operating with these other influences: the corruption in the War Department before Stanton became Secretary, the suppression of free speech and freedom of the press, arbitrary arrests which had continued to be made by military orders of the Secretary of War.[16]

With the presidential election drawing near, Lincoln knew his political career was in serious jeopardy. In a memorandum delivered to his Cabinet on 23 August 1864, he expressed his despondency over an expected defeat at the polls by Democratic candidate, George McClellan: "This morning... it seems exceedingly probable that this Administration will not be reelected."[17] It has been noted that "there was no period from January, 1864, until 3d of September, when McClellan would not have defeated Lincoln for President."[18] Even the most ardent worshippers of Lincoln have been forced to admit that "only a few conservatives supported Lincoln in his desire for a second term," while "at the same time a strong and open opposition to his re-election had developed" throughout the Northern States.[19] How Lincoln overcame these immense obstacles to secure a second term is indicative of how far removed from a constitutional foundation his Administration had become by late 1864.

According to Lincoln biographer Norman Hapgood, "It was undoubtedly true that all the resources of the administration, including the War Department... were used to secure the

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15. Albert Bushnell Hart, *Salmon P. Chase* (Boston: Houghton Mifflin Company, 1899), page 309.

16. Rhodes, *History of the United States*, Volume IV, page 163.

17. Lincoln, in Nicolay and Hay, *Lincoln: Complete Works*, Volume IX, page 251.

18. McClure, *Lincoln and Men of War Times*, page 112.

19. Tarbell, *McClure's Magazine*, July 1899, page 268.

President's renomination and reelection. But these things did not bother the people. The only thing that counted much with them was military success...."[20] An order from Secretary of War Stanton, which declared criticism of the Administration to be a treasonous offense, made a Democratic canvass for the Presidency very difficult, if not impossible. In his book, *Our Presidents and How We Make Them*, Alexander McClure recalled how he had, two weeks before the election, proposed to Lincoln that 5,000 Pennsylvania soldiers be granted a twenty-day furlough if they would agree to vote the Republican ticket. The order was subsequently issued and then returned and concealed.[21]

In his autobiography, General Benjamin F. Butler described how he was sent to New York city by the War Department, along with 5,000 troops, with orders to intimidate, and even to shoot, those who dared to cast a vote in favor of McClellan.[22] George Edmonds summarized the conversation which occurred between Butler and Stanton:

> The election day was November 8, 1864. Lincoln had sent agents to New York City to spy out and report how the election would go. The report boded ill for Lincoln's success; in fact, indicated that New York would give a large majority for General McClellan. Lincoln, Seward, and Stanton were alarmed. The latter instantly telegraphed General Butler to report to him at once. Butler rushed to Washington, and Stanton explained the situation at New York.
>
> "What do you want me to do?" asked Butler.
>
> "Start at once for New York, take command of the Department of the East, relieving General Dix. I will send you all the troops you need."
>
> "But," returned Butler, "it will not be good politics to relieve General Dix just on the eve of election."
>
> "Dix is a brave man," said Stanton, "but he won't do anything; he is very timid about some matters."
>
> This meant that General Dix was too honorable to use the United States Army to control and direct elections.
>
> "Send me," suggested the shrewd Butler, "to New York with President Lincoln's order for me to relieve Dix in my pocket, but I will not use the order until such time as I think safe. I will report to Dix and be his obedient servant, and coddle him up until I see proper to spring on him my order, and take supreme command myself."
>
> "Very well," assented Stanton, "I will send you Massachusetts troops."
>
> "Oh, no!" objected the shrewder Butler, *"it won't do for Massachusetts men to shoot down New Yorkers."*
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> Stanton saw this also would be bad politics, so Grant was ordered to send Western

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20. Norman Hapgood, *Abraham Lincoln: The Man of the People* (New York: The Macmillan Company, 1913), page 348.

21. Alexander K. McClure, *Our Presidents and How We Make Them* (New York: Harper and Brothers, 1900), page 195.

22. Butler, *Butler's Book*, Volume II, pages 753ff.

> troops — 5,000 good troops and two batteries of Napoleon guns — for the purpose of shooting down New Yorkers should New Yorkers persist in the evil intention of voting for McClellan (emphasis in original).[23]

On the seventh of November, the day before the election, Butler reported to Stanton, "I have done all I could to prevent secessionists [Democrats] from voting, and think it will have some effect."[24]

In his book entitled *Civil Government and Self Government*, Francis Lieber described the farcical nature of elections held under such circumstances:

> If the imperatorial sovereignty is founded upon an actual process of election, whether this consist in a mere form or not, it bears down all opposition, nay all dissent, however lawful it may be....
>
> The Caesar always exists before the imperatorial government is acknowledged and openly established. Whether the praetorians or legions actually proclaim the Caesar or not, it is always the army that makes him. A succeeding ballot is nothing more than a trimming belonging to more polished or more timid periods, or it may be a tribute to that civilization which does not allow armies to occupy the place they hold in barbarous or relapsing times, at least not openly so.
>
> First to assume the power and then to direct the people to vote, whether they are satisfied with the act or not, leads psychologically to a process similar to that often pursued by Henry VIII., and according to which it became a common saying: First clap a man into prison for treason, and you will soon have abundance of testimony. It was the same in the witch-trials.
>
> The process of election becomes peculiarly unmeaning, because the power already assumed allows no discussion. There is no free press.[25]

Lincoln garnered even more votes by creating bogus States with the cooperation of a minimum of ten percent of the "loyal" populations of Louisiana and Tennessee.[26] He went further to install Michael Hahn as Military Governor of the former and his future Vice-President Andrew Johnson as Military Governor of the latter. Showing his gratitude for the appointment, Johnson pledged the votes of "the real Union men" in occupied Tennessee "for Lincoln for President."[27]

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23. Edmonds, *Facts and Falsehoods*, pages 204-205.

24. Butler, letter to Edwin Stanton, 7 November 1864; quoted by Edmonds, *ibid.*, page 206.

25. Lieber, *Civil Liberty and Self Government*, pages 390, 393.

26. John T. Morse, Jr., *Abraham Lincoln* (Boston: Houghton, Mifflin and Company, 1892), pages 295-298.

27. Andrew Johnson, letter to Horace Maynard, 14 January 1864; quoted by Minor, *Real Lincoln*, page 221.

The Creation of the "State of West Virginia"

Lincoln, in direct violation of the U.S. Constitution, also sanctioned the carving out of an entire section of Virginia to form the so-called "State of West Virginia." According to the Constitution, "...[N]o new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress."[28] In order to circumvent this obstacle, a specious government of "Virginia" was established in Wheeling under Lincoln's guidance with Francis H. Pierpont acting as "Governor," over against the true State government which already existed at Richmond. The new government then proceeded to give its "consent" to the division of the State, to which Congress assented. Thus, "by assuming the consent of Virginia, which could only be asserted as a technical fact, the makers of the new state offered a kind of sophistry to excuse the non-fulfillment of a constitutional obligation...."[29] The congressional debates on this matter, especially the comments made by Republicans, are most revealing of the prevailing mindset which justified this unconstitutional action. Speaking on the proposed Act of Congress to admit the new "State" to the Union, Thaddeus Stevens stated in the House of Representatives:

> I do not wish to be understood as sharing the delusion that we are admitting West Virginia in pursuance of any provision of the Constitution. I can find no provision justifying it, and the argument in favor of it originates with those who either honestly entertain an erroneous opinion, or who desire to justify by a forced construction an act which they have predetermined to do. By the Constitution, a State may be divided by the consent of the Legislature thereof and by the consent of Congress admitting the new State into the Union.
>
> Now, sir, it is but mockery to say that the Legislature of Virginia has ever consented to the division. Only two hundred thousand out of a million and a quarter of people have participated in this proceeding....
>
> But, sir, I understand that these proceedings all take place, not under the pretense of any legal or constitutional right, but in virtue of the laws of war.... I say then, that we may admit West Virginia as a new State, not by virtue of any provision of the Constitution, but under our absolute power which the laws of war give us in the circumstances in which we are placed. I shall vote for this bill upon that theory, and upon that alone; for I will not stultify myself by supposing that we have any warrant in the Constitution for this proceeding.[30]

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28. U.S. Constitution, Article IV, Section 3, Clause 1.

29. Randall, *Civil War and Reconstruction*, page 336.

30. Stevens, *Congressional Globe* (Thirty-Seventh Congress, Third Session), 9 December 1862, pages 50-51.

The views of Abram Baldwin Olin of New York were similar:

> Now, Mr. Speaker, I am rather disposed to vote for this bill; but I confess I shall do it with great reluctance.... I confess I do not fully understand upon what principles of constitutional law this measure can be justified. It cannot be done, I fear, at all. It can be justified only as a measure of policy, or of necessity.... This proceeding is sanctioned by the rules and practices of war, which have been sanctioned by all nations through all time. The Constitution gives no authority for it. It does not grow out of any constitutional provision, nor of any right guarantied by it.[31]

Thomas E. Noell of Missouri heartily endorsed the bill with the following words:

> We are living in revolutionary times, and he who would undertake to apply measures of relief, such as are expedient in ordinary times of peace, is no statesman. We must apply a medicine suited to the disease, apply a remedy suited to the times; and we cannot afford, while the nation is trembling on the brink of destruction, to split hairs on technical constitutional points. If I had power, I would save the nation's life by the exercise of all powers necessary to the result; for such powers, whether expressed in the Constitution or not, are from necessity implied. I would save the nation, and would march with relentless step towards accomplishing its high and proud destiny.... I am for the exercise of those powers which will accomplish the purpose.... I believe that these people of Western Virginia are entitled to come into the Union as a State. I admit that I have grave constitutional doubts upon this question....[32]

Martin Conway of Kansas, one of the few Republicans who opposed the bill, described the "constitutional convention" of "West Virginia" as a "mob," and then voiced his suspicion that "it is the intention of the President to encourage the formation of State organizations in all the seceded States, and that a few individuals are to assume State powers wherever a military encampment can be effected in any of the rebellious districts." He denounced the proceeding as "utterly and flagrantly unconstitutional, as radically revolutionary in character and deserving the reprobation of every loyal citizen," and added, "It aims at an utter subversion of our constitutional system and will consolidate all power in the hands of the Executive.... I insist that the President of the United States has wrongfully exercised his discretion in this case; and that, if this instance is brought in as a precedent for future action, it will involve the entire subversion of our constitutional system."[33] According to Henry Dawes of Massachusetts, "...[N]obody has given his consent to the division of the State of Virginia and the erection of a new State who does not reside within the new State itself....

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31. Abram Baldwin Olin, *ibid*., page 45.

32. Thomas E. Noell, *ibid*., page 53.

33. Martin Conway, *ibid*., page 44.

This bill does not comply with the spirit of the Constitution. If the remaining portions of Virginia are under duress while this consent is given, it is a mere mockery of the Constitution."[34]

John Crittendon, a Democrat from Kentucky said that the so-called "government of Virginia" set up at Wheeling could be regarded as the true State government "only by a mere fiction. We know the *fact* to be otherwise...." (emphasis in original) He went on to argue, "If you can do this, can you not also, without the consent on the part of the people of North Carolina, divide that State and make up new States just as your armies progress, setting aside the necessity of consent on the part of the Legislature? If you can dispense with that, you can make States at pleasure.... [T]he Constitution gives us no power to do what we are asked to do."[35]

Over in the Senate, the arguments against the bill were not much different. Garrett Davis, a Democrat Senator from Kentucky, said:

> I hold that there is, legally and constitutionally no such state in existence as the state of West Virginia and consequently no senators from such a state. My object is simply to raise a question to be put upon the record, and to have my name as a Senator recorded against the recognition of West Virginia as a state of the United States. I do not believe that the Old Dominion, like a polypus, can be separated into different segments, and each segment become a living constitutional organism in this node. The present state of West Virginia as it has been organized, and as it is seeking representation on the floor of the Senate, is a flagrant violation of the Constitution.[36]

Lincoln's Attorney General, Edward Bates, described the formation of "a new State out of Western Virginia" as "an original, independent act of revolution." He went on to write, "Any attempt to carry it out involves a plain breach of both the constitutions — of Virginia and the nation."[37] Writing twenty years later, Radical Republican James G. Blaine admitted, "As a punitive measure, for the chastening of Virginia, it cannot be defended. Assuredly there was no ground for distressing Virginia by penal enactments that did not apply equally to every other State of the Confederacy. Common justice revolts at the selection of one man for punishment from eleven who have all been guilty of the same offense."[38]

Finally, in affixing his signature to the bill for the admission of "West Virginia," Lincoln himself admitted that it stood on the same dubious legal foundation as his

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34. Henry Dawes, *ibid*, page 48.

35. John Crittendon, *ibid*., page 47.

36. Garrett Davis, *ibid*.

37. Edward Bates, letter to A.F. Ritchie of the so-called Virginia Convention at Wheeling, 12 August 1861; quoted by McHenry, *Cotton States*, pages xlv-xlvi.

38. Blaine, *Twenty Years of Congress*, Volume I, page 466.

Emancipation Proclamation:

> We can scarcely dispense with the aid of West Virginia in this struggle, much less can we afford to have her against us, in Congress and in the field. Her brave and good men regard her admission into the union as a matter of life and death. They have been true to the union under many severe trials. The division of a state is dreaded as a precedent but a measure expedient by a war is no precedent for times of peace.
>
> It is said that the admission of West Virginia is secession, and tolerated only because it is our secession. Well, if we call it by that name, there is still difference enough between secession against the Constitution and secession in favor of the Constitution. I believe the admission of West Virginia into the union is expedient.[39]

It is perhaps one of the greatest absurdities to arise from the War of 1861-1865 that Lincoln, who believed that "the slaveholder has a legal and moral right to his slaves" and who spoke of the "natural disgust in the minds of nearly all white people to the idea of an indiscriminate amalgamation of the white and black races,"[40] who believed that "there is a physical difference between the white and black races which... will forbid the two races living together in social and political equality," and was "in favor of having the superior position assigned to the white race,"[41] and who, after the war, had formulated a plan with General Butler to "get rid of the negroes" by sending them to Panama to dig the canal[42] and finally, who used the military power of the Government and fictitious "States" to secure his re-election, should have been immortalized after his assassination as "the greatest, wisest, godliest man that has appeared on earth since Christ,"[43] and "as gentle and as unoffending a man who died for men,"[44] and memorialized in the hearts of nearly all Americans since as "the Great Emancipator," the champion of racial equality, and the greatest President this country has ever had. Nothing could be further from the truth. Indeed, Lincoln is indicted and condemned by his own words:

> If destruction be our lot, we ourselves must be its author and its finisher. As a

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39. Lincoln, quoted by John C. Nicolay and John Hay, *Abraham Lincoln: A History* (New York: The Century Company, 1886), Volume II, page 286.

40. Lincoln, speech delivered in Springfield, Illinois on 26 June 1857; in Roy B. Basler, editor, *The Collected Works of Abraham Lincoln* (New Brunswick, NJ: Rutgers University Press, 1953), Volume II, 403-407.

41. Lincoln, speech delivered at Charleston, Illinois on 18 September 1858; in Johannsen, *Lincoln-Douglas Debates*, page 162.

42. Butler, *Butler's Book*, Volume II, pages 903-907.

43. John Hay, quoted by Rutherford, *Truths of History*, page 85.

44. Henry Watterson, quoted by Rutherford, *ibid.*, page 73.

nation of free men, we must live through all time, or die by suicide.

That will be the time when the usurper will put down his heel on the neck of the people, and batter down the fair fabric of free institutions. Many great and good men may be found whose ambition aspires no higher than a seat in Congress, or a Presidential chair, but such belong not to the family of the Lion, or the tribe of the Eagle. What! Think you such places would satisfy an Alexander? a Caesar? or a Napoleon? Never! Towering ambition disdains a beaten path. It seeks regions unexplored. It sees no grandeur in adding story to story upon the monuments already erected to the memory of others. It scorns to tread in the footsteps of any predecessor, however illustrious. It thirsts, it *burns*, for distinction, and, if possible, it *will* have it, whether at the expense of *emancipating slaves or enslaving freemen*. Is it unreasonable then to expect, that some man possessed of the loftiest genius, coupled with ambition sufficient to push it to its utmost stretch, will at some time, spring up among us? And when such a one does, it will require the people to be united with each other, attached to the government and laws, and generally intelligent, to successfully frustrate his designs (emphasis in original).[45]

45. Lincoln, "The Perpetuation of Our Free Institutions," lecture delivered before the Young Men's Lyceum at Springfield, Illinois on 27 January 1838; in Basler, *Collected Works of Lincoln*, Volume I, page 114.

SUPPORTING DOCUMENT

Statements in the House of Representatives on the Creation of the State of West Virginia

Congressional Globe, 9 December 1862

Mr. CRITTENDEN. I have not much to say upon this subject, and therefore shall speak briefly. I have no feeling upon this matter.... With me, in the consideration I have given to it, it is a matter of principle and constitutional law. These are views which may appear a little stale in this body. From long usage and long habit of regarding the Constitution of the United States as the only safe basis upon which we can act, the only safe rule we can follow in peace or in war, in prosperity or adversity, I must be excused for regarding this subject, not upon the broad and vague ground of my sympathies or my feelings, but upon the ground of the great policy of this nation, and the Constitution of the nation.

I feel for the people of Western Virginia. I appreciate their patriotism and their valor, and I appreciate their wish to become, as expressed by their Legislature, a free people. I have a proper regard for all that; I have a proper respect and a healthy sympathy for them; but when I am called upon to give my judgment and to case my vote, I must look to the Constitution of my country. I see there that no State can be divided and another State made out of its territory without its consent. That is in positive and unequivocal language. Now, what are we asked to do? Make a new State out of Western Virginia.

Sir, can any argument make stronger the case than the mere statement of the question? The Constitution says you shall make no new State within the jurisdiction of another State without its consent. You are asked to make Western Virginia into a State. The Constitution requires that the State of which the new State has formed a part shall give her consent. Where is there room for doubt? If the Constitution which we have sworn to support

is to be the rule of our action, I ask you, in all calmness and all sobriety of feeling, is not the rule plain?

There was a Virginia once by that simple name — a great name at one period of our history, and one of the original formers of the Constitution. She never was admitted into the Union; she formed it; she is a part of the original creation and being. Does she ask to be admitted? No. But a part of that State wishes now to be formed into a new State, and to be admitted into the Union as an independent State. Is not that so? Is there any ingenuity or any technicality which can change the face of the facts?

You say that old Virginia no longer exists, and therefore can give no consent. Is there one man here who can be misled and blinded by such hypercriticism? We know the fact to be otherwise. We know that at this time old Virginia is in a state of rebellion, which we are endeavoring, by all the means in our power, to put an end to; a rebellion which once put a end to, will restore her to her constitutional place in the Union just as she existed before. You cannot admit a new State out of her boundaries without her consent, says the Constitution. That is the limit of your power, and that is enough to settle this question. You are appealed to and your power is invoked now to make this a new State. It seems to me that you cannot do it. I do not presume to argue with you on this question, because it seems to me that the very statement of it is an argument stronger than anything that I can urge. We have heard a great deal of imagination and of sympathy. That does not make constitutions. That does not sustain empires. It is not out of such stuff as that that the great, the majestic pillars have been reared that support the might fabric of this Republic. This question is to return to you. Remember that! Look to the future. Is there a man here who does not contemplate the restoration of this Union, and the restoration of all these States to it? If Virginia were to-morrow to lay down the arms of her rebellion and to ask to be admitted into our councils, to be part of us, as she is by the Constitution to-day, to be actually what she is constitutionally, what could you say to her if you had created a new State out of her territory? What could you say to her? Do you believe that with the pride which ought to belong to one of the States of this Union, the State would agree to come back, not as she was, not with the boundaries she had, but cut up and divided and made into different States, to come back with circumscribed and diminished power as a State? Can you expect such a thing? Suppose, then, this question of peace or war, the restoration of the Union or the continuation of hostilities depends upon Virginia coming back, and coming back as she went, coming back as she was when she made this Constitution; coming back whole and entire as Virginia, not as Eastern and Western Virginia, but coming back as Virginia. I warn my friends from Western Virginia to look to the future. You to-day make them a new State, and interests rise up around them. Peace is to come in a few years, and we here are to be appealed to on another side of this great question. You will be told that we had no power to admit this State, and you will be obliged to acknowledge it. Old Virginia will come back and say, "I gave no consent, and there is the Constitution which says that without my consent you shall not do what you have done, and now you cannot deprive me of my rights by any such unconstitutional course of procedure."

Mr. STEVENS. Without intending to occupy a very great deal of the time of the

House... I wish to give the reasons for my vote. I have had great difficulty in determining how I ought to vote upon this bill as a question of policy, and I can hardly say that I have yet made up my mind; but, as at present advised, I shall vote for the admission of this State, and I desire to state the grounds for so doing. I do not desire to be understood as being deluded by the idea that we are admitting this State in pursuance of any provisions of the Constitution. I find no such provision that justifies it, and the argument in favor of the constitutionality of it is one got up by those who either honestly entertain, I think, an erroneous opinion, or who desire to justify, by a forced construction, an act which they have predetermined to do. By the Constitution, a State may be divided by the consent of the Legislature thereof, and by the consent of Congress admitting the new State into the Union.

Now, sir, it is but mockery, in my judgment, to tell me that the Legislature of Virginia has ever consented to this division. There are two hundred thousand, out of a million and a quarter of people, who have participated in this proceeding. They have held a convention, and they have elected a Legislature in pursuance of a decree of that convention. Before all this was done the State had a regular organization, a constitution under which that corporation acted. By a convention of a large majority of the people of that State, they changed their constitution and changed their relations to the Federal Government from that of one of its members to that of secession from it. Now, I need not be told that that is treason. I know it. And it is treason in all the individuals who participated in it. But so far as the State municipality or corporation was concerned, it was a valid act, and governed the State. Our Government does not act upon the State. The State, as a separate and distinct body, was the State of a majority of the people of Virginia, whether rebel or loyal, whether convicts or freemen. The majority of the people of Virginia was the State of Virginia, although individuals had committed treason.

Now, to say that the Legislature which called this seceding convention was not the Legislature of Virginia, is asserting that the Legislature chosen by a vast majority of the people of a State is not the Legislature of that State. That is a doctrine which I can never assent to. I admit that the Legislature were disloyal, but they were still the disloyal and traitorous Legislature of the State of Virginia; and the State, as a mere State, was bound by their acts. Not so individuals. They are responsible to the General Government, and are responsible whether the State decrees treason or not. That being the Legislature of Virginia, Governor Letcher, elected by a majority of votes of the people, is the Governor of Virginia — a traitor in rebellion, but a traitorous Governor of a traitorous State. Now, then, how has that State given its consent to this division? A highly respectable but very small number of the citizens of Virginia — the people of West Virginia — assembled together, disapproved of the acts of the State of Virginia, and with the utmost self-complacency called themselves Virginia. Now, is it not ridiculous? Is not the very statement of the facts a ludicrous thing to look upon — although a very respectable gentleman, Governor Pierpont, was elected by them Governor of Virginia? He is a most excellent man, and I wish he were the Governor elected by the whole people of Virginia.

The State of Virginia, therefore, has never given its consent to this separation of the

State. I desire to see it, and according to my principles operating at the present time, I can vote for its admission without any compunctions of conscience, but with some doubt about the policy of it. My principles are these: we know the fact that this and other States have declared that they are no longer members of this Union, and have made, not a mere insurrection, but have raised and organized an army and a power, which the Governments of Europe have recognized as a belligerent Power. We ourselves, by what I consider a most unfortunate act, not well considered — declaring a blockade of their ports — have acknowledged them as a Power. We cannot blockade our own ports. It is an absurdity. We blockade an enemy's ports. The very fact of declaring this blockade recognized them as a belligerent Power, entitled to all the privileges and subject to all the rules of war, according to the law of nations....

Now, then, sir, these rebellious States being a Power, by the acknowledgment of European nations and of our own nation, subject and entitled to belligerent rights, they become subject and entitled to the rules of war. I hold that the Constitution has no longer the least effect upon them. It is idle to tell me that the obligations of an instrument are binding on one party while they are repudiated by the other. It is one of the principles of law universal, and of justice as universal, that obligations, personal or national, must, in order to be binding, be mutual and be equally acknowledged and admitted by all parties. Whenever that mutuality ceases to exist it binds neither party. There is another principle just as universal; it is this: when parties become belligerent, in the technical sense of the word, the war between them abrogates all compacts, treaties, and constitutions which may have existed between them before the war commenced. If we go to war with England to-day, all our treaty stipulations are at an end, and none of them bind either of the parties. If peace is restored, it does not restore any of the obligations of either. There must be new treaties, new obligations entered into, before either of the parties is bound.

Hence I hold that none of the States now in rebellion are entitled to the protection of the Constitution, and I am grieved when I hear those high in authority sometimes talking of the constitutional difficulties about enforcing measures against this belligerent Power, and the next moment disregarding every vestige and semblance of the Constitution by acts which alone are arbitrary. I hope I do not differ with the Executive in the views which I advocate. But I see the Executive one day saying "you shall not take the property of rebels to pay the debts which the rebels have brought upon the Northern States." Why? Because the Constitution is in the way. And the next day I see him appointing a military governor of Virginia, a military governor of Tennessee, and some other places. Where does he find anything in the Constitution to warrant that?

If he must look there alone for authority, then all these acts are flagrant usurpations, deserving the condemnation of the community. He must agree with me or else his acts are as absurd as they are unlawful; for I see him here and there ordering elections for members of Congress wherever he finds a little collection of three or four consecutive plantations in the rebel States, in order that men may be sent in here to control the proceedings of this Congress, just as we sanctioned the election held by a few people at a little watering place

at Fortress Monroe, by which we have here the very respectable and estimable member from that locality with us. It was upon the same principle....

But, sir, I understand that these proceedings all take place, not under any pretense of legal or constitutional right, but in virtue of the laws of war; and by the laws of nations these laws are just what we choose to make them, so that they are not inconsistent with humanity. I say, then, that we may admit West Virginia as a new State, not by virtue of any provision of the Constitution, but under our absolute power which the laws of war give us in the circumstances in which we are placed. I shall vote for this bill upon that theory, and upon that alone; for I will not stultify myself by supposing that we have any warrant in the Constitution for this proceeding.

This talk of restoring the Union as it was under the Constitution as it is, is one of the absurdities which I have heard repeated until I have become sick of it. This Union can never be restored as it was. There are many things which render such an event impossible. This Union shall never with my consent be restored under the Constitution as it is with slavery to be protected by it; and I am in favor of admitting West Virginia because I find here a provision which makes it a free State, and because of the very worthy men who have been sent here to represent the people of the proposed State. I would almost trust them with the freedom of this Union, and that is saying a great deal, for I find that when you admit men here from the slaveholding States, though they may not represent ten men the owners of slaves, they are constantly going on questions of policy with the friends of slavery, that is, with the Democratic party. They went with them in caucus, and they almost uniformly act with them here. That is the only doubt in my mind. I have no difficulty in respect to the power. That we have it under the belligerent right I have mentioned, I do not doubt. But if I had not almost entire confidence in the people of Western Virginia, and if I had not known their respectable Representatives here, I confess that I should hesitate much in voting for this bill; not because we have not the power under the Constitution to do it, but because I should fear that when once admitted they would use their power, if ever they had it, to re-establish slavery; but I have no fear of it in this instance. I had some hesitation as to how I ought to vote, but I have consulted the acts of the Executive, and I find that while in a great majority of instances in the rebel States he has had but little regard to the Constitution, he has upheld it in only one. In that he prohibits the taking of the property of women and children of rebel men who are in arms with the enemies of the Union.

SUPPLEMENTARY ESSAY

How Lincoln Secured His Re-Election

by George Edmonds

Many men of this day fancy Lincoln's election to a second term proves that he was the people's choice, and was trusted and beloved by the people. In this busy age few men have the time to look below the surface and find facts. Some of Lincoln's apotheosis biographers boldly assert that Lincoln was indifferent about his re-election. Others deem it better to tell the plain truth on this question. Lamon says during his first term he was all the time anxious to secure re-election.

In his *Life of Lincoln*, McClure says, "Lincoln's desire for re-nomination was the one thing uppermost in his mind during the third year of his first term." In *Our Presidents* (page 184), McClure says, "A more anxious candidate I have never seen. I could hardly treat with respect Lincoln's anxiety about his re-nomination."

After Lincoln's nomination for the second term, but before election, the prospects of his re-election became very gloomy. Many of Lincoln's friends predicted the success of McClellan. Mr. Lincoln himself was almost in despair of re-election. In Volume I, on this subject, Morse has this:

> In Lincoln's party the foremost men, as the time approached for a second term, so strongly opposed Lincoln they determined to prevent his re-election. They called a convention to be held May 21, 1864, in Cincinnati, Ohio. The call said: "Republican Liberty is in danger. The object of this call is to arouse the people, and make them realize that while we are saturating Southern soil with the best blood of the country in the name of Liberty, we have already parted with it at home."

Nicolay and Hay's *Life of Lincoln* (Volume 2, page 249) says, "By August, 1864, Weed, Raymond and everyone, even Lincoln himself, despaired of his re-election. Raymond, Chairman of the Republican National Executive Committee, August 22, 1864, wrote Lincoln: 'I hear but one report. The tide is setting against us.'"

In *Our Presidents* (page 183), McClure says:

> Three months after Lincoln's renomination in Baltimore, his defeat by General McClellan was feared by his friends and conceded by Lincoln himself. Wade of Ohio, and Winter Davis, aided by Greeley, published in Greeley's *Tribune*, August 5, 1864, their bitter manifesto against Lincoln, in which they charged him with having committed a more studied outrage on the authority of the people than had ever before been perpetrated.

In Holland's *Life of Lincoln*, he says, "After Mr. Lincoln's nomination for a second term, a peculiar change came over the spirit of Mr. Lincoln's friends; the thought became prevalent that a mistake had been made; simultaneously and universally the friends of the Administration felt he ought not to have been nominated for a second term."

Morse, in Volume 2, says, "Recent local elections in New York and Massachusetts showed a striking reduction of Republican strength."

In *The Truth Story of a Great Life*, Weik states that Wendell Phillips made stump speeches over New England denouncing Lincoln, and holding him up to public ridicule. At Cooper Institute, 1864, before an immense audience, Phillips said, "Lincoln has overthrown Liberty. I call on the people to rise in their might and see to it that Lincoln is not elected to a second term."

On August 14, Greeley wrote, "Mr. Lincoln is already beaten. He cannot be re-elected. We must have another ticket to save us from utter overthrow. Grant, Butler or Sherman would do for President."

Chase, Winter Davis, Wade of Ohio, Governor Andrew of Massachusetts, were in sympathy with the movement to prevent Lincoln's re-election. The editor of the Cincinnati *Gazette* wrote, "The people regard Mr. Lincoln's candidacy as a misfortune. I do not know a Lincoln man. In all our correspondence, which is large and varied, are few letters from Lincoln men."

The New York *Sun* said, "The withdrawal of Lincoln and Fremont, and the nomination of a man who would inspire confidence, would be hailed with delight."

In his apotheosized *Life of Lincoln*, Holland bears witness to the strong and general dissatisfaction of the people in 1864, and their desire for a change. Fremont's name was the rallying cry with dissatisfied Republicans. Fremont boldly denounced Lincoln:

> Had Mr. Lincoln remained faithful to the principles he was elected to defend, no schism could have been created, and no contest against him could have been possible. The ordinary rights secured under the Constitution have been violated. *The Administration has managed the war for personal ends, and with incapacity and selfish disregard for constitutional rights, with violation of personal liberty and liberty of the press.*

Miss Tarbell, who seems to have written her *Life of Lincoln* while on her knees before his image in a sacred shrine, says:

> In the spring of 1863 a plot was formed and favored by all the most prominent Republican leaders to *force* President Lincoln to abdicate, and to put Vice-President Hamlin in his place. Greeley thought he could use such pressure on Lincoln as would force him to step down and out. Lincoln knew of this plot. Mr. Enos Clark states that in the interview President Lincoln had with the committee of seventy men from Missouri, in 1863, at the moment the committee was about to leave he saw tears streaming down Lincoln's face. On getting to the door Mr. Clark looked back, and instead of tears, Lincoln was laughing heartily and joking (Volume II, page 176).

This committee of seventy was anti-Lincoln. Next day Secretary of the Treasury Chase gave the committee a reception, and told them he was heartily in sympathy with their mission. The committee went to New York and was given a great and enthusiastic meeting at Cooper Institute. William Cullen Bryant made a speech, and various distinguished men indulged in violent denunciation of the Administration and threatened Lincoln with revolution.

In 1863 the New York *Herald* advocated Grant for the Presidency. The great majority of the Republican leaders wanted a change. Lincoln knew of all these efforts. Again Tarbell: "The despair, the indignation of the country in this dreadful year [1863] all centered on Lincoln. The Republicans were hopeless of re-electing him. Amid this dreadful uproar of discontent, one cry alarmed Lincoln — the cry that Grant should be presented for the Presidency" (Volume II, page 199).

Leonard Sweet, a loving friend of Lincoln, August, 1864, in a letter from New York City to his wife, wrote:

> The fearful things in relation to this country induced me to stay a week. The malicious foes of Lincoln are getting up a Buffalo convention to supplant him. They are Sumner, Wade, Henry Winter Davis, Chase, Fremont, Wilson, *etc*. The most fearful things are probable. Democrats preparing to resist the draft. There is not much hope; unless material changes, Lincoln's re-election is beyond any possible hope, and is probably clear gone now.

Lincoln himself believed he would be defeated. On August 23, 1864, Lincoln, fully understanding the danger, put on record his belief that he would be defeated. In a speech bitterly denouncing Lincoln at a Republican meeting in Boston, Wendell Phillips went so far as to say, "Lincoln and his Cabinet are treasonable. Lincoln and Stanton should be impeached."

The Chicago *Tribune* denounced Lincoln as the author of the negro riots. So eager was Lincoln for a second term, so intense his anxiety, it showed in his face. Miss Tarbell

describes his looks during that period, 1863-65: "Day by day he grew more haggard, the lines in his face deepened, it became ghastly gray in color. Sometimes he would say, 'I shall never be glad again.' When victory was assured a change came at once. His form straightened up, his face cleared; never had he seemed so glad."

Yet in the face of all this evidence of Lincoln's unpopularity, it now suits the Republicans to assert that Lincoln was trusted and beloved during his lifetime.

Such being the gloomy outlook for the Republican party immediately preceding the Presidential election of 1864, what brought about the change? What lifted from Lincoln's heart its load of despair, and filled it with hope? The answer is easy. First came a few Union victories, which indicated that the poor Confederates were failing for want of numbers. Farragut captured Mobile, Sherman was taking a holiday march over the South, burning and pillaging to his heart's delight, no armed men to impede his progress; Sherman's unresisted entrance into Atlanta, Ga., his brilliant victory over the 15,000 unarmed women and children of that unfortunate city, his splendid strategic feat in driving at the point of the bayonet the 15,000 Atlanta women and children out of their homes, out of the city — out into the pathless woods to wander about shelterless, foodless, and after Atlanta was tenantless, its streets all silent save where armed men trampled over them, Sherman's magnificent success in burning every house in the city, private as well as public — these valiant deeds of Sherman's army served to expel the despair from Lincoln's head and let in fresh breezes of hope. In addition he had General B.F. Butler and others of that calibre ready and willing to do his bidding, regardless of honor or honesty. In his book, Butler relates how he obeyed orders, and, by the use of soldiers, secured Lincoln's election for a second term.

Oh, if the souls of liberty-loving men of '76 take cognizance of the workings of affairs in the land they loved, and many died to free, how must they mourn over the decadence of the men of this age — the men who glorify the shameful fact that an American President procured his re-election to office by the use of the United States army at the polls! Hapgood's *Life of Lincoln* contains the following unblushing paragraph:

> Charles A. Dana testifies that the whole power of the War Department was used to secure Lincoln's re-election in 1864. There is no doubt but this is true. *Purists may turn pale at such things, but the world wants no prettified portrait of Mr. Lincoln. Lincoln's Jesuitical ability to use the fox's skin when the lion's proves too short was one part of his enormous value*.

Think of it, men of America! "Jesuitical ability" to trick, to deceive, to rob the people of their right to the ballot is, by a modern Republican historian, not only condoned, but commended as of *"enormous value."* And any honest man, shocked at so infamous an outrage on the rights of freemen, the Republican Hapgood sarcastically terms *"purist." "Purists may turn pale," etc.* In his book, published in 1892, General Butler proudly relates his part in the infamous work of using the army at the polls. The story is this: The election day was November 8, 1864. Lincoln had sent agents to New York City to spy out and report how the election would go. The report boded ill for Lincoln's success; in fact, indicated that

New York would give a large majority for General McClellan. Lincoln, Seward and Stanton were alarmed. The latter instantly telegraphed General Butler to report to him at once. Butler rushed to Washington, and Stanton explained the situation at New York.

"What do you want me to do?" asked Butler.

"Start at once for New York, take command of the Department of the East, relieving General Dix. I will send you all the troops you need."

"But," returned Butler, "it will not be good politics to relieve General Dix just on the eve of the election."

"Dix is a brave man," said Stanton, "but he won't do anything; he is very timid about some matters."

This meant that General Dix was too honorable to use the United States Army to control and direct elections.

"Send me," suggested the shrewd Butler, "to New York with President Lincoln's order for me to relieve Dix in my pocket, but I will not use the order until such time as I think safe. I will report to Dix and be his obedient servant, and coddle him up until I see proper to spring on him my order, and take supreme command myself."

"Very well," assented Stanton, "I will send you Massachusetts troops."

"Oh, no!" objected the shrewder Butler, "it won't do for Massachusetts men to shoot down New Yorkers."

Stanton saw this also would be bad politics, so Grant was ordered to send Western troops — 5,000 good troops and two batteries of Napoleon guns — for the purpose of shooting down New Yorkers should New Yorkers persist in the evil intention of voting for McClellan.

When the citizens of New York saw Butler and his escort proudly prancing their horses on the streets and saw the arrival of 5,000 Western troops and the Napoleon guns, there was great agitation and uneasiness over the city. Newspapers charged that these warlike preparations were made to overawe citizens and prevent a fair election. Butler was virtuously indignant at such charges. General Sanford, commanding the New York State militia, called on Butler and told him the State militia was strong enough to quell any disturbance that might occur and he intended to call out his militia division on election day. Butler arrogantly informed General Sanford that he (Butler) had no use for New York militia; he did not know which way New York militia would shoot when it came to shooting. General Sanford replied that he would apply to the Governor of the State for orders.

"I shall not recognize the authority of your Governor," haughtily returned Butler. "From what I hear of Governor Seymour I may find it necessary to arrest all I know who are proposing to disturb the peace on election day."

Butler well knew he was the only man in the city who intended to disturb the peace on election day. Butler's mean and cowardly soul gleefully gloated over the power he possessed to bully and insult the great State of New York, its Governor and militia officers — power given him by Lincoln, whose orders he had in his pocket to relieve General Dix, and take command of the army under Dix, and hold himself ready on election day to shoot down

New York men at the polls to secure the re-election of President Lincoln. On November 5th Butler issued Order No. 1, the purpose of which, he said:

> is to correct misrepresentations, soothe the fears of the weak and timid and allay the nervousness of the ill-advised, silence all false rumors circulated by men for wicked purposes, and to contradict once for all false statements made to injure the Government in the respect and confidence of the people. The Commanding General takes occasion to declare that troops have been detailed for duty in this district to preserve the peace of the United States, to protect public property, and insure a calm and quiet election.

The citizens of New York well knew that the above was one tissue of falsehood; they knew that Butler and his 5,000 Western troops, his batteries and Napoleon guns, were there to overawe the people and force the re-election of Lincoln.

"The Commanding General," continues Order No. 1, "has been pained to see publications by some not too well informed persons, that the presence of the troops of the United States *might* by possibility have an effect on the free exercise of the duty of voting at the ensuing election. Nothing is further from the truth."

Who, knowing Butler's nature, does not picture to himself the Mephistophelean smile which ornamented his visage as he penned the above, and the following pretty falsehood: "The soldiers of the United States are here especially to see that there is no interference with the election."

If the reader cares to see the full text of this lying order he can find it in Butler's book (page 1097).

On November 7th, the day before the election, after Butler had placed his troops and made all arrangements necessary to control the ballot, he wrote to Secretary of War Stanton a letter in which he said, "I beg leave to report that the troops have all arrived, and dispositions made which will insure quiet. I enclose copy of my order No. 1, and trust it will meet your approbation. I have done all I could to prevent secessionists from voting, and think it will have some effect." Secessionists meant Democrats who chose to vote for McClellan.

On page 760 of his book, Butler describes how he disposed of the troops to accomplish his purpose. On page 771, Butler gives a joyful account of a reception at Fifth Avenue Hotel tendered him in honor of his signal success in keeping Democrats from voting. Full to bursting with pride, Butler made a speech to his entertainers, explaining how, after the Union army had conquered the South, her people should be treated. "Let us," said this willing and eager tool of despotic power, "take counsel from the Roman method of carrying on war." The Roman method was to make slaves of all prisoners of war; to inflict upon them every cruelty pagan hearts could devise. Butler continued:

> Let us look to the fair fields of the sunny South for your reward. Go down there in arms; you shall have what you conquer, in fair division of the lands, each man in pay for his military service. We will open new land offices wherever our army marches, dividing the lands of the rebels among our soldiers, to be theirs and their heirs forever. Rebels

> should no longer be permitted to live in the land of the South, or anywhere in the boundaries of the United States. Let them go to Mexico, or to the islands of the sea, or to a place I do not like to name. I know of no land bad enough to be cursed with their presence. Never should they live here again.

This pagan speech was so rapturously received by Butler's audience, the Rev. Henry Ward Beecher (who a few years later was tried and found guilty by all the world except those interested in whitewashing him, of breaking up the home of one of his parishioners and blasting the reputation of that parishioner's wife), made a speech highly lauding Butler's evil work and pagan principles and naming him for the Presidency in 1868. General Whitmore followed Beecher in the same strain of eulogy, all of which filled Butler to bursting with pride. But he sorrowfully relates that these high laudations proved disastrous to all the hopes he had cherished of promotion in the army. These fine compliments, says Butler, and the grand receptions tendered —

> Were the most unhappy and unfortunate occurrences of my life. I should at once have repudiated the honor intended. I should promptly have said: "Gentlemen, you do me too much honor. General Grant ought to be our next President after Lincoln retires." *That* would have taken the sting out of the whole affair. I could then have been put in command of the Army of the Potomac, if I wished.

Butler no doubt thought his service in New York in keeping Democrats from voting would be rewarded by promotion. As a salve to his vanity he tries to have it appear that Grant's jealousy interfered. Butler's vanity was immense. It shines out from every page of his book.

In the year 1903, in the city of St. Louis, Mo., two men of foreign birth and from the lower ranks of life were found guilty of having procured fraudulent naturalization papers for some of their countrymen just arrived from Italy. These two men were sentenced to serve a term of five years in the penitentiary. The St. Louis *Globe-Democrat*, a staunch Republican journal, in an editorial called the offense of which these two men were found guilty, *"a horribly atrocious crime against the ballot box and American citizenship."*

Reader, compare the magnitude of the crime these two men committed in 1903 with the magnitude of the crime committed in 1864 by the President of the United States. Is not the one as a molehill to the mountain of the other? Yet the criminals of 1903 were condemned to wear the stripes of infamy in a State penitentiary for five years. The criminal of 1864 is held up as a model for American youths to imitate.

The preceding essay was extracted from George Edmonds, Facts and Falsehoods Concerning the War on the South, 1861-1865 *(Memphis, Tennessee: A.R. Taylor and Company, 1904).*

CHAPTER FIFTEEN

The Seizure and Conscription of Southern Slaves

"Slave Property Subject To Be Appropriated"

Much has been made by modern revisionist historians of the fact that an estimated 186,000 Blacks fought under the United States flag against the South.[1] However, we are seldom, if ever, told the reason for this. According William Whiting, "All the property of rebels [is] forfeited to the treasury of the country,"[2] and "slave property [is] subject to the same liability as other property to be appropriated for war purposes."[3] Lincoln's Secretary of War, Edwin Stanton, elaborated on this premise: "The population of African descent that cultivate the lands and perform the labor of the rebels constitute a large share of their military strength, and enable the white masters to fill the rebel armies and wage a cruel and murderous war against the people of the Northern States. By reducing the laboring strength of the rebels their military power will be reduced."[4] Consequently, the invading Northern army began to seize Southern slaves and conscript them into service to the United States, often against their will. General Orders No. 17, from the Department of the South headquarters at Hilton Head, South Carolina, stipulated:

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1. *Official Records: Armies*, Series III, Volume V, page 661.

2. Whiting, *War Powers of the President*, page 107.

3. Whiting, *ibid*., page 28.

4. Edwin M. Stanton, dispatch to Brigadier-General Rufus Saxton, 25 August 1862; in *Official Records: Armies*, Series I, Volume XIV, pages 377-378.

> [A]ll able-bodied male negroes between the ages of eighteen and fifty within the military lines of the Department of the South who are not, on the day of the date of this order, regularly and permanently employed in the quartermaster and commissary departments, or as the private servants of officers, within the allowance made by the Army Regulations, are hereby drafted into the military service of the United States, to serve as non-commissioned officers and soldiers in the various regiments and brigades now organized, and in process of being organized, by Brig. Gen. Rufus Saxton, specially authorized to raise such troops by orders of the War Department.[5]

After this order had failed to produce the desired results, an amended order was issued:

> In view of the necessities of the military service, the want of recruits to complete the unfilled regiments in this department, the great numbers of unemployed colored men and deserters hiding about to avoid labor or service, and in consideration of the large bounties now paid to volunteers by the Government, General Orders, No. 17, dated headquarters Department of the South, Hilton Head, S.C., March 6, 1863, is hereby amended to read as follows:
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> All able-bodied colored men between the ages of eighteen and fifty, within the military lines of the Department of the South, who have had an opportunity to enlist voluntarily and refused to do so, shall be drafted into the military service of the United States....
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> The owners or superintendents of plantations, and all other persons throughout the department not in the military service, are hereby authorized and required to arrest and deliver to the local provost-marshal of the nearest military post all deserters in their employ or loitering about their plantations, and if it be necessary for a guard to make the arrest, it shall be the duty of such person or persons knowing of the whereabouts of any deserter, or person by common reports called a deserter, to report the fact to the nearest military commander, and also to render him all assistance in his power to cause the arrest. Any person found guilty of violating this section shall be severely punished.[6]

These orders adequately account for a large majority of the Black men who bore arms against their former masters, without whom Lincoln declared that he would have to "abandon the war in three weeks."[7] In a 26 February 1864 dispatch from Huntsville, Alabama, General John A. Logan wrote that "a major of colored troops is here with his party capturing negroes,

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5. General Orders No. 17, 6 March 1863; *ibid.*, Volume XIV, page 1020.

6. General Orders No. 119, 16 August 1864; *ibid.*, Series III, Volume IV, page 621.

7. Lincoln, quoted by Nicolay and Hay, *Lincoln: Complete Works*, Volume II, page 562.

with or without their consent.... [T]hey are being conscripted."[8] On 1 September 1864, Captain Frederick Martin reported from New Berne, North Carolina, "The negroes will not go voluntarily, so I am obliged to force them.... I expect to get a large lot to-morrow."[9] To this report, General Innis N. Palmer added:

> The matter of collecting the colored men for laborers has been one of some difficulty, but I hope to send up a respectable force. The matter has been fairly explained to the contrabands, and they have been treated with the utmost consideration, but they will not go willingly. Now, I take it that the state of the country needs their services, and that if they will not go willingly they must be forced to go, and I propose to take all I can find who are in no permanent employment and send them up. I am aware that this may be considered a harsh measure, but at such a time we must not stop at trifles.[10]

In the words of General Rufus A. Saxton, "Men have been seized and forced to enlist who had large families of young children dependent upon them for support and fine crops of cotton and corn nearly ready for harvest, without an opportunity of making provision for the one or securing the other." On at least one occasion, "three boys, one only fourteen years of age, were seized in a field where they were at work and sent to a regiment serving in a distant part of the department without the knowledge of their parents...."[11] It was also reported that, "On some plantations the wailing and screaming were loud and the women threw themselves in despair on the ground. On some plantations the people took to the woods and were hunted up by the soldiers.... I doubt if the recruiting service in this country has ever been attended with such scenes before."[12]

It was not uncommon for these Black regiments to be "forced to the front by a wall of bayonets, in white hands, behind them."[13] One Northern soldier is quoted as saying, "I used to be opposed to having black troops, but when I saw ten cart-loads of dead niggers carried off the field yesterday I thought it better they should be killed than I."[14] Another

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8. John A. Logan to T.S. Bowers, 26 February 1864; in *Official Records: Armies*, Series I, Volume XXXII, Part II, page 477.

9. Frederick Martin to Benjamin F. Butler, 1 September 1864; *ibid.*, Series I, Volume XLII, Part II, pages 653-654.

10. Innis N. Palmer to R.S. Davis, 1 September 1864; *ibid.*, page 654.

11. Rufus A. Saxton to Edwin M. Stanton, 30 December 1864, in *ibid.*, Series III, Volume IV, page 1028.

12. Edward L. Pierce to David Hunter 13 May 1862; *ibid.*, Series III, Volume II, page 57.

13. Carpenter, *Logic of History*, page 170.

14. Unnamed Northern soldier, quoted by Charles Godfrey Leland, *Abraham Lincoln* (New York: G.P. Putnam's Sons, 1881), page 61.

soldier commented that this treatment "has created a suspicion that the Government has not the interest in the negroes that it has professed, and many of them sighed yesterday for the 'old fetters' as being better than the new liberty."[15]

Some Black slaves, supposedly emancipated by Lincoln's Proclamation of 1 January 1863, even found themselves traded back to Southern planters by Northern officers in exchange for cotton. One Government document revealed:

> A commission is now in session at the west with Maj. Gen. McDowell at its head, investigating the conduct of Maj. Gen. Curtis and other Republican officials, in conducting their military operations so as to secure the largest amount of cotton possible for their own private benefit. One of the richest revelations made is in reference to the trading off of negroes for cotton! The specification alleges that negro slaves had been taken from the plantations upon the pretense of giving them freedom under the President's "emancipation edict," and thus used as a substitute for coin. It has been fully proven before the investigating court. The officer charged with this lucrative speculation was Col. Hovey of Illinois, formerly the principal of the State Normal School at Bloomington.[16]

Northern Atrocities Against Southern Blacks

Because the invading Northern soldiers had been instructed to view the Southern slaves as "enemy property" to be confiscated and appropriated to the use of the United States Army, it was inevitable that the hatred these men carried in their hearts toward the people of the South would be projected upon their helpless servants. In his address to the Confederate Congress of 7 December 1863, Jefferson Davis stated:

> Nor has less unrelenting warfare been waged by these pretended friends of human rights and liberties against the unfortunate negroes. Wherever the enemy have been able to gain access they have forced into the ranks of their army every able-bodied man that they could seize, and have either left the aged, the women, and the children to perish by starvation, or have gathered them into camps where they have been wasted by a frightful mortality. Without clothing or shelter, often without food, incapable without supervision of taking the most ordinary precautions against disease, these helpless dependents, accustomed to have their wants supplied by the foresight of their masters, are being rapidly exterminated wherever brought in contact with the invaders. By the Northern man, on whose deep-rooted prejudices no kindly restraining influence is exercised, they are treated with aversion and neglect. There is little hazard in predicting that in all localities where the enemy have gained a temporary foothold the negroes, who under our care increased six-fold in number since their importation into the colonies by Great Britain, will have

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15. G.M. Wells to Edward Pierce, 13 May 1862; in *Official Records: Armies*, Series III, Volume II, page 59.

16. Quoted by Carpenter, *Logic of History*, page 263.

> been reduced by mortality during the war to no more than one-half their previous number.
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> Information on this subject is derived not only from our own observation and from the reports of the negroes who succeed in escaping from the enemy, but full confirmation is afforded by statements published in the Northern journals by humane persons engaged in making appeals to the charitable for aid in preventing the ravages of disease, exposure, and starvation among the negro women and children who are crowded into encampments.[17]

Davis' words are easily verified. Indeed, the official records of the war, published by the United States Government, are literally filled with accounts of the robbery, rape, and murder endured by Southern Blacks at the hands of their supposed "liberators." General Orders No. 27, issued on 17 August 1862 under the authority of Major-General David Hunter, stated that "numerous acts of pilfering from the negroes have taken place in the neighborhood of Beaufort, committed by men wearing the uniform of the United States."[18] J.T.K. Hayward testified that Northern soldiers were "committing rapes on the negroes and such like things.... and no punishment, or none of any account, has been meted out to them."[19] In the tiny town of Athens, Alabama, Northern soldiers under the command of Colonel John B. Turchin "attempted an indecent outrage on [a] servant girl," and quartered themselves "in the negro huts for weeks, debauching the females." This account also tells of the gang-rape "on the person of a colored girl...."[20] Although Turchin was court-martialed and convicted for these crimes on 7 July 1862, he was promoted by Lincoln only a month later to the rank of Brigadier General.[21]

The following letter dated 29 December 1862 was written by a Northern chaplain and two surgeons stationed at Helena, Arkansas:

> The undersigned Chaplains and Surgeons of the army of the Eastern District of Arkansas would respectfully call your attention to the Statements and Suggestions following. The contrabands within our lines are experiencing hardships, oppression and neglect the removal of which calls loudly for the intervention of authority. We daily see and deplore the evil and leave it to your wisdom to devise a remedy. In a great degree the contrabands are left entirely to the mercy and rapacity of the unprincipled part of our army (excepting only the limited jurisdiction of Capt. Richmond) with no person clothed with specific authority to look after and protect them. Among the list of grievances we mention

17. Jefferson Davis, address to the Confederate States Congress, 7 December 1863; in *Official Records: Armies*, Series IV, Volume II, Part I, page 1047.

18. Edward W. Smith, General Orders No. 27; *ibid.*, Series I, Volume XIV, page 376.

19. J.T.K. Hayward, *ibid.*, Series I, Volume III, page 459.

20. *Ibid.*, Series I, Volume XVI, Part II, pages 273-275.

21. *Ibid.*, page 277.

these:

Some who have been paid by individuals for cotton or for labor have been waylaid by soldiers, robbed, and in several instances fired upon, as well as robbed, and in no case that we can now recall have the plunderers been brought to justice.

The wives of some have been molested by soldiers to gratify their licentious lust, and their husbands murdered in endeavoring to defend them, and yet the guilty parties, though known, were not arrested. Some who have wives and families are required to work on the fortifications, or to unload Government stores, and receive only their meals at the public table, while their families, whatever provision is intended for them, are, as a matter of fact, left in a helpless and starving condition.

Many of the contrabands have been employed, and received in numerous instances, from officers and privates, only counterfeit money or nothing at all for their services. One man was employed as a teamster by the Government and he died in the service (the Government indebted to him nearly fifty dollars) leaving an orphan child eight years old, and there is no apparent provision made to draw the money, or to care for the orphan child. The negro hospital here has become notorious for filth, neglect, mortality and brutal whipping, so that the contrabands have lost all hope of kind treatment there, and would almost as soon go to their graves as to their hospital. These grievances reported to us by persons in whom we have confidence, and some of which we know to be true, are but a few of the many wrongs of which they complain.

For the sake of humanity, for the sake of Christianity, for the good name of our army, for the honor of our country, cannot something be done to prevent this oppression and stop its demoralizing influences upon the soldiers themselves? Some have suggested that the matter be laid before the Department at Washington, in the hope that they will clothe an agent with authority to register all the names of the contrabands, who will have a benevolent regard for their welfare, through whom all details of fatigue and working parties shall be made, through whom rations may be drawn and money paid, and who shall be empowered to organize schools, and to make all needful regulations for the comfort and improvement of the condition of the contrabands; whose accounts shall be open at all times for inspection, and who shall make stated reports to the Department.

All which is respectfully submitted,
Samuel Sawyer
Pearl P. Ingall
J.G. Forman[22]

After the fall of Richmond, Virginia, General Grant was notified that "a number of cases of atrocious rape by these men have already occurred. Their influence on the colored

22. Ira Berlin, Barbara J. Fields, Steven F. Miller, Joseph P. Reidy, and Leslie S. Rowland (editors), *Free at Last: A Documentary History of Slavery, Freedom, and the Civil War* (New York: The New Press, 1992).

population is also reported to be bad."[23] General Saxton wrote the following report to Secretary of War Stanton on 30 December 1864: "I found the prejudice of color and race here in full force, and the general feeling of the army of occupation was unfriendly to the blacks. It was manifested in various forms of personal insult and abuse, in depredations on their plantations, stealing and destroying their crops and domestic animals, and robbing them of their money.... The women were held as the legitimate prey of lust...."[24] Private John W. Haley of the Seventeenth Maine Regiment, related how he and his fellow soldiers amused themselves at the Negroes' expense: "A host of young niggers followed us to camp and soon made themselves too familiar. We bounced them up in blankets and made them butt against each other also against some pork barrels and hard-bread boxes. A couple hours worth of bouncing satisfied them. One young nigger had an arm broke and several others were more or less maltreated."[25] The *Official Records* also record the following communique from General Dix: "...[T]he colored people... have been forced to remain all night on the wharf without shelter and without food; ...one has died, and... others are suffering with disease and... your men have turned them out of their houses, which they have built themselves, and have robbed some of them of their money and personal effects."[26]

Such accounts were corroborated by the eyewitness testimonies of Southerners themselves, both White and Black. The vast majority of atrocities against the Blacks were committed by Northern soldiers during William Tecumseh Sherman's infamous march from Atlanta, Georgia to Charleston, South Carolina in late 1864 and early 1865. Mrs. Nora Canning of Savannah, Georgia told how the dead baby of one of the family's slave-women was dug up by Northern soldiers looking for buried treasure, the body being carelessly cast aside "for the hog to root" when none was found.[27] Dr. Daniel Trezevant, a respected citizen of Columbia, South Carolina, testified how one "old negro woman, who, after being subjected to the most brutal indecency from seven of the Yankees, was, at the proposition of one of them to 'finish the old Bitch,' put into a ditch and held under water until life was extinct...."[28] In a letter that was discovered in the streets of Columbia after Sherman's "bummers" passed through, Lieutenant Thomas J. Myers wrote the following words to his wife in Boston: "The damned niggers, as a general rule, prefer to stay at home, particularly after they found out that we only wanted the able-bodied men, (and, to tell you the truth, the

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23. Henry W. Halleck, in *Official Records: Armies*, Series I, Volume XLVI, Part III, page 1005.

24. Saxton to Stanton, 30 December 1864; *ibid*., Series III, Volume IV, page 1029.

25. John W. Haley in Ruth L. Silliker (editor), *The Rebel Yell and Yankee Hurrah* (Camden, Maine: Down East Books, 1985), page 273.

26. John A. Dix, *Official Records: Armies*, Series I, Volume XVIII, page 464.

27. Mrs. Nora M. Canning in Rod Gragg (editor), *The Illustrated Confederate Reader* (New York: Gramercy Books, 1998), page 179.

28. Dr. Daniel Heyward Trezevant in Gragg, *ibid*., page 192.

youngest and best-looking women.) Sometimes we took off whole families and plantations of niggers, by way of repaying secessionists. But the useless part of them we soon manage to lose; sometimes in crossing rivers, sometimes in other ways."[29]

Dr. John Bachman, pastor of the Lutheran Church at Charleston, described the brutal treatment of the Blacks by the Northern invaders as follows:

> When Sherman's army came sweeping through Carolina, leaving a broad track of destruction for hundreds of miles, whose steps were accompanied with fire, and sword, and blood, reminding us of the tender mercies of the Duke of Alva, I happened to be at Cash's Depot, six miles from Cheraw.... A system of torture was practiced toward the weak, unarmed, and defenseless, which, as far as I know and believe, was universal throughout the whole course of that invading army. Before they arrived at a plantation, they inquired the names of the most faithful and trustworthy family servants; these were immediately seized, pistols were presented at their heads; with the most terrific curses, they were threatened to be shot if they did not assist them in finding buried treasures. If this did not succeed, they were tied up and cruelly beaten. Several poor creatures died under the infliction. The last resort was that of hanging, and the officers and men of the triumphant army of General Sherman were engaged in erecting gallows and hanging up these faithful and devoted servants. They were strung up until life was nearly extinct, when they were let down, suffered to rest awhile, then threatened and hung up again. It is not surprising that some should have been left hanging so long that they were taken down dead. Cooly and deliberately these hardened men proceeded on their way, as if they had perpetrated no crime, and as if the God of heaven would not pursue them with his vengeance....
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> On Sunday, the negroes were dressed in their best suits. They were kicked, and knocked down and robbed of all their clothing, and they came to us in their shirt-sleeves, having lost their hats, clothes, and shoes. Most of our own clothes had been hid in the woods. The negroes who had assisted in removing them were beaten and threatened with death, and compelled to show them where they were concealed. They cut open the trunks, threw my manuscripts and devotional books into a mud-hole, stole the ladies' jewelry, hair ornaments, *etc*., tore many garments into tatters, or gave the rest to the negro women to bribe them into criminal intercourse. These women afterward returned to us those articles that, after the mutilations, were scarcely worth preserving. The plantation, of one hundred and sixty negroes, was some distance from the house, and to this place successive parties of fifty at a time resorted for three long days and nights, the husbands and fathers being fired at and compelled to fly to the woods.[30]

Even more shocking is the following account given by William Gilmore Simms of

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29. Letter of Lieutenant Thomas J. Myers to Mrs. Thomas J. Myers, 26 February 1865; quoted by Dean, *Crimes of the Civil War*, pages 82-83.

30. Dr. John Bachman, letter dated 14 September 1865; quoted by Davis, *Rise and Fall of the Confederate Government*, Volume II, pages 710, 712.

Columbia:

Something should be said in respect to the manner in which the negroes were treated by the Federals while in Columbia.... [The soldiers] were adverse to a connection with them; but few negroes were to be seen among them, and they were simply used as drudges, grooming horses, bearing burdens, humble of demeanor and rewarded with kicks, cuffs and curses, frequently without provocation. They despised and disliked the negro; openly professed their scorn or hatred, declared their unwillingness to have them as companions in arms or in company at all.

Several instances have been given us of their modes of repelling the association of the negro, usually with blow of the fist, butt of the musket, slash of the sword or prick of the bayonet.

Sherman himself looked on these things indifferently, if we are to reason from a single fact afforded us by Mayor Goodwyn. This gentleman, while walking with the general, heard the report of a gun. Both heard it, and immediately proceeded to the spot. There they found a group of soldiers, with a stalwart young negro fellow lying dead before them on the street, the body yet warm and bleeding. Pushing it with his feet, Sherman said, in his quick, hasty manner:

"What does this mean, boys?"

The reply was sufficiently cool and careless. "The d---d black rascal gave us his impudence, and we shot him."

"Well, bury him at once! Get him out of sight!"

As they passed on, one of the party remarked:

"Is that the way, General, you treat such a case?"

"Oh!" said he, "we have no time now for courts martial and things of that sort!"

...The treatment of the negroes in their houses was, in the larger proportion of cases, quite as harsh as that which was shown to the whites. They were robbed in like manner, frequently of every article of clothing and provisions, and where the wigwam was not destroyed, it was effectually gutted. Few negroes having a good hat, good pair of shoes, good overcoat, but were incontinently deprived of them, and roughly handled when they remonstrated....

The soldiers, in several cases which have been reported to us, pursued the slaves with the tenacity of blood-hounds; were at their elbows when they went forth, and hunted them up, at all hours, on the premises of the owner. Very frequent are instances where the negro, thus hotly pursued, besought protection of his master or mistress, sometimes voluntarily seeking a hiding place along the swamps of the river; at other times, finding it under the bed of the owner; and not leaving these places of refuge till long after the troops had departed.

For fully a month after they had gone, the negroes, singly or in squads, were daily making their way back to Columbia, having escaped from the Federals by dint of great perseverance and cunning, generally in wretched plight, half-starved and with little clothing. They represented the difficulties in the way of their escape to be very great, and the officers placing them finally under guards at night, and that they could only succeed in flight at the peril of life or limb. Many of these were negroes of Columbia, but the larger proportion seemed to hail from Barnwell. They all sought passports to return to their

owners and plantations.[31]

Even many honorable men in the North saw through the thin philanthropic mask of the Abolitionist invasion of the South. According to R.G. Horton of New York, "The driving off negroes from the plantations was no uncommon occurrence throughout the South. The negro is naturally very much attached to his home, and when the abolition officers came among them and told them they were free to leave their masters and they did not do so, they often became very angry with them, and *compelled* them to enjoy what they called 'the blessings of freedom.' These 'blessings,' it has been proved, consisted mainly of 'disease and death'" (emphasis in original).[32] It was estimated by Senator James R. Doolittle of Wisconsin, himself an ardent Abolitionist, that one million Negroes had perished from disease, neglect, and other factors associated with the invasion of the South and a disruption of its institutions.[33] According to Robert Lewis Dabney's 21 October 1865 letter to Major-General O.O. Howard, half the Black population of Louisiana were lying in their graves by the end of the war.[34]

Such accounts, which would literally fill volumes and sicken the soul of any civilized man or woman, are rarely brought to light by those who propagate the myth that the war was fought by the Northern armies with the welfare of the Black race in mind. We will conclude this chapter with the following words of Dennis A. Mahony, editor of the Dubuque (Iowa) *Herald*, written in the Old Capitol Prison at Washington, D.C. where he was imprisoned in 1862 by the Lincoln Administration for his Democratic sentiments. In his journal entry for the ninth of September, Mahoney recorded the entrance into the prison of several Confederate prisoners of war, captured at the battle of Fredericksburg, Virginia:

> Several prisoners have been brought here to-day from the neighborhood of Fredericksburgh. Among them were some negroes, one of them, a large, intelligent spoken fellow, was very anxious to see his master, who, having been paroled, was not brought to the prison. I asked this slave whether he would go back to his master.
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> "Yes, sir," said he, "I don't want to stay here; my master always treated me well, and I don't want to leave him."
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> "But," said I, "they will keep you here, or send you north."
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> "Well, massa," said he, "if they won't let me go home, I can't help it; but, if they will let me away, I will go with my master."
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> In connection with this, I may say, from conversations I have had with nearly

31. William Gilmore Simms, *The Sack and Destruction of Columbia, South Carolina* (Columbia, South Carolina: Power Press of the Daily Phoenix, 1865), pages 60-62.

32. Horton, *History of the Great Civil War*, pages 291-292.

33. James R. Doolittle, quoted by Horton, *ibid*., page 292.

34. Dabney, *Discussions*, Volume IV, page 38.

> every one of the male contrabands around the premises, that every one of them desires, and designs, if he should have an opportunity, to go back to his master. Most of them were brought here against their will, and, if left free to choose, they will go back to their old masters, in preference to remaining here or going north.[35]

Further comment on the "freedom" given to the Southern Blacks by the Northern invaders is not necessary.

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35. Mahony, *Prisoner of State*, pages 235-236.

SUPPORTING DOCUMENT

Report of General Rufus A. Saxton to Secretary of War Edwin M. Stanton

Official Records of the War of Rebellion — 30 December 1864

By your instructions of August 25, 1862, I was authorized and instructed to organize and receive into the service of the United States as soldiers "volunteers of African descent" not exceeding 5,000, and to detail officers to command them.

The special duty of this force was to guard the plantations and settlements in the department and to make incursions into the rebel territory for the purpose of bringing away the negroes, the only laboring force of the rebels, and thus reducing their military strength. I invited the people to embrace the opportunity and privilege of aiding to achieve their permanent freedom. They were assured that their enlistment would be entirely voluntary; that no force would be used to compel them to enlist. The First Regiment of South Carolina Volunteers was mustered into the service of the United States in October, 1862, and placed under the command of Col. T.W. Higginson, an able and accomplished officer. The career of this pioneer regiment, the first colored regiment ever mustered into the U.S. Army, its perfect discipline and efficiency are matters of history.

The claim of this regiment is that its earlier struggles, its drill and discipline, its expeditions along the southern coast, it made Port Hudson and Fort Wagner possible, because it opened for colored soldiers an opportunity.

Subsequently I was relieved from the duty of recruiting by the major-general commanding, General Gillmore.

The whole number of colored troops recruited in the department, both by myself and others, falls much short of the number contemplated in your instructions.

The failure is owing to several causes. When first invited to enlist the negroes had

hardly learned to realize the promised change in their condition — to comprehend as a possibility that they had been so suddenly lifted out of the utter degradation of chattelism to the dignity of the right of bearing arms. They were far from being sure of their freedom.

Several occurrences had led them to doubt our good faith, who professed to come as their deliverers. They were fully aware of the contempt, oftentimes amounting to hatred, of their ostensible liberators. They felt the bitter derision, even from officers of high rank, with which the idea of their being transformed into available soldiers was met, and they saw it was extended to those who were laboring for their benefit. When their own good conduct had won them a portion of respect, there still remained widespread distrust of the ultimate intention of the Government.

A large number was required as laborers in the various departments of Government service. But one of the chief causes of failure is the fact that a comparatively few of the negroes are physically fit for soldiers; many suffer under some visible or concealed infirmity, produced by the rigor, cruelty, and barbarity of their treatment, and the evidences of the most unsanitary conditions of life on the plantations. In these circumstances the recruiting went on slowly, when the major-general commanding (General Foster) ordered an indiscriminate conscription of every able-bodied colored man in the department. As the special representative of the Government in its relation to them, I had given them earnest and repeated assurances that no force would be used in recruiting the black regiments. I say nothing of this order, in reference to my special duties and jurisdiction and the authority of the major-general commanding to issue it; but as an apparent violation of faith pledged to the freedmen, it could not but shake their confidence in our just intentions, and make them the more unwilling to serve the Government.

The order spread universal confusion and terror. The negroes fled to the woods and swamps, visiting their cabins only by stealth and in darkness. They were hunted to their hiding places by armed parties of their own people, and, if found, compelled to enlist. This conscription order is still in force. Men have been seized and forced to enlist who had large families of young children dependent upon them for support and fine crops of cotton and corn nearly ready for harvest, without an opportunity of making provision for the one or securing the other.

Three boys, one only fourteen years of age, were seized in a field where they were at work and sent to a regiment serving in a distant part of the department without the knowledge or consent of their parents.

A man on his way to enlist as a volunteer was stopped by a recruiting party. He told them where he was going and was passing on when he was again ordered to halt. He did not stop and was shot dead, and was left where he fell. It is supposed the soldiers desired to bring him and get the bounty offered for bringing in recruits.

Another man who had a wife and family was shot as he was entering a boat to fish, on the pretense that he was a deserter. He fell in the water and was left. His wound, though very severe, was not mortal. An employee in the Quartermaster's Department was taken, and without being allowed to communicate with the quartermaster or settle his accounts or

provide for his family, was taken to Hilton Head and enrolled, although he had a certificate of exemption from the military service from a medical officer.

I protested against the order of the major-general commanding (General Foster) and sent him reports of these proceedings, but had no power to prevent them. The order has never to my knowledge been revoked.

It was generally believed that the commission with which I was intrusted was given with a view to a critical test experiment of the capabilities of the negro for freedom and self-support and self-improvement, to determine whether he is specifically distinct from and inferior to the white race, and normally a slave and dependent, or only inferior by accident of position and circumstances, still a man, and entitled to all the rights which our organic law has declared belongs to all men by the endowment of the Creator.

I believed myself charged with a mission of justice and atonement for wrongs and oppressions the race had suffered under the sanction of the national law. I found the prejudice of color and race here in full force, and the general feeling of the army of occupation was unfriendly to the blacks. It was manifested in various forms of personal insult and abuse, in depredations on their plantations, stealing and destroying their crops and domestic animals, and robbing them of their money.

The women were held as the legitimate prey of lust, and as they had been taught it was a crime to resist a white man they had not learned to dare to defend their chastity.

Licentiousness was widespread; the morals of the old plantation life seemed revived in the army of occupation. Among our officers and soldiers there were many honorable exceptions to this, but the influence of too many was demoralizing to the negro, and has greatly hindered the efforts for their improvement and elevation.

There was a general disposition among the soldiers and civilian speculators here to defraud the negroes in their private traffic, to take the commodities which they offered for sale by force, or to pay for them in worthless money. At one time these practices were so frequent and notorious that the negroes would not bring their produce to market for fear of being plundered. Other occurrences have tended to cool the enthusiastic joy with which the coming of the "Yankees" was welcomed.

Their disappointment at not getting the lands they had selected at the invitation and under the supposed guaranty of the Government, I have referred to. They had been promised land on conditions they were ready and offered to fulfill. The land was denied to them; they could not understand the reasons of law and expediency why the promise was broken to the hope.

When they were invited to enlist as soldiers they were promised the same pay as other soldiers; they did receive it for a time, but at length it was reduced, and they received but little more than one-half what was promised. The questions of the meaning and conflicts of statutes which justified this reduction could not be made intelligible to them. To them it was simply a breach of faith. It is first of all essential to the success of the efforts of the Government in their behalf that the negroes shall have entire confidence in its justice and good faith. These things fill them with doubt and apprehension. They know as yet very little of potential

mechanism or gradation of authority, and hence every white man is in their eyes the Government.

Their conceptions are too confused to enable them to distinguish clearly between official acts and the wanton outrages of individuals. I had no independent power to prevent or punish these violences and wrongs. The aid and protection in my operations which the commander of the department was instructed to afford were not always promptly or efficiently rendered.

In all matters relating to my special duties I was declared independent of the other military authorities. I was deeply sensible of the importance of maintaining harmonious relations with those authorities. I have never consciously invaded their functions. I have scrupulously endeavored to avoid exercising or claiming any power which was not clearly conferred by my instructions, or which would bring me into collision with other authorities; yet my operations have been interfered with in every step I have taken. My authority has been questioned by the department commanders, explanations of my official acts demanded, those acts annulled, and subordinate officers sustained and encouraged in preventing the execution of my orders.

These frequently occurring and harassing conflicts of jurisdiction, when harmony of councils and concert of action were vitally important, compelled me to ask very earnestly to be relieved from my special duties. Having experienced embarrassments in the past, I could not hope they would be lessened in the future by one less friendly to the work I had to do. I will not recapitulate the frequent occasions of disputed jurisdiction in which I have been most unwillingly involved with the other military authorities. I have sometimes yielded without controversy and sometimes reported and referred the question to the department to which I am responsible. I could scarcely carry out measures of importance with the confidence and vigor necessary to success when the first movement might be contested with questions of jurisdiction to be settled at every step. I was put upon my defense and required to prove before an authority to which I was not responsible that the official acts I contemplated were not usurpations. So far as these things affect me personally, I would be silent concerning them. I do not refer to them in a spirit of personal complaint, but only in their relation to the people whose interests were intrusted to my charge, and my own ability to fulfill the beneficent intentions of the Government toward them. I was the organ of communicating to them the purposes of the Government as conveyed in your instructions in their general scope and the particular measures devised for their good. Their frequent disappointments, though for causes over which I had no control, which, being political considerations, they had not the faintest understanding of, weakened their confidence in me and impaired my influence and usefulness.

Amid all their griefs and disappointments they seem to have kept bright their faith in Mr. Lincoln. Their hope and confidence in him never wavers. They regard him as their great friend and deliverer, who, though often thwarted in his purpose of good by malign influences, will at last bring them to the promised land.

The experiment with the freedmen in this department is a success. The only use I

wish to make of this catalogue of difficulties is as an illustration of the fact which forms the summary and substance of this and all other true reports of the freedmen in their new conditions — amid all their obstructions, and in spite of all, they have made constant progress and proved their right to be received into the full communion of freemen.

They have shown that they can appreciate freedom as the highest boon; that they will be industrious and provident with the same incitement which stimulates the industry of other men in free societies; that they understand the value of property and are eager for its acquisition, especially of land; that they can conduct their private affairs with sagacity, prudence, and success; that under freedom's banner these sea islands are not destined to become a howling wilderness, but will flourish more than ever when cultivated by freemen; that they are not ignorant from natural incapacity, but from the brutishness of their former condition; that they are intelligent, eager, and apt to acquire knowledge of letters, docile and receptive pupils; that they acquire to adopt as fast as means and opportunity admit the social forms and habits of civilization; that they quickly get rid of in freedom the faults and vices generated by slavery, and in truthfulness and fidelity and honesty may be compared favorably with men of any other color, in conditions as unfavorable for the development of those qualities; that they are remarkably susceptible of religious emotions and the inspirations of music; that, in short, they are endowed with all the instincts, passions, affections, sensibilities, powers, aspirations, and possibilities which are the common attributes of human nature.

They have given the highest proof of manhood by their bravery and discipline on many a battle-field where defeat, they well knew, had for them no mercy. They have conquered a recognition of their manhood and right to be free and vindicated the wisdom and justice of your first order to place arms in their hands (which I had the honor of receiving and executing). The senseless prejudices and bitter contempt against their race are disappearing before their peaceful and orderly conduct under their trials and provocations, their patient hope and heroism in war. Events for four years have been disciplining the mind of the nation to prepare it to give them full recognition and ample justice.

In this view it may be that the obstacles which beset their earlier path toward freedom were blessings, normal elements for the solution of the great problem of their manhood and their rights; as the atrocities and diabolisms, the murders and martyrdoms, the countless sacrifice of noblest lives in this war, may have been necessary to convince the American people of the utter and irredeemable barbarism of slavery and to inspire them with a determined purpose to build themselves up into a new nation and a new Union upon the enduring foundation of justice, freedom, and equal rights of all men.

It has been my earnest endeavor to carry out to the extent of my ability your views and purposes with regard to the people committed to my charge, and to inaugurate in this department the wise and humane policy contemplated in your instructions to me.

In the hope that I have been in some degree successful, I am sir, with great respect, your obedient servant.

R. Saxton, Brigadier-General of Volunteers

SUPPLEMENTARY ESSAY

The Fidelity of the Negroes During the War

by Sallie B. Putnam

There is an inherent pride in personal responsibility, and this was fully exemplified in the test of the negro during the war. It was a matter of infinite gratification with him to take care of his mistress and the little ones, while his master was absent in the field. The duties of rearing and of training the children of a Southern family were always proudly shared by the domestics known as "house servants." In almost every Southern household there was the "mammy," the "daddy," and aunties and uncles of the senior servants, who received these appellations from the affection and respect in which they were held by the members of the white family to which they were attached.

We might cite numerous instances of the fidelity of negroes that came under our notice, but will only refer to one, illustrating the deep attachment of which the negro is capable, and the just cause of responsibility which takes hold of his mind.

A young soldier from Georgia brought with him to the war in Virginia a young man who had been brought up with him on his father's plantation. On leaving his home with his regiment, the mother of the young soldier said to his negro slave: "Now, Tom, I commit your master Jemmy into your keeping. Don't let him suffer for anything with which you can supply him. If he is sick, nurse him well, my boy; and if he dies, bring his body home to me; if wounded, take care of him; and oh! if he is killed in battle, don't let him be buried on the field, but secure his body for me, and bring him home to be buried!" The negro faithfully promised his mistress that all of her wishes should be attended to, and came on to the seat of war charged with the grave responsibility placed upon him.

In one of the battles around Richmond the negro saw his young master when he entered the fight, and saw him when he fell, but no more of him. The battle became fierce, the dust and smoke so dense that the company to which he was attached, wholly enveloped

in the cloud, was hidden from the sight of the negro, and it was not until the battle was over that Tom could seek for his young master. He found him in a heap of the slain. Removing the mangled remains, torn frightfully by a piece of shell, he conveyed them to an empty house, where he laid them out in the most decent order he could, and securing the few valuables found on his person, he sought a conveyance to carry the body to Richmond. Ambulances were in too great requisition for those whose lives were not extinct to permit the body of a dead man to be conveyed in one of them. He pleaded most piteously for a place to bring in the body of his young master. It was useless, and he was repulsed; but finding some one to guard the dead, he hastened into the city and hired a cart and driver to go out with him to bring in the body to Richmond.

When he arrived again at the place where he had left it, he was urged to let it be buried on the field, and was told that he would not be allowed to take it from Richmond, and therefore it were better to be buried there. "I can't do it," replied the faithful negro; "I can't do it; I promised my mistress (his mother) to bring this body home to her if he got killed, and I'll go home with it or I'll die by it; I can't leave my master Jemmy here." The boy was allowed to have the body and brought it into Richmond, where he was furnished with a coffin, and the circumstances being made known, the faithful slave, in the care of a wounded officer who went South, was permitted to carry the remains of his master to his distant home in Georgia. The heart of the mother was comforted in the possession of the precious body of her child, and in giving it a burial in the church-yard near his own loved home.

Fee or reward for this noble act of fidelity would have been an insult to the better feelings of this poor slave; but when he delivered up the watch and other things taken from the person of his young master, the mistress returned him the watch, and said: "Take this watch, Tom, and keep it for the sake of my dear boy; 'tis but a poor reward for such services as you have rendered him and his mother." The poor woman, quite overcome, could only add: "God will bless you, boy!"

To allude to an institution which is without the prospect of or a wish for its resurrection, would be like opening the grave and exhibiting the festering remains of our former social system; but we cannot forbear extracting from an evil — and only evil morally, not necessarily involving sin — many a beautiful lesson from the relation in which it was held by us. Our slaves were most generally the repositories of our family secrets. They were our confidants in all our trials. They joyed with us and they sorrowed with us; they wept when we wept, and they laughed when we laughed. Often our best friends, they were rarely our worst enemies. Simple and childlike in their affections, they were more trustworthy in their attachments than those better versed in wisdom. For good or evil, in his present altered condition the negro has the warmest sympathies of his former master, and ever in him will find a "friend in need," who will readily extend to him the hand of kindness and generous affection.

The preceding essay was extracted from Sallie B. Putnam, Richmond During the War: Four Years of Personal Observation *(New York: C.W. Carleton and Company, Publishers, 1867).*