

A MORAL ACCOUNTING OF THE UNION AND THE CONFEDERACY

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What it means to be an American, both for Americans and foreigners, is largely determined by one's attitude toward the war to defeat Southern independence in 1861–65. More books have been written about this war than about any other event in secular history, and they continue to pour forth. It has been a war to conjure with. To Americans, at least, it has seemed pregnant with transcendent, mythical, and theological meanings. What meaning can libertarians find in that great struggle?

Southerners argued that they were fighting for *liberty*, particularly the liberty to govern themselves. They placed the Southern states' secession on the same moral plane as the American colonies' secession from Great Britain a generation or two before (the fathers of Robert E. Lee and Jefferson Davis had been officers during the Revolutionary War). The Great Seal of the Confederacy contains an equestrian statue of secessionist George Washington.

Libertarians, I argue, should morally identify with the Confederacy's struggle for independence, and therefore redirect historical research and the writing around the moral propositions that the 1860 dismemberment of the Union by peaceful secession was morally sound, and that the North's invasion to prevent secession and to create a consolidated American state was morally unsound.

WAS THE MORAL PROBLEM SLAVERY OR RACISM?

Libertarians are and must be sympathetic to secession, for seces-

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sion is nothing other than an exit right, a right internal to the very idea of liberty. Secession is not always justified, but, for libertarians, it is presumed morally justified unless compelling reasons to the contrary exist.

The reason why the secession of the Southern states has not generally been accorded this moral presumption is twofold. First, the founding myth of American nationalism is that the South seceded to protect slavery while the North invaded to abolish it. The vast resources available to the central government and its cultural elites have been used to drum this “Battle Hymn of the Republic” myth into the public consciousness for over a century. This myth, however, is false.

Still, a second barrier remains, for slavery was legal in the South and not in the North. How can we take seriously the moral claim of Southerners that they seceded in order to govern themselves when they did not extend the right of self-government to blacks? One is reminded of Dr. Johnson’s irritation at the American colonists who threatened secession from Britain: he wondered why he had to hear constant yelps about liberty from the drivers of slaves. It is impossible not to feel the force of this argument, and we must acknowledge that slavery was a moral stain on the seceding American colonies, all of which allowed slavery in 1776, as well as on the seceding Southern states, all of which allowed slavery in 1861.¹

But slavery is not the only moral wrong in the world, and its presence does not make other actions automatically immoral, nor opposing actions automatically moral. If the American colonies and the Southern states had a moral right to secede and govern themselves, then the invasions to suppress secession were morally reprehensible. This was even more true in the Southern case than in the colonial case. First, Southerners gave a *legal* argument for secession that was not available to the colonists.² Second, unlike the British, the North, in order to win,

¹See Woody Holton, *Forced Founders* (Chapel Hill: University of North Carolina Press, 1999), who argues that threats by British authorities to emancipate and use slaves against the colonists partially motivated colonial secession.

²See James Ostrowski, “Was the Union Army’s Invasion of the Confederate States a Lawful Act? An Analysis of President Lincoln’s Legal Arguments Against Secession,” and Donald W. Livingston, “The Secession Tradition in America,” in *Secession, State and Liberty*, ed. David Gordon (New Brunswick, N.J.: Transaction Publishers, 1998).

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abandoned the code of civilized warfare by directing war against civilians. Sherman knew that, under the legal code of warfare taught at West Point, he was guilty of war crimes punishable by death.³

Had the British invasion of the colonies, or the Northern invasion of the Confederacy, been launched with the intention of eliminating slavery, they might have had some appearance of morality. But neither invaded for that purpose. The British were still engaged in the slave trade, and the Northern-dominated Congress (with Lincoln's support) passed an ironclad amendment to the Constitution protecting slavery *forever* in the States where it was legal. If the Southern states had stayed in the Union, slavery would have lasted until they saw fit to abolish it.⁴

From this alone, it appears that slavery was not the central cause of either the South's secession or the North's invasion. And this raises the question of how, from a *moral* point of view, we are to understand the relation of slavery to secession and its violent suppression. There was almost universal agreement among antebellum Americans, North and South, as to the moral status of slavery. Most agreed that, abstractly considered, slavery was immoral, but that it must be suffered out of practical necessity. Larry Tise has called this the "negative proslavery" argument, and has shown that it was first developed not by Southerners but by late-eighteenth-century Northerners responding to Samuel Johnson-type criticisms from Europeans after Americans had gained their independence.⁵

Even John C. Calhoun's claim that slavery was a "positive good" was not the radical doctrine, hitherto unknown in America, that historians have tirelessly claimed. Calhoun carefully separated the question of slavery "in the abstract," as Southerners called it, from slavery as a practical question. He tried to make clear that his point was only about the latter, and that under the institution, the African population had made remarkable progress and was capable of further improvements. He called the institution an "experiment," which should be given a pe-

³On Sherman as a war criminal, see Charles Adams, *When in the Course of Human Events: Arguing the Case for Southern Secession* (Lanham, Maryland: Rowman & Littlefield, 2000), pp. 109–25.

⁴Mark Brandon, *Free in the World: American Slavery and Constitutional Failure* (Princeton, N.J.: Princeton University Press, 1998).

⁵Larry Tise, *Proslavery: A History of the Defense of Slavery in America, 1701–1840* (Athens: University of Georgia Press, 1987).

riod of time, and he put no limit on the improvements of which Africans were capable.

But what was this universal practical necessity that forced the acceptance of slavery? It was, in a word, white European supremacy. Nearly all Americans, North and South, saw America as a white European polity, and held that neither Indian nor African populations would ever participate as social and political equals. Indians had land in the West, but Africans, being dispersed, had to be managed. As long as it was humane, slavery was considered a reasonable and productive arrangement for both blacks and whites. Thus, the tolerance of slavery can be viewed as the practical outcome of a white Euro-centric mindset.

THE NORTH SEEKS TO FREE ITSELF OF AFRICANS

Northern manumission laws were designed to rid the North of its African population. However, actual slaves were not freed; rather, those born after a certain date would be emancipated upon reaching a prescribed age. This was, in effect, a form of compensated emancipation that enabled the slave owners to employ the labor of the young, and then sell them before the year of emancipation. By 1860, the formerly great slave-trading state of Massachusetts had reduced its African population to around one percent. In many states, a period of apprenticeship accompanied emancipation. New Jersey abolished slavery, but only after defining those freed as apprentices-for-life.⁶

Most Northern states passed laws prohibiting or severely restricting the entrance of “free blacks.” Free blacks were shut out of New Jersey, and Massachusetts prescribed flogging for nonresidents who stayed longer than two months. Ohio, at one time, passed a law expelling the entire black population.⁷ A number of states erected *constitutional* barriers to the entrance of free blacks. The language of Oregon’s constitution was typical:

No free negro, or mulatto, not residing in this state at the time of the adoption of this constitution, shall ever come, reside, or be within this state, or hold any real estate, or make any contract, or maintain any suit therein; and the legisla-

⁶Ann Norton, *Alternative Americas* (Chicago: University of Chicago Press, 1986), pp. 226–28.

⁷Norton, *Alternative Americas*, p. 228.

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... shall provide by penal laws for the removal by public officers of all such free negroes who shall bring them into the state, or employ or harbour them therein.

Indiana's constitution prohibited free blacks with almost identical wording. Illinois once allowed free blacks to enter, but only if they posted a bond of \$1,000 each. After 1848, white supremacy became even more insistent in some Northern and Western states. Illinois changed its constitution in 1848 to absolutely exclude the further entrance of free blacks, followed by 1853 legislative enactments enforcing the ban. Oregon's constitution banning the entrance of free blacks passed by a vote of eight to one in 1857.

Once in a Northern state, blacks were tightly managed. The Illinois revised statutes of 1833 declared:

If any person or persons shall permit or suffer any . . . servant or servants of colour, to the number of three or more, to assemble in his, her, or their out-house, yard, or shed, for the purpose of dancing or reveling, either by night or by day, the person or persons so offending shall forfeit and pay a fine of twenty dollars.

And it was the duty of all "coroners, sheriffs, judges, and justices of the peace" who learned of such assemblages to commit the

servants to the jail of the county, and on view of proof thereof, order each and every such . . . servant to be whipped, not exceeding thirty-nine stripes on his or her back.⁸

LINCOLN ON THE RIGHTS OF BLACKS

Because Lincoln supported oppressive black codes in his home state of Illinois, never objecting to them throughout his career, that state's laws are worth pondering. Once in Illinois, blacks were not citizens; they could not vote, serve on juries, testify against whites in court, or intermarry with whites. Further, blacks were forced to pay taxes for a public school system that excluded their children. Lincoln voted for and supported these laws because he did not believe that free blacks should ever have social and political equality with whites. He held this position throughout his career, repeating it publicly every-

⁸Quoted in Tol. P. Shaffner, *The War in America* (London: Hamilton, Adams, 1862), pp. 337–38.

where in language that cannot be disguised. In one of the debates with Stephen Douglas, September 18, 1858, he declared:

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 favor of having the superior position assigned to the white race.⁹

As his career shows, Lincoln meant every word of this. He voted against black suffrage in his first year in the Illinois legislature. He refused to sign a petition from a black “friend” of his requesting that blacks be allowed to testify in court. During his undistinguished and only term in Congress, he voted against abolishing the slave trade in the District of Columbia. Against enormous pressure from friends and foes alike, he adamantly refused to use blacks as troops during the war until Congress forced him to do so. And when they were used, he insisted on paying them \$7 a month while whites received \$13. Near the end of the war, moreover, Lincoln helped draft the new constitution of Louisiana. In it, he refused to acknowledge black citizenship and suffrage in Louisiana, even for black Union veterans, just as he had always publicly opposed granting citizenship to blacks in his own state. He relented only under pressure from Congress.¹⁰

Throughout his career, since he found equality impossible, Lincoln was opposed to universal emancipation as being an evil greater than slavery itself.

What then? Free them all, and keep them among us as underlings? Is it quite certain that this betters their condition? . . .
What next? Free them, and make them politically and so-

⁹Abraham Lincoln, *Abraham Lincoln, Speeches and Writings, 1832–1858*, ed. Don E. Fehrenbacher (New York: The Library of America, 1989), pp. 636–37, italics added.

¹⁰Lerone Bennett, *Forced into Glory* (Chicago: Johnson Publishing, 2000), pp. 53–54, 602–4, and chap. 5.

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cially, our equals? My own feelings will not admit of this; and if mine would, we well know that those of the great mass of white people 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, can not be safely disregarded. We can not, then, make them equals.¹¹

LINCOLN'S SOLUTION

What, then, was the *moral* solution to the problem of an alien population never to be socially and politically integrated into the polity? Lincoln confessed that he was blocked at every turn in thinking of one: "If all earthly power were given to me, I should not know what to do, as to the existing institution."¹² Unlike contemporary Americans who have inherited the "Battle Hymn of the Republic" view of a demonic South and virtuous North, Lincoln understood slavery as a national evil inherited from British colonial practice. The Northeast conducted a vast slave trade and acquired much wealth by supporting the plantation system in the West Indies. Duncan Rice observes that without the slave trade and "the opportunity to sell their wares as supplies for the Caribbean slave owners, it is hard to imagine the rise of New England or New York commerce."¹³

Accordingly, in the debate with Douglas, Lincoln acknowledged the common moral understanding of Northerners and Southerners on the question of slavery. On August 21, 1858, he said,

Before proceeding, let me say I think I have no prejudice against the Southern people. They are just what we would be in their situation. If slavery did not now exist amongst them, they would not introduce it. If it did now exist amongst us, we should not instantly give it up. This I believe of the masses of the north and south. . . . When southern people tell us they are no more responsible for the origin of slavery than we, I acknowledge the fact.¹⁴

Lincoln makes three important points here. First, there is the common

¹¹Lincoln, *Speeches and Writings, 1832–1858*, pp. 510–11.

¹²Lincoln, *Speeches and Writings, 1832–1858*, pp. 510–11.

¹³C. Duncan Rice, *The Rise and Fall of Black Slavery* (Baton Rouge: Louisiana State University Press, 1975), p. 150.

¹⁴Lincoln, *Speeches and Writings, 1832–1858*, p. 271.

belief among most Americans, Northern and Southern, that slavery, considered abstractly, is immoral. Second, there was an equally common belief among most Americans that the consequences of universal emancipation would be worse for both blacks and whites than would be the maintenance of the institution itself. Third, he recognizes that slavery was an unfortunate inheritance from British colonialism.

Insofar as Lincoln had any solution to the problem, it was three-fold: (1) gradual emancipation accompanied by a period of apprenticeship, (2) compensation to slave owners, and (3) eventual deportation. Major American political leaders had long backed a policy of colonization of Africans, and the American Colonization Society included among its members Daniel Webster, Francis Scott Key, Andrew Jackson, Millard Fillmore, John Marshall, James Monroe, and James Madison. Henry Clay, who had been president of the Society, was Lincoln's mentor on matters of slavery, economics, and politics. Like Clay, Lincoln had a high moral vision of slavery as a period of tutelage whereby Africans acquired the dispositions of a superior civilization in religion, law, and liberty. These could be taken back by "the African to his native clime" to educate and enrich his posterity. Lincoln always thought of blacks as an *alien* people away from their "native land."¹⁵

No American political leader pursued colonization more vigorously than Lincoln. Biographer J.G. Randall placed the issue at the top of his presidential policy agenda, and observed that "[o]ne can hardly find any subject on which Lincoln argued and pleaded more earnestly than on this."¹⁶ In two State of the Union addresses, the preliminary Emancipation Proclamation, a number of other policy statements, and the debates with Douglas, Lincoln urged that the federal and state governments buy slaves and deport them to an appropriate location. In 1857, Lincoln proposed that the Illinois Legislature appropriate money to colonize free negroes in the State.¹⁷

In 1862, President Lincoln introduced a constitutional amendment to buy and deport slaves. He engaged the State Department to arrange a treaty with England, France, the Netherlands, and other colonial powers to sell or lease land for free negroes, and he ordered the Secretary of

¹⁵Lincoln, *Speeches and Writings, 1832–1858*, pp. 271, 401–2.

¹⁶James G. Randall, *Lincoln, the President* (New York: Dodd, Mead, 1945–55), 4 vols., pp. 142, 145. See also Bennett, *Forced into Glory*, pp. 381–90.

¹⁷Eugene H. Berwanger, *The Frontier Against Slavery* (Urbana: University of Illinois Press, 1967), pp. 4–5.

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State to investigate the possibility of settlements in Haiti, Liberia, New Granada, Ecuador, St. Croix, Surinam, British Guiana, Honduras, and the Amazon. At one time, he proposed deporting to Texas the entire slave population; at another, to Florida.¹⁸ Even in the last months of the war, Lincoln proposed to his Cabinet raising \$400 million to compensate slaveholders if they would return to the Union and ratify his proposed Thirteenth Amendment by July 1, 1865. Compensated emancipation was *always* tied, in Lincoln's mind, to deportation.

Lincoln honestly believed that whites and blacks could not live together on terms of equality, and therefore could not live together in peace. He was deeply opposed to miscegenation, and appears to have thought that republicanism required a racially homogeneous population. He supported black codes in Northern states that kept blacks out, and when they were allowed in, he supported laws that denied them citizenship and basic civil rights. Deportation would free society "from the troublesome presence of free negroes."¹⁹ But he knew it could not be effected immediately. In the meantime, slavery, under the restriction of the Missouri Compromise (which would keep blacks south of the line), seemed to him a reasonable arrangement.

LINCOLN'S VIEWS AS AN ATTORNEY

For 45 of his 56 years, Lincoln never raised the issue of slavery, nor did he attempt to improve the condition of free blacks in his own state. He took money from his slaveholding father-in-law, processed a will that involved selling slaves, and vigorously supported returning runaway slaves to their masters. He even went out of his way to serve as counsel to Robert Matson, who sought to have Jane Bryant (a slave) and her four children, who had fled to abolitionists in Illinois, returned to Kentucky.²⁰ Lincoln defenders say that lawyers take on clients of whom they do not necessarily approve, but the evidence shows that Lincoln approved of the fugitive slave laws. He was opposed to slavery only "in the abstract," not as a contingent *modus vivendi*. He lost the case, and the woman and her children gained their freedom. He did not have to take this case. And whatever we are to think about his mo-

¹⁸Lucius Chittenden, *Recollections of President Lincoln and His Administration* (New York: Harper & Brothers, 1891), pp. 336–40; and Bennett, *Forced into Glory*, p. 553.

¹⁹Lincoln, *Speeches and Writings, 1832–1858*, p. 271.

²⁰Bennett, *Forced into Glory*, pp. 278–80.

tives, his doing so does not sit well with the deeply entrenched myth, so necessary to the centralized American state, of the Great Emancipator and champion of black equality.

His co-counsel, former state attorney general Usher Linder, had had a role in inciting the mob that murdered Illinois abolitionist Elijah Lovejoy. Lincoln was blistering everywhere in his attacks on abolitionists, and at times he could overstep the line. Speaking in Worcester, Massachusetts, in September 1848, he indirectly referred to the murdered Lovejoy: "I have heard you have abolitionists here. We have a few in Illinois, and we shot one the other day."²¹

LINCOLN PLAYS THE SLAVERY CARD

Lincoln took up the topic of slavery only after the 1854 passage of the Kansas-Nebraska Act abolished the Missouri Compromise line that extended to the west, a compromise that had allowed slavery to the South of the line but ruled it out to the North. Each territory would now decide whether it would allow slavery. Most commentators agree that Lincoln turned to the slavery question as a way of reviving a moribund political career. As many today play the race card to gain and centralize power, so Lincoln played the slavery card. He heated up passions by inciting fear that the Kansas-Nebraska Act would open the door to slavery not only into the West but into the North as well. This was a contrived issue; there was virtually no probability of the plantation system moving West—by 1860, there were only seventeen slaves in all of the Western territories—and none whatsoever about it moving North.²²

Lincoln gave high-minded speeches about the immorality of slavery, but it was not slavery as such that bothered him or his audience, as anyone reading the black codes of Northern and Western states could see. It was the entrance of *Negroes*, free or slave, into the West. For, once in the territories, slaves could pass through an apprenticeship system and be freed.

Indeed, westward diffusion of the African population was one scenario of eventual emancipation that Jefferson and other Southerners

²¹Douglas L. Wilson and Rodney O. Davis, ed., *Herndon's Informants* (Urbana: University of Illinois Press, 1998), p. 681.

²²Charles Ramsdell, "The Natural Limits of Slavery Expansion," *Mississippi Valley Historical Review* 16 (1929), pp. 151–71.

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had entertained. A reduction of the black-to-white ratio in a state would ease the difficulty of social and political integration. However, the demand that the northwestern territories should be an African-free zone had blocked such diffusion. For example, John Randolph freed his slaves in his will and bought farms for them in western Ohio, but the citizens of Mercer County, Ohio, forced them out. The slaves returned to Virginia, and asked to be made wards of the state.²³

It was the fear that the western territories would be a dumping ground for blacks, not a moral passion to stamp out or restrict slavery, that animated Lincoln's speeches and his audience. The territories, he said, "should be kept open for the homes of free white people." "Is it not rather our *duty*," he asked, "to make labor more respectable by preventing all black competition, especially in the territories?" Keeping *all* blacks out of the territories would solve the problem of miscegenation, which Lincoln viewed with horror. In a June 1857 speech critical of the *Dred Scott* decision, he declared that a

separation of the races is the only perfect preventive of amalgamation, but as an immediate separation is impossible, the next best thing is to *keep* them apart *where* they are not already together. If white and black people never get together in Kansas, they will never mix blood in Kansas.

In another speech a month later, he drove the point home again: "What I would most desire would be the separation of the white and black races."²⁴

THE MORALITY OF LINCOLN'S POSITION

The myth of Lincoln's moral grandeur is rooted in the debates with Douglas, where Lincoln supposedly raised the moral horizon of Americans by rediscovering the radical egalitarian implications of the Declaration of Independence's claim that all men are created equal.

²³Jefferson's diffusionist solution is touched on in M.E. Bradford, *Against the Barbarians, and Other Reflections on Familiar Themes* (Columbia: University of Missouri Press, 1992), p. 234. Ann Norton discusses how Randolph's slaves were shut out of Ohio in *Alternative Americas*, pp. 152–53.

²⁴Abraham Lincoln, *The Collected Works of Abraham Lincoln*, ed. Roy R. Basler (New Brunswick, N.J.: Rutgers University Press, 1953–55), vol. 3, pp. 311, 79, italics added; and Lincoln, *Speeches and Writings, 1832–1858*, pp. 478, 401–2.

Leaving constitutional issues aside, the *moral* quarrel between Lincoln and Douglas was briefly this: Douglas argued that the Founders did not include Africans in the Declaration's claim, but tacitly understood "men" to mean a certain kind of man developed by a certain kind of culture. Lincoln argued that Africans and, indeed, all men, independent of culture, were included.

While Lincoln appears to have taken the high moral ground, this is an illusion. In the same debates, he also held that there is a "physical difference" between blacks and whites which "forever" precludes social and political equality, and that blacks are to remain subordinate, a proposition about which he and Douglas agree: "I, as well as Judge Douglas, am in favor of the race to which I belong, having the superior position."²⁵

How does Lincoln reconcile the radical egalitarian claim with the inegalitarian white supremacist claim? His answer is that the egalitarian principle applies only to *new states*. Where slavery is already established by law and custom, slavery can remain, and it would be criminal to subvert it, i.e., to disobey the fugitive slave laws in the name of natural rights. This means that slavery can remain as it is in the states where it is legal, but it cannot be introduced into new states.

This is a morally incoherent position. On the one hand, Lincoln's understanding of the Declaration of Independence meant that blacks had *inalienable natural rights* that transcend the historicity of particular cultures and legal traditions. This transcendent character of natural rights is what makes them inalienable and establishes them as stern measuring rods for *any* political tradition. On the other hand, by allowing that slavery cannot be touched in the states where it is sanctioned by legal tradition, Lincoln abandons entirely the transcendent character of natural rights. After all, if mere legal tradition can alienate these "inalienable rights" in Virginia, why can't it do so in Kansas, which is part of the same legal order? And if it can't in Kansas, how can it do so in Virginia?

This moral incoherence perplexed not only Douglas but also the radical abolitionists. Once we admit that inalienable rights can be alienated by tradition and practical circumstances, we have lost entirely the radically transcendent character of natural rights that gave them their searing critical power.

²⁵Lincoln, *Speeches and Writings, 1832–1858*, pp. 512, 636–37.

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There is a serious philosophical question as to whether the doctrine of natural rights is itself coherent. Thoughtful writers from David Hume to Michael Oakeshott and Alasdair MacIntyre have argued that the doctrine, as traditionally conceived, is incoherent, a fertile ground for hypocrisy, and a rationalist mask for centralizing power.²⁶ Whether this is true, or, if true, whether the doctrine can be reformed, are issues we cannot take up here. The point to be made is that, taking the doctrine seriously, as Lincoln's admirers do, Lincoln was reduced, in the debates with Douglas, to the moral absurdity that blacks were included in the inalienable natural rights affirmed in the Declaration of Independence, but that they could not exercise those rights in the United States. He said exactly that on many occasions, and in some cases so clearly that he could not be misunderstood:

Negroes have natural rights, however, as other men have, although they cannot enjoy them here, and even Tawney once said that "the Declaration of Independence was broad enough for all men." But though it does not declare that all men are equal in their attainments or social position, yet no sane man will attempt to deny that *the African upon his own soil* has all the natural rights that instrument vouchsafes to all mankind.²⁷

Thus, according to Lincoln, in order for blacks to enjoy the natural rights that no time, circumstance, or tradition can alienate, they must be deported to Africa.

Lincoln said many times that the Declaration did not imply that blacks were equal to whites in all respects, and that it would not be morally unjust to place them in a subordinate position in places where they were not equal. This raises an important question: in what respects were they equal or unequal? On this most important policy question, the supposedly greatest of American statesmen had virtually nothing to say. He says that there is a "physical difference" and not merely a cul-

²⁶David Hume, "Of the Original Contract," in *Essays, Moral, Literary, and Political*, ed. Eugene Miller (Indianapolis, Ind.: Liberty Classics, 1987); Michael Oakeshott, *Rationalism in Politics* (Indianapolis, Ind.: Liberty Classics, 1985); and Alasdair MacIntyre, *After Virtue* (Notre Dame, Ind.: University of Notre Dame, 1983).

²⁷Lincoln, *Collected Works*, vol. 3, p. 79, italics added. See also vol. 2, pp. 266, 274, 385, 501, and 520; vol. 3, pp. 16, 222, 249, 255, 276, and 300. For a merciless but just and long-overdue treatment of Lincoln's racism, see Bennett, *Forced into Glory*.

tural one. Blacks are not equal in “color” and “perhaps not in moral or intellectual endowment.” In what respects, then, are they equal? Lincoln mentioned only one: “in the right to put into his mouth the bread that his own hands have earned, he is the equal of every other man, white or black.”²⁸ This is all very well, but the freeman must have control of the means of producing the bread. He must have the right to earn it somewhere and to protect that right in court when it is violated. But he cannot earn it at all in Lincoln’s Illinois because its state constitution prohibits his entrance. And, even if he is allowed to enter the state, he is not a citizen, does not have access to the courts, cannot vote, and is severely restricted in where he can go and what he can do.

Far from being morally profound, Lincoln’s handling of the Declaration of Independence is morally corrupt. It enables him and his audience to feel good about themselves because they, unlike moral pygmies such as Douglas, openly and generously affirm the natural rights of all men, including negroes, while at the same time firmly preserving slavery where it is legal, enforcing the fugitive slave laws and the cruel black codes of Illinois and other Northern states, and keeping the Western territories and states an African-free zone. In short, the Declaration of Independence, in Lincoln’s understanding of it, does not impose upon him any concrete moral duty to do anything whatsoever about either slavery where it is legal or about the condition of free blacks in his own state.²⁹

On March 2, 1861, Congress passed what would have been the Thirteenth Amendment. This Amendment made it impossible *ever to change the Constitution* so as to give Congress authority to interfere with the domestic institutions of a state, including slavery. It established that:

No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by

²⁸Lincoln, *Speeches and Writings, 1832–1858*, pp. 512, 478.

²⁹Harry Jaffa has made a career out of attempting to distill edifying moral blood from the abstract turnip of Lincoln’s debate with Douglas, so easily seduced is a certain kind of American by self-serving Enlightenment abstractions over moral substance. See Harry Jaffa, *A Crisis of the House Divided: An Interpretation of the Issues in the Lincoln-Douglas Debates* (Chicago: University of Chicago Press, 1982).

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the laws of said State.

In his first Inaugural Address, Lincoln went out of his way to endorse this ironclad protection for slavery in the states where it was established, as it was exactly what he had always maintained: “I have no objection to its being made express and irrevocable.” So if the South had stayed in the Union, slavery would have continued as long as the states desired.

THE REASON FOR SECESSION IN 1861: THE SAME AS IN 1776

Strange as it may seem today, there was no serious *political* opposition to slavery throughout the antebellum period, at least, not in the form of national political parties. A few abolitionists were elected in state elections, but no political party of any importance ever raised the question of emancipation. Voters flatly rejected Martin Van Buren’s tiny Free Soil Party, which included a compensated emancipation plank. Nor were Lincoln and his associates above inciting racist fears by attacking Van Buren’s courageous proposal.³⁰ The North simply did not invade the South over the moral question of slavery. Nor did the South secede in order to protect slavery, for with the *Dred Scott* decision and the just-passed (but not ratified because the South seceded) “Thirteenth Amendment,” making it impossible for Congress to touch slavery, the institution had never been so well protected. Why, then, did the South secede?

The answer is complicated and cannot be adequately taken up here, but we can say that there was no single reason. Different states seceded for different reasons. For example, Virginia, North Carolina, Tennessee, and Arkansas voted to remain in the Union even *after* the Confederacy was formed. They reversed themselves only after Lincoln decided on an invasion that they considered both unconstitutional and immoral.

AMERICAN SECTIONALISM

Culture and Sectionalism

The North and South had distinct cultures going back to colonial

³⁰Bennett, *Forced into Glory*, pp. 204–8.

times,³¹ and their relations were never happy. After independence, the New England states seriously considered secession in 1803, 1808, 1814, and 1843, and only the last had anything to do with slavery. Recent scholars have shown that antebellum Americans North and South widely regarded secession as a legal option to a state, though one that few wanted to see exercised.³²

Susan-Mary Grant has recently subverted the established view that the South developed a sectional ideology hostile to the nation and thus withdrew from the Union.³³ She argues that the North (and especially New England) first developed a destructive sectional ideology which, after 1848, it identified with the nation, and then sought to impose on the South. Anti-slavery was only a part (and not even a necessary part) of this aggressive, imperialistic Northern nationalism. By 1850, the comity of states in the federal union had entirely broken down. Under these conditions, legally enacted secession was a reasonable and moral solution. However, nineteenth-century European nationalisms were projects of expansion and unification, making the very idea of secession synonymous with treason. And here, as in so many other instances, American (Northern) nationalism was precisely on schedule with the modern European disposition to centralize.

Tariffs and Sectionalism

If one had to pick one cause of secession around which the other causes revolved, it would have to be the forty-year-long moral and constitutional conflict surrounding the Northern policy of imposing a protective tariff at the expense of the South. As Charles Adams has

³¹David Hackett Fischer, in *Albion's Seed* (New York: Oxford University Press, 1989), argues that the differences existed even before the settlement of the American colonies. He identifies four distinct "folkways": Calvinists in New England, Royalists in the South, Quakers in Pennsylvania, and Scottish borderers in Kentucky and Tennessee. These differences were well entrenched even before the American Revolution.

³²See, e.g., Livingston, "The Secession Tradition in America"; Ostrowski, "Was the Union Army's Invasion of the Confederate States a Lawful Act?"; and Thomas DiLorenzo, "Yankee Confederates: New England Secession Movements Prior to the War Between the States," in *Secession, State, and Liberty*.

³³Susan-Mary Grant, *North Over South: Northern Nationalism and American Identity in the Antebellum Era* (Lawrence: University of Kansas Press, 2000).

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shown in his brilliant study of the issue, such pundits as Charles Dickens, Lord Acton, and Karl Marx regarded the tariff as the fundamental cause of both Southern secession and Northern invasion. Marx supported the North, but he had no illusions as to what the war was about:

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 sovereignty.³⁴

From 1820 to 1860, the United States suffered bitter sectional conflict over the tariff and surrounding issues. As of 1860, approximately 76 percent of American exports were agricultural staples. Nearly all came from the South, and were exchanged for British and European manufactures. The South raised little objection to an 1816 tariff to pay the debt from the War of 1812. The result was a 25-percent tax on woolen, cotton, and iron manufactures, a 30-percent *ad valorem* tax on various goods, and a 15-percent duty on all other imports. The 1816 tariff was to have expired in three years but was extended until 1824. Under this tariff, northern profits on manufacturing climbed as high as 25 percent, while agriculture yielded no more than four percent, and Southern land as low as two percent. Charles Wiltse observes that “Tariff sentiment rose with rising profits. . . . The protectionist movement . . . came to be as completely sectional as slavery itself.”³⁵

This spectacular increase in Northern profits prompted an increase of the tariff in 1824. The minimum duty on cotton goods, which had been 25 percent, was raised to more than 33 percent, for a stunning average rate of 37 percent. South Carolina’s economy depended almost entirely on exporting staples on an unprotected world market. A year after the new tariff, the price of cotton dropped from 21 cents per pound to 12 cents a pound, and the next year it dropped again to 8.8 cents a pound. From 1825 to 1827, her exports declined from 11 million to eight million. Not satisfied, the North again raised the tariff to an average of 50 percent on dutiable goods in 1828. This was done in full knowledge of what it would do to the Southern export trade. South Carolina’s response was nullification of the tariff until it came down to

³⁴Quoted in Adams, *When in the Course of Human Events*, p. 79.

³⁵Charles M. Wiltse, *John C. Calhoun, Nationalist* (New York: Bobbs-Merrill, 1944), pp. 286, 108, 120, 134, 352, and 370. For technical information on tariff rates, see Richard B. Norris, *Encyclopedia of American History* (New York: Harper & Brothers, 1961), pp. 511–17.

10 percent. This led to the nullification crisis in 1832. A compromise was reached on dutiable goods at around 19 percent, where it hovered until Lincoln's election in 1860.³⁶

Lincoln's Election, Sectionalism, and Tariffs

In 1860, Lincoln ran on a Republican Party platform that proposed raising the tariff back to the high level that had prompted South Carolina's nullification. The North, it was clear, would use its Congressional majority to pursue its interests even if it meant wrecking the Southern export trade. Accordingly, following Lincoln's election, South Carolina seceded on December 20, 1860. Congress promptly raised the tariff to 47 percent on March 2, 1861. Lincoln said that South Carolina could stay out of the Union if it liked, but he would still collect the revenue; like Rome, the North would live by tribute.

To ensure that the North continued to receive its bounty, Lincoln reinforced Fort Sumter, located in Charleston Harbor. The purpose of the Fort was to protect the harbor's tariff station. The Confederacy resisted paying tribute to the Union and, as their fathers before them had done, they drove the tax-collecting military from the fort. Contrary to myth, there were no casualties from the exchange at Fort Sumter. Clearly, none of this had anything to do with the moral question of slavery.

Behind it all was the vision of Lincoln's deeply respected mentor, Henry Clay, who had framed the ideal of "the American System." America was to become a great continental industrial empire. This required a central bank, the union of government and big business (with the latter providing loans and the former providing subsidies), and a high protective tariff to keep out foreign industrial competition. Lincoln was a Chamber-of-Commerce Whig all the way, and the "American system" was the animating principle of his soul. This system was simply the nineteenth-century version of Hamilton's mercantilism which, in turn, was built on the model of British mercantilism.

Southerners, including Jefferson, Madison, Henry, Mason, Randolph, St. George Tucker, Taylor, Upshur, Jackson, and Calhoun, had vigorously opposed this system as immoral and unconstitutional. For decades until 1860, through the tariff on imports, the South had funded between 75 and 90 percent of the federal revenue—revenue

³⁶Norris, *Encyclopedia of American History*, pp. 511–17; see also Ludwell Johnson, *North Against South: The American Iliad, 1848–1877* (Columbia: Foundation for American Education, 1993), pp. 109–21.

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which a hostile Northern majority used to improve its own infrastructure. Aside from this exploitation by the North, the tariff seriously damaged the South's vast export trade, forcing a sharp drop in profits, and forcing European trading partners to go elsewhere for staples. Calhoun bitterly observed that the North's "American system" could absorb only a *fifth* of what the South produced; the rest had to be traded on an unprotected world market.

These just complaints fell on deaf ears during the antebellum period and long afterward. The oppressive tariff rate of 47 percent imposed in 1861 remained at or above that rate (reaching at one point a high of 57 percent) until 1909, when it dropped to 38 percent, and again to 30 percent in 1913. From 1921 to 1934, it shot up again to the high of the 1861 tariff. This protectionist policy destroyed the Southern export trade. To put the matter in perspective, we need only consider that taxation policy has been one of the main causes of secession throughout history. The vast province of Western Australia voted in 1931 to secede from the Union over a tariff imposed by the industrial east at the expense of the agrarian west. Biafra seceded from Nigeria in 1967 over tax policy. And Northern economic exploitation of the South was much worse, and less justified, than what had prompted the colonies to secede from Britain in 1776.

While the Northern tariff was 47 percent, the Confederate tariff, by contrast, was 12 percent. A low-tariff zone on the Union's southern border would not only benefit Southerners but also allow cheaper manufactured goods to go north up the Mississippi. Having lost the power to exploit the South, the Northern ports of New York, Boston, and Philadelphia would have to share international wealth with Charleston, New Orleans, and Mobile.

While Lincoln, a white supremacist to the core, could tolerate slavery in the States where it was legal, and not only tolerate but actively support the black codes of Illinois, he could not tolerate the dissolution of Henry Clay's mercantilist "American system." His willingness to wade through an ocean of blood to prevent this dissolution led to the invasion of the South, and to the moral low of directing war against civilians to impose this system by force.

Moreover, Lincoln was the first *sectional* president. What were Southerners to think when major Republican leaders openly declared the sectional goal of the party? Wendell Phillips, for instance, declared:

It is just what we have attempted to bring about. It is the

first sectional party ever organized in this country. It does not know its own face, and calls itself national; but it is not national—it is sectional. The Republican Party is a party of the North pledged against the South.³⁷

Lincoln received only a little over a third of the popular vote, and got *no* votes in the South. He was a creature of the New York–Chicago industrial axis.

Lincoln, of course, did not present himself as a sectional president engaged in a mercantile war of conquest, but as a besieged statesman trying to uphold his oath to preserve the Union. However, he had taken no such oath. Rather, he had taken an oath to uphold the *Constitution*, and the Constitution did not in 1860, and does not now, prohibit the secession of an American state.³⁸

Just how seriously we can take Lincoln’s legalist argument— secession was *treason* and he was simply enforcing the law—can be seen with a thought experiment. Suppose that, after Lincoln’s election, the *North* had begun to secede from the South, as abolitionists had been arguing since the 1830s, and as New England leaders had threatened a number of times. Can we seriously believe that President Lincoln, newly placed in Washington, would refuse to receive Northern commissioners to negotiate a settlement, and that he would have launched the bloodiest war of the nineteenth century merely to coerce the North back into the Union?

Lincoln’s war was not a legal act to put down treason, as he absurdly claimed, but a war of conquest in pursuit of empire in an age in which empire, unification, and conquest were terms of glory, not shame. Like Bismarck, he created a unitary state, “one and indivisible,” with a policy of blood and iron. Despite the conjuring of Lincoln hagiographers, there simply was no higher moral purpose to it.

ANTI-SLAVERY BECOMES A MASK

If the North did not invade the South over the *moral* issue of slavery (i.e., emancipating and improving the conditions of blacks), as it most certainly did not, how did the myth that the war was about slavery, and the even more absurd myth of Lincoln as the great emancipa-

³⁷Quoted in Albert Taylor Bledsoe, *Is Davis a Traitor?* (Baltimore: Innes, 1866), p. 250.

³⁸Brandon, *Free in the World*.

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tor and champion of black equality, come about? Here we confront the mystery of what might be called *political alchemy*, an act by which base political metals are magically transmuted into moral gold. In every case but one in which anti-slavery agitation occurred in events leading up to and during the war, the motive was not a moral regard for freeing and improving the lot of blacks, but advancing various interests of white Northerners. Anti-slavery was largely a smokescreen created to obscure the North's economic and political struggle to dominate the South.

Abolitionists and Secession

The only exception to this rule were the abolitionists, a small but vocal sect that appeared in the 1830s under the leadership of such men as William Lloyd Garrison and Wendell Phillips. The abolitionists put forth a moral argument on behalf of emancipating the slave (though even here many abolitionists, including Garrison, stopped short of social and political equality). And much of the agitation was stained with anti-Semitism and anti-Catholicism, and evidenced more a hatred of slaveholders than a love of the slave. Still, it was a movement demanding universal emancipation. Realizing that change under the Constitution was unlikely, many abolitionists advocated Northern secession. The American Anti-Slavery Society, for instance, resolved, "That the Abolitionists of this country should make it one of the primary objects of this agitation to dissolve the American Union."³⁹ Garrison burned a copy of the Constitution in public.

Far removed from the solution of peaceful Northern secession were abolitionists such as John Brown, who advocated a slave uprising and a reign of terror against planters and their families. Van Buren's Free Soil Party proposed gradual compensated emancipation, but sank as soon as it was put afloat. Most Americans, of course, were endowed with a sentimental anti-slavery disposition derived from the natural rights tradition of the Declaration. But sentimental anti-slavery, as we saw in the case of Lincoln, did not impose on one any duty to abolish slavery where it was legal or reform the black codes of the North. Sentimental anti-slavery existed easily alongside the crudest form of white

³⁹Quoted in Bledsoe, *Is Davis a Traitor?* p. 149. Jeffrey Rogers Hummel defends the abolitionist argument for secession in *Emancipating Slaves, Enslaving Free Men: A History of the American Civil War* (Chicago: Open Court, 1996).

supremacy and social and political degradation for blacks. Harriet Beecher Stowe's *Uncle Tom's Cabin* warmed the hearts of anti-slavery sentimentality for millions, but Congress still passed what would have been the "Thirteenth Amendment," making impossible Congressional interference with slavery in states where it was legal, and black codes remained. The Underground Railroad ended in Canada, not the North.

Economic and Political Self-Interest

Anti-slavery masked economic and political self-interest in three stages. First, when Southerners

- complained that high tariffs protecting Northern industry were not only exploiting Southern states, but also threatened to destroy their export trade,
- observed that they were funding some 75 percent of federal revenue, which a Northern majority appropriated to improve its own infrastructure, and
- opposed "internal improvements" (i.e., subsidies for Northern business) and a central bank as unconstitutional, which Southerners from Jefferson and Madison on had argued,

they were met with a reply from the moral high ground that these policies were advanced on behalf of free labor while Southerners relied on slave labor. Whatever argument Southerners might put forth in protest against Northern injustice could be met with the charge that the argument was motivated to protect slavery at the expense of free labor. However, those who used anti-slavery as a mask were not about to support a national policy of emancipating slaves, removing Northern black codes, compensating slave holders, and allowing blacks to migrate North to enjoy the benefits of "free labor."

Second, the Kansas-Nebraska Act inspired anti-slavery agitation addressing the question of whether slavery could be extended to the Western territories. There, as I have argued, this agitation was largely a mask hiding white supremacist fears that blacks would enter the territories.

Third, the first year-and-a-half of the war was traumatic for Northerners. What was to have ended in a month dragged on with no end in sight. As casualties mounted, hatred of the South intensified. Wars are usually not created out of hate, but, once started, they create it.

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The Confiscation Act and the Emancipation Proclamation^{acy}

Southerners were using blacks in agriculture, construction of fortifications, and various military capacities, including their informal use in combat. Northern boys were dying, and the public demanded an end to the war by hitting the South where it hurt most: by emancipating and even arming slaves and confiscating the lands of Confederate planters. Accordingly, a new and militant Congress passed the Confiscation Act allowing emancipation of captured slaves (whom Lincoln had ordered returned to their masters) and seizure of Confederate plantations. The motive behind this act was not a moral regard for blacks, as there was no thought of free blacks moving North. It was, instead, the same as that of the British who, though still engaged in the slave trade, had issued a similar order of emancipation and confiscation against colonial rebels during the American Revolution.

The Confiscation Act was a rebuke to Lincoln's failure to emancipate and use blacks in the war effort. Lincoln threatened to veto it unless the confiscation-of-property clause was removed. Congress agreed, and the bill passed, but the emancipation clause was still too radical for Lincoln. He had always opposed immediate universal emancipation, and the Confiscation Act threatened to do just that.

Consequently, Lincoln issued *his own* Emancipation Proclamation, which meant that he could ignore the more radical Confiscation Act and control emancipation policy himself. It gave him discretion to exclude certain districts from emancipation, and emancipated *no* slaves then under his control. Moreover, it *returned* to slavery thousands of blacks whom Northern generals had proclaimed free and whom the Confiscation Act would have freed.

Lincoln's hope was that his Proclamation would end the war, and that slavery would remain intact as still the best way of managing the African population. He said many times that the Emancipation Proclamation was merely a military measure of doubtful legality which would be inoperative after hostilities ceased. It was designed merely to shorten the war. With peace concluded, Lincoln was content to let litigation decide the status of the limited number of blacks who had been freed by the Proclamation. So much for the moral grandeur of the Great Emancipator and champion of black equality.

**EMANCIPATION IN
THE CONFEDERATES STATES OF AMERICA**

We turn now to the abolitionist argument that Northern secession was the best way to solve the problem of slavery.⁴⁰ To appreciate this, let us consider what most likely would have happened had the South not seceded. The states would have ratified the constitutional amendment outlawing Congressional interference with slavery. Slavery, thus, would have lasted as long as the states wanted it to.

Northern and Southern Timetables for Abolition

How long did Lincoln think slavery would last? He said it might last a century.⁴¹ When in Congress, he voted *against* a bill to abolish the slave trade in the District of Columbia, and, worse, even urged extending the fugitive slave law to the District, where slavery was not protected by the Constitution. When it seemed that an abolitionist bill might pass, he suggested a compromise bill for compensated emancipation in the District, but later withdrew it. Like the Emancipation Proclamation, the compromise bill did not free anyone immediately; it would only emancipate children born after January 1, 1850, and then only after an unspecified period of apprenticeship. Later, he drew up an emancipation bill for Delaware in which the apprenticeship period was quite long. Slavery would not have been eliminated until 1914.

In his State of the Union Address on December 1, 1862, Lincoln proposed what would have been the Thirteenth Amendment to the Constitution, requiring that slavery be abolished by January 1, 1900. His proposed Fourteenth Amendment would compensate slave owners who had remained loyal to the Union, and his Fifteenth Amendment would have provided money for deportation of Africans out of the United States. He presented these *before* he issued the Emancipation Proclamation. Had the South remained in the Union, slavery would have had ironclad protections and could easily have stretched into the twentieth century had the Southern states so desired.

But would they have so desired? What would have been the prospects of emancipation in the South had the Confederacy secured its independence? Our nationalist historians have shown no interest in asking this question, and, while it is too daunting to take up here, we can suggest that the South would have abolished slavery in a reasonable

⁴⁰Hummel presents a powerful argument for this thesis in *Emancipating Slaves, Enslaving Free Men*.

⁴¹Lincoln, *Speeches and Writings, 1832–1852*, pp. 514–15.

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period, probably sooner even than Lincoln proposed. By the 1880s, slavery had entirely vanished from the western hemisphere, and only in Haiti and the United States was its abolition accompanied by violence.

There had long been an anti-slavery tradition in the South, especially in Virginia. By 1830, there were far more anti-slavery societies in the South than in the North. In 1832, the Governor of Virginia called on the legislature to do something about slavery. The legislature passed a resolution to abolish slavery in Virginia, but ran into difficulties when writing the statute, and the bill was tabled. It was at just this time that the abolitionist frenzy swept down from the North, urging immediate and uncompensated emancipation. Pamphlets urging that slaves revolt, poison wells, and murder the families of planters in their sleep—as John Brown did and was praised for doing—did not strengthen the moderate forces of abolition in the South. Thomas Hart Benton, who had worked to secure the right of a jury trial for slaves in Missouri, bitterly complained that Northern abolitionist agitation had blocked further reforms. Massachusetts Senator Daniel Webster said the same thing in the 1850 debates over the nature of the Union.

In the nineteenth century, no European country or Northern state, having the South's high percentage of what was considered an alien African population (many of whose members were only two generations removed from tribal existence), could have integrated without great difficulties. Racial prejudice aside, emancipation was costly, and the cost was to fall entirely on each planter or state. There was no prospect at all of a nationally funded emancipation, and Western lands and Northern states were effectively sealed off for purposes of racial diffusion. State and local emancipation would have required considerable patience and goodwill between the races, enlightened leadership, the continuity of a stable tradition, peace, and prosperity. It would have been difficult under the best circumstances, and it occurred under the worst in a region torn by a scorched-earth war that violated international laws of warfare, its economy a shambles, its public debt repudiated, its currency destroyed, its ruling class eliminated, a quarter of its military-age male population dead, its ex-Confederates disenfranchised, and its slaves suddenly enfranchised with no political experience subject to Republican Party exploitation to maintain power—all under twelve years of military dictatorship in most of the South.

“Somerset’s Case” and Southern Judicial Review

Serfdom, a European form of slavery, was abolished in England

not by statute but over centuries by judicial review. Much Southern jurisprudence was rooted in the principle laid down in English common law by Chief Justice Lord Mansfield in *Sommersett's Case* (1771), namely, the proposition that slavery, being a violation of natural law, could be justified only by positive statute, and that such statutes must be strictly construed in the light of natural law, i.e., in the direction of freedom. A Virginia statute, for instance, provided that "slaves which shall hereinafter be brought into this Commonwealth, and kept therein one year, or so long, at different times, as shall amount to one year, shall be free." The statute excluded slaveholders from other states who became citizens of Virginia and took a specified oath within a certain time. In *Murray v. McCarty* (1811), Judge Joseph Cabell construed this proviso strictly so as to grant a slave, Nancy Murray, her freedom. Chief Justice William Gaston of the North Carolina Supreme Court, in *State v. Manuel*,⁴² carried this strict construction so far as to hold that whenever a slave became free by any lawful means, he also became a citizen of his state with the same rights as other citizens. Lincoln, remember, was opposed to making blacks citizens in his state: "If the State of Illinois had that power [to make blacks citizens,] I should be opposed to the exercise of it."⁴³

Dred Scott sought his freedom and that of his wife and daughters in a suit before the circuit court of Missouri. This Southern court granted Scott and his family their freedom, basing its decision on a long chain of Southern state court precedents rooted in Lord Mansfield's ruling in *Sommersett's Case* that a slave, upon entering territory where slavery was prohibited by law, was instantly free. Scott subsequently lost his freedom, though, when the case went to the U.S. Supreme Court on appeal in 1857. The tradition of Southern state jurisprudence adopting the principles of *Sommersett's Case* can be found in the dissenting opinions of Justice John McLean and Justice Benjamin Curtis in *Dred Scott v. Sandford*.⁴⁴

Free blacks flourished in the South as businessmen, slaveholders, and artisans. In New Orleans, one quarter of the blacks were free. In

⁴²4 Dev. & B. 20 at 24–25 (1838).

⁴³Lincoln, *Speeches and Writings, 1832–1858*, pp. 675, 791.

⁴⁴19 Howard 391 at 547–564, 573, and 601–604 (U.S. 1857). I am indebted to Jack Graham for this point about the influence of *Sommersett's Case* in Southern judicial review. See his *The Abolitionists of the Old South*, *League of the South Papers*, no 5 (Monroe, La.: League of the South), pp. 1–30.

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many places, especially urban areas, slavery was developing into an apprenticeship system, and slaves were able to buy or work out their freedom. William Gilmore Simms of Charleston, South Carolina, the greatest Southern literary figure of the day, was a planter who believed slavery under then-current circumstances was a benevolent institution, but he had no difficulty abandoning it should circumstances change. In the 1850s, he argued that slavery would be eliminated in the border states in about twenty years, while its elimination in the Deep South would take longer. His reason was that the border states “will become manufacturing.”⁴⁵ His prediction was reasonable as, by 1860, about half the blacks in Maryland were free not by statute but by having purchased their freedom through apprenticeship. The same was occurring in other manufacturing and urban areas in the border states. In Nashville, 44 percent of blacks were free.

Integration in the South and North

From the late 1840s on, planters were often reminded of their duties to slaves, and major theologians such as James Henry Thornwell and Robert Lewis Dabney urged legislative reforms. William Drayton, scion of the oldest families in South Carolina and the owner of several plantations, started a school on his plantation to teach black children to read. A great gardener, Drayton called them his “black roses.” Confederate general Stonewall Jackson supported a school. After the war, a stained-glass window was dedicated to him in the church of the black families he had befriended.

Jefferson Davis and his brother Joseph both contemplated the eventual emancipation of slaves. Davis spoke to Southerners of the duty of “Christianizing and improving” Africans in their charge. To this end, he instituted a system of laws, courts, and juries administered by slaves themselves so that they might learn the principles of law and civil society. Some of his slaves were taught to read, and even engaged in commercial activity. Whereas Lincoln opposed court testimony by blacks, Davis favored it even during the chaos of Reconstruction.⁴⁶

⁴⁵William Gilmore Simms, *The Letters of William Gilmore Simms*, ed. Mary C. Simms Oliphant, Alfred Taylor Odell, and T.C. Duncan Eaves (Columbia: University of South Carolina Press, 1952), vol. 4, p. 335.

⁴⁶Felicity Allen, *Jefferson Davis: Unconquerable Heart* (Columbia: University of Missouri Press, 1999), pp. 103–4, 116. This is the first biography to present Davis as a human being, rather than in the character of a spoiler in a great na-

Davis was appalled at the condition of free blacks in the North, and at frequent remarks—like those of Senator John Dix of New York—that, once freed, blacks would “continue to be an inferior caste” and would eventually die out. For Davis, blacks were integrated into Southern society as part of the household, and he was horrified to hear “their extinction treated as a matter of public policy.” During the war, rhetoric proposing the extermination of Southerners also rang from Northern pulpits and in political speeches. “The Battle Hymn of the Republic” is perhaps the most celebrated reflection of such language. After the war, Sherman proposed a policy of exterminating the Western Indians; he called it his “final solution to the Indian problem.”⁴⁷

We forget that there was no segregation in the antebellum South; subordination did not mean segregation. Mrs. Davis rescued Jim Limber, a seven-year-old black boy, from abuse, legally freed him, and adopted him into the family. He lived, slept, ate, and played with the Davis children as a member of the family in the Confederate White House while the Davises were in Richmond. The Union army seized him by force when Davis was captured. Despite Mrs. Davis’s efforts over the years to find him and “to look after . . . Jim’s education,” he was never heard from again. It is unimaginable that Lincoln, who never did anything in Illinois to improve the conditions of blacks, would have freed and adopted a black orphan and raised him with his own children in the starkly segregated North.⁴⁸

Black Supporters of the Confederacy

The long-suppressed story of blacks who identified themselves as Southerners, were loyal to the Confederacy, and saw the war as an opportunity to improve their condition, is only gradually coming to light.⁴⁹ The Confederate armies employed blacks long before Union

tionalist drama.

⁴⁷Allen, *Jefferson Davis*, p. 168. On the Northern use of genocidal language, including Sherman’s “final solution” to the Indian problem, see Adams, *When in the Course of Human Events*, pp. 109–25. For an argument that blacks were treated better in the South than free labor was in the North, see the classic non-pro-South study by Robert William Fogel and Stanley L. Engermann, *Time on the Cross: The Economics of American Negro Slavery* (Boston: Little, Brown, 1974).

⁴⁸Allen, *Jefferson Davis*, pp. 6, 8, 24, 373–74, 409, 412, and 594 n. 20.

⁴⁹Edward C. Smith, “Calico, Black, and Gray: Women and Blacks in the Confederacy,” *Civil War Magazine* 8, no. 3, issue 23; Richard Rollins, *Black*

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armies did so, and blacks were everywhere in the Confederate army. When white regiments marched off to war, an equal number of blacks often accompanied them. There were some 30,000 body servants in the Army of Northern Virginia alone. Given the informality of many Confederate units, some of these and other blacks often served in military capacities. An Afro-American scholar recently observed:

When you eliminate the black Confederate soldier, you've eliminated the history of the South. . . . [We] share a common heritage with white Southerners who recall that era. We shared in the plantation scheme of things as well as the forces that fought to keep them.⁵⁰

Nor should this be surprising, as another Afro-American scholar has observed:

Students of African American history should have been able to predict with a great degree of certainty that some, if not most, black Southerners would support their country, as did most white Southerners. During the Revolutionary War black and white fought together, on both sides, [demonstrating that] it is possible to hate the system of slavery and love one's country.⁵¹

Ervin L. Jordan, an Afro-American scholar and a pioneer in researching black Confederates, has estimated that up to 25 percent (65,000 out of 261,000) of free Negroes in the South and 15 percent (600,000 out of four million) of slaves supported the South's struggle for independence.⁵² Indeed, it was this military employment of blacks that prompted an angry white supremacist North to urge Lincoln to free and arm blacks to subvert the war effort. Eventually, some 200,000 blacks served in the Union army, mostly as laborers. Some were there voluntarily, but great numbers were forced into the Army at bayonet point, as records amply show.

But there were still more than three million blacks in the South. The overwhelming majority remained to run plantations and farms left

Southerners in Gray (Redondo Beach, Calif.: Rank and File Publications, 1994); and Ervin L. Jordan, Jr., *Black Confederates and Afro-Yankees in Civil War Virginia* (Charlottesville: University Press of Virginia, 1995).

⁵⁰Quoted in Rollins, *Black Southerners in Gray*, p. 57.

⁵¹Rudolph Young, "Black Confederates in Lincoln County, North Carolina," in *Black Southerners in Gray*, p. 121.

⁵²Young, "Black Confederates," p. 131.

by three-fourths of the white male population of military age who had gone off to war. As Prof. Edward C. Smith, a black professor at American University, observed:

blacks . . . could have escaped to nearby Union lines but few chose to do so and instead remained at home and became the most essential element in the Southern infrastructure to resisting Northern invasion.⁵³

Though state and Confederate governments did not legally sanction black troops until late in the war, commanders accepted black troops from the first. Early in the war, Confederate commanders such as Patrick Cleburne had argued for arming blacks. As early as August 1863, the *Jackson Mississippian* insisted that slavery should not be “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!”⁵⁴ Later, the Confederate Cabinet agreed to abolish slavery five years after the end of hostilities in exchange for British and French recognition. Progressive and enlightened slaveholders such as Davis were fighting for economic and political independence, not for slavery.

In the last year of the war, the Confederate Congress authorized the raising of 300,000 black troops, with some states also voting to raise black troops. Davis issued General Order Fourteen, requiring that slave recruits be fully emancipated and treated equally with whites:

No slave will be accepted as a recruit unless with his own consent and with the approbation of his master by a written instrument conferring, as far as he may, the rights of a freedman. . . . All officers . . . are enjoined to a provident, considerate, and humane attention to whatever concerns the health, comfort, instruction, and discipline of these troops, and to the uniform observance of kindness, forbearance, and indulgence in their treatment of them, and especially

⁵³For the impressment of black troops see *War of the Rebellion: A Compilation of the Official Records of Union and Confederate Armies* (Washington, D.C.: U.S. Government Printing Office, 1884), series 1, vol. 3, p. 459; vol. 32, pt. 2, p. 477; series 3, vol. 2, pp. 53, 57. See also Thomas B. Keys, *The Uncivil War: Union Army and Navy Excesses in the Official Records* (Biloxi, Miss.: The Beauvoir Press, 1991). For black support of the South, see Smith, “Calico, Black, and Gray,” p. 12.

⁵⁴Quoted in Hummel, *Emancipating Slaves, Enslaving Free Men*, pp. 280–81.

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that they will protect them from injustice and oppression.⁵⁵

And black Confederate troops, unlike black Union troops, received equal pay.

Both Northerners and Southerners were white supremacists; the South, however, had a vastly larger population of Africans. Unlike Northerners such as Lincoln, who viewed blacks as an alien people and Africa as their “native land,” Southerners tended to see blacks as integrated into their society through the family household. Southerners thought of Georgia and Virginia as the native land of blacks while at the same time thinking of them as politically subordinate (just as they, along with Northerners, thought of women). American liberals, though, have either denied or ridiculed as “paternalistic” the bonds of affection that had sprung up between the two races who lived together so intimately. And paternalistic they were, for the South was a quasi-feudal society, but such relations, though limited, were the only solid moral ground on which the South’s evolution into a modern civil society could occur.

Lincoln was content that slavery could take a century to work itself out, and, in his shortest time frame, it would have lasted until 1900. In the North and the South, the disposition to emancipate was triggered by changing conditions brought on by war. Blacks were, for the first time, *necessary* to maintain a political society. Had the South gained independence, its blacks would likely have had a smoother transition into civil society than they had in the North before the war or in the South after the barbarism of totalitarian Reconstruction.

Robert E. Lee might well have been the next President of the Confederacy. Lee not only argued for an end to slavery, he had emancipated his own slaves, and even argued that slaves be both emancipated and armed. There is every reason to think that under his leadership, and that of men such as Davis and Jewish Secretary of State Judah Benjamin, that the peculiar institution would have been on its way out. In fact, Davis had said at the beginning that secession meant the end of slavery.

The Missing Element in American Historiography

What is missing from nearly all American historiography about the

⁵⁵Emory Thomas, *The Confederate Nation: 1861–1865* (New York: Harper & Row, 1979), pp. 295–96.

War is the *humanity* of the South. Southerners do not appear as flesh-and-blood human beings with good reasons for desiring a country of their own, who formed a nation and could have and would have abolished slavery in their own way and in a reasonable time. In American historiography, especially that written since the 1960s, the South serves as an ideological foil of ignorance and evil against which a centralizing American nationalism justifies itself.

Nor do Southern blacks appear as real people, a great number of whom saw the South as their homeland and wanted to participate in a Southern Confederacy, and to move up in it if possible—just as blacks mistreated by racial segregation were nevertheless eager to serve in World Wars I and II. Approximately 10,000 Jews fought for the Confederacy.⁵⁶ The five “civilized” tribes in Oklahoma fought for the Confederacy, were represented in the Confederate Congress, and, in a rare act of magnanimity in American-Indian relations, were promised their own *state*—not a federal reservation—in an independent Confederacy.

In short, in modern historiography, there were no human beings in the South engaged in a great variety of emotional and spiritual adventures who, confronting radically new circumstances, could be expected to modify their views, trying this and then that solution. Southerners, black and white, are presented as cardboard characters, a necessary ideological background against which a self-congratulatory American liberalism defines itself. This deep need to legitimize a centralized American state corrupts American historiography regarding the War Between the States—which is why dominant public opinion has it that the South fought for slavery and the North fought against it.

THE MORAL SIGNIFICANCE OF THE CONFEDERACY: A RETROSPECTIVE VIEW

Liberals and the Unitary State

When liberals contemplate the horrors of the twentieth century—its world wars and totalitarian revolutions—they often blame them on evil men such as the Kaiser, Hitler, and Stalin, or on evil ideologies such as Fascism, Nazism, and Communism. Yet, liberals themselves are partly responsible for the century’s barbarism, a fact they have yet

⁵⁶Eli N. Evans, *Judah P. Benjamin, The Jewish Confederate* (New York: Free Press, 1988), p. 205.

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to acknowledge. After all, such barbarism could not have occurred without the unprecedented centralization of power in modern “unitary” states of vast scale, first created and legitimated by the liberal tradition in the name of individual liberty. From the seventeenth century on, the trend of Western politics has been to crush smaller political units and independent social authorities of all kinds, herding them into ever-larger unitary states. The official moral justification for these wars of “unification,” setting aside the question of whether this is the real reason, is that smaller polities and independent social authorities oppressed individual liberty. Indeed, they often did.

But in this “contract” of unification and centralization for the sake of liberty, liberals failed to read the fine print. Massive centralization of power in the name of liberty can be put to quite illiberal purposes. The French Revolution produced the first massive centralization, destroying all independent social authorities in the name of the “rights of man.” It also produced the first totalitarian reign of terror. For the first time in European history, universal male conscription was ordered, allowing the new French state to raise an army beyond anything of which eighteenth-century monarch could have dreamed. Whereas Louis XVI did well to raise an army of 200,000, the French Republic would eventually run through over three million troops—at that time the largest army ever assembled in the history of the world. Napoleon used this unprecedented concentration of power to plunder Europe, legitimating his brutal conquests with the Enlightenment mask of the “rights of man.”

The French state became the model for other European countries, and the nineteenth century, from the Congress of Vienna to 1914, was an era of brutal wars of “unification” and centralization, legitimated by ideologies of liberty and, with the advent of industrialization, of something called “progress.” The massively centralized regimes that went to war in 1914 were all either self-professed liberal progressive regimes or, as in the case of Czarist Russia, on the way to becoming liberal regimes.⁵⁷ They appear to have been unaware of the power they had amassed. Armed with public credit, conscription, and the income tax, collision between these modern liberal leviathans would send shock waves around the world. Just four years of war would yield ten million

⁵⁷On the liberalism of 1913 Czarist Russia, see John Gray, *Post-Liberalism* (New York: Routledge, 1993), pp. 165–68, and John Dziak, *Chekisty: A History of the KGB* (Lexington, Mass.: Lexington Books, 1988).

battle deaths, and more mutilated physically and mentally. This was more battle deaths than in the preceding two centuries of European war combined.

World War I was the most significant war of the twentieth century, and World War II was simply its horrific second round, yielding some 60 million deaths, with no longer any distinction to be made between civilian and military. And the responsibility for World War I must be placed squarely at the feet of the modern unitary state created by the liberal tradition. In its obsessive pursuit of the noble ideal of individual liberty, it had failed to cultivate the constitutional art of limiting the centralization of power.

Worse than the battle deaths, World War I shattered the *social fabric* of Europe, leaving a deracinated mass of individuals. From what Eliot called the “waste land” arose the ideologies of National Socialism, Communism, and Fascism. The very names of these ideologies point to a deep human need which they perversely claimed to satisfy, namely to bind together and recreate social life. Liberals rightly point out the perverse character of these ideologies with their false promises of social unity, but utterly fail to recognize that their own spectacular mismanagement of the centralization of power led to the shattered social conditions which provided a moral and political market for such ideologies. These things did not arise in a vacuum. Hitler did not create the massive centralization of power he put to such evil purposes. That was the century-old work of German liberals legitimated by Kantian, Hegelian, and Weimar liberalism.

In the early eighteenth century, Germany consisted of over 200 independent principalities and approximately 50 free cities. For centuries, this highly decentralized region had been one of the most peaceful in Europe. With a policy of “blood and iron,” Bismarck crushed these independent sovereignties into a vast liberal modern state. After World War I, a number of Bavarians thought that the unification of Germany had been a disaster and that Bavaria should secede from the German federation; liberals, Nazis, and communists locked arms in opposition. All agreed with the fundamental liberal principle laid down by the French Revolution and reaffirmed by the postbellum United States that a modern state is “one and indivisible.” Had Bavaria been allowed to secede and had Hitler become its dictator, as he had tried to do, he would have posed no threat to the world, and probably little to Bavaria. Dictators are easier to criticize and overthrow in small states than in large ones. Likewise, during the Spanish Civil War liberals, commu-

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nists, and fascists all agreed in suppressing Basque and Catalanian self-rule.

The Failure of Democratic Centralization

Classical-liberal devices for limiting the centralization of power—representative democracy, checks and balances between branches of the central government, and the rule of law—have not only failed, but have proven to be excellent tools *for* centralization.⁵⁸ It could not be otherwise, since these devices are the exclusive possession of the central government. The only way to limit centralization is to endow the *periphery* with the right, in some way, to veto the center. By periphery, I do not mean a mere aggregate of individuals, but a political society or independent social authority. Modern liberal states typically have a history of welding these smaller units into “unions” where members forfeit corporate self-government in favor of a wider sphere of individual liberty. There can be no real check to the centralization of power unless these corporate entities are acknowledged to have a legal right of corporate resistance in the form of a veto and, as a last resort, peaceful and legal secession from the union. But, from the time of the French Revolution, the liberal state has demonized the very thought of secession, declaring itself “one and indivisible.” In doing so, it has rejected the one constitutional instrument that could limit centralization in vast-scale modern states.

The attempt to secure individual liberty by vast-scale centralization would eventually lead to a spectacular loss of liberty. The modern liberal state, grounded in the autonomy of the individual, could not tolerate private ownership of labor, but, unhappily, for the same reason that it could not tolerate *any* independent social authority. However, by the logic of centralization inherent in all modern states, it would gradually accept *state ownership* of labor in the form of the income tax and universal conscription, both of which eighteenth-century monarchs found quite beyond their reach.

In 1861, the Czar abolished serfdom in Russia. By the 1880s, it had disappeared from the Western hemisphere. Yet, only 50 years

⁵⁸ An argument why liberal schemes to limit power tend to result in even more centralization is given by Bertrand De Jouvenel, *On Power* (Indianapolis, Ind.: Liberty Classics, 1993). See also A.J. Conyers, *The Long Truce: How Toleration Made the World Safe for Power and Profit* (Dallas: Spence Publishing, 2001).

later, new forms of *state-imposed* involuntary servitude, dwarfing the evils of nineteenth-century slavery and serfdom, would be instituted. Nearly three times as many men would die on the battlefield of World War I as there were slaves in the South. An equal number would be mutilated, the result being early deaths for many. Most were conscripts of the state. Slavery is evil because one man owns the labor of another. But what are we to say when the state centralizes power to the point where it can not only conscript the labor of its so-called “citizens,” but can use them for cannon fodder as well? Not even the worst pagan gods demanded such human sacrifice as was offered up in World War I.

War, however, has not been the worst crime of the centralized modern state. R.J. Rummel has pointed out that modern governments have killed nearly *four* times as many people under their own jurisdiction as have been killed in all twentieth-century wars, both foreign and domestic.⁵⁹ After World War I, *state slavery* suddenly reappeared in modern states. In only two generations, tens of millions would perish in slave camps, overshadowing the 11 million Africans brought to the Western Hemisphere in four centuries of the slave trade, about five percent of whom ended up in North America. And this new and more brutal form of slavery would be the work not only of fascist regimes such as those of Hitler and Tojo, but also of Marxist regimes that raised high the banner of human freedom around the world, and for 70 years would have the support of “fellow travelers” at the highest level of liberal regimes. Even now, there are no public monuments to these holocausts in liberal regimes.

The American Model of Decentralized Liberty

While the unitary state of the French Revolution would become the dominant political fashion of Europe, a quite different model emerged from the American Revolution. Whereas the French Revolution was a struggle by the bourgeoisie to control and augment the power of the center, the American Revolution was really a war of secession by the periphery from the center. The French model was designed to secure liberty by centralization; the American to secure liberty by decentralization. Very early, Madison crafted the doctrine of state interposition, and Jefferson the doctrine of state nullification.

⁵⁹R.J. Rummel, *Death by Government* (New Brunswick, N.J.: Transaction Publishers, 1994).

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Calhoun developed these ideas into America's first systematic political philosophy, *A Disquisition on Government*. Lord Acton, who was greatly concerned with the problem of how to limit the centralization of power in a modern state, included the *Disquisition* in his list of the 100 most important books ever written. He also praised the Confederate Constitution, which he viewed as the perfection of the American decentralist tradition rooted in the Declaration of Independence.⁶⁰

Anyone who wants to know why the South seceded need only read the Confederate Constitution. It abolished the slave trade and, unlike the U.S. Constitution, required legislation to enforce the ban. In fact, Jefferson Davis's first veto was a bill allowing the sale of slaves from a captured Yankee slave ship. Further, the Confederate Constitution allowed the entrance of non-slaveholding states. Marshall DeRosa has shown that the instrument was designed to prevent the centralization⁶¹—and with it the patronage and plunder at the center—that was the goal of Lincoln's "American system." The right of secession was acknowledged in the explicit declaration that each state retains its "sovereignty and independence." Had the Confederate States of America survived, the world would have had the model of a vast-scale federative polity with a strong central authority explicitly checked by the ultimate right of a state to secede.

Acknowledgment of this right would have compelled the central authority to respect the vital interests of the federative polity's distinct *political cultures* to such a degree that the right of secession would likely never have been exercised. But where great interests clashed, secession would have been a *legal* remedy. In a world of vast modern states, secession would be the moral alternative to a war of centralization and unification. This Confederate principle of civility for macro political order, rooted in the Declaration of Independence, was too advanced for its time, as many in the nineteenth century thought that liberty required unification. But after two world wars and totalitarian revolutions of unmatched brutality, modern states were exhausted and demoralized.

⁶⁰For Lord Acton's support of the Confederacy, see his "Political Causes of the American Revolution," "The Civil War in America: Its Place in History," and "Acton-Lee Correspondence," in John Acton, *Selected Writings of Lord Acton*, ed. Rufus Fears (Indianapolis, Ind.: Liberty Classics, 1985).

⁶¹Marshall DeRosa, *The Confederate Constitution of 1861* (Columbia: University of Missouri Press, 1991).

Great empires were relinquished, and there was no military resistance when fifteen republics peacefully negotiated a secession from the Soviet Union in 1990, hitherto the most centralized power in history. These secessions occurred 70 years after the founding of the Soviet Union. This was exactly the same period of time (1790–1860) after which eleven American states seceded from the Union described by Washington in his Farewell Address as an “experiment” that should be given a fair chance. By 1860, it should have been clear that the experiment had failed and should be suspended.

Nobel laureate James Buchanan has urged that the European Union write into its treaties the explicit right of a member state to secede. So far, this has not happened, but one day, the world may rise to the moral understanding of the Confederate Founders. Just as individuals need libertarian principles, so too do political units in vast-scale modern states need them. To be sure, these smaller units can be oppressive to the individual, but they also provide a buffer against greater centralization.

Ocean-going vessels are divided into compartments so that the vessel does not sink if the hull ruptures. For this reason, perhaps, Nobel laureate F.A. Hayek, surveying the monster states of his time, once suggested that individual liberty in the future would best flourish in small states. But in the current artificial world of vast states created by the liberal tradition, small states cannot emerge in a civil way unless the right of secession is first acknowledged. We can, of course, raise nice questions about the conditions for exercising this right, but they cannot be explored unless we abandon the liberal superstition that the state is “one and indivisible.”

Lincoln’s Legacy of Centralized Liberty

Lincoln and the Republican Party chose the path of unification through war, and in doing so abandoned the great moral principle of the Declaration of Independence: the right of “one people to dissolve the Political Bands which have connected them with another.” The Southern people assembled to gain their independence like the gathering of Highland Clans. Those who had been pro-union and opposed secession on policy grounds nevertheless believed in the right of secession and closed ranks to resist invasion. Of Southern white males of military age, three-fourths served in uniform, one-fourth were killed, and probably an equal number were mutilated physically and mentally. No country in World War II suffered casualties of that magnitude in

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proportion to its population.

Having failed to win the war after two years, Lincoln broke the international moral code of war and turned it against civilians. Sherman acknowledged that he was guilty of war crimes punishable by death according to the laws of war taught at West Point.⁶² Vast areas of the South were turned into desert, and two-thirds of Southern property was destroyed, not counting the cost of slaves. When the war ended, the South was utterly prostrate, its economy destroyed, its money worthless, its Confederate debt declared null and void.

Unknown thousands died of starvation and of disease from weakened bodies—something our nationalist Court historians have been shy to explore. Consider the 1866 Congressional testimony of Chief Justice William Sharkey of the Mississippi Supreme Court. Starkey had been pro-Union before the war, was appointed Reconstruction governor of Mississippi by President Andrew Johnson, and led the convention of the people of Mississippi in abolishing slavery before the Thirteenth Amendment was adopted.

I believe that there are now in the State very little over half the number of freedmen that were formerly slaves—certainly not more than two thirds. They have died off. There is no telling the mortality that has prevailed among them; they have died off in immense numbers.⁶³

It is sobering to think that when we include civilian casualties, considerably more people were killed in the South from Lincoln's invasion to establish Henry Clay's centralized "American system" than the total number of Americans killed in World Wars I and II combined—a disproportionately large number of whom were Southerners. The greatest threat to human life in the South has not been Hitler, Tojo, or the Kaiser, but the central government of the United States. The war shocked Europe. It was not only the bloodiest of modern times, but, in turning war against civilians, it was also the greatest atrocity of the nineteenth century.

To grasp this, suppose today that all states west of the Mississippi should secede and form a Western confederacy. What moral judgment would we make if the Eastern states should invade the Western con-

⁶²On the Lincoln administration and war crimes, see Adams, *When in the Course of Human Events*, pp. 109–25.

⁶³Hans L. Trefousse, ed., *Background for the Radical Construction* (Boston: Little Brown, 1970), p. 29.

federacy and inflict on it the casualties and destruction the government of the United States inflicted on the South? Such a war would rightly be denounced as evil, and its perpetrators guilty of war crimes. To dignify the invasion and destruction of the South by a white supremacist North as a holy crusade to abolish slavery is a foundational myth of American liberalism that morally corrupts everyone it touches.

TOWARD A LIBERTARIAN HISTORIOGRAPHY OF THE WAR

Nearly all American historiography after 1865 is *nationalist* and based on the moral assumption that, at all cost, the Union should have been preserved. In the nineteenth century, the heyday of empire and wars of unification and consolidation, an American empire might have seemed something worth trying. Since then, though, we have learned through fatal experience about the evils that follow from vast-scale modern states.

Libertarians should initiate a new historiography rooted in the moral proposition that secession in 1860 was morally correct, and was the only rational and humane solution to all the problems confronting the federation at the time. When two men are about to come to blows, it is best to separate them. To write history from the assumption that the peaceful dissolution of the Union in 1860 was a good thing—nationalists, after all, assume that the dissolution of the Union under the Articles of Confederation was a good thing—would bring to light a vast array of facts, moral possibilities, and spectacular moral losses hitherto hidden from view. And it would open up political possibilities that are today closed off because the limits of politics are, in large part, the limits of historical self-understanding.

Four examples of this new libertarian revisionist history are worth mentioning. Thomas DiLorenzo, in *The Real Lincoln: A New Look at Abraham Lincoln, His Agenda, and an Unnecessary War*, explores the mercantilist and imperialist motives behind Lincoln's decision to invade the South.⁶⁴ Charles Adams argues, in *When in the Course of Human Events*, that the North invaded because it could not tolerate the South's policy of free trade and low tariffs. Jeff Hummel's near-classic work *Emancipating Slaves, Enslaving Free Men* makes a convincing case for the hard moral line put forth by Northern abolitionists that se-

⁶⁴Thomas DiLorenzo, *The Real Lincoln: A New Look at Abraham Lincoln, His Agenda, and an Unnecessary War* (Roseville, Calif.: Prima, 2002).

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cession was the best method of eliminating slavery. John Remington Graham's forthcoming *A Constitutional History of Secession*⁶⁵ argues that the Anglo-American legal tradition implies a right of secession.

A lack of moral imagination prevents us from even entertaining the thought that peaceful secession in 1860 would have been a positive step forward; this lack of moral imagination is a disability brought on by more than a century of state-enforced nationalist propaganda. How, might we ask, could there be two unions in a land "from sea to shining sea"? Old nineteenth-century nationalist habits are hard to break even when their rationale has vanished. But suppose the U.S. had conquered Canada, as was required by "Manifest Destiny" and was attempted on at least two occasions. Suppose now that the "Canadian States," in legally called conventions of the people, should vote by large majorities to secede, leaving Alaska disconnected from the continental United States. One can hear the objections. Such an arrangement could never work. Canada would not be viable. What about defense? There would be constant war between the two states, as in Europe. And what about detached Alaska? Of course, the arrangement works quite well. Both countries stretch from sea to shining sea, and disconnected Alaska is as much a part of the U.S. as is any other state, contiguous or not. In fact, the actual horrors that followed from suppressing secession and the subsequent massive centralization have dwarfed every possible scenario marshaled to exhibit the horrors that would have followed from peaceful secession.

Confederate Vice President Alexander Stephens had been a unionist who nevertheless believed in a state's right of secession. After the war, as he looked to the future, he saw a dark era of consolidationism, what we would later know as totalitarianism. And he took comfort in the fact that the South had not only resisted the modern state's drive to centralize power but, in its own constitution, had framed principles to prevent it. Echoing the language of Jefferson and the Anti-Federalists, he said

Depend upon it—there is no difference between Consolidation and Empire; no difference between Centralism and Imperialism. . . . If the worst is to befall us; if our most serious apprehensions and gloomiest forebodings as to the future, in this respect, are to be realized; if Centralism is ulti-

⁶⁵John Remington Graham, *A Constitutional History of Secession* (forthcoming).

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mately to prevail; if our entire system of free Institutions as established by our common ancestors is to be subverted, and an Empire is to be established in their stead; if that is to be the last scene in the great tragic drama now being enacted: then be assured, that we of the South will be acquitted, not only in our own consciences, but by the judgment of mankind, of all responsibility for so terrible a catastrophe, and from all the guilt of so great a crime against humanity!⁶⁶

Stephens simply could not conceive that future consolidationism would have to answer for such great crimes against humanity. Nor could he realize how long it would take for historians to free themselves from the legitimating myths and ideologies in which consolidationism has wrapped itself.

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⁶⁶Alexander Stephens, *A Constitutional View of the Late War Between the States* (Harrisonburg, Va.: Sprinkle Publications, 1994), vol. 2, p. 669.

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