

Confederate Emancipation Without War

By Donald W. Livingston

War Crimes

Suppose the legislature of California should today call a convention of the people of the state to vote up or down an ordinance to secede from the Union and it was later ratified by the people in convention. Suppose Oregon and Washington should do the same, and within three months eleven contiguous states had joined to form a Pacific federation. The federation, then, recalls its senators and representatives and sends commissioners to Washington to negotiate payment of federal property and its share of the national debt.

In response, the administration in Washington refuses to see the commissioners. It argues the states are not political societies but administrative units of the national government; that the votes of the people in state constitutional conventions are null and void. A military force is assembled to invade and coerce the seceding states back into the Union. After nearly two years of fighting when it becomes clear that the federation is determined to maintain its independence and Washington might lose the war, the administration turns to total war, directing its forces against civilians in hopes of demoralizing the enemy in order to quickly end the war.

Eventually, the Pacific federation is defeated. Its cities laid waste, a quarter of its men of military age dead, some 60 percent of its capital destroyed, its public debt repudiated, and its currency worthless. The total number of battle and civilian deaths (the latter almost exclusively in the Pacific federation), is in the range of 10 million. Washington acknowledges this was a high

price to pay to keep all 50 states under central control, but gives thanks to God that the Union was preserved.

Can there be any doubt that most thoughtful people in the world today would judge the United States, in the scenario described above, to be guilty of a crime against humanity? Yet that was in all essentials what happened in the War of 1861-65. If the battle and civilian casualties of that war (around a million), were adjusted for today's population, the toll would be some 10 million deaths.

Moreover, secession was more justified morally and constitutionally in 1861 than it would be today because nearly all Americans have said the Pledge of Allegiance to the Flag of a nation "one and indivisible." No such pledge existed or was even possible in 1861. If we all say the nation is "indivisible," there is certainly a presumption, if not a law, against dividing it. Even so, if the Pacific federation just described was in fact formed, it is doubtful that an invasion and total war would be launched today against the federation on the ground that Washington's control of the 50 states is "indivisible." Such a war would be rightly judged morally reprehensible.

Why don't we make the same judgment about the War of 1861-65? Lord Acton, famous for his maxim that power corrupts and absolute power corrupts absolutely, did make that judgment. Lincoln's invasion, he said, was "an awful crime." But for Americans to acknowledge that would be to throw into question the moral legitimacy of the nationalist regime which emerged after the war. It is said that might does not make right. But there is a contrary principle of the right of conquest. Alexander

the Great is great *because* of his conquests. William the Conqueror did not blush at the name. The Romans built arcs of triumph and marched the kings, people, and possessions of the conquered through the cheering streets. Napoleon was the robber and plunderer of Europe, but he is an icon of French "glorie."

There is some sense to this. Once the conquest has happened, one must get on with life, and so what is imposed is "right" in that it is the framework one acknowledges as lawful. The alternative would be to renew the war. Even so, moral judgment must remain unclouded. To acknowledge the laws imposed by conquest is one thing; to transform the conqueror into a moral icon is a work in black magic, an attempt to turn base metal into gold. And this is what has been done with Lincoln and his war. As a true conqueror, he demanded *unconditional* surrender. But instead of praising Lincoln as a noble conqueror (as one might Napoleon), Americans resolutely disown this vision in favor of the moralistic one of the "great emancipator."

Many Americans, cannot bring themselves to consider Lincoln, Seward, Stanton, Grant and Sherman as agents of a ruthless and criminal conquest which one can, nevertheless, take pride in as people have done throughout history with their conquering heroes. Americans, it is said, do not conquer people. America is the vanguard of a universal civilization of human rights. Americans fight only defensive wars or wars to liberate people. So speaks the voice of "American exceptionalism."

But exactly what were Americans defending themselves against in 1861-65? The answer usually given by historians is the

“slave power,” a faction determined, as Lincoln said, to spread slavery to the western territories and even to the whole Union. Historian Charles Ramsdell, however, has shown there was no serious threat to slavery moving west.¹ But even if there was, that threat was eliminated by dividing the Union. The bounds of the Confederacy did not include the Western territories. Why, then, was not a peaceful division the best solution to all the problems confronting the Union in 1861?

The Union had never been happy. In 1794, when it was only five years old, Senators Rufus King of New York and Oliver Ellsworth of Connecticut urged Senator John Taylor of Virginia to support a move to divide the Union. The two senators said the differences were too deep to be settled by the ordinary means of political negotiation. Northerners and Southerners, these Yankees said, “never had and never would think alike.”²

By 1861 two quite different countries and identities had emerged from the Constitution that all had judged in 1788 to be an “experiment.” There were two quite different economic systems; profound differences on the nature of the Constitution, the tariff dispute, slavery in the western territories, and theological differences which had already split the churches. The two sections had come to hate each other beyond all reason. Rational discourse had become impossible. The Union, by any standard, was dysfunctional. It simply had failed. All of these difficulties, however, would have disappeared with a peaceful negotiated division.

And it is not as if this option had not occurred to Americans before. From the ratification of the Constitution up to South Carolina’s secession, there was never a time in which a division of the Union was not publicly discussed as a policy option. And the section which most often considered secession was New England: in 1804-1814 over the Louisiana Purchase, Jefferson’s embargo, and the War of 1812; during 1845-48 over the annexation of Texas, and in 1850 over the fugitive slave act. All wanted the Union to work, but all knew it was an artificial corporation created by a compact between the states for their mutual

benefit. The Union was not, and had never been, an end in itself. This understanding was alive into the early 20th century when Senator Henry Cabot Lodge of Massachusetts could say that after the Constitution was ratified by the people of the sovereign states: “there was not a man in the country, ... who regarded the new system as anything but an experiment entered upon by the states, and from which each and every state had the right peaceably to withdraw, a right which was very likely to be exercised.”³

Asking the Right Question About the Cause of the War

After the war, however, professional historians assumed the “indivisibility” of the Union, and illegitimately read that assumption back into the founding era. If the Union is thought of as “indivisible,” then the main question guiding historical research about America’s past must be “Why did the South Secede?” The question, however, is a loaded one because if we assume the Union is “indivisible,” then the South could have no good reasons to secede because if there were good reasons that would mean the Union is “divisible” which contradicts the assumption guiding most professional historical research after 1865. Since it is assumed beforehand there were and could be no good reasons for secession, the reason assigned must be a morally blameworthy one. So it is not surprising that protection for the morally unworthy institution of slavery is the reason usually given for secession by most academic historians. That Southerners gave a number of other reasons for secession, and that different states gave different reasons, is dismissed as so many masks to hide the “real” reason which *must be* protecting slavery, otherwise the assumption of “indivisibility” is thrown into question, and that cannot be allowed.

But it is anachronistic to think the Union in 1861 was morally and legally “indivisible.” There was never a time during the antebellum period in which respected political elites in every section had not entertained a lawful division of the Union. That being the case, the South needed no

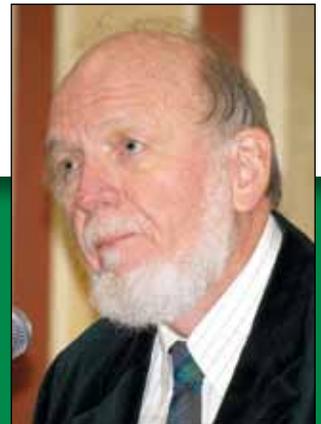
reason to secede other than the American desire (authorized by the Declaration of Independence), to govern themselves.

The American colonists in 1776 had a right to secede not because they suffered egregious oppression (the British government at the time was the most liberal government in Europe), but because, except for the navigation acts, the colonists had pretty much governed themselves from the very beginning. In time, they had matured and were now demanding to enter the world of nations themselves. The great Scottish philosopher, David Hume, supported secession of the colonies as early as 1768 before the idea had occurred to most Americans. He thought separation would be best for America and Britain. The colonists, he said, were once dependent infants, but they had grown up and, like any adult, demanded to govern themselves: “Let us, therefore, lay aside all Anger; shake hands, and part Friends.”⁴ Jefferson expressed the same magnanimous sentiments over the agitation for secession from New England which had gone on from 1804-1814. He said “If any state in the Union will declare that it prefers separation ... to a continuance in union ... I have no hesitation in saying, ‘let us separate.’”⁵

And secession was, and is, constitutional. Article VII of the Constitution states that “Ratification of the Constitution of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the same.” This meant that if four states did not ratify, they would remain under the Articles of Confederation, and there would be two unions on the continent.

Since the Union is a compact “between the States,” as the Constitution says in Article VII, it is open to the equitable remedy of rescission, as are all compacts.

The question historians should be asking, then, is not “Why did the South secede?” but “Why did the North invade?” To say it invaded to establish the central government’s monopoly on coercion over individuals



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als on the continent (despite the lawfully expressed consent of 11 American States to govern themselves), is morally bankrupt. Since this moral truth flies in the face of "American exceptionalism," a myth had to be constructed that the war was somehow "about" slavery.

I have argued in another place that slavery was a *national wrong* in which the North played a foundational role in its origin in the 17th century (the slave trade and in servicing slave economies throughout the Western Hemisphere) and that it continued to promote and profit from slavery down to 1861 (through textile manufacturing and through financing, shipping, and insuring slave-produced staples).⁶ Moreover, the federal revenue, throughout the antebellum period, was funded mainly by a tariff on imports in exchange for the exports of slave-produced staples. The North had little to sell the world. Some 75 percent of exports as of 1860 were from the South. The Southern economy indirectly funded most of the federal revenue.

Since slavery was a national wrong, what was morally demanded of all Americans (and not just Southerners), was to *emancipate* slaves, *compensate* slaveholders for their loss, and *integrate* the free Africans into American society. Yet throughout the entire antebellum period there was no national political party that advocated emancipation. And compensation and integration were completely out of the question. If there was anything Northerners were agreed upon (most abolitionists included), it was that the North and the Western territories were to be an African-free zone. Moreover, Lincoln and Congress repeatedly said that the war had only one aim: to preserve the Union. But that brings us back to the thought experiment about the secession of the Pacific federation in 2014. If total war, launched merely to coerce a Pacific federation of 11 American States back into a Union from which their people had voted to secede was morally blameworthy, then so was Lincoln's war.

Anti-Slavery: A Mask Hiding Northern Economic Nationalism

Since American "exceptionalism" cannot face this moral truth, a fiction must be created to hide it. That is accomplished in the *Battle Hymn of the Republic's* teaching that the war was a holy crusade to abolish slavery. Up to the 1960s most historians did not think the war was about the *moral* issue of slavery. It was about establishing a regime of *economic nationalism* from sea to shining sea controlled by Northern financial, industrial, and commercial interests. This Yankee project was given a certain

moral grandeur by covering it with an abstract ideology of liberty and equality.

Since these terms are abstract and indeterminate, everyone could invest the words with a meaning which answered his or her hopes and needs, but in fact their public meaning would be whatever the ruling class would assign. Economic nationalism joined to an abstract ideology of liberty and equality was also the motive behind the wars of "unification" and "nation-building" throughout Europe, which followed upon the French Revolution. Lincoln, Bismark and Lenin were all engaged in cracking heads to make a nationalist omelette in the name of liberty and equality. Marxists and liberals differ on the meaning of "liberty" and "equality," but the language is the same, and the project of crushing smaller political entities into larger and larger ones under central bureaucratic control was, and is, the same for *all* modern centralizing ideologies. In this there was no "American exceptionalism." The United States was right on schedule with the centralizing trend of European politics.⁷

Today it is regularly said by historians, pundits, curators of museums and national battlefields that the war was about the moral problem of slavery despite the massive historical evidence to the contrary. Until recently, few mainline historians challenged it. One who has is Gary Gallagher. In *The Union War*, he argues the obvious truth that the war was about what Lincoln, Congress, and the Union generals who fought it, said it was, namely not a war to free slaves but a war to preserve the Union. That such a book needed to be written tells us a great deal about the one-sided ideological character and lack of moral imagination in academic history today.

But having shown this, Gallagher does not draw the conclusion that the war was the "awful crime" Lord Acton, at the time, said it was. The moral imagination of most Americans is understandably controlled by a deep prejudice instilled, in part, from the ritual of saying the Pledge of Allegiance to the Flag of a nation "one and indivisible." This prejudice is read retrospectively (and illegitimately) into the antebellum era, so it never occurs to most Americans to question whether a negotiated division of the Union was the morally best solution (and the most American solution), to the problems which had been tearing at the Union for nearly half a century and had become a vicious "cold war" since the 1830s.

But if the war was not about the moral challenge of slavery, then Lincoln's invasion and prosecution of total war against civilians merely to preserve Northern central control over all States was and is morally deplorable. Jeffrey Hummel is rare

among historians in making this obvious moral point: "As an excuse for civil war, maintaining the State's territorial integrity is bankrupt and reprehensible. Slavery's elimination is the only morally worthy justification."⁸ Hummel identifies with the radical abolitionists of the 1830s who argued for secession of the *North* from the South and who plotted to organize a slave uprising throughout the South of which John Brown's abortive raid was the fruit.

Hummel acknowledges a slave revolt would have been bloody, but it would be morally justified, he thinks, because it is right for a slave to throw off his bondage and right for others to help him do so. Although abolitionists of this sort could support slaves *liberating themselves* through violence, the best of them (and only a few of those remained after war started), abhorred Lincoln's invasion for two reasons. First, they knew the invasion was not motivated by a desire to free slaves. Second, they did not believe the Union was indivisible. Indeed, they argued for dividing it as the best way to put slavery on the road to extinction. Lysander Spooner, one of the more principled and admirable abolitionists, had urged both secession of the North *and* plotted to assist in a slave uprising. After the war he bitterly excoriated those who celebrated the war for preserving an indivisible "nation" and for "freeing slaves."⁹

Given the way popular history of the War of 1861-65 has been written, it cannot be said too often that the North did not invade the South to emancipate slaves. Lincoln and Congress made clear at the outset that military force was to be used only to force the seceding states back into the Union. As Lincoln put it early in the war: "We didn't go into the war to put down slavery, but to put the flag back..."¹⁰ Besides, if slaves were freed they could be citizens of the United States, and a thoroughly white supremacist North was not at all interested in having to contend with what Lincoln called "the troublesome presence of free Negroes" in their territory. It was assumed by both sides at the beginning that, however the military conflict ended, slavery would remain intact.¹¹

Why the War *Must* be About Slavery, Even if it Was Not

Since Americans *must* believe the war was "about" freeing slaves, and since it cannot be honestly maintained that Lincoln invaded the South to free slaves, a weaker thesis is employed which runs as follows. Even if granted (as it must be), that Lincoln and his administration did not invade the South for the purpose of freeing slaves, nor as a response to the moral chal-



A FAMILY QUARREL.

lence of slavery, all must acknowledge that the war jarred events into a knot that in fact eventually led to emancipation.

Had there been no war (so the account runs), slavery would have continued for an intolerably long period of time because Southerners, being the sort of people they were, simply did not have the moral resources to abolish it. Nothing but brute force could have dislodged slavery from the South.

The evidence, however, strongly supports the contrary counter-factual judgment that had there been no war, slavery, in an independent Confederacy, would have ended in a reasonable amount of time, and race relations in the South (and in America), would have been better than what they became, having been put through the dehumanizing experience of a scorched earth war, a decade of military occupation, the plunder and corruption of Reconstruction, and the manipulation of race by the Union League and similar organizations created to keep the Republican party in power.

In treating this question, one historian

has said that, setting aside the motives for the North's invasion, it did in fact eliminate slavery and that is "a triumph that cannot be overrated."¹² To think the elimination of slavery was an *unqualified* good which came out of the war is to treat slavery (and liberty) as abstractions. Liberty considered abstractly, of course, absolutely trumps slavery considered abstractly. But liberty and slavery are not abstractions, they are historic practices in the world intertwined with other practices. There is no such thing as liberty in the abstract but only liberty as actually practiced in Eighteenth-Century Whiggish Britain, or in Jeffersonian America, or under the current highly centralized bureaucratic regime of Obama's America. Moreover, practices must be judged by comparative contrast with other practices to understand their virtues, vices, their potentiality for change, and to judge the direction change should take.

Whether emancipation, as it actually occurred and as the *unintended* consequences of a policy of total war, was a good—much less one that cannot be "overrated"

— cannot be known without a critical comparison with what most likely would have happened had there been no war. To make a proper moral judgment, the destruction and suffering caused by the war must be morally matched against emancipation as it *actually occurred* to real people in real time and place and not as the displacement of abstract slavery by abstract liberty.

Counting the Cost

Such a comparison prompts two questions. First, what was the cost of the *unintended* elimination of slavery by Lincoln's invasion of the South? Most of the death and nearly all of the destruction of property and infrastructure occurred in the South. Since Lincolnian Americanism must somehow find a link between the war and the *unintended* consequence of emancipating slaves, a hard look at the destruction and suffering caused to Southerners, black and white, is rarely undertaken. If the new estimates of battle deaths, at around 750,000 or more, is accepted, then, as we shall soon

see, when civilian deaths are included, a figure of around a million comes into view. If adjusted for today's population, that would be some 10 million battle and civilian deaths.

And the figure is higher than if we expand the scope of the war beyond 1865. Troops were not removed until 1877, during that time much of the South was under military dictatorships. As we shall see shortly, violence, state-created poverty, famine, and disease continued to claim deaths as a result of the war and the inept and corrupt policies of the military occupation.

The *unintended* emancipation of slaves as a by-product of this violence must be a worthy goal indeed to justify such carnage. Some 60 percent of Southern capital was destroyed; its public debt repudiated and its currency worthless. A quarter of its men of military age were dead, wiping out some of the South's best and most promising men. But even worse, the social and political structure was destroyed. The acquired virtues and habits that were housed in that structure and could evolve and be perfected only within it could no longer be exercised.

It is a terrible thing to destroy a social and political order. History shows that a people can recover in a short time from almost any amount of physical destruction if their social and political traditions are intact. The great tragedy of World War I is that it destroyed the social fabric of Europe and opened the door to a plethora of ideologies and other social pathologies, including totalitarian regimes and World War II. Similar baneful results followed from the North's systematic destruction of Southern society.

But there was another cost which has been largely ignored, namely the death and suffering of blacks caused by the Emancipation Proclamation itself. A window has recently been opened into this terrible episode by Jim Downs in *Sick From Freedom, African American Death and Suffering During the Civil War and Reconstruction*. "The Civil War," he says "produced the largest biological crisis of the nineteenth century ... wreaking havoc on the population of the newly freed." Tens of thousands of freed slaves "became sick and died due to the ... exigencies of war and the massive dislocation triggered by emancipation."¹³

The Emancipation Proclamation was designed to encourage a slave uprising and weaken Southern morale. Consequently, the Lincoln administration had made no preparation to care for the slaves suddenly dislocated from their place of sustenance. The army hastily threw up what were called "contraband camps." These were the first modern "concentration camps," a

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distinction usually given to the British in the Boer War 1899-1902. Though no longer slaves, blacks in these camps were not citizens of the states or of the United States and had little in the way of civil rights. They were legally defined as "contraband" of war.

Able-bodied males were forcibly separated from their families and put to work on abandoned plantations. In theory their wages were supposed to support their families in the contraband camps as the federal government did not see itself authorized to provide welfare which was viewed as the constitutional duty of the states. Downs observes, there was little employment to be found: "The war destroyed much of the land for cultivation, while drought and the crop failures of 1866-67 further devastated large parts of the South — leaving emancipated slaves penniless. The onset of famine in 1867 led to chilling mortality rates among newly freed slaves."¹⁴ Moreover, as "contrabands," free blacks did not have the civil rights of citizens and were often defrauded by corrupt officials of their wages and sometimes not paid at all.

Packed into the ill-equipped, overcrowded, and foul conditions of the contraband camps were women, children, the elderly, disabled and sick. Their livelihood was dependent on money from working family males, charity, and what the army, with its stretched resources, could provide. It proved to be not enough, and tens of thousands became ill and died.

Another source of mortality were forced marches of the contraband camps to new locations, covering in some cases hundreds of miles. Those already weak from disease and malnourishment died in these coerced marches. Downs observes the army's separation of working males from their dependents enacted a greater separation of families than had occurred in the plantation system.

Downs challenges the story told by Eric Foner and his school, that Reconstruction "failed due to the withdrawal of the federal government from the South in the 1870s." It was not the withdrawal of the federal government, but the failure of its policies: "as this book has demonstrated, the federal government did not solve the problems that freed people faced in the 1860s.... The government's organization of freed people into a labor force separated families, quarantined women and children to contraband camps, and summarily stripped African Americans of their cultural resources to care for their bodies."¹⁵

The fact the military restricted freed slaves to contraband camps cannot be overstated. This was the beginning of a process of emancipation which ultimately evolved into a system whereby the freed Africans were bottled up in the South and prevented from going West and North. The impoverished and scorched earth of the South became a vast black reservation, and continued as such until the early 20th century. Vast tracts of western land were available to settle this uprooted population, but they were closed off by government policy. Lincoln and the Republican Party had run on a platform to keep not only slaves but "free blacks" out of the West.

Lyman Trumbull of Illinois, abolitionist and a major author of the Fourteenth Amendment, supported Oregon's constitution which *prohibited* free blacks from entering the state, saying that his antislavery principles did not mean Negroes should "be placed on an equal footing in the States with white citizens."¹⁶ Lincoln's policy was to use the army to keep the African population bottled up in the South. Shepherd Pike, a correspondent for the influential *New York Tribune*, hated slavery in the abstract, but like so many abolitionists, he did not want to live with Negroes. He wrote in the *Atlantic Monthly* February 1861: "We say the Free States should say, confine the Negro to the smallest possible area. Hem him in. Coop him up. Slough him off. Preserve just so much of North America as is possible for the white man, and to free institutions."¹⁷

A New England clergyman, Joseph Henry Allen, writing in a Unitarian journal April, 1862, urged that blacks should be herded into federal reservations in the hot humid places of the South which their racial instincts preferred. The South in turn would be cleansed of white Southerners and "large areas of the South would be open to settlement by Northern whites who would redeem these areas from barbarism by introducing "free industry and free intelligence."¹⁸

The war strengthened the desire, long held in the North, for a policy which would

eventually eliminate the Negro. This policy was put forth at the upper levels of government. For example, the Republican-controlled House Committee on Emancipation Policy said in its report, 1862: "that the highest interests of the white race, whether Anglo-Saxon, Celtic, or Scandinavian, requires that the whole country should be held and occupied by these races alone." If so, no part would be set aside for blacks. "The Anglo-American looks upon every acre of our present domain as intended for him and not for the Negro."¹⁹ Historian, George Fredrickson says that the free soil movement and the Republican Party which brought Lincoln to power was motivated by "an expectation of white expansion into every corner of the nation, with the disappearance of the Negro as the inevitable corollary."²⁰

A smallpox epidemic raged throughout the South and into the West from 1862-68, decimating whites and blacks. But a medical authority judged the death rate was "in many cases three to four times as large" among blacks as among whites. Children sometimes died within the day.²¹ This was explained as a racial difference about which little could be done. The weakened, diseased and malnourished condition of blacks was apparently not considered. This fitted nicely with the assumption, long held in the North, that without the *protection* of slavery, blacks in competition with whites would die out. A clergyman said in 1863: "Like his brother the Indian of the forest, he must melt away and disappear forever from the midst of us." Congressman Samuel Cox from Illinois, thought the freedmen were "dying out."²²

Downs observes that when the smallpox epidemic broke out in the North, the standard methods of quarantine and vaccination were quickly employed, not so in the South. Despite continued reports "on the devastation and deaths that smallpox caused among the freed people, federal authorities in Washington failed to react."²³

It is significant a study such as Downs' should take a hundred and fifty years to appear. Until recently historians have not shown much interest in the mortality of the freedmen anymore than in determining the number of Southern white civilian deaths due to the war and its aftermath. Downs does not speculate about the number of freed blacks who died as a result of Lincoln's ill-thought-out Emancipation Proclamation. The weakened bodies of ill-nourished freedmen easily succumbed to diseases which would otherwise not be fatal. He observes that 30,000 died to small pox in the Carolinas during a six-month period of 1865. The epidemic raged throughout the South for six years, gener-

ating a casualty rate probably in the high tens of thousands. We have a holocaust here whose numbers are yet to be fixed.

Slavery Would Have Lasted Longer if the South Remained in the Union

Was the war, with all its destruction (and a baneful legacy which keeps on generating resentment and public mendacity), the only way slavery could have been eliminated? Would an independent South have had the moral resources to abolish slavery on its own and in a reasonable time? If it did have those resources, then far from being a good that "cannot be overrated," the violent elimination of slavery as an *unintended* consequence of a policy of total war aimed at civilians, was indeed a good, but one morally overwhelmed by being embedded in the massive destruction and suffering of an unjust and brutal war of conquest. Moreover, if the South had those moral resources, "the war" has no moral merit whatsoever, not even the attenuated merit of generating an unintended good.

But did the South have those moral resources? Before answering that question, we should ask whether the *North* possessed the moral resources needed to abolish slavery had the South remained in the Union? To say that without war, slavery in an independent South would have lasted for an intolerably long time supposes that had the South *not* left the Union, slavery would have been eliminated in a reasonable amount of time due to Northern pressure. But is there any reason to believe this? As we have repeatedly seen, antebellum Northern political elites were never interested in a morally responsible national program to abolish slavery, compensate slaveholders, and integrate freed Africans into Northern society. That Congress passed the Corwin Amendment March 1861, making it unconstitutional for it to ever interfere with slavery, meant slavery would have continued as long as the States wanted it.

That being the case, the only way left to abolish slavery legally would have been through a constitutional amendment. There were 34 States in the Union in 1861. Only nine were needed to defeat an emancipation amendment. Since there were fifteen slave States (eleven in the Confederacy plus Kentucky, Missouri, Maryland and Delaware), there were enough states to protect slavery as long as desired. Moreover, it is not likely Northern and Western States would have supported an emancipation amendment unless it contained a prohibition on free blacks moving North and West, and it is likely that Southerners would

have rejected any such prohibition.

Northerners, including most abolitionists, were horrified at the prospect of free blacks moving North. Texas congressman John Reagan who became the Confederate postmaster general, exposed the absurdity of Yankee abolitionists who excoriated the South but were unwilling to live, work, worship and eat with blacks. He told the House January, 1861: "Suppose these slaves were liberated; suppose the people of the South would today voluntarily surrender \$3,000,000,000 of slave property, and send their slaves at their expense into the free States, would you accept them as freemen and citizens of your States? You dare not answer me that you would. You would fight us with all your energy and power for twenty years, before you would submit to it. And you demand us to liberate them, to surrender this \$3,000,000,000 ... to ruin our commercial and political prospects for the future."²⁴

And how likely would it have been for Northern States to agree to an emancipation amendment, acknowledging that slavery was a national wrong which required compensation to slaveholders, had the South stayed in the Union? When abolitionist William Seward who became Lincoln's secretary of state was told by Southern senators before the war that compensation should attend any possible emancipation, he replied: "Compensation for their Negroes! Preposterous idea! The suggestion is criminal — the demand wicked, unjust, monstrous, damnable! Shall we pat the bloodhounds for the sake of doing them a favour? Shall we feed the curs of slavery to make them rich at our expense? Pay these whelps for the privilege of converting them into decent, honest men?"²⁵ This was not a rhetoric conducive to rational debate, but it was all too typical of anti-slavery agitation.

Here as elsewhere there was no recognition at all that slavery was a national wrong in which the North played a foundational and continuing role from the 17th century up to 1861. Duncan Rice, an historian of slavery, observed 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 and New York commerce."²⁶ As Seward ridiculed the suggestion that Northerners should shoulder some of the financial burden of freeing slaves, the North was busy financing plantations, shipping and insuring slave-produced staples, turning slave produced cotton into textiles, and enjoying the lion's share of a federal revenue, most of which was raised by a tariff on foreign imports in exchange for slave-produced staples which accounted for some 75 percent of American

exports.

The lack of moral self-knowledge on the part of Northern elites such as Seward is astonishing, but no greater than the lack of moral imagination today among main-line historians who claim the War of 1861-65 was "about" freeing slaves.

With the Corwin Amendment passed by Congress, it is difficult to imagine any greater protection for slavery than what the South enjoyed in 1861. If anything, had the South remained in the Union, slavery most likely would have been *prolonged* beyond what would have happened otherwise. Jefferson Davis and others acknowledged that slavery would have less protection outside the Union than in it. Vice President of the Confederacy, Alexander Stephens though: "slavery much more secure in the Union than out of it."²⁷

All the evidence supports Jeffrey Hummel's neo-abolitionist thesis that a negotiated division of the Union in 1861 would have been the best means, at the time, for advancing the cause of emancipation. The Union, free of the South, would no longer be obligated to return fugitive slaves. The United States could, if it wished, use the law of nations to put a variety of pressures on the Confederacy to abolish slavery which it could not legally do with the South in the Union.

Domestic Terrorism and the Republican Party

What secession gave Southerners was not greater protection for slavery; rather, it gave them independence and the political authority to decide when and how slavery would be abolished. Since Northerners had erected legislative and even state constitutional barriers to "free blacks" entering their States, emancipation is something Southerners would have to live with and pay for on their own. If so, they should have the authority to decide what and how it should be done. Independence also freed them from the endless insults of Southern character, conjoined with self-imposed ignorance about the North's share of responsibility for a national economy nourished in large part by slave labor and about the benefit the North continued to enjoy from it.

Finally, independence would give Southerners greater leverage in dealing with terrorism of the sort advocated by New England elites such as Lysander Spooner, Wendell Phillips, Thomas Wentworth Higginson, Samuel Gridley Howe, Theodore Parker, Franklin Benjamin Sanborn, Gerrit Smith and George Luther Stearns. These supported John Brown who murdered Southerners in Kansas, who did

not own slaves, and in his attack on the federal arsenal at Harper's Ferry in an attempt to start a slave uprising.

When the governor of Virginia requested that fugitives from this raid be returned to Virginia to stand trial, as the Constitution requires, the Republican governors of Ohio and Iowa refused. If Virginia were out of the Union, the law of nations could be used to combat abolitionist terrorism coming from the United States, and pressure could be put on the government to return Northern terrorists for trial. As long as Southern States remained in the Union, they were helpless against Republican governors. The election of Lincoln, the leader of the Republican party, who received only 39 percent of the popular vote and had no support in the South, was a sign of bad things to come. The Union was clearly dysfunctional, and it was time to divide it.²⁸

Would the South have Abolished Slavery in a Reasonable Amount of Time?

The nineteenth century, as Tocqueville and Lord Acton observed, breathed the air of something called "liberty." Robert E. Lee wrote shortly before the war: "In this enlightened age, there are few I believe, but what will not acknowledge, that slavery as an institution, is a moral and political evil in any country." The Czar abolished serfdom in Russia in 1861. The survival of slavery in mid 19th century America was not so much immoral as absurd and archaic. As of 1861, every Western country had abolished slavery except Brazil, Cuba and the United States, the latter of which had the largest slave population in history.

Lincoln thought this love of liberty was as strong in the Southern character as elsewhere. He was himself of Southern origin. He had married into a slave-holding family, and had prosecuted a family of runaway slaves which had fled to Illinois for freedom. In his debate with Stephen Douglas, August 21, 1858, he told his audience that Southerners were as opposed to slavery in the abstract as were Northerners. Slavery was something they had inherited, and he said that "If slavery did not now exist amongst them, they would not introduce it."²⁹ That Southerners would not introduce it reveals something about their moral character and how they would act under conditions favorable to emancipation. But given the bitter cold war (economic, political, and cultural) that had existed from the 1830s on, and the great economic boon enjoyed by the South in the 1850s, those conditions were not yet ripe.

The South, nevertheless, had a long emancipation tradition going back to

founders such as Washington, Jefferson, Mason and Randolph. St. George Tucker of Virginia wrote the first commentary on the Constitution in 1803 which laid out a plan for gradual emancipation. As of the 1830s there were more anti-slavery societies in the South than in the North: 106 anti-slavery societies in the South with 5,150 members, and 24 anti-slavery societies in the North with 1,475 members. Southern Quakers, who worked for limited practical goals of emancipation and reforms benefiting the African population, warned their members to disassociate themselves from Northern abolitionists.

It has been said the South was unique among slave-holding societies in that debates on the abolition of society were tolerated. After Nat Turner's massacre of more than 50 white people in 1831, the governor of Virginia called the legislature into special session to consider the question of emancipation. Most every argument for and against slavery was presented by Southerners in a rational and civil debate. A resolution was put forth that it was expedient to begin a process of abolishing slavery. Although the resolution was defeated 73 to 58, it showed there was substantial support for emancipation. It was at just that time that New England abolitionists began their theatrical antics demanding immediate, uncompensated emancipation, backed by threats of terror and/or Northern secession. This irresponsible and self-congratulatory agitation placed a wet blanket over the disposition to work out a plan of gradual emancipation.

Another feature of Southern character which intimated acceptance of emancipation under the right circumstances was the social integration of blacks and whites in the antebellum South. This will seem strange given the Southern segregation laws of the late 19th and early 20th centuries which are highlighted when recalling the civil rights movement of the 1960s. But we must keep in mind that strict racial segregation began in New England as part of its white Anglo-Saxon nativist ideology. Northern State constitutions and other regulations banned free blacks from their territories or otherwise discouraged their entrance. The goal in the North (even for many abolitionists) was to keep blacks as far removed from whites as possible. Lincoln was simply repeating a commonplace when he said: "what I would most desire would be the separation of the white and black races."³⁰

In the antebellum South, however, it was not possible to keep the two races separate. Slave owners were taught they

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had a duty to Christianize their slaves. Slaves attended church with their masters; heard the same sermons, lived on the same property with them, and sometimes in the same house. As of 1860, more than 80 percent of Southerners did not own slaves, and most of those who did possessed one to six hands, often working side by side with the owners on the plantation. Owners traveled with their slaves in carriages. And white infants were at times nursed by black women. Something Northerners found offensive.

Segregation became a feature of the "New South" i.e., a region devastated by total war and "reconstructed" after 1865 by a victorious Northern army and political elites along New England lines which demanded racial segregation. C. Vann Woodward shows in *The Strange Career of Jim Crow* that many of the few surviving elites from the Old South were opposed to racial segregation. It smelled to them of regimented Yankee industrial society.

Black Slave Holders Accepted in Southern Society

It was not unusual for free blacks to own slaves and be accepted in Southern society. To a considerable degree, wealth everywhere tends to transcend race, ethnicity, and religion and to translate into social influence and economic power. This was true of free blacks as well. In Louisiana there were six free blacks who owned 65 or more slaves, the largest owning 152.

Just what this meant in terms of wealth and status can be gathered from the research of economists Samuel Williamson and Louis P. Cain who have translated the value of slaves in 2011 dollars.³¹ The value of a slave in 1850, translated into 2011 dollars and, depending on the level of skill and character, ranges from \$12,000 to \$176,000. A person who owned just one slave was perceived as a wealthy member of society. To own 10 slaves put one in the top one percent of economic status which would make one today a multi-millionaire. To own 50-99 gave one an average estate value of \$72 thousand in 1860 dollars. Translated into 2011 dollars that would mean an economic status of \$25 million and the economic power of \$250 million.³² The Free black in Louisiana who owned 152 slaves far exceeded that in economic status and power.

Of the more than 10,000 free blacks in

New Orleans, 28 percent were slave holders. There were 125 black slave owners in Charleston in 1860. Six owned 10 or more slaves. To own just 10 slaves would put one in the top one percent of economic status. Even owning one slave meant one was a wealthy member of society.

Consider the example of William Ellison. He was born a slave in South Carolina in 1790, the mulatto offspring of a slave woman and her owner. He was taught by his master to read and write and was educated into a number of skills. South Carolina had a "task" system which meant that slaves could work on their own time to earn money. Ellison worked on the side for wages, and eventually bought his freedom and that of his wife. In time, he became a wealthy manufacturer and planter, and eventually owned 60 slaves which gave him the status of a multi-millionaire in contemporary dollars. He bought the home of a former governor and was respected in South Carolina society.

The children of mulattoes sometimes married whites and were considered white. In South Carolina, "whiteness" was determined not merely by skin color but also by character. An act of the legislature could elevate one of African descent to the status of whiteness. Ellison was so elevated and enthusiastically supported the Confederacy by supplying the army and buying Confederate bonds. Ellison had moved from slavery, to buying his freedom, to becoming one of the richest men in Calhoun's South Carolina.³³

By contrast, in Lincoln's Illinois (and with no dissent from him), free blacks were *prohibited* by the Constitution from even entering the state, and those already residing did not enjoy anything remotely resembling the freedoms Ellison enjoyed in South Carolina. And Ellison was not the only one. Justus Angel and Mistress L. Horry of Colleton District, South Carolina, owned 84 slaves.³⁴ As early as 1830, a quarter of free blacks in South Carolina owned 10 or more slaves. Eight owned 30 or more. These were very wealthy people. The freedoms these free blacks enjoyed in peace and prosperity were a foundation on which further reforms could be built as the numbers of virtuous blacks increased, and as slavery became less profitable. When that happened, more and more slaves would seek to buy their freedom, and more masters would be happy to free themselves

from the financial burden of cradle-to-grave welfare.

Jefferson Davis' wife rescued an abandoned and abused black boy of five years named Jim Limber. Davis had his free papers registered at the mayor's office in Richmond. He lived as one of the Davis family in the Confederate White House and became fast friends with the Davis children. He was separated from the family by the army when Davis was captured. It is unlikely Lincoln would have gone out of his way to rescue and to adopt a black boy into his home. And had he done so, it would have been a scandal in Illinois.

The long-established social relations between black and white in the South was evident even during the period of segregation. Jennifer Roback has shown that public transportation in the form of trains and trolleys in large Southern cities in the late 19th and early 20th centuries was not initially segregated. Transportation executives would not segregate and did not fear a boycott from the public. It was only when ideologues captured state legislatures and coerced segregation that it became established.³⁵ It is ironic Southerners who defended state-imposed segregation in the 1940s and 50s when it was challenged did not realize how close they were to antebellum Yankees, and how far removed from antebellum Southerners.

Joanne Pope Melish in her study of New England racial attitudes observes that there is "a visceral discomfort on the part of Northern whites with the actual, physical presence of individual persons of color in the landscape, coupled with a willing assumption of ... authority over, the well-being of people of color who exist theoretically, somewhere outside that landscape—at a safe and comfortable distance in the Northern white imagination."³⁶ This tension between what she calls "advocacy and aversion" appears in *Uncle Tom's Cabin* and continues into the 20th century.

James Weldon Johnson, an African American, wrote in 1912: "It may be said that the claim of the Southern whites that they love the Negro better than the Northern whites do is in a manner true. Northern white people love the Negro in a sort of abstract way, as a race; through a sense of justice.... Yet generally speaking, they have no particular liking for individuals of the

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race”³⁷ The same view was expressed by African American social critic Nora Neale Hurston, writing on the dawn of the civil rights movement: “I have listened to the northern abstractions about justice, and seen the cold hardness to the black individual.... in some instances the South is kinder than the North. Then the North adds the insult of insincerity to its coldness.”³⁸

Historian, Eugene Genovese, pointed out that the great race riots, complete with the burning of cities in 1960s America, occurred in the urban centers of the North and West Coast, not in the South. This lack of self-knowledge on the part of Northerners coupled with an inability to perceive the virtues in Southern race relations at their best is to be found even in such distinguished scholars as Nathan Glazer. He was perplexed by the virulence of Northern racial attitudes toward blacks. Writing in 1971, he explains that Northerners have been corrupted by Southerners: “Southern attitudes toward the Negroes have been brought North — physically — by black and white.”³⁹ Glazer is astonishingly ignorant of the virulent racial attitudes of Northerners to their own *native blacks* handed down in unbroken practice from the 17th century to his time and which Melish has documented.

That there was no segregation in the antebellum South — that blacks (free and slave), were considered a normal, though subordinate, part of Southern society, unlike blacks in the North — should not be romanticized. It did not mean Southern whites believed in racial equality (hardly anyone in America did), but it did mean social relations had long been established which under the right conditions could naturally lead to emancipation and to a higher degree of social integration. By contrast, Northerners sought to remove themselves as far as possible from black flesh. Northerners could still fantasize about the project of colonizing Africans abroad, or of free blacks leaving the North, driven by their racial instincts for a warm and humid climate. And there was the near-universal fallback belief that blacks, without the protection of slavery, would die out from inability to compete with whites.

Lincoln was still pushing colonization a few days before his death.⁴⁰ But colonization was a pipe dream because planters were generally not interested in sending

their slaves to Africa and because slaves generally did not want to go. They identified with the Southern culture in which they were raised. And the integration of slaves into the plantation household created bonds of intimacy which planters did not want to break. As one Southerner wrote:

*What! colonize old coachman Dick!
My foster brother Nat!
My more than mother when I'm sick,
Come, Hal, no more of that!*⁴¹

Southerners knew that blacks and whites, though different, would simply have to learn to live together. The South was the *only* region which had cultivated the reciprocal practices needed to do so. To be sure, these practices left much to be desired, but they were the only roots in America at the time on which a more liberal and humane integration could be grafted.

Black “Due Process” Rights in the Confederacy

Jefferson Davis and his brother Joseph met, and were influenced by British utopian socialist Robert Owen. Both brothers believed in eventual emancipation. Joseph’s slave Ben Montgomery was taught to read by the Davis family and was educated in land surveying and architecture. He managed Joseph Davis’ plantation, and applied in vain for a patent on an invention. He was denied by the US government because slaves, not being citizens, could not receive patents. As president of the Confederacy, Davis had legislation passed which abolished that rule, allowing slaves to receive patents and to make money on their inventions.⁴²

Jefferson Davis sought to teach his slaves the principles of the rule of law. He held a court on the plantation with a slave jury, prosecutor and defender. Davis sat as judge, and was required to follow the verdict of the jury. Although he could lessen the punishment required by the jury, he could not increase it. In this way, it was hoped slaves would learn the basic principles of law which they would need for eventual emancipation. By contrast, Lincoln supported the Illinois law prohibiting free blacks from testifying against whites in court. Davis believed that once freed, blacks should be able to so testify.

In a study of Confederate case law, con-

stitutional scholar Marshall DeRosa points out how attached Confederates were to the rule of law and to individual rights which were extended to slaves. In slave law, the master had property only in the labor, not the *person* of the slave. The slave, as person, had certain rights. For example, the Louisiana Supreme Court ruled that, “slaves being men, they are to be identified by their proper names.”⁴³ An article in the *Southern Literary Messenger* affirmed in 1856 the “fundamental equality and common humanity of black and white.”⁴⁴ Eugene Genovese points out Southerners generally diminished the difference between slave and free labor, referring in some plantation books to “hands” or “servants” and not as slaves. Anne Norton notes that, “Slavery was a frequent subject in Southern magazines, but the word “slave” seldom appears.”⁴⁵

The “person” of the slave was forcefully acknowledged in criminal cases. In one case, a slave woman Josephine had a sexual relation with her master. She poisoned his wife and fourteen month old child, the latter of which died. Although the evidence of murder was clear, there were legal errors in the indictment. Two trials followed. Josephine was convicted in the second. An appeal was made to the Mississippi Supreme Court which ruled Josephine was entitled to a new trial even though the judge acknowledged the strong evidence against her. The presiding judge said the “matter here involved was a substantial right of the prisoner [Josephine] and not a mere question of form of proceeding.”⁴⁶

The 14th amendment is hailed as a great episode in the story of universal emancipation because free blacks were given “due process rights” in criminal cases. Professor DeRosa observes what is not appreciated is the person of the slave had those rights under the Confederate judiciary. The due process rights of the slave, Josephine, were acknowledged and adjudicated in three trials, notwithstanding the strong evidence against her.

DeRosa concludes: “an amazing fact about the Confederate judicial system is the documentary evidence of its strict adherence to the rule of law. There was not a military despotism, nor a *de facto* termination of fundamental rights. When and where the courts could operate, they administered justice with clarity, consistency,

and honor, almost, one could argue, to a fault considering the circumstances.... Had Lincoln's war not interrupted the evolution of the CSA, strong evidence suggests that Confederate justice would have been effectively administered through a decentralized court system adamantly adhering to the rule of law."⁴⁷

DeRosa observes further that "Court rulings involving the plight of slaves had acted as potent solvents to [slavery] in both Northern and Southern States." In the absence of impractical and self-serving abolitionist agitation, "international and domestic political and economic pressures would have fueled gradual manumission in the CSA."⁴⁸ In support of this, we should consider that serfdom was abolished in England not by statutes but was gradually nudged out of existence by court adjudication, the last case being *Pigg v. Caley* (1618).

The rights of slaves was also manifest in Southern jurisprudence flowing from *Somerset's Case* (1771) in English common law. James Sommersett was a slave purchased in America and brought to England. He escaped and suit was brought for his freedom before the King's court. Lord Mansfield ruled that slavery abstractly considered is incompatible with natural law and can be legally justified only by a positive statute. Such statutes exist in the

English colonies, but not in England. Consequently, when James Sommersett, legally a slave in the colonies, set foot on English soil, he was immediately free.

Somerset's case was used in an early stage of *Dred Scott v. Emerson* (1852). Scott had been taken from Missouri, a slave state, to Illinois, which had abolished slavery. The question was whether Scott gained freedom by entering a state with no statute protecting slavery. The Southern circuit court of Missouri, a slave state, granted Scott his freedom in accord with *Somerset's case*. The judgment was overturned by a panel of three judges on the Missouri Supreme Court. However, Chief Justice Hamilton Gamble wrote a dissenting opinion in which he cited the application of the principle of *Somerset's case* in previous rulings by Southern courts in Virginia, Kentucky, Louisiana and Mississippi.

We need not follow the *Dred Scott* case any further. The point is that slaves by virtue of their personhood had due process rights in the antebellum South and within the Confederacy which DeRosa argues "would certainly have been expanded first in the Border States and then throughout the Confederacy. Given the Southern legal community's demonstrated commitment to the rule of law, "state courts would have been important forums for litigating

against slave owners where slavery and the rule of law intersected."⁴⁹

How was slavery understood in the CSA Constitution as distinct from that of the US? Both constitutions recognized the legality of slavery, and, to say it again, Congress was prepared with the Corwin Amendment to give it ironclad constitutional protection against any federal interference. Both required fugitive slaves be returned to their masters. Both outlawed the slave trade, but unlike the US Constitution, the CSA Constitution required Congress to pass laws enforcing it. Failure to do so enabled a vigorous illegal slave trade to flourish in the North from 1808 up to the war under the winking eye of the government. President Davis' first veto was against a bill permitting the sale of slaves from a captured Yankee slave trader. Strictly adhering to the rule of law, he held the sale to be unconstitutional.

It was a disputed question in the US Constitution whether slavery could exist in the territories. The US Supreme Court ruled in the *Dred Scott* case that slavery could not be prohibited in the territories by Congress. The CSA Constitution settled the question in the manner of the US Supreme Court by allowing slavery in the territories. Both constitutions left the abolition of slavery up to the states.

The Confederate Constitution allowed the entrance of non-slave holding states. It permitted slave holders to travel through free states without prejudice (which nullified a strict reading of Sommersett's case) but not to reside in them with their slaves. Confederates allowed free states to join the Confederacy. It was thought that a number of free states in the Midwest and West would join because of the Confederacy's low tariff policy; because it provided better protection against the growth of federal power; and because the Western states believed themselves oppressed by Northeastern financial and industrial interests. There was hardly any moral difference between the US and the CSA Constitutions on the legal status of slavery.

Intimations of Emancipation in Southern Clerical Reforms

The ideological style of thinking about politics in America tends to think of slavery as an abstract timeless institution and not as historic practice embedded in other practices and modified by them. Any attention to intimations of emancipation in the practice of slavery itself is sure to receive the charge of "defending slavery" — that is, defending the abstract principle. *Time on the Cross* was a book which challenged the traditional wisdom that free labor is always more productive than slave labor. The authors (one of which was a Nobel Laureate in economics), argued that antebellum slave labor was quite productive and that in terms of health, longevity, and recreation, slaves, on the whole, fared better than Northern industrial laborers. Although the book was as objective as any economic study could be, the authors had to frequently deny they were "defending slavery."⁵⁰ They were not defending abstract "slavery," they were simply providing a thoughtful, comprehensive, and factual description of a practice.

To say it again, liberty and slavery were not abstract "principles" but practices, and like all practices, slavery in antebellum America was evolving. Great changes had occurred by 1848. Southern clerical leaders argued that, although from a Biblical perspective, slavery as such is not a sin; there are modes of slavery which are sinful. Slave marriages should be recognized in law, families should not be broken up, slaves should receive education, and other reforms were urged on Christian masters to bring slavery into conformity with the best of Christian practice. This was the very sort of thing Jefferson Davis and his brother were doing on their plantations.

This movement was to be found throughout the South and involved some of

the region's best minds, e.g. Robert Lewis Dabney and John Henley Thornwell, both of which had national reputations as theologians. It is highly likely that in an independent South, without the distraction of self-congratulatory and irresponsible New England abolitionism which demanded immediate, uncompensated emancipation, this reform movement, advocated by the best of Southern clerical leaders, would have had considerable effect and inexorably pointed to eventual emancipation. A Texas advocate said such reforms in time would bring forth the African "elevated, redeemed, and prepared for freedom."⁵¹

The industrial revolution played its role everywhere in abolishing slavery. The industrial revolution begins with the first successful commercial steam engine produced in Scotland by Boulton and Watt in 1775. By 1825 the fixed steam engines of Britain represented a capital value of 10 million pounds sterling. A century before the value of all fixed capital in Britain was a little more than two million pounds sterling. In 1825 the fixed engines of Britain were producing the work of 5,400,000 men working 24 hours a day.⁵² By 1860 it was not lost on Southerners that, against this new "reality" of machine-produced labor, slavery as the personal ownership of human labor was doomed.

William Gilmore Simms, a great Southern literary figure, scholar, and political pundit predicted in the 1850s that slavery would be abolished in the border states by the 1870s. His reason for thinking so was that those states are turning to "manufacturing." Since there was talk of forming a Southern federation at the time, Simms warned that if one were formed, the border states of the federation would desire a protective tariff for their industry (just as the Northern States had done) at the expense of the exporting states of the deep South which would still be producing agricultural staples on an unprotected world market. Consequently, the constitution of the new confederacy should prohibit protective tariffs. And it did. Here was a no-nonsense perception of inevitable emancipation in the border States of the South based not on Christian scruples but on a changed relation in production.⁵³

Compare Simms's prediction of slavery's elimination in the border states by the 1870s with the plan Lincoln sketched out for Delaware before the war in which slavery would last until 1893 and with his "apprenticeship" provision could, in effect, continue until 1914.⁵⁴ In his annual message to Congress, December 1, 1862, he proposed a plan of gradual compensated emancipation in which slavery would not end until 1900. But even ending slavery did

not mean the end of bondage. Slavery was abolished in New Jersey before the war, but those freed were declared "apprentices for life."

To be free did not mean one was a citizen of a state or of the United States. Slaves were not citizens in Lincoln's Illinois, and he rejected proposals to make them such. Lincoln also made clear in the bill proposed to Congress that Northerners could use state laws to prevent free blacks from entering their states: "And in any event, cannot the North decide for itself, whether to receive them [free blacks]?"⁵⁵ Even so, Lincoln's proposal received no support from Northerners who had long been tone deaf to the suggestion that they had an obligation to bear some of the cost of an eventual emancipation. The Virginia legislature which revealed an interest in emancipation in 1831 might have responded favorably to such a proposal had it been made at that time. But in 1862 Southerners were fighting not for slavery (since there had never been any morally responsible effort in the North to eliminate it), but for *national independence*. Acceptance of Lincoln's proposal would mean their sacrifices were in vain and would place them again under Yankee domination.

Simms was right about the border States. Slavery was already being nudged out of existence. As of 1860 nearly half the blacks in Maryland were free, mostly from purchasing their freedom. Slavery would end in the South when it ceased to be profitable. Why would one want to be saddled with the burden of cradle-to-grave welfare for an African population unless it was profitable? Northern capitalists could discard a worker once he became injured or the market demanded it; Southerners could not. Historian Allan Nevins in his magisterial study of the War concluded that thoughtful Southerners knew slavery "soon would have to be modified and eventually, relinquished." They resisted invasion because they "wished ... to choose the hour and method by which they should decree its gradual extinction."⁵⁶

Arming and Emancipating Slaves in the Confederacy

Many on both sides thought the War would end quickly. Southerners won the first major battle at Manassas, and their hopes were high for a quick war. But Confederate General Richard S. Ewell told Jefferson Davis after the battle that not only would the war be long, the South would need to employ black troops and emancipate them to win. Even before the Confederacy was formed, a Mississippi planter, January 1861, urged the governor to repeal

the state law prohibiting slaves from bearing arms, so masters could form them into military units. Similar suggestions were sent to the Confederate government from South Carolina, Georgia and Alabama. An Arkansas planter offered to arm a hundred of his own slaves and offered his son to lead them.⁵⁷

Black troops were raised in New Orleans. The governor of Louisiana praised "the loyalty of the free native colored population." A Mobile citizen offered to raise "a battalion or regiment" of colored troops for the Confederate army. Mobile's mayor was authorized by the Alabama legislature to form free blacks into military formations. A Mississippi planter in July of 1863 urged that all male slaves from sixteen to fifty years of age should be armed and mobilized. In August of 1863, the Alabama legislature resolved to allow slaves to become soldiers.⁵⁸

The call to arm slaves as soldiers came from all over the South and from all parts of the public. A Raleigh, NC, newspaper editor was surprised to hear "people talking on the street corners in favor of the measure."⁵⁹ Governor William Smith told the Virginia legislature "A man must be blind to current events" not to see that victory demanded that the state "arm such portion of our able-bodied slave population as may be necessary, and put them in the field, even if it resulted in the freedom of those thus organized."⁶⁰ Some indulged the illusion slaves would fight and remain under the control of their master. But the thoughtful understood that arming slaves meant emancipation in some form or other, and that would mean a social revolution. As Fredrick A. Porcher, a professor at the College of Charleston who approved the plan, nevertheless recognized it as "the en-

tering wedge of a quiet plan of emancipation."⁶¹

The editor of the Jackson *Mississippian* urged: we must "proceed at once to take steps for the emancipation or liberation of the Negroes itself. Let them be declared free, placed in the ranks, and told to fight for their homes and country." Editors of other major Southern newspapers, the Richmond *Enquirer*, the Charlotte, NC, *Democrat*, the Lynchburg *Virginian*, the Mobile *Advertiser*, all agreed to arm slaves and give them their freedom.⁶²

An eloquent plea was put forth by Confederate General Thomas C. Hindman, a former Arkansas congressman who published an open letter in Georgia, December, 1863, urging the mobilization and emancipation of slaves. Give him, Hindman said, "the 'chances of a white man' as against the Yankees — put him by the side of a white Southern soldier, allow him a little modest pay, assure him of freedom for good conduct, his State consenting; let him feel that he defends his country as well as ours."⁶³ Notice that Hindman imagines integrating black and white troops, that blacks will fight "by the side of a white Southern soldier." Black troops in the North were strictly segregated.

General Patrick Cleburne drafted a proposal to the heads of the Army of Tennessee in December 1863 to begin immediately training slaves to become soldiers. If so, "every consideration of principle and policy demand that we should set him and his whole race who side with us free." Since the choice is between national independence and the private ownership of Negro labor, "we assume that every patriot will freely give up the latter — give up the Negro slave rather than be a slave himself." In Cleburne's division, the document was

signed by four brigade commanders, ten regimental commanders, and one cavalry division commander.⁶⁴

Two months earlier, Louisiana governor Henry W. Allen appealed to the Confederate Secretary of War to immediately "put into the army every able-bodied Negro man as a soldier." Allen later met with Confederate governors from Virginia, South Carolina, North Carolina, Georgia and Alabama in Augusta, Georgia. The governors resolved that the time had come to appropriate the use of slaves in the military as the public necessities demanded.⁶⁵

In November, 1864, Jefferson Davis endorsed purchasing 40,000 slaves for use in military service. These would be freed and allowed to enjoy their freedom in the Confederacy after the war. This was quite different from Lincoln's Illinois, where free blacks were legally prohibited from entering the State and where three days before his death he was still considering plans to colonize slaves freed after the Emancipation Proclamation. The Davis administration was busy trying to persuade State legislatures to alter their laws to free the families of slaves who served in the military. Secretary of State Judah Benjamin urged the public to support the administration's policy. He exclaimed: "Let us say to every Negro who wishes to go into the ranks on condition of being made free — 'Go and fight; you are free.'"⁶⁶

Robert E. Lee had supported gradual emancipation before the war, and had urged Jefferson Davis early in the war to arm slaves. In October, 1864, Lee wrote Virginia Senator Andrew Hunter that slaves should be made soldiers without delay and that this should be part of a "well-digested plan of gradual and general emancipation."⁶⁷

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A general emancipation would strengthen sympathy for the Confederacy and make recognition by Britain and France more likely. Such a policy said the Richmond *Enquirer* would free the Confederacy from "the prejudices which slavery has thrown around it," and would appear in its true colors as "the cause of a people struggling for nationality and independence, and the United States would stand before the world as the oppressor, denying the principles by which its own struggle for liberty was justified."⁶⁸

James Henley Thornwell, a theologian of national prominence who had advocated major reforms in slavery, said at the beginning of the conflict that the South must win otherwise its enemies would write a false history to make the war a holy crusade to emancipate slaves: "Our history will be worse than Poland and Hungary. There is not a single redeeming feature in the picture of ruin which stares us in the face if we permit ourselves to be conquered. It is a night of thick darkness that will settle upon us. Even sympathy, the last solace of the afflicted, will be denied to us. The civilized world will look coldly upon us, or even jeer us with the taunt that we have deservedly lost our own freedom in seeking to perpetuate the slavery of others."⁶⁹ This taunt has always been a part of self-congratulatory American liberalism, but since the late 1960s has become an obsession.

The Emancipation Proclamation, although a mere war measure, designed to unleash a slave uprising, enabled the North to incline the minds of Europeans against the Confederacy by falsely presenting the conflict as a heroic struggle to end slavery. Against this, the Jackson *Mississippian*, August, 1863, insisted that property in Negro labor should not be a "barrier to our independence. If it is found in the way—if it proves an insurmountable object to the achievement of our liberty and separate nationality, away with it! Let it perish!"⁷⁰ The influential Richmond *Enquirer* proclaimed that "slavery was the mere occasion, and is not the object or end of this war." The South is fighting "for national independence and freedom from Yankee domination; in addition to sacrifices already made, the people of these States are ready and willing, when necessity arises, to sacrifice any number or all slaves to the cause of national freedom."⁷¹

While holding the line against Grant at Petersburg, Lee sent a questionnaire to the Army of Northern Virginia, asking whether the troops approved arming and emancipating slaves. By a large margin the army voted to approve freed slaves as troops.⁷² On March 13, 1865, Davis signed a bill arming and freeing slaves and issued

General Orders No. 14: "no slave will be accepted ... 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 that they will protect them from injustice and oppression;" and that "harshness and contemptuous or offensive language or conduct to them must be forbidden."⁷³

Lee provided guidance for the social revolution that was to come by insisting that black units be integrated with units from the same State and from the same locality, if possible. This would create a new civic bond between whites and blacks who would have the same experience of defending their regions and homes from invasion. No such concern for social integration occurred in the arrangement of blacks in the Union army. Lee urged that special efforts be made "to conciliate" the "good will" of black recruits. They must be made "to forget as soon as possible" their former condition as slaves. And "Strict orders should be given as to their treatment." They should be placed on the same "footing of soldiers with their freedom secured."⁷⁴

Southern leaders were conscious that they were about to undertake a great social revolution. The slave, long perceived as an integral, though subordinate, part of Southern society, would now be promoted to special honor as a freeman defending his country. This service the Richmond *Sentinel* said would become "a badge of merit and certificate of honor as long as they may live. This new status would make them "a sort of aristocracy in their own class." After the war they would "enjoy a popular favor and respect" in the Confederacy "from which they will reap large advantages." Southerners should "cheer on the colored soldiers by showing them the favor and giving them the praise so justly due to their conduct."⁷⁵

The Macon *Telegraph* assured that just provisions would be made for those who served their country "and [for] their families and fair wages given." Again the Richmond *Sentinel* went out of its way to impress on the public that promises made about the future legal status of those emancipated "be redeemed with the most scrupulous fidelity, and at all hazards." There must not be "the least appearance, the slightest semblance of bad faith."⁷⁶ And as we have seen, Southerners were sticklers for the rule of law.

In the last months of the war, the

Confederate congress authorized raising 300,000 black troops.⁷⁷ Recruiters moved throughout the Confederacy. The response was hopeful. The governor of Virginia told Lee that "there is a very favorable disposition in the country to promote this policy." Planters in Virginia, Alabama, Louisiana and elsewhere enthusiastically offered black troops. A paper in North Carolina announced that North Carolina would soon be able to send 15,000 black troops. Kirby Smith was expected to raise 25,000 in the Trans-Mississippi Department. The Confederate War Department expected 100,000 troops soon.⁷⁸ But Lee was compelled to surrender on April 9, 1865, and the social revolution inaugurated by the Confederacy was suffocated by the Union army.

Southern Moral Character and Emancipation

The debate on emancipating and arming slaves that began even before the War reveals a great deal about the character and moral resources of Southerners. The best of their leaders were open to abolishing slavery and to the social revolution that would follow. They were conscious of the reciprocal bonds that had been formed by social intimacy of master and slave, and sought to exploit those bonds in building a Confederate society in which blacks would have a new status as free men.

This effort at Confederate Emancipation forms no part at all of our popular history. A few professional historians have looked into it, but few in the public know anything about it. When mentioned by mainline historians, it is usually as an aside and with a sense of impatience tinged with contempt: too little too late.

Behind the impatience is the implied question: Why were not slaves emancipated from the first? Why did it take so long to reach a national policy of emancipation? Why did not the Confederacy abolish slavery with the stroke of a pen as did Lincoln?

Such questions reveal a failed appreciation of historical context as well as a contempt for the character of antebellum Southerners. Looking back, it is certainly true that heed should have been paid to warnings such as those of General Ewell who, from the first, urged freeing and arming slaves. But moral impatience should also lead us to ask why Northern leaders did not take the initiative before sectional antagonism reached the point of secession and invasion in proposing a *national plan* of emancipation, compensation, and integration which acknowledged the North's own foundational and sustaining role in a national economy and a federal revenue generated from the first, mostly by slave-

produced staples? Slavery was from the first, and continued to be, a national wrong and not just a Southern one. The North had ample financial means to help pay for the elimination of slavery but lacked the moral resources. The war cost was some 6 billion dollars. The total value of slaves was some \$3 billion. The cost to the North alone could have freed every slave and bought forty acres and a mule. But the North lacked the moral to acknowledge its own foundational role in slavery and the prosperity it continued to enjoy because of it. It is a massive moral gap in mainline historians that the North is never held morally responsible for slavery and its elimination — and a gap which is never perceived.

And there was a great difference between Lincoln's Emancipation Proclamation and Confederate Emancipation. Lincoln's Proclamation did not free any slaves in the four slave States still in the Union, nor in certain parts of the South loyal to the Union. It was merely a military measure designed to change the war from a battle between armies to one waged against civilians with the aim of encouraging a slave uprising and the disruption of Southern society.

Moreover, Lincoln's Proclamation did not require that he pay compensation for the slaves freed; whereas, Southerners had to pay for each slave emancipated either by the planter himself or through the States and/or the central government. One can easily imagine the resistance that would have occurred if Northerners were told they had to pay their part of compensation for each slave freed under the Emancipation Proclamation. Moreover, to free slaves, the Confederate government had to get permission from the States and masters. All Lincoln had to do was conquer territory. Emancipation in the South was nothing less than a fundamental legal and social revolution. Emancipation in the North caused no social upheaval except the fear that "free blacks" would flood North. Northerners were adamant in refusing to accept refugees or to integrate blacks into their societies.

Lincoln acknowledged that the Emancipation Proclamation was a military command of doubtful legality, and was willing to allow the courts to settle the question after the war. By contrast, Davis had to work through Congress, the States, and the Courts to effect the changes needed for emancipation. Arming and freeing slaves would, he said, require a "radical change in the theory of the law."⁷⁹ To overcome these constitutional, political, and social problems in a decentralized federative regime fighting against superior numbers for its very existence would tax the greatest

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statesmen.

Some Southerners desperate to effect emancipation for the sake of national independence wished for a dictatorship: a Southern Abraham Lincoln who would cut through the constitutional and political hurdles to arm and emancipate slaves to secure Southern independence. One of these was Edward Pollard, editor of the Richmond *Examiner*, who bitterly criticized the Davis administration for not taking bold action earlier to emancipate and arm slaves. The South, then, could have "fought the war on the basis of the emancipation of the Negro," and that would "have assured one of the most splendid successes of statesmanship that the world has ever seen."⁸⁰ The policy failed on the national level because it became bottled up in the Confederate Congress. It would not be the first time that salutary policies would be strangled by an obtuse Congress. We need only look at our own Congress today. But this failure does not take away from what we learn about the character of the Southern people: that they had the moral and political resources to effect emancipation when the right political circumstances presented themselves.

It is true a policy of emancipation did not arise until the Confederacy's existence was threatened. But that is also true of the North. Both sections suddenly discovered they needed blacks to win the war. Prior to the war, the North displayed no recognition of its responsibility for the origin and continuing existence of slavery, and no morally responsible effort at emancipation was made. There was strong opposition in the North for using black troops at the beginning of the War. Lincoln's Emancipation Proclamation was a desperate war measure enacted not out of moral sentiments but because he was losing the war, as he said explaining the Proclamation: "Things had gone from bad to worse, until

I felt we had reached the end of our rope ... that we had about played our last card, and must change our tactics or lose the game. I now determined upon the adoption of the emancipation policy."⁸¹

From the beginning of the war, Southerners believed that blacks identified with their communities and could be depended upon to help in their defense. This belief necessarily produced a sense of goodwill and was expressed in the insistence by the more generous Southern leaders such as Cleburne and Lee that black Confederate soldiers be received as equals. Lee had said before the war that slavery in any society is a "moral and political evil." He freed the 170 slaves inherited from his father-in-law in accord with his will, and he did so before the Emancipation Proclamation.

His wife Mary established a school at Arlington to teach slaves to read. Stonewall Jackson also established a school and funded it throughout the war. After the war, the ex-slaves who benefited from Jackson's generosity had a stained-glass window installed in their church in his honor. Italian historian Raimondo Luraghi thought that without war, Southern elites would have been able to create a bi-racial society more "humane," "less demagogic and more solicitous ... of the fate of the blacks" than what was forged by Lincoln's ill-thought-out invasion, his turn to total war, the tragic era of Reconstruction by radical Republicans, and the aftermath.⁸²

Black Support for the Confederacy

At the beginning of the conflict, Southern planters voiced confidence their slaves would be loyal during the war and could be expected to support Southern independence. Mainline historians, however, highlight the cases in which planters were disappointed by slave desertions. There were some desertions, but what still needs recognition is the story of blacks, free and slave, who identified themselves as Southerners and saw the war as an opportunity to improve their condition in their own country. Too much attention is given to the prospects of blacks serving in the *national* army of the Confederacy, a policy cut short by Lee's surrender. However, there were other ways blacks supported the Confederacy on the individual, state and local level.

The Confederate armies employed blacks before the Union armies did. When Southerners went to war, body servants often accompanied them. There were some 30,000 body servants in the Army of Northern Virginia. Given the informality of many Confederate units, blacks served in military capacities. An Afro-American

scholar observes: "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." ⁸³

The mainline story that the War was about protecting slavery finds it unthinkable that blacks should have supported the Confederacy. But again, that is to think of slavery ideologically as an abstraction and not as a practice. As a practice, slavery had many dimensions as Rudolph Young, an Afro-American scholar, reminds us: "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." ⁸⁴

The studies of Afro-American scholar Ervin L. Jordan of the University of Virginia estimates that some 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. Eventually, some 180,000 blacks served in the Union army, mostly as

laborers. Some were there voluntarily but others were forced into the Army at bayonet point to make up for a deficit in Northern volunteers. ⁸⁵

But there were still over three million blacks in the South. The overwhelming majority remained to run plantations and farms after most all males of military age had gone off to war. They typically did not rebel nor cross over to Union lines. As Prof. Edward C. Smith, an Afro-American professor at American University, observed: "blacks ... could have escaped to nearby Union lines, but few chose not to do so and instead remained at home and became the most essential element in the Southern infrastructure to resisting Northern invasion." ⁸⁶ We need to keep in mind that although slavery, as a practice, is the evil Lee said it was, the plantation and its locality, for many, was also "home."

Afro-American scholar Charles H. Wesley, a pioneer in Afro-American history, discovered the same disposition among many Southern slaves who showed their loyalty by "offering themselves for actual service in the Confederate army." They believed "their land invaded by hostile forces" and "were more than willing ... to offer themselves for the service of actual warfare." Since the "loyalty of thousands of them had been thoroughly tested by

the war," it should not be surprising that a plan to arm them should emerge, and gain widespread acceptance. ⁸⁷

If these studies are correct, they strongly suggest a common Southern identity between blacks and whites forged by over a century and a half of living together in common practices where many slaves were willing to serve in defending their country and the latter to accept them. During the War, Lee urged integration of black soldiers with whites in units from the same State or locality. After the War, Southern States paid pensions to black Confederates. By contrast the Union veterans' organization, the Grand Army of the Republic, initially resisted giving pensions to black Union troops. The mutual regard intimated in master-slave relations at their best found an occasion to surface in the exigencies of war and survival. It would not be the first time the shock of adverse events would suppress pride, habit, arrogance and bring out, if only awkwardly, the better nature of men.

Confederate Emancipation: the Best Solution to Slavery

To sum up. The historical record strongly suggests that slavery would have

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been abolished in a reasonable period of time in an independent Confederacy due to the South's own emancipation tradition, and to economic and political pressures, among which was manufacturing, already evident in the 1850s to knowing Southerners such as Simms. To this we should add the reform movement after 1848 by leading clergymen to ameliorate slavery in accord with Christian ideals; the strong attachment by Southerners to the rule of law which afforded due process rights to slaves as persons and which pointed to further reforms by the judiciary; the willingness, early in the war by some Confederate leaders, to arm and free slaves—a proposal that gathered support in every section and class of the South, was strong by the second year of the war, and eventually gained the support of most governors, major journalists, military leaders, and leaders of the Davis administration.

All of this strongly suggests that the Southern people had a moral imagination quite capable of reforming and eventually ending slavery. And it further suggests that the habits acquired from over a century and a half of everyday social integration and reciprocal conduct caused by slavery itself would have led to a more humane integration of blacks into society than what happened as a consequence of the destruction of Southern society by total war and a decade of military occupation, disenfranchisement of whites, plunder, and the use of race to make the South safe for the Republican party.

We get a glimpse of what most likely might have been in the insistence of Lee and the best of Confederate leaders that newly armed and emancipated slaves should be treated in such a way as to make them, in Lee's words, "forget their former condition," and be accepted as free men in Confederate society. There is an episode which occurred in St. Paul's Church in Richmond, Virginia, June, 1865, that reveals more about this aspect of Lee's character. When the priest offered a call to Holy Communion, a "tall, well-dressed" black man approached the communion table first ahead of the white congregation, causing shock. For an awkward moment the congregation did not move. Then Lee rose, walked to the communion rail and knelt near the black man. According to one observer, this had "a magic effect upon the other communicants ... who went forward to the commu-

nion table." This shows something of the character of the man who, after independence, might have been the next Confederate president. But in any case, Lee's voice and example would have had great weight in an independent Confederacy.

The industrial revolution began with textile manufacturing. Textile manufacturing in New England and around the world had an endless appetite for cotton. The South was going through a great economic boon in the 1850s. This weakened the emancipation tradition in the South which had able supporters in elite society from Jefferson into the 1830s. As we have seen, the voice of this tradition was heard in the Virginia legislature of January-February 1832 called by the governor in hopes of abolishing slavery. A resolution to end slavery was defeated by 73 to 58. Yet the vote revealed a substantial disposition to emancipation. The appearance in January, 1831, of William Lloyd Garrison's *The Liberator* and the abolitionist demand for *immediate* and *uncompensated* emancipation backed by a slave insurrection and/or secession had a chilling effect on debate in the South for emancipation.

Yet the debate was not shut down as many historians have said. Two vigorous Virginia opponents of slavery in the 1840s were John H. Pleasants and Samuel Janney. Nor were such discussions confined to Virginia. In 1849 Cassius Marcellus Clay, a prominent political leader in Kentucky and ambassador to Russia, was an outspoken opponent of slavery. He ran for governor without incident on an anti-slavery ticket.⁸⁸

Despite these anti-slavery intimations in the South, rational discourse about the deeply established *American* practice of slavery on the *national* level was impossible. The abolitionist movement was ideology in its starkest form. It meant to leave no room for compromise, and it never waived. Free of Northern agitation and posturing (which never acknowledged the North's foundational and continuing profit from slavery), Southerners could have, in a condition of peace and prosperity, explored and cultivated their own anti-slavery traditions.

But it is very important to deny this. Southerners must be viewed not as real flesh and blood people with complex moral dispositions, capable of reforms and rational adjustments to changing circumstances, but as stereotypical, motionless characters in a nationalist mosaic designed to cel-

ebate saving the Union and freeing slaves. This prejudice has become fundamental to American national identity and even more so after the 1960s.

Nevertheless, the historical record provides good reason to believe that a gradual process of emancipation would have occurred soon enough in an independent Confederacy. That only a brutal war could have dislodged slavery is a romantic liberation myth needed to hide the immorality of Lincoln's invasion and prosecution of total war merely to prevent 11 American States from forming a federation of their own.

How a Confederate emancipation would have eventually worked out is too detailed a question to answer. A number of equally plausible scenarios can be imagined, some morally more attractive than others. But when one considers the terrible loss of life, (a million battle and civilian deaths); that a quarter of Southern white males of military age were killed resisting the invasion of their country; that tens of thousands of black and white civilians died from violence, disease, and starvation; and when one considers the broken lives, depressions, children deformed from lack of nourishment in the first few years of growth, suicides, early deaths, the destruction of 60 percent of the South's capital; resentment, constitutional chaos, disenfranchisement of Southerners; the use of racial conflict during 12 years of military occupation to keep the Republican party in power; the transformation of the South for nearly a century into a virtual colony of the Northeast along with economic discriminations on the region which transformed Jefferson's middle class yeoman farmers (most of whom owned their land in 1861), to the landless "redneck" sharecroppers living in grinding poverty far into the 20th century; and the bitter legacy these left for all concerned—in the light of all this, almost any scenario would be better than the one that followed upon Lincoln's ill-thought-out decision to invade the Southern States and, when losing the war, to turn it on civilians merely to maintain control by a Northern industrial and financial ruling class over the people and resources of a continent.

Historians today shy away from exposing this scene to the public, as it would morally subvert belief in "indivisibility," "American exceptionalism," and other nationalist myths undergirding the current regime. Better to repeat over and over that

the war was a moral struggle over slavery, however flimsy the evidence might be. But, as we have seen, most Northern elites before, during, and right after the war had no sustained interest in the welfare of the black man. It is impossible to exaggerate the sense in which making money had become a religious creed in the North which, even before the war, was building what Mark Twain excoriated as the corrupt and corrupting "Gilded Age." It was an age of unrestrained crony capitalism. The Republican Congress, for instance, gave away 158 million acres (an area nearly twice the size of Germany) to politically well-connected railroad companies. Historian David Goldfield has remarked that "The railroad was part of a broader Republican effort to remake America in the image of the North."⁸⁹ That would have been impossible with the South in the Union. As Lenin said, you have to crack a few heads to make an omelette.

The Triumph of Northern Economic Nationalism

Fundamental to that creed was *centralized economic nationalism* which demanded Yankee control over the people and territory of the Southern States, an imperative which had nothing to do with the strictly moral challenge of slavery which — it cannot be repeated too often — demanded a nationally funded program of emancipation, compensation, and integration. Historian Charles Bancroft, in *The Footprints of Time: A Complete Analysis of Our American System of Government*, published in 1875 (two years before troops were finally removed from the South), gives an unabashed justification for the war in terms of Northern economic nationalism:

While so gigantic a war was an immense evil; to allow the right of peaceable secession would have been ruin to the enterprise and thrift of the industrious laborer, and keen-eyed businessman of the North. It would have been the greatest calamity of the age. War was less to be feared."⁹⁰

The South with its flourishing export economy had long been the milk cow of the Union and provided a majority of federal revenue, most of which was spent in the North to improve its infrastructure. When Lincoln was asked in a cabinet meeting, "Why not let the South go?" there are three independent accounts which record that he replied: "What shall we do for our revenue?" The Yankee government would no longer get its revenue from the South but would have to tax its own people and, moreover, would have to share international trade with a low-tariff Southern federa-

tion—that this could be seen as the "greatest calamity of the age" reveals how deep this religious faith in a Yankee-dominated economic nationalism was.⁹¹

It should not be surprising, therefore, that Bancroft says not a word about slavery being the reason for preventing secession. The fashionable view today, as one legal scholar enthusiastically put it, that "secession" was "essentially a referendum on slavery," is another desperate effort to make the war somehow about the moral challenge of slavery.⁹² If anything, secession was a referendum on "indivisibility," whether America would continue to be the federative polity ratified by the States in 1789 (in which case secession of 11 contiguous American States would be legitimate) or whether it would be transformed into a French-style unitary state "one and indivisible." But, of course, the war was not a "referendum" at all, but a brutal act of conquest that denied the original American principle of government by consent of the people of the sovereign States.

Kenneth Stampp was one of the great historians of the War of 1861-65. His career was shaped before the post-60s' cultural Marxist historical revolution. He understood the truth in Bancroft's claim that behind the war were the ambitions and interests of the "keen-eyed business man of the North" (though often hidden in sentimental anti-slavery rhetoric). "Yankees," Stampp says, "went off to war animated by the highest ideals of the nineteenth-century middle classes But what the Yankees achieved—for their generation at least—was a triumph not of middleclass ideals but of middleclass vices. The most striking products of their crusade were the shoddy aristocracy of the North and the ragged children of the South."⁹³

Lysander Spooner shared a similar view. Spooner was an abolitionist and a libertarian who, before the War, had advocated secession of the North from the South as the best way to push slavery to extinction. Failing Northern support for secession, he urged assistance for a slave uprising which he thought was morally justified. But he drew the line at using the violence of state coercion to prevent secession, and he had no patience for the moralistic and jingoistic nationalism of the victorious North and which today is the foundation stone of the American unitary state: "All these cries of having 'abolished slavery,' of having 'saved the country,' of having 'preserved the union,' of establishing 'a government of consent,' and of 'maintaining the national honor' are all gross, shameless, transparent cheats—so transparent that they ought to deceive no one."⁹⁴ Spooner knew that America in 1861 was a federation of States

and not a unitary nation-state as Lincoln in the Gettysburg Address falsely said it was.

After the war, he said "chattel slavery" had been replaced by state coerced "political slavery." Spooner would probably have agreed with Robert E. Lee that "the consolidation of the states into one vast republic" would generate a regime "sure to be aggressive abroad and despotic at home."⁹⁵ From whatever direction the thoughtful and humane person takes in contemplating the War of 1861-65, he or she is eventually brought back to the same moral conclusion: the best solution to all the problems confronting Americans in 1861 (and especially the moral challenge of slavery) was a peaceful, negotiated division of the Union.

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