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WHAT GOD HATH WROUGHT: THE EMBODIMENT OF FREEDOM IN THE THIRTEENTH AMENDMENT

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WHAT GOD HATH WROUGHT:

THE EMBODIMENT OF FREEDOM

IN THE THIRTEENTH AMENDMENT

by

GEORGE H. HOEMANN

A THESIS SUBMITTED
IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE

DOCTOR OF PHILOSOPHY

APPROVED, THESIS COMMITTEE:

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Houston, Texas

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MAY, 1982
ABSTRACT

What is freedom? The Civil War brought forth this central question as a result of the interaction of war and slavery. The different constituent elements of the northern war coalition--abolitionists, Republicans, war Democrats, and conservatives--each perceived the reality of war and slavery differently. Hence, the answer to the question of "what is freedom" was different for each group.

The present study suggests that the abolitionist vision of freedom as a positive, substantive force matched the reality of war-created circumstance, and that Republicans adopted this radical vision as the means to defeat the Confederacy. An equation of slavery, secession, rebellion, and treason allowed Republicans to break through heretofore constraining ideological and constitutional limits.

Once the attack on slavery began the subsidiary issue of the freedmen arose. What to do with four million ex-slaves was a problem that plagued Americans during the War, Reconstruction, and subsequent eras. The realization that white southerners would re-enslave freedmen if given the chance led abolitionists and Republicans to the idea of freedom as more than the absence of slavery. Rather,
freedom contained natural law rights which, translated into
the American idiom, meant citizenship and at least civil
equality. The Thirteenth Amendment is founded upon this
substantive, expansive view of freedom. The struggle to
embody freedom for blacks in the Constitution is the history
and lesson of the war itself.

America came close to accomplishing that embodiment.
Yet, the war's cessation removed the motivating necessity
of defeating the Confederacy. With victory over treason,
Americans precipitously retreated from civil equality,
content to allow more normal, peaceful patterns to determine
racial relationships. The lesson of the Civil War was
forgotten.
ACKNOWLEDGEMENTS

Anyone who has written a dissertation knows that, in many ways, he is only one of its authors. The debts I owe to others, intellectual as well as personal, loom large in the final product of these many years of study.

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I also include with my warmest feelings Alice and Frank Hagen, Angelica Menta, and Nancy and Ray Nowak.

Finally, I thank Gary L. Adams, O.P., who taught me that the fullness of life is the glory of God, and to whom I dedicate this dissertation.
INTRODUCTION

THE MEANING OF WORDS

Sumter.

Seldom in American history has a single word stirred such a range of emotion. Seldom has one word summed up so well the essence of a time. Sumter the moment of independence, Sumter the fulfillment of treason. Men of reason and insight accepted the word with resignation or greeted it with jubilation—Sumter a blessing was also a curse.

There was another word that also captured the time, the moment, the condition of men. It, too, brought forth the extremes of reaction. Defended, attacked, blessed, and cursed.

Slavery.

The two words, Sumter and Slavery, are linked in American history. The connection we see today is one almost of causality, but it was not necessarily the relationship seen then. Abolitionists, anti-slavery extensionists, Unionists, secessionists—all agreed on the gross outlines of the April crisis. Slavery (conceived alternately as the cornerstone of a civilization or as a malevolent, sinful force antithetical
to Civilization) was to be limited and subject to wounding and destruction. The rub occurred when each group decided upon the virtue of the event.

On the whole northerners accepted slavery's decline. On the whole southerners rejected it. The remedy southerners selected--Sumter--placed many border state men in a quandary. Residents of the border states were southern by birth, tradition, and culture. The physical separation of South from North left these natural seekers of compromise with little ground to stand on, for they did not approve the secession solution. But neither were they happy with the prospect of warring with their cultural coursins--of coercing them back into a Union growing increasingly inimical to their most profound views of right and order.

Some border state men eventually followed their section--former Vice-President John C. Breckinridge--whereas others went with the nation, as future Vice-President Andrew Johnson. Although most remained loyal to the nation, they were never comfortable with the leadership provided by Republicans, who were antislavery from the beginning and dangerously open to experience as a teacher. Border state men in Congress would have the Union remain as it had been prior to Sumter; slavery would not be harmed at all. This policy, officially adopted
in July 1861 in the Crittenden-Johnson Resolutions, pleased border state men who thought that they had confined anti-slavery feelings and principles in congressional concrete. With slavery protected, a reunion of the states through negotiations would be practical, and the fear of the unknown avoided.

That policy suited Confederates not at all, since they were well on the road to creating (or ratifying) a distinct and separate self-view, devoid of attachment to a Union they neither trusted nor respected. Republicans, on the other hand, were always willing to employ the least government action to get the job done--but act they would, and their task was the reaffirmation of the integrity of the Union, whole, complete, and indivisible. To accomplish that goal Republicans would do what was necessary, remaining open to the prospect of discovery so they could determine what means would achieve their end. Abolitionists, uneasy with Republican pragmatism and caution, joined them to prosecute the war more fully aware of the possibilities the circumstances allowed.

During the first months of the struggle, a third word emerged into the American conscience, full of meaning and hope. Its course paralleled the experience and expectations of the times.
Freedom.

And the word spread. By the efforts of Republicans and abolitionists, in tension with border state and conservative opposition, the word lived. And the word grew. The gulf that separated radicals from conservatives was not constitutional ideology so much as psychology: would the nation face the future with fear or with confidence?

In the end, the third word overshadowed the others, even as it was made possible by their convergence. Freedom was embodied in the Thirteenth Amendment. The accomplishment of the embodiment of freedom is the history of the war itself. Yet in the working out of history, freedom declined. Psychology also dictates the calculus that weighs word and flesh, life and death, form and substance. Freedom was real, and joined with the possibility of America, but remained, in the end, a dearly purchased, fragile opportunity and hope.

2. See LaWanda Cox, *Lincoln and Black Freedom* (Columbia, South Carolina: University of South Carolina Press, 1981), 3-5, for a similar view, although Cox discounts the impact war itself had in forging war time action.

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CHAPTER ONE
THE SHOCK OF WAR

Sumter's surrender on April 14, 1861 forced upon the North the decisive issue of war or peace. How would the nation react; what constitutional rules would it follow? Would slavery be affected? The shock of war, binding agent though it was, did not and perhaps could not alter life-long conceptions of nation, government, power, and right. Sumter's more apparent meaning, the unity of North against South, was only a superficial expression of solidarity. Expectations of the ensuing war, tactics used and even the reasons for the conflict itself were areas of bitter disagreement and division. To be sure, the war was for the Union, but conceptions of exactly what the Union was varied sharply among members of the war coalition.

In the months of indecision preceding Sumter the debate over secession had grown steadily. Variant perceptions of Union emerged even as the Union itself disintegrated. With the exception of secessionists, the 36th Congress provided the leadership of the Union coalition in the beginning months of the war. And though the war motivated all to find a solution, possibilities remained only dimly seen and little
altered by the changed circumstances. An essential continuity from December 1860 through July 1861 is evident. As the war lengthened and as victory proved elusive, congressmen did respond to the changed situation, but only gradually. In what was desirable or, more grimly, what was necessary, the first months of war resembled the last months of peace. Only later would the perception of the war become the perception of Union: what it was, how it could endure, and what it ought to be.

Border states reacted cautiously to the firing on Sumter and even placed the blame upon the Confederacy's doorstep. Yet Lincoln's April 15 proclamation calling for 75,000 troops to suppress the rebellion prompted Virginia, Arkansas, Tennessee, and North Carolina to quit the Union of states. For them the issue had crystallized and coercion could not be submitted to.¹

In the North, however, the issue focused not on the Government's use of force, but upon the South's resistance. The April 15 proclamation was the first war reaction to southern intransigence. On the day before the call for troops, Ohio senator John Sherman expressed northern weariness of suspense, and gave in to the relief of decision. Laying his former pro-compromise principles aside, Sherman welcomed the resolution of months of tension. "For me, I am for a war that will either establish or overthrow the government and will purify
the atmosphere of political life. We need such a war, and we have it now."

Others in the North, however, did not react to Sumter so dispassionately. Months of uncertainty had worked its will on many leaders of northern opinion. With Sumter it was as if something had snapped; the restraint that always was bent but never ruptured now gave way in a flood of passion. War had come to America; was it not God's will? A refusal to furnish volunteers would be "flying in the face of His Omnipotence." And so one editor offered his meditation on the theme, "War as a Means of Grace":

So, bowed with sadness that it must be, we bend to the necessity of war, believing that it is best for us. Honorable war is better than dishonorable peace. Honorable war is better than corrupt peace. War that stirs us and calls us for self-abnegation and self-sacrifice—war that makes heroic lives of common-place men—war that binds the hearts of men together as with bands of iron—war that brings forgetful men and women to their knees, and leads then to the acknowledgement of the God of nations—war that inspires with noble motives the brutal elements of society—war that makes us forget the schemes of personal gain in devotion to the country—war that recalls and emphasizes the trials of the fathers of the republic—war that shows us what a true peace is worth—such a war is not the greatest of evils . . . . Let it come then; and may God in His mercy make it the blessing to us which he means it to be!"

Sumter's importance as a revolutionary force in northern thought cannot be overestimated. While divisions remained, the nation's momentum went over to the Republicans as they united
behind the standard of the Union militant and hoped for triumph of antislavery principles. In their eyes the war for the Union became a holy crusade. Young men were called to sacrifice their lives upon the "altar of our country" in the great battle between "anarchy and law, between rebellion and government." Secession was treason and treason anarchy. As Columbia law professor Theodore Dwight observed immediately before Sumter, "the flag of the Union is not merely the symbol of freedom; it is as well the symbol of law." Law was the rudder for society not only in peace, but most especially during war. The "heathenish maxim" that the law became silent during wartime had to be rejected; the enemy was not only traitors, but those who would succumb to war's passion. Dwight urged his audience to "insist that even a traitor's doom shall be settled in strict accordance with law." Liberty and law were Siamese twins, for one could not be assured without the other. Such was the faith in legal forms; such was secession's threat.

While emphasizing the overriding goal of restoring order to the nation, Republicans were careful not to limit themselves too closely to narrow interpretations some might place upon law and Constitution and Union. Indeed, they were leading the fight for law and Constitution and Union, arguing that "the necessities of war—especially civil war—are above all technical forms." The necessity of war was the just
reward for southerners who dared disrupt the nation. In their effort to crush out rebellion, some Republicans even acknowledged the possibility of dictatorship. Sumter posed the question whether Americans should use force to settle its disputes. The dedication to the rule of law might have provided a negative answer; the challenge to entire concepts of Union compelled an affirmative response.

From the beginning many abolitionists saw the war as an opening for the eradication of slavery. Most abolitionists abandoned whatever pacific ideals they had previously held to join the Unionist coalition. Wendell Phillips explained his changed view in a speech at Boston, April 21, when he remarked "civil war is a momentous evil. It needs the soundest, most solemn justification." Phillips found justification in Lincoln's sincerity and in Phillips' belief that slaves would soon view the Stars and Stripes as a pledge of emancipation. William Lloyd Garrison joined Phillips in urging pacifist abolitionists to "stand still and see the salvation of God."  

Henry Ward Beecher focused his sermons upon the necessity of the war. Denouncing war in general, he nonetheless held that it was "ten thousand times better to have war than to have slavery." As if gifted with foresight, and against continuous denials by most responsible officials, men like Beecher saw the war as God's instrument, not for reunification
with the South, but for a true reconstruction of the nation's spirit. Freedom for the slave and mutual respect of the reconstructed sections would become new national anchors. Until then, Beecher urged a commercial embargo against the South (his call antedating the July 31 law by some three and one half months). The war, far from being cursed, should be utilized and opposition to the forces of Union seen as treason against both nation and God.11

Disunion and the dynamic of war began an evolutionary process. Those Republicans, northern Democrats, and border state men who did not accept secession were forced into alliance—an alliance that meant something different to each group within it. The Republican press attempted to hide these deep divisions without success.12 Many conservatives chose the North and a pro war platform. Yet their conception of Union meant that they would be forever watchful, temporizing where they could, to keep the Union in war as nearly like it was in peace. Rather than seeing war as a means of grace, conservatives lamented the resort to force. As one Philadelphia editor wrote, "it is as if Hell had been transplanted into Eden."13 As the war brought problems forward and the nation dealt with substantive issues, the coalition regularly divided, and with Republican victories, reunited. Republicans led the Union coalition in only the narrowest of sense; no one foresaw the future.
Those who held Union as the highest good were, on the whole, less strident in tone and more moderate in policy. The conflict was termed "this unhappy war"; calmness of spirit and moderation of temper were the watchwords. These Unionists sought reunification with the South, not reconstruction of the section. Their only purpose was to "uphold the Constitution [and] to reinvigorate the Union."\textsuperscript{14} Others reassured themselves that their partners in war did not fight to abolish slavery and that the integrity of the nation's political unity was the supreme goal.\textsuperscript{15} Above all, conservative Unionists meant to let Republicans and abolitionists know that they had not been swallowed up in the reaction to Sumter. While they might support a war for reunification, they did not endorse a platform of antislavery principles.\textsuperscript{16} Virtually from the beginning of the conflict, these Unionists realized that their's was a two-front war—against secessionists who dissolved political bonds and against Republicans who might transform the nation: "The question is this: Is the war in support of the Government, the Constitution, the Union and the dearly-purchased rights of a free people, or a negro crusade for the abolition of slavery?"\textsuperscript{17}

On the whole antislavery advocates did not heed conservatives misgivings. But neither did they rush to emancipation. There was no consensus upon goals or methods within the
antislavery part of the Unionist coalition. Republicans and abolitionists realized that they stood for some ideals, loosely defined as "antislavery," but the ready answers of "no" to the slave power and "yes" to the Wilmot Proviso had little relevance for the nation torn by war. The long pilgrimage of improvisation began for men like Benjamin F. Butler who, though they renounced compromise with the South, offered little in its stead except a fight to sustain the government.¹⁸

The Republicans' first strategy relied upon border state unionism. Throughout the secession crisis they had misconceived the nature of border state unionism, missing entirely the ambiguity contained within the word. The secession of North Carolina, Virginia, Arkansas, and Tennessee might have informed Republicans that border unionism was far from absolute. Nevertheless, it is unclear whether they ever fully believed during the first months of war that a majority of southern people really wanted secession.¹⁹ Lincoln's concern for maintaining an alliance with border state unionists contributed to his "go slow" approach to most war-related issues; nothing must be done to alienate what many believed were absolutely necessary parts of the war coalition.²⁰ As long as antislavery forces were unsure of themselves and the war situation, the Union coalition remained fairly harmonious. As the war daily
brought up new questions requiring new answers and as tactics and goals subtly changed, so conservative resistance increased. It was not that they were blind to what was occurring. Indeed, conservatives understood all too well. Their compromise formulas had always been based upon a protection of southern rights within the Union of states; with war, that position changed little, yet the situation was radically different. The more tinkering with slavery, the more difficult would be the restoration of political unity, conservatives thought. Their continuing goal remained the reunification of slave and free states. Yet the more that new situations called forward new answers, the more irrelevant conservative concepts and formulas became. They were caught in the unfolding of history.

One reason war was so readily accepted by northerners in April 1861 was their supreme confidence in a quick victory over treason. Within the general belief, however, many differing estimates were made for how long victory would take, ranging from six to eighteen months to years. Writing to his brother William, John Sherman acknowledged the better organization, arms, and unity of the South. Hence, he expected preliminary military defeats but still looked for a quick Union victory. A better prophet was New York Democrat Daniel S. Dickinson. Although he did not venture an exact estimate of the conflict's duration, Dickinson unknowingly
grasped the nature of the war long before most even began to suspect: "The war, for aught I can discover, must go on its bitter end,--bitter it must be, but the end I wot not of."\(^{21}\)

If many opinions existed about the length of the war, even more offered their view on how the war should be waged. Although Sumter was in many ways a revolutionary break in American history, tradition still shaped and constrained. Charles Sumner offered the use of his international law books to a Union general and Attorney General Edward Bates hoped to force the South's capitulation by economic blockade rather than military engagement. Bates, as others, did not retain so limited a view for long. On April 19 citizens of Baltimore fired upon Union troops moving through that city, killing or wounding a number of soldiers. Writing in his diary four days later, Bates cited the incident and bemoaned the government's lack of strong military action.\(^{22}\) Vice-President Hannibal Hamlin echoed the sentiment in a letter to Lincoln:

> Does our government feel its full strength? I fear they cannot. The only course now to pursue is one of promptness, energy, and power. The whole power of the government should be exerted. **There is safety in no other course.**\(^{23}\)

Other government officials served notice of their displeasure with Lincoln's war actions--or inactions. When the President called for 75,000 volunteers Republican senator
Henry Wilson of Massachusetts urged the number be increased to 300,000.\textsuperscript{24} Also urging stronger war measures were senators Zachariah Chandler (R, Michigan) and Benjamin Wade (R, Ohio). Wade reacted particularly strongly to the decision not to discipline severely Baltimore citizens for their attack on federal troops. Calling for southerners to be punished and hung, Wade hoped the war could be conducted "by assent of the President in a constitutional way, but the stern demand for justice of a united people cannot and must not be baffled by the perverseness of one man though he be the President of the United States."\textsuperscript{25}

During the first weeks of war many issues received public attention, but never far from the forefront was the issue that many labeled the cause of the war--slavery. Besides abolitionists few spoke of the institution's overthrow although others realized that whether a goal or not, slavery would not remain unaltered.\textsuperscript{26} Three days after Lincoln's call for troops, one Republican editor predicted:

\begin{quote}
Slavery, foul, loathsome, man-cursing, and heaven-defying slavery--in this mortal struggle will go down--down like a millstone in the ocean--even though, under the Providence of God, it should be called to make its exit amid the glare of burning cities and the shock of armies.\textsuperscript{27}
\end{quote}
As abolitionists abandoned pacific principles in hopes of an antislavery crusade and as the war's length defied even the most pessimistic forecasts, government leaders began to look at new possibilities under the cloak of military necessity. The abolitionist wing of the Union coalition increased its power as it saw circumstances play into its hands. Movement toward his goal prompted William Lloyd Garrison to comment on his support of the war: "when I said I would not sustain the Constitution because it was a covenant with death and an agreement with hell, I had no idea that I should live to see death and hell secede."²⁸ The National Anti-Slavery Standard spoke of slavery itself as a state of war, and while the best way to abolish it might be through Christian non-violence, the editor quickly pointed out that "war, bad as it is, is innocence itself compared with the sort of peace which, in this case, is its only alternative."²⁹ Even Lincoln's otherwise conservative friend Orville Browning (later United States senator from Illinois) contemplated the creation of a "negro republic" upon the ruin of the conquered cotton states.³⁰

The war's outlook never reached a point low enough for Browning's suggestion to gain significant support. As conditions were not disastrous, conservatives continued to work for as little change as possible in slavery's status.
Yet, the war had stopped the effective enforcement of the fugitive slave law; slaves were fleeing their Maryland masters in ever increasing numbers, and many northerners feared slave insurrections.\textsuperscript{31} Lest the war give bondsmen any encouragement, some urged protection for southern whites against slaves. The rule of civilized warfare demanded as much, and Attorney General Bates hoped for the least possible disturbance of the South's "accustomed occupations."\textsuperscript{32}

A good example of the ambivalence over slavery is found in an exchange between Benjamin Butler (commanding the contingent of Massachusetts volunteers in Baltimore) and Massachusetts governor John A. Andrew. Acting little like the "beast" he was later called, Butler promised Maryland governor Thomas Hicks that he would aid state forces in suppressing any slave rebellion. Butler argued that he was not in Maryland to interfere with its laws but to restore peace within the Union. Governor Andrew and abolitionists denied any obligation to uphold Maryland slave laws. Slavery-related questions were no longer to be regarded as political, but only military issues. In other words, the risk of slave uprisings was a danger the South ought to incur as a military liability and a cost of secession. As a matter of good tactics, the North might not encourage, but neither should it prevent slave insurrection.\textsuperscript{33}
The difficulty with Andrew's reasoning was that Maryland, though the home of many secessionists, had not left the Union. Such a tactic was incompatible with her loyal status. Moreover, Butler had other reasons for opposing Andrew's suggestions. The general argued on moral grounds that arming slaves or promoting rebellion could endanger southern white women and children. Since his own troops would do nothing to them, Butler could not allow slaves to harm these whites. Recalling that the British use of Indians during the Revolutionary War had embittered Americans, he also believed that such a tactic would prevent the speedy reunification of North and South. Butler did raise the question of a northern response to possible dishonorable southern tactics. If the South continued to employ assassins or poison soldiers, then Butler would retaliate by utilizing the "potent means" for slaughter within southern lines--slave insurrection.  

As the war moved into May, calls for a vigorous prosecution continued to reflect northern confidence in quick victory. Pennsylvania congressman Galusha Grow, soon to be Speaker of the House, urged any measure "no matter what the cost" to quell the insurrection. One Republican newspaper editorialized: "We do not want peace now, nor do we desire a slow or merely defensive war. We want war, swift and overwhelming: The more terrible the war is made, the
shorter it will be, and the more humane the policy." The New York Evening Post suggested that traitors ought to "look out for themselves." Even so, military men like William Sherman saw that the war could not be won before the next winter, at the earliest. And new estimates of war's length posed new questions for government leaders.

Troop strength and projected needs increased accordingly. Some commentators guessed that the number might go as high as 500,000 men, and by early May, three year enlistments began to be emphasized by government recruiters. While few believed the war would last that long, Americans had in previous wars exhibited the disturbing habit of leaving the battlefield when their enlistments expired. To secure a stable manpower supply, the army called for three year enlistments, not envisioning that the war would go beyond even that timetable. How many Americans appreciated the necessity for a secure supply of soldiers is unclear as the flood of northern volunteers poured in. The government found itself in the embarrassing position of having too many troops in the war's first months. With the policy of limited engagements, there was little need for replacements. Rather than turn away volunteers for which no organization, weapons, or supplies were available, Lincoln's insight proved entirely correct and prophetic: "The enthusiastic uprising of the
people in our cause, is our great reliance; we can not safely
give it any check, even though it overflows, and runs in
channels not laid down in any chart."39

For a moment, however, popular resentment of the policy
of "masterly inactivity" continued despite military assess-
ments in its support. Lincoln's policy aimed toward keeping
border states in the nation. Such delicacy came under special
attack. "The strongest battalions are always on the side of
God," James Russell Lowell wrote, and the North fought "for
the defense of principles which alone make government august
and civil society possible."40 Military actions that did
occur at this time were designed partly, at least, to quell
public dissatisfaction.41

The possibility of dramatic changes in the nation's
social-political arrangements were in the minds of
abolitionists as northern armies prepared to meet the enemy.
The editor of the National Anti-Slavery Standard observed
that the future of the rebel states (and by implication
slavery) was certainly in question. No one, it was true,
could predict the future. Still, "the question will turn
rapidly from Abstract into the Concrete as the armies advance
into the enemy's country."42 The convergence of federal
armies and southern property came soon in the conflict. One
of the first instances of an emerging policy occurred in mid-
May. In a proclamation to the people of Baltimore, Benjamin Butler reaffirmed the sanctity of private property, excepting only munitions and other articles used to aid the rebellion. When found, these would be confiscated by the army, operating under the law of nations. 43

Slave property was not mentioned, nor were legal questions about military confiscation addressed. Military confiscation could be justified within traitorous states. With Maryland, however, the federal army meant to single out individual traitors in a state still within the nation. The South's apparent disregard for public and private property (as represented by sequestration of northern debts and the seizure of federal property during secession) salved the consciences of cautious northerners when Union incursions upon property occurred. One newspaper suggested a mass seizure of southern real estate and a redistribution to northerners, converting the land from one of "treason and barbarism into one of law, order and civil liberty." 44 August Belmont, conservative Unionist and future chairman of the Democratic party, shuddered when Republicans spoke in these terms. If the war lasted more than one year, Belmont sadly remarked, its goal would surely change from reunification to reconstruction. Abolition would then be the war's aim, and the Union as it was would have little meaning for Americans. 45
Belmont had good reason to fear a change in the war's goal. Editorial ambivalence on the issue of slavery continued, but sentiment was growing for some attack, however indirect, upon the institution. Repeating his call for a movement against slavery, Henry Ward Beecher fanned the flames of patriotism, hoping to channel its fervor for abolition's end. Butler's intention of suppressing slave revolts was condemned by William S. Robinson, the New York Tribune's Boston correspondent, as an "old fashion and foolish notion, of comity and Constitutional obligation which is bad enough in times of peace, but absolutely intolerable in times of rebellion." That language was remarkable, even for antislavery leaders. Perhaps more remarkable was the fact that Butler himself began the first chipping away at the institution of slavery.

Transfered from the Department of Annapolis to Fort Monroe in Virginia at mid-May, Butler was in close contact with Confederate military forces. Three slaves made their way to his lines, seeking asylum from their masters. After questioning them, Butler discovered that the slaves had been used by the Confederates in building military fortifications. Since the general was himself in need of laborers, Butler improvised a policy, declared the slaves "contraband of war," and put them to work for the North. Butler's policy, termed a "happy fancy" by abolitionists, was narrow indeed. He
returned slaves from loyal states and Virginia slaves if their masters took an oath to support the Union. Moreover, the overall policy toward private property closely resembled Butler's Baltimore proclamation. Seizures would only be made by the military when necessary, by the proper officers, and according to specific procedural norms. 48

Almost immediately, Butler was forced to modify his policy toward fugitive slaves. His rationale of confiscating the labor of those slaves used against the United States for military purposes collapsed when southern masters began sending slave women and children South. Instead, many escaped and sought protection behind Union lines. These slaves had not been used against the federal government to further the insurrection. Confronted with the situation, Butler decided against returning these slaves. Instead, he put the able-bodied to work, feeding all, and keeping a record of work against food eaten so the government would not have to finance the venture at a loss. From a humanitarian point of view, Butler had no doubt that what he did was correct. Yet he was unsure about the political ramifications of his actions and so requested guidance from Washington. 49

Butler's query came before the Cabinet for discussion and, according to Postmaster General Montgomery Blair, Lincoln was concerned about the matter. Blair suggested limiting the
the contraband umbrella to working slaves and letting the South care for women and children. Writing to Butler, Blair revealed his own views when he explicitly reminded the general that his business was "war not emancipation." Realizing the delicate position that Butler was in, though, the Postmaster General recommended congressional action: "I think that Congress should amend the law of treason so as to admit, in the less aggravated [sic] cases, of punishment by fining so as practically to work confiscation." Blair also urged the general to use slaves as spies because they knew the land and their "sly tricks" would allow them to learn a great deal of military intelligence.50

Secretary of War Simon Cameron informed Butler on May 30 that the Cabinet had approved his ad hoc policy for dealing with fugitive slaves from seceded states. The general was authorized to use slaves and not to return them to their masters. Nevertheless, legal title to the slaves was not abolished nor even transferred. Rather, final disposition was reserved for some future determination.51

Butler's limited policy exemplified what had been stated from the outset of the war: "This war is in truth a war for the preservation of the Union, not for the destruction of slavery . . . on the other hand, no pledges can be given that slavery shall receive no damage from a Union triumph."52
Abolitionists predicted that sheer numbers would soon overwhelm Butler's stop-gap policy, requiring a systematic approach to the problem of slavery's status in war times.\textsuperscript{53}

The Administration's policy of holding the Unionist coalition together through military inactivity no longer sufficed. Cabinet members now joined their voices in criticism of General-in-Chief Winfield Scott's policy of inactivity. Montgomery Blair hoped northern armies would be "pushed into action by the indignation of the people." In London, American commentator Samuel Goddard had only contempt for qualms over shedding fraternal blood.\textsuperscript{54} Underlying this uneasiness was the untested belief in swift northern victory. Estimates continued to put the war's end at next winter, and Scott himself thought success would come in February, 1862. Commentators also blamed the encouragement given the Confederacy by British and French neutrality.\textsuperscript{55}

Nevertheless, the optimistic forecasts about the war's early end had already been disporved by June and Americans began to realize the scope of the war in which they were engaged. Lincoln's original call for 75,000 troops seemed laughable against estimates that this number alone would be necessary to capture Richmond. As troops increased, the amount of money needed for the war escalated. By late June, some guessed that the government would need $150 or $200 million
before the conflict's end. The sobering sense of a tough fight was reflected by Henry Adams in a letter to his brother, Charles Francis, Jr. "The cotton states," Adams wrote, "would rather annex themselves to England or Spain than come back to us." A week and a half before Congress convened on July 4, Iowa's senator James Grimes confided to his wife that he knew nothing more than any one else on when the war would end. Ever present on conservative minds was the relationship between the war's duration and its effect on slavery. And there was the rub. As armies advanced, more and more slaves would be brought into Union lines. What to do with slaves (let alone slavery) was a frightening, perplexing question for an Administration fearful of driving the upper South into the eager arms of their southern cousins.

So the quest for action collided with ingrained American restraint, and fears that Congress would do little more than talk were joined with fears that it would do too much. The uneasiness that Grimes felt over Lincoln's "usurpations" had not lessened. Yet in his uneasiness, Grimes, too, could see the new tools the Union would use for its purposes. Unwilling to "clothe the President with the utmost potentiality of this great people," as was his colleague Timothy Howe of Wisconsin, Grimes nonetheless anticipated the enactment of a direct tax and conscription—significant departures from
peacetime practice.57

American dedication to order and restraint was evident not only in Administration strategy, but in martial conduct. Cries for hanging Confederate privateers as pirates were conspicuous for their unusualness. Whether captured rebels were prisoners of war or traitors was a puzzle. The question was resolved in theory that Confederates were traitors, but punishment was never as severe as theory allowed. More representative of how the war was being fought were prisoner exchanges and safe conduct passes; "civilized warfare," was still the norm. In a communication with his Confederate opposite, Butler carefully explained federal policy on private property, emphasizing the limited scope of military seizure. All non-contraband property would be returned to Virginians when they demonstrated their allegiance to the United States. An indemnity would be paid for destroyed property. As proof of his good word, Butler court-martialed several soldiers who had plundered private property without cause.58

Conservatives worried about the connection between the war's duration and slavery; antislavery advocates seized upon it. Francis Lieber, former South Carolina College professor of history and political economy, was willing to accept "all the struggle and heart-burning ... if and only [if]" slavery would be abolished in the border states.59 Such a radical
sentiment was not shared by all members of the antislavery faction. Members of the President's Cabinet, notably Bates, opposed military emancipation through December 1861, and pushed for enforcement of the fugitive slave law. Montgomery Blair hoped to remove the unwanted contraband to Haiti and let Congress tie up the loose ends either by confiscation or compensated emancipation.60

By the time Congress convened on July 4 a consensus had emerged to strike at slavery in some way. Although questions of tactics continued to haunt the Administration, tactical questions proved definitive in understanding the shape and force of freedom unleashed by war. The crucial first question was settled in July—attack slavery, accept the abolitionists' argument that the war was the product of malignant slave power. Recognize the intimate connection between slavery and southerners' treason and the necessity of striking at treason's heart in order to preserve the Union. Philadelphia lawyer Sidney George Fisher put it well: "It has been discovered that laisser aller won't do in politics at any rate, and that society must be armed for self-defense."61 Republicans adopted abolitionist arguments; the best self-defense was an attack upon the war's cause. On July 4, Congress began the search for an effective weapon against slavery.
NOTES FOR CHAPTER ONE


4. Ibid., 1066-67.


7. Philadelphia Legal Intelligencer, June 7, 1861. A judge in Pennsylvania common pleas court remarked that even if the enemy were within the city [Philadelphia] the court would be protected in the administration of justice. The Legal Intelligencer's editor agreed, Ibid., April 26, 1861. Lawyers were also concerned that people know their contribution to the war effort--either by enlistment in the army or through continued legal activity. Legal practice was necessary to continue the civil justice system and therefore give business the legal security necessary to function and produce the wealth required for the war, Ibid., May 3, 17, 1861.


13. Ibid., 946.


17. Ibid., 830-31.


27. Perkins, Northern Editorials, 744.


32. Perkins, Northern Editorials, 527.


34. Butler, Correspondence, 1:38-41.


42. *National Anti-Slavery Standard*, July 13, 1861.


47. As quoted in Butler, *Correspondence*, 1:77.

48. Ibid., 105-110; *National Anti-Slavery Standard*, June 8, 1861.


52. Perkins, Northern Editorials, 834, 835.


54. Blair quoted in Butler, Correspondence, 1:129-30; Goddard, Letters, 34.

55. Trefousse, Wade, 146; Willard H. Smith, Schuyler Colfax, the Changing Fortunes of a Political Idol (Indianapolis: Indiana Historical Bureau, 1952), 155; Belmont, Letters, 64.


57. Salter, Grimes, 141.

58. Fisher, Diary, 394; Belmont, Letters, 67; Butler, Correspondence, 1:123, 139-41, 150-51.

59. Perry, Lieber, 320. See also Belmont, Letters, 77; Charles Sumner, The Works of Charles Sumner (Boston: Lee & Shephard, 1872-83), 5:497-98. Secretary of State William Seward refused to grant a Massachusetts black a passport, citing the Dred Scott decision which denied United States citizenship to blacks. Sumner then went to Seward's office and personally filled out the passport application. The Secretary of State thereupon granted the passport, saying that he would accept anyone Sumner certified to be a citizen.


61. Fisher, Diary, 393.
CHAPTER TWO
A STERN AND SERIOUS REALITY

In the first months after Sumter the reality of war encroached on the traditional patterns of thought and behavior of Americans. Changes in attitudes were gradual though subtle.¹ Often those whose commitment to Union was tenuous tenaciously clung to carefully constructed schema defining relationships between government and citizens. Even before hostilities, many conservatives proclaimed the soundness of the rock upon which slavery was built, invoking the law of nations as well as positive local law for its protection.² Many did not seem to believe that war made a difference or altered the situation in a meaningful way. When citizens of Norfolk, Virginia complained about damage to their property during the fighting, they must have been surprised at the Union commander's reply: "Gentlemen, this is War. I hope that you considered the full meaning of that word before you seceded."³

But in truth, there were few changes in men's views and the possibilities they envisioned. Senator James Grimes of Iowa worried over the expanded military, fearing violations of the Constitution as the Confederacy ignored the document entirely. Democratic representative John McClelland, later a Union general, observed that no serious person proposed the
abolition of slavery in the states where it existed.\textsuperscript{4} Abolitionists' calls aside, the political truth, the reality of the possible, almost justified the Norfolk citizens' outrage that the war had gotten in the way of their lives.

Or so it must have appeared to Republicans who gathered in Washington on July 4 to attend the special session of Congress. Begun without congressional sanction, the war would never again be free of congressional involvement. And never afterward would antebellum reality dictate the realm of possibilities.\textsuperscript{5} The full meaning of war emerged not only on fields reclaimed by body and blood, soul and humanity, but in the precincts of Congress and President. These men perceived the hope of victory in the embrace of heretofore impossible federal action, and by that embrace began the long climb through reconstruction.\textsuperscript{6}

Such a climb would not be easy, nor barely perceived at the beginning as a climb at all. The prediction of a correspondent of the \textit{National Anti-Slavery Standard} seemed premature when he likened the Congress of July 4, 1861 to that of the Congress of July 4, 1776, both being called to decide upon the question of freedom. The assembled House disclaimed any abolition aspirations by explicitly confining its business to measures affecting the war effort. Rumors abounded of compromise along the lines of the old Crittenden
formula, and an inquiry into repealing the fugitive slave law lost overwhelmingly. Gerrit Smith, writing to the repeal's sponsor Owen Lovejoy of Illinois, labeled the distinction between war measures and slavery an absurdity, noting, "the slave question is the war question."

Despite Republican hopes for a short session skirting the slavery issue, there was a willingness to consider, if only in the abstract, circumstances in which slavery might die for the sake of the nation. Republican senators James Dixon and Kinsley Bingham both accepted in principle the demise of slavery if that proved necessary for the Union's preservation. To crush out the rebellion any means needed would be used, Dixon declared, even those "which seem to us terrific in their consequences." Secretary of War Cameron and Kansas Republican James Lane invoked the mantle of Fate, a tone terrifying to conservative Unionists, as they commented on the inevitable fall of slavery in the face of advancing federal armies. When Republicans raised the specter of abolition either through war necessity or as an intrinsic product of the war itself, it was another signal that slavery's strongest defense had been breached. A question of "whether" suddenly became questions of "how, when, and where," and the psychological impediment that so constrained during the secession crisis and early war gave way. A constitutionalism
that had, barely four months before, brought forth a thirteenth amendment that forever prohibited the abolition of state slavery seemed suddenly anachronistic.9

All members of the 37th Congress did not grasp the fullness of war. During those hot July days of 1861, members of the conservative wing of the Unionist coalition were intent upon maintaining the constrained constitutionalism of the pending thirteenth amendment. As the Senate considered a bill for the organization of the vastly expanded army, Lazarus Powell, a Kentucky Democrat, introduced an amendment that would prohibit interference with slavery in the states.10 To be sure, no serious man, as John McClernand stated, now proposed slavery's abolition. But the key word was "now," and Powell sought to commit Congress and the nation to the status quo antebellum regarding slavery. Republican contemplation of a wholly free Union was too unsettling an abstraction, too clearly an idle fancy, and too worrisome a possibility not to stop immediately—if possible.

Powell's amendment brought home the division between realists and romantics.11 Unionist senator John S. Carlile, representing the few square miles of loyal Virginia, argued that the war was for the Union and had nothing to do with slavery. He opposed the amendment because it raised a false issue. At least Powell was aware enough to note the shift
in Republican perceptions. When as conservative a Republican as Illinois' Orville Browning was willing, at least in theory, to abolish slavery to save the nation, the slavery issue was already intimately linked with the prosecution of the war. Indeed, it might be surmised that so quickly had the fate of slavery become dependent upon the fortunes of war that the link could be parodied. Samuel Pomeroy (R, Kansas) spoke of the great sacrifices in men and material the North was making to fight the war. If, in the process of beating back treason, slaves were taken from their masters (he used the word confiscated), it was an "incidental result." After all, all were called upon to sacrifice.

Kansas' other senator, James Lane, asked Carlisle whether in the event of a slave insurrection, the army ought to return slaves to their masters. When Carlisle answered yes, Lane remarked that this might be so with loyal masters, but never with rebels. Carlisle unknowingly pinpointed the difficulty of distinguishing loyal southern whites from rebels and warned that an assault upon slavery would lead southern Unionists to reconsider their allegiance. Powell asked Browning if he could "uphold constitutional government by putting the Constitution of his country under his feet?" Behind that query (really an indictment) lay the assumption that constitutional form was being saved by destruction of constitutional
substance, that is, intent and protection. Army-sponsored confiscation (a synonym of abolition for Powell and others, although certainly not the same) would make Congress "national robbers, national freebooters" in the name of constitutional preservation.\textsuperscript{14}

John Sherman, another conservative Republican, provided the means to remove a potentially embarrassing problem for Republicans voting against a commitment not to abolish state slavery. Sherman's substitute language stated merely that the army's purpose was the preservation of the Constitution, and omitted explicit mention of slavery. Although Powell and two allies, Democrats Jesse Bright and John C. Breckinridge (both later expelled from the Senate) favored a direct vote on Powell's amendment, the substitute passed overwhelmingly. With the embarrassment removed, the substituted amendment thereupon was rejected.\textsuperscript{15} This debate occurred on July 18, just two days before the Senate began consideration of a bill making the first tentative but official congressional attack upon state slavery. Thus border state and Democratic opposition was registered against any measure touching the issue of slavery. Republicans were not deterred, and a confiscation bill came before the Senate on schedule.

Although other plans were suggested, the proposal of the Judiciary Committee chairman Lyman Trumbull (R, Illinois) was
the basis for debate on confiscation in July of 1861.\textsuperscript{16} The comparatively limited scope of his measure was clear from the first, for it only confiscated that property that was specifically used for insurrectionary purposes.\textsuperscript{17}

On July 20 the Senate began consideration of Trumbull's bill, S. No. 25. Its restraint was remarkable. Confiscations were only to be handled through civilian courts. Originally, the condemnation proceedings would be held in the district, circuit, or admiralty court having jurisdiction of the property's location when seized. Yet this presented a problem since most property seized would be in rebel-held areas where civilian courts were not functioning. Rather than allow the military to control such actions, a Judiciary Committee amendment (readily agreed to by Trumbull and approved on July 22) directed that condemnation proceedings be held "in any district in which the property may be seized or into which they may be taken and proceedings first instituted."\textsuperscript{18} Thus, confiscated items would have to be taken to an area where civilian courts were functioning before formal proceedings could be initiated and legal title transferred.

So far Trumbull's bill conceived property in general terms, but the senator proposed an amendment that explicitly dealt with the question of slave property. With the introduction of that amendment, both the nature of the bill and the
debate changed.

When war was less than a month old, President Lincoln's secretary John Hay considered the question of what to do with slaves that came into Union hands. In contradiction to the policy then followed by commanders at Forts Pickens and Madison, Hay believed that the government ought to keep fugitive slaves because their masters were in rebellion:

... nothing would bring [masters] more to their senses than a gentle reminder that they are dependent upon the good will of the Government for the security of their lives and property. The action [confiscation] would be entirely just and eminently practicable ... . What we could not have done in many lifetimes the madness and folly of the South has accomplished for us. Slavery offers itself more vulnerable to our attack than at any point in any century and the wild malignity of the South is excusing us before God and the World.19

Abolitionists echoed Hay's view and went a step further, deploring the irony that slavery was safer within the Union than without. Constitutional protections and obligations ruled during peacetime, but with rebellion and a de facto rupture of the Union, those guarantees lapsed. "The war is to be no child's play," the Springfield Republican reminded its readers, and this presumably meant a willingness within the Unionist coalition to reevaluate notions of obligation and the rendition of slaves.20

What to do with fugitive slaves was more pointed in
Washington, D. C. Slaves began to escape to the District from Virginia shortly after the war began. Rather than extend Butler's contraband theory, Lincoln ordered that fugitives not be harbored in the District. Lincoln's District policy was born from his deep concern to reassure border states and his inaugural pledge to enforce the Fugitive Slave Act. But it was not announced until mid-July, and never became general army practice. Butler had been holding slaves since late May and continued to do so. By the end of July, the general reported nearly 850 slaves at Fort Monroe, almost a third of the Elizabeth City county's prewar slave population. According to Lincoln's secretary, the President consciously allowed this contradiction in order to meet local situations and military necessities. The actual situation at the time of congressional debate over confiscation, then, contained precedents for limited "slave holding," if not confiscation. The difference between holding and confiscating was important, as Secretary Cameron realized when he postponed the question of legal title until Congress acted. Lincoln's policy of diversity to the contrary notwithstanding, a more uniform policy towards runaways and captured slaves was needed. In one sense, Trumbull's amendment was an attempt to legitimate a policy already being implemented in a haphazard way.
On July 15 S. No. 25 went to the Judiciary Committee and was reported to the Senate on the 20th, debate beginning on the 22nd. The Battle of Bull Run intervened on the 21st, and was one of the first major military clashes of the war and a major Union defeat. The North had been so confident of victory that many congressmen had gone to the battlefield near Washington to view the engagement. The disaster's impact on the members of Congress was profound. One reporter told of a Democratic congressman who went out to the field as an old line Breckinridge Democrat and came back a fighting abolitionist. Such a dramatic reversal was reportedly shared by thousands, but could hardly have been usual. Yet the defeat had a tremendously disturbing effect, dislodging many from safe if archaic notions. Government leaders who had avoided the plaguing question of slavery, now began some "hard thinking" about the institution. Sidney George Fisher noted that "everyone is impressed with the conviction that the war is a very stern and serious reality."23 In the shock of defeat, Trumbull's slave confiscation amendment came before the Senate.

Linking slave confiscation directly with reaction to the defeat at Bull Run, however, is not that easy. Although debate occurred after the battle, Trumbull had introduced the amendment the day before the fighting. Trumbull's motivation
in oresenting the amendment was not Bull Run. The defeat does offer, however, an understanding of the Senate's subsequent action.24

Before the battle it appears that Trumbull's colleagues on the Judiciary Committee were unwilling to cross the line and make confiscation government policy rather than ad hoc military tactic. Trumbull offered the slave confiscation clause soley as a personal amendment, not from the committee and not in his position as committee chairman. Indeed, Senator John Ten Eyck (R, New Jersey) observed that he had voted against the amendment when in committee. Trumbull apparently could not find a majority among his four Republican and two Democratic colleagues on the committee, and was forced to offer the amendment on his own authority.25

Trumbull's amendment was consistent with the rest of the bill. In other words, all slaves would not be confiscated, but only those used for insurrectionary purposes. Slaves used to aid the rebel war effort would be subject to seizure; Trumbull carefully safeguarded loyal southerners' property rights.26

Despite the bill's restraint, some Democratic senators remained hostile. Realizing that prolonged debate was futile because of Republican strength in the Senate (32 Republicans against 17 opposition members), Democrats nonetheless registered
their fears. Not surprisingly they aimed their remarks at the violation of slave property rights contemplated in Trumbull's amendment. Maryland Democrat James Pearce questioned the workability of the legal apparatus for condemnation of property, the effect the bill might have on the border states, and the measure's constitutionality. Above all, he saw Trumbull's amendment as an irritant to the South and the border, making suspect the North's war motives. From a war to preserve the Union, Pearce saw a hybrid goal of Union with emancipation. 27 Similarly, Kentucky's Breckinridge looked beyond the letter of the slave confiscation amendment to an underlying trend. Instead of a restrained war measure, Breckinridge labeled slave confiscation as the first step toward total emancipation. 28

And that was that. The remarkable thing about the Senate debate was the lack of it. Pearce and Breckinridge provided the only real opposition to Trumbull's amendment and the bill. The size of the Republican majority was not the only reason for the lack of debate. The idea of confiscation in general and slave confiscation in particular was not new, in the sense that abolitionists had proposed it earlier. The defeat at Bull Run, and more specifically the use of slaves by the Confederacy against the Union, were important points favoring the bill's passage.
Although Trumbull did not have Confederate use of slaves in mind when he introduced his amendment, he was too good a politician not to use the argument to his advantage once the issue arose, and other senators picked up the refrain. Henry Wilson declared that if the southern traitors used slaves against the government, then the government ought to "convert those bondsmen into men that cannot be used to destroy our country." 29

Many saw the use of slaves in combat as unjustified and illegitimate. The new Confederate tactic was so disturbing that the House of Representatives formally asked Secretary Cameron to provide the chamber with a report on the subject. 30 Again abolitionists had anticipated politicians' realization. In May the Oneida, New York Weekly Herald remarked that slaves armed under the banner of rebellion ought to be met by black men under the flag of loyalty. Any slave fighting with the North ought to secure not only his freedom, but that of his family as well. In April Wendell Phillips had called for the North to summon "justice, God and the negro to her side." 31

Until the Battle of Bull Run nothing had been done about the legal status of confiscated slaves. But with the stunning Union defeat, men everywhere began to look at the war in a different and more somber light. The Washington correspondent for the National Anti-Slavery Standard summed up the new
realization. The conquest of rebellion would not be easy, he said, "It is, in fact, a gigantic job for the government to conquer it. It cannot be done without striking at the heart of the monster."\textsuperscript{32} It is quite possible that had the North won at Bull Run, the Confederate use of slaves on fortifications might not have been seized upon or cared about so deeply. If the Union had won, however, the necessity for confiscation would not have been as apparent. Defeat at Bull Run and the use of slaves to engineer that outcome changed at least one senator's mind. Ten Eyck, who had opposed Trumbull's amendment in committee, announced his conversion during debate on the Senate floor. Confronting his belief that the South would not "make use of such means as the employment of persons held to labor or service in their armies," was exactly that reality. Ten Eyck declared:

God knows that we do not want them [freed slaves] in our own section of the Union. But, sir, having learned and believing that these persons have been employed with arms in their hands to shed the blood of the Union-loving men of this country; I shall now vote in favor of that amendment with less regard to what may become of these people than I had.\textsuperscript{33}

The vote was anti-climatic. Thirty-three senators favored the slave confiscation clause and only six opposed it. Thirty-one of the affirmative votes were cast by Republicans; no Republican voted against the amendment. The bill as a whole
passed without a division. Within a day of Bull Run, the Senate had acted (reacted?) swiftly and forcefully.34

Transmitted to the House the next day, July 23, the confiscation bill was sent to the House Judiciary Committee. When the measure came back from committee on August 2, a substitute amendment was proposed to replace Trumbull's language. Ohio Republican John Bingham was in an awkward position since, as committee chairman, he reported the substitute as the committee's decision. As a member of Congress in his own right, however, he opposed the change. The primary difference in the language was a more explicit limitation on slave confiscation—applying only to those slaves actually engaged in military activities against the Union. The Senate's language might be interpreted to allow confiscation for other than military use of slaves, that is, indirect support of the Confederate war effort. Bingham argued strongly against the substitute because of its more cautious treatment and conception of southern tactics. Bingham was against showing any "tenderly regard [for] the property of these rebels in arms."35

Even so, the chairman and other supporters of slave confiscation continually emphasized the limited scope of the proposition before the House. All slaves who aided the rebellion were not subject to confiscation, but only those whose masters knowingly consented to their use in rebel activity. Bingham
made this explicit in a reply to a Kentucky congressman's apprehensions:

I will undertake to say that no just court in America will ever construe this fourth section . . . to the effect that, because it happens that citizens of the United States residing in a seceded state hold slaves, this law amounts to an emancipation of their slaves. I deny that that was the intention of law, or that it will bear any such construction by a court of justice.36

But under the Senate language, "insurrectionary use" might mean something besides military action. Henry Burnett (D, Kentucky) asked whether the slaves of a Tennessee slaveholder used to produce staple crops would be subject to confiscation if those crops were sold to the rebel army. Bingham answered that they would, because "a traitor justly forfeits both life and property."37 When the House decided to accept the committee's substitute language, a major limitation was placed upon an already limited policy.

Senators had passed the confiscation bill without serious attention to a connection between slave confiscation and emancipation. But former senator and now congressman John J. Crittenden, described by abolitionists as a "defunct politician" and "a corpse set up for show, galvanized at times to go" turned his persuasive talents to the issue.38 Ignoring questions of practicality, Crittenden focused on Congress's power to act upon slavery:
It has been conceded that [slavery] was a subject for state legislation only. Does war change the powers of Congress in this respect? It is the absence of all power upon the subject which has prevented your legislation. Absence of all power of legislation in time of peace must be the absence of the same power at all times. The constitutional power of this House does not come and go with a change in circumstance. 39

Crittenden's argument was on two levels. First, he took a static view of the Constitution; it superseded the environment. The Constitution was meant to control political circumstances and not be controlled by them. But on the second level, Crittenden was upholding essentially the special nature of slave property. His colleagues' attempts to trap him in inconsistency failed to note this distinction. Two members from Illinois, Democrat John McClernand and Republican William Kellogg, asked Crittenden whether the government had the right to confiscate a horse if the owner were a traitor. Crittenden replied that he was not concerned about any increase of power during war, or international law, but the constitutional sanction against interference with slavery.

Kellogg tried to recoup by emphasizing the limited nature of the proposed law; slavery was not being abolished, no state law on slavery was, in fact, being touched at all. Only specific slaves were being confiscated. According to Kellogg, Congress was not legislating on slavery per se, but merely punishing treason:
I repeat that we have no more power to legislate on the subject of slavery in time of war than we have in time of peace. If a citizen of the United States commits high treason, or any other crime known to the law, it is competent for the United States legislature, if the crime be within its cognizance (and treason is), to provide for the forfeiture and confiscation of the offender's property... yea, his right to service in another shall be confiscated; not annulling the law by which he holds it: for that is a matter which neither in war nor in peace can we reach. But because of the crime, we may either in war or peace impose the penalty of... confiscation.\textsuperscript{40}

Crittenden replied by denying that necessity sanctioned the assumption of power. Moreover, in the final round of this exchange, he argued that slave confiscation would allow the South to misrepresent the North's war aims and that the use of slaves in war was an insignificant military matter.\textsuperscript{41} The Kentucky congressman did not refute Kellogg's argument distinguishing confiscation from abolition. As has been pointed out, many border men appeared to equate the two terms. That Crittenden felt constrained to deny the significance of the military use of slaves is further evidence of the importance of this action.

Another conservative Unionist, congressman Alexander Diven (R, New York) maintained that confiscation of property would hardly be worth the price to advance the Union cause. Breaking with the Republican tactic of considering slaves as "property" in order to confiscate and free them, Diven
consistently referred to slaves as men. The ironic consequence of his position was continued enslavement for men he was unwilling to confiscate as property. Diven proposed to treat all persons captured by Union forces as prisoners of war. Rather than freeing slaves thus encountered, they would be held as bargaining chips in possible prisoner exchanges. Diven emphasized the impracticality of the confiscation bill, yet his own suggestions seem hardly less unworkable. Because of his unwillingness to acknowledge the growing trend among Republicans and follow it, abolitionists later questioned Diven's commitment to the antislavery cause, remarking that a Democrat would hardly act differently.42

Objections to the confiscation bill centered upon southerners' rights.43 This plainly irritated Republicans in the House, especially Thaddeus Stevens, one of the most influential members. In his response to the bill's opponents, Stevens delivered one of the clearer statements in favor of the bill. At first, his appeal was not to the Constitution, but to international law as authority for confiscation. Stevens ridiculed the notion of constitutional rights for rebels. "Who pleads the Constitution," Stevens asked, but the same traitors who were fighting to overthrow it? When one congressman asked whether Stevens admitted that the confiscation was, in fact, unconstitutional, the Pennsylvanian retreated
quickly. Confiscation was both constitutional and sanctioned by international law. The special situation in which the nation found itself clothed the government with powers it did not possess during peace.

Stevens did not make the usual distinction between rebel property in general and that specifically used for military purposes. Stevens' principle was broader than almost any other announced during debate on the 1861 Confiscation Act. By his rule, all rebel property, regardless of its use, was confiscable. Despite a formalistic "reassurance" given to southerners, Stevens' view of confiscation surely confirmed their worst suspicions.44

After parliamentary maneuvering, the bill came before the House on August 3 with substantially the same language it had had the previous day. Chairman Bingham, however, refused to allow more debate on the bill, and after defeating a motion to table 66 to 47, the House accepted the committee's substitute language without a division. The lower house then narrowly passed the confiscation bill as amended, 60 to 48; eleven of the forty-eight negative votes were cast by Republicans.45

When the House version came back to the Senate on August 3, Trumbull quickly accepted the House language, saying only that it made the same limitations he had attempted to include in
the original text. Two days later the Senate approved the bill 24 to 11, and President Lincoln signed it into law on August 6. 46

The Confiscation Act of 1861 was not born in the isolated arena of legal precedent but in the aftermath of defeat and growing commitment. But commitment to what? Viewed from one perspective, the Union was already near death and death not inflicted by the South, but by zealous abolition fanatics using opportunity to their advantage. Members of Congress more moderate and open to anti-abolition pressure struggled to justify to themselves the course they had chosen. Constitution, international law, common sense were all appealed to as sanctions for what a majority agreed had to be done. Yet each source seemed to have its deficiency. 47

With this diversity, why confiscation? Why any attack upon slavery? A clue emerges from looking at the question Unionists asked themselves and each other. Preeminent was the simple question of what was necessary to win the war, or rather, what was enough. The process of learning, of growth through experience, depends upon a gradualistic approach to problems and circumstance. A coalition made up of widely disparate groups could never uniformly agree upon an answer. Unionists' answers to what was enough could not be plotted as a point upon a graph, but more as an elliptical range of opinions.
Some elements tended to hold back as others moved forward with rapidity. The great middle, by and large Republican congressmen, moved far too quickly for the tastes of Crittenden, and far too slowly for the imperatives of Garrison. And yet, in certain narrow and exceedingly legal paths, they did move against slavery. What had been unthinkable six months before became not only thinkable, but possible—and accomplished. Through the experience of war and rebellion, Republicans accepted that portion of abolitionist thought and program (constitutionalism) that seemed to be "enough." What abolitionists hoped, conservatives feared, and no one knew, was that there could be no stop-gap measures. Enough was enough only when the Unionist coalition accepted the heart of abolitionist thought—abolition itself. The prophets in the wilderness were those members of the coalition who called the country forward to the uncharted realms of freedom. For as most Unionists asked themselves what was enough, abolitionists had already moved beyond. They answered their coadjutors question (enough was the end of slavery), but also began the more precise task of coping with abolition's aftermath. As slaves came forward to Union lines, as confiscation of slave property became law, abolitionists asked "What shall be done with the Slaves?"—and for those who would listen, they gave their answer.
Emancipation, when it came, would not mean freedom and then abandonment. Government protection—national protection—for freed men and women's rights was part of the abolitionist vision as early as July 1861. And the major purpose for protection of freedmen's rights was to prevent their re-enslavement, to create a public climate that would prevent such a calamity from ever occurring. Abolitionists knew the intransigence of southern whites with regard to slavery and its related issues. They themselves had often been the victims of southern white reaction. They expected white southerners to resist abolition, to fight it at every turn. Certainly Republicans were not unaware of potential (and already active) southern opposition to war measures. Yet Republicans did not have the experience of thirty years of fighting the Slave Power. They soon realized the lengths which southerners, unionist and secessionist, would go to save slavery. Abolitionists had too long been the victims of southern hostility. They did not propose to leave the ex-slave alone to keep his freedom as best he could. Republicans also learned this lesson through the months of fighting intransigence on battlefield and in Congress' halls.51

The Confiscation Act of 1861 was the first substantive congressional action against slavery, and one of the first signs that Congress understood the stern and serious reality that war
imposed upon the country. As the war went on it continued to call forth new responses to new circumstances, drawing government leaders closer and closer to the abolitionist perception that, in the end, slavery must die if the nation were to live.
NOTES FOR CHAPTER TWO

1. In his diary Attorney General Edward Bates noted on April 15, 1861, that while the nation was now in "open war," he hoped to keep in close control and to "disturb as little as possible, the accustomed occupation of the people," Edward Bates Papers, Library of Congress (hereafter, DLC).


3. As quoted in the Philadelphia Legal Intelligencer, May 10, 1861.


5. Abolitionists' predictions, though unheeded at the time, proved accurate: "Our main hope must still bein EVENTS, as the moving spring of action," National Anti-Slavery Standard, July 13, 1861.

6. Before the assault on Fort Sumter, the National Anti-Slavery Standard editorialized against the new word "reconstruction" which it took to mean a series of compromises engineered for Virginia and other border states to secure their allegiance and to woo back the seceded South, National Anti-Slavery Standard, April 13, 1861.

7. Ibid., June 29, July 13, 20, August 7, 1861; Cong. Globe, 37:1, 24-25.


9. The text of the proposed thirteenth amendment is as follows: "No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State." The proposed amendment (usually referred to as the "Corwin Amendment" after its author Thomas Corwin of Ohio) is treated tangentially in the standard works on the secession crisis. See especially Dwight L. Dumond, The Secession Crisis, 1860-61 (New York: Macmillan, 1931), David Potter, Lincoln and His Party in the Secession Crisis
(New Haven: Yale University Press, 1962), and Kenneth Stampp, And the War Came (Baton Rouge: Louisiana State University Press, 1950). The only treatment of the Corwin Amendment itself that I am aware of is an article by R. Alton Lee, "The Corwin Amendment in the Secession Crisis," Ohio Historical Quarterly, 70:1 (1961), 1-26. No study has centered on the Corwin Amendment's place during the first year of the war, although Ohio, Maryland, and Illinois all ratified the proposition. For the text, see Cong. Globe, 36:2, Appendix, 350.

10. For the text of Powell's amendment, see Cong. Globe, 37:1, 186.

11. Note the following from Wendell Phillips' speech of April 21, 1861: "The North thinks--can appreciate argument--is the nineteenth century .... The South dreams--it is the thirteenth and fourteenth century--baron and serf--noble and slave." National Anti-Slavery Standard, April 27, 1861.


15. Ibid., 192-94.

16. Ibid., 11, 78, 134, 194.


26. Ibid., 218.

27. Ibid., 218-19. Pearce argued that even if slaves were emancipated by this act, state slave law would not be
abolished and state authorities would only re-enslave anyone freed. Without the slave confiscation clause, Pearce indicated he would vote for the confiscation bill.

28. Ibid., 219.
29. Ibid., 218-19.
30. OR, Series III, 1:340. Cameron replied on July 25, "I have the honor to state that this Department has in its possession no information on the subject."
34. Ibid. The two Democrats voting in favor of the amendment were James McDougall of California and Andrew Johnson of Tennessee.
37. Ibid., 411.
40. Ibid.
41. Ibid., 411-12.
42. Ibid., 413-14; National Anti-Slavery Standard, March 1, 1862.
45. Ibid., 415, 431.
46. Ibid., 427, 434, 455. McDougall voted yes, while Cowan voted against accepting the House version. Seven of the eleven opponents were from border states.

47. Blaine, Twenty Years, 1:343; Leonard Curry, Blueprint for Modern America (Nashville: Vanderbilt University Press, 1968), 78, quoting the San Francisco Daily Alta Californian, August 18, 1861: "Constitutions are made for peace. We are at war, and we must make war and do it effectively, without regard to paper Constitutions."

48. The difficulty congressmen had in finding grounds to justify confiscation illustrates the tenacious hold legal principles and categories exercised throughout the war. Competing views of the war's nature, whether rebellion or international conflict, shaped what powers the government might exercise over its traitorous citizens, or by the alternate view, enemy aliens. Confiscation of citizens' property, without conviction for treason, appeared unconstitutional and illegal on its face; confiscation of enemy aliens' property was a generally accepted right under international definitions of belligerent rights. Yet the stance also appeared to grant tacit recognition of the South's successful separation from the Union—the exact issue upon which the war centered. The ambiguity and tension between the two views was accepted by government authorities both in the President's blockade proclamation and his July 4, 1861 message to Congress, Shapiro, Confiscation, 3-4; Randall, Constitutional Problems, ch. 13. See also the discussion in chapter four, below.

49. As Herman Belz rightly observes the slave confiscation clause did not "free" any slave, but denied legal title to the former master. Abolitionists emphasized the prevention of re-enslavement, noted below. But also note the tentative movement toward antislavery goals. Belz notwithstanding, the fact of first movement against slavery retains its importance, Herman Belz, A New Birth of Freedom (Westport, Connecticut: Greenwood Press, 1976), 4-5.


51. Ibid., July 13, 27, 1861.
CHAPTER THREE

WHAT GOD AND NATURE DECREED:

ABOLITION IN THE DISTRICT OF COLUMBIA

Liberty for the slave remained more an abstract hope than an experienced reality when Congress reassembled on December 2, 1861. During the four months of recess from August through November, General George B. McClellan organized and polished his Army of the Potomac, eventually succeeding the elderly Winfield Scott as General-in-Chief, the Trent Affair began with the capture of Confederate emissaries James Mason and John Slidell, a Union army met defeat at Balls Bluff, Virginia, and John C. Frémont lost his command in Missouri. Perhaps the most significant fact was the appreciable lack of military engagement, and the knowledge that a great offensive to end the war must now wait upon the spring. Even so, a spirit of possibilities greeted members of Congress as they returned to the seat of government—or rather, that spirit was upon them as they resumed their stewardship of the war effort.

The seat of government, the see city of the republic, presented the question: what spirit—liberty or slavery—would rule the city and by implication the country? Slavery could remain dominant by continued inaction, for Washington
was a southern city, and slavery in the community was older than the city itself. Slavery's spirit would be manifest if rebeldom ever managed to enlarge its territory northward by a mere few miles. Shortly after assuming the post of Secretary of War in January 1862, Edwin Stanton wrote of his strong faith in the government's future—a faith not founded upon guns so much as upon the rock of God's will. "The powers of hell cannot prevail against it," Stanton proclaimed, hoping that his quotation of Matthew might engraft upon the government a bit of the permanence the Christian church had received from the promise.\(^1\)

Stanton's "undoubting faith" in the government's survival was present among congressmen. Already members of the Unionist coalition began to realize that to sustain the government their faith must be placed in a kind of country that had not heretofore existed. Military necessity might demand novel responses, events might demand reactions. The remedies Congress considered were not always initiated for their own intrinsic merit. But the alteration of the substance of America was already effected in the response to war.

As before the news from Fort Monroe, Virginia, continued to highlight the interaction between Union armies and fleeing slaves. Benjamin Butler, transferred to the Department of New England on October 1, had made arrangements with the
American Missionary Society to begin the education of the contrabands held at the encampment. The society, founded upon the principle of preaching the Gospel "free from all complicity with slavery and caste" jumped at the chance to implement its philosophy—grounded in mutual respect, qualitative freedom, and racial integration. This fit well with the previous efforts Butler had encouraged among his troops. One of the Massachusetts volunteers at Fort Monroe, Edward L. Pierce, a lawyer and abolitionist, became superintendent for the contrabands. Watching over their work, securing food and housing, Pierce became an outspoken advocate for the contrabands.²

Upon completing his three month enlistment, Pierce returned to New England and prepared an article for the November issue of the Atlantic Monthly, detailing the contrabands' situation at Fort Monroe and giving his assessment. Pierce's legalistic analysis explored the varying perspectives with which the fleeing slaves might be viewed, noting that the question, what to do with the fugitives, was a "new question, and a grave one." Although the question of sojourner slaves (Dred Scott v. Sandford) and fugitive slave rendition (Prigg v. Pennsylvania) had received much attention, the "new question" Pierce referred to was the massive increase of slaves fleeing from traitorous masters. Viewed from
international law, slaves used in an auxiliary way to military operations might be prizes of war. Seizure by this method usually resulted by contact between a belligerent and a neutral power. The issue revolved around property caught between two belligerents. Pierce observed that under the law of nations all enemy alien property might be seized. Lest this grant too much to rebel claims of sovereignty, he noted also that the common law allowed the forfeiture of all traitors' property. These last alternatives, though strictly legal, were not in accord with modern, more humane practice. Nevertheless, the right to confiscate property "immediately auxiliary" to military purposes was unquestionable. Regarding slaves as property, Pierce concluded they could be confiscated, thereby sustaining the 1861 Confiscation Act. If, however, more delicate souls balked at the expedient of calling slaves property for the opportunity of freeing them, Pierce provided another answer. By their approach to Union lines, by their willingness to aid the Union cause, the fugitive slaves proved themselves loyal to the federal government. They were among the few loyal persons in the South, and asked for the government's protection. With this view of the contraband, Pierce gave a most hopeful definition for the fugitives. Contrabands were "negroes who had been held as slaves, now adopted, under the protection of the government."
By defining contraband Negroes as slaves, Pierce seemed to hedge upon their final legal status. The more significant part of his rule, however, lay with the protection the federal government now exercised over contraband. State authority was nowhere to be found, and a striking new, direct link was forged between federal government and individual.

Moreover, Pierce's reluctance forthrightly to declare contraband Negroes to be "freemen" appears to have been more a matter of political expedience. Noting that conservatives preferred to confiscate slaves rather than emancipate and to call blacks contraband rather than freemen, Pierce thought "contraband" a useful, legal term that helped to move public opinion along when it might otherwise balk at a nobler formula.\(^4\)

The 1861 Confiscation Act directed the civil authority in its dealings with fugitive southern slaves, and legitimized the military's practice, but did not, in Pierce's opinion, limit in any way actions derived from the war power. "That law," he wrote, "founded on salus reipublica [sic], transcends all codes, and lies outside of forms and statutes." Fears of border state reaction prompted restraint, like the revocation of Frémont's emancipation edict in Missouri, sprang from the Union coalition's reluctance to shed the "fine-drawn distinctions of peaceful times." Unionists allowed themselves the power to kill or imprison a rebel but not to "unloose his hold on a
person he has claimed as a slave . . . . This reverence for things assumed to be sacred, which are not so, cannot long continue."^5

Divergent elements within the Unionist coalition were coming to agree with Pierce that slavery, more often recognized as the underlying cause of rebellion and war, had to be dealt with. Slavery was the "Goliath of the Rebellion," according to Charles Sumner. Yet what to do and exactly how to strike at the mainspring of treason remained complex and controversial. The Washington National Intelligencer, a conservative organ and no friend of the freedman, pinpointed the problem early in December 1861. Any solution to the slavery problem involved a "question of race as well as a question of political and civil status . . . ." Even with slavery gone, the National Intelligencer's editor believed race "imbedded as it is in great historical laws" would continue to keep black subordinate to white. Articles on Liberia and Negro colonization were featured prominently in the National Intelligencer during this time. In its view the Negro question was unsolvable within America; freedom would cause horrible problems between the races. Emancipation, if it came, had to be accompanied by colonization, for the good of both races.^6

How striking a contrast was Edward Pierce's own view of the future as he recalled the courage the contrabandas of
Fort Monroe exhibited. Whatever the war's ultimate conclusion, Pierce firmly believed that every fugitive slave who defended the Union "had vindicated beyond all future question—for himself, his wife, and their issue—a title to American citizenship, and become heir to all the immunities of Magna Charta [sic], the Declaration of Independence, and the Constitution of the United States." 7

Thus were the two choices presented as America turned upon slavery. The hope of liberty confronted not only the spirit of slavery but also that of race. Long before consensus had been reached to strike forthrightly at the heart of rebellion, the subsidiary and, in truth, more profound question of the quality of freedom emerged. In the process of attacking slavery, the coalition that could agree to attack, often disintegrated when faced with the consequences of its intended victory. What was freedom—what would the war mean—what did the Constitution allow—demand? To paraphrase Lincoln's Inaugural Address, the Constitution did not expressly say. And thus experience did. 8

Different conceptions of the Union, what it was, what it ought to be, necessarily led to competing views of what the Constitution allowed and demanded. Conservatives, border state men and northern Democrats, continued to emphasize the pre war distinctions Edward Pierce found anachronistic. Government,
especially the federal government, was not an innovator, protector or locus of power. The Bill of Rights was a list of wrongs that could not be perpetrated by federal authorities upon states and their citizens. At the other extreme of the Unionist coalition were the abolitionist war advocates, who had had little use for the Constitution in pre-war times. Now, they perceived events opening the way for radical innovations in constitutional substance. Commenting on his rather abrupt switch from castigator of the Union and Constitution to their defender, Wendell Phillips wryly summed up the radical viewpoint: "Do you suppose I am not Yankee enough to buy union when I can have it at a fair price?" The importance was Phillips' belief that the situation in which the nation found itself must bear upon the Constitution's meaning. Months later he would make the point explicit:

Now, I love the Constitution, though my friend . . . who sits besides me, has heard me curse it a hundred times, and I shall again if it does not mean justice.10

Radical abolitionists would often comment on their coalition partners' reverence for the Constitution. Instead of reverence, however, they termed it idolatry. The Union founded upon the Constitution of 1787 was a pro-slavery union, according to abolitionists. The South fought for that old union, and as long as the North clung to the Constitution's
strictures and spirit, it would also fight for the slave power. All of which prompted Gerrit Smith to write that the North's first concern ought to be saving the country. What Smith meant by country became clear when he continued, "that saved, and we can restore the old Constitution or make a new one, but that lost and we shall have need of either." Constitutional form seemed less important than the spirit the country possessed. With the correct spirit, any constitution might do.

Not all abolitionists were as flippant with form nor so willing to distinguish it from substance. Henry Ward Beecher, accepting a pre war view of constitutional allowances, wished that Congress could abolish slavery. But Beecher did not believe the North should violate the letter of the Constitution in order to defeat those who would destroy it. To violate its rules would be an admission of the failure of American institutions. If events proved the Constitution unworkable, then the war was already lost, and the nation severed.

Somewhere in the middle of the spectrum, too antislavery for conservatives and much too moderate for radicals, was the President. Profoundly respectful of the Constitution and aware of his oath to "preserve, protect and defend" it, Lincoln's view allowed him neither the blind, unswerving
faith in form held by conservatives, nor the firey exhilaration of the radical prophets. He was by nature and by constitutional opinion, a man of principle willing to deal with realities. Writing in January 1861, before the tremendous events of the war's first year, Lincoln observed how the Constitution and Union were necessary to the United States, and yet were not the primary reason for the nation's great prosperity. "There is something back of these, entwining itself more closely about the human heart. That something, is the principle of 'Liberty to all.'" Lincoln clearly preferred to keep government practice as closely as that of peace as possible. Just as clearly, he was willing to modify or abandon tradition and opinion for sufficient reason. Lincoln sought consensus among the divergent viewpoints represented within the Unionist coalition. No doubt disturbing to him, and positively terrifying to conservatives, consensus continued to emerge further and further down the road radicals advocated. Gradually but perceptibly, the middle range of coalition opinion became increasingly radical. Lincoln was not "driven" to emancipation, but no one denied that was where the government was "drifting."

Nevertheless, emancipation without regard to Constitution and law gained little support. Leaders of government, most of whom were lawyers, were unwilling to journey too far beyond
accustomed form. Law defined liberty, as Harvard College student Eldridge C. Cutler suggested: "O Law, fair form of liberty, God's very light is on thy brow--O Liberty, the soul of law, God's very self art thou." 15

It was the latter sentiment that radicals had the greater difficulty believing. Too often had they seen lawyers exhibit a soul of subservience to interest and financial reward rather than to the spirit of liberty. They were distrustful of those in power who might well use their expertise to steal the soul of freedom from congressional action, leaving a hollow and debilitating husk in its place. Still, abolitionists recognized that it was Congress that had to act upon war, slavery, and freedom. Like the President, congressmen also demonstrated willingness to synthesize new answers for new situations. But life-long dedications and familiar concepts and language could not be jettisoned, only adapted. Student Cutler was correct when he wrote of law and liberty, "Friends whom we cannot think apart, seeming each others foe--Twin flowers upon a single stalk, with equal grace that grow." The war had to be fought and won in the context of law and Constitution, not from mere adherence to form, but from a genuine faith that liberty had no meaning outside of a legal framework. America defined herself in a legal medium, and that to save
the country, "the majesty of law must be vindicated and upheld."16

The experiment of abolition began in the District of Columbia. The Confiscation Act of August 1861 only affected slaves used for insurrectionary purposes, and then only as they came within Union lines. Whether those blacks were freedmen or contraband was left too much to public sensibilities, as Edward Pierce observed. Even if confiscated slaves were freed, even if all rebel-held slaves were freed, the system of slavery remained. Emancipation of specific slaves did not abolish the legal arrangement of holding property in human beings. The realization that slavery caused the rebellion referred not just to the act of holding slaves. Slavery was also the social, political, economic, and spiritual power slaveholders exercised over the nation. To defeat the South, slavery as an act and a system had to be attacked. How this might be accomplished in the least disturbing way was the question congressmen faced within their own hearing and seeing. Long a target for abolitionists, slavery at the seat of American government began its end that December 1861. Possessing clear power to legislate in "all cases whatsoever," Congress made the District of Columbia an experiment for the nation. There slavery was attacked directly; there it was first destroyed.17
Slavery in the District of Columbia existed more as a symbol of a larger reality than as a major institution in itself. Of the 14,316 blacks living within the District in 1860 only 3185 were slaves. Surrounded by Maryland and Virginia, the District's importance to southerners and northerners was apparent. Southerners feared an oasis of freedom in the midst of bondage, as abolitionists had long dreamed, would surely reduce the District to a fugitives' haven. Even now during the war, with Virginian sensibilities not in high regard, Marylanders worried over the possibility of a freedom too close for comfort. The borderland sentiment of defeating the rebellion but not disturbing social arrangements was aptly mimicked by an antislavery wag when he produced new lyrics to the tune "Yankee Doodle":

Old Fogies sing on every hand--
The little men and bigger;
Wage war against the rebel band,
But do not touch 'the Nigger!'

Strike any other mortal blow
And use extremest rigor
But, lest you 'irritate the foe,'
Oh, do not touch 'the Nigger!',

Circumstance, however, demanded congressional attention, and the House of Representatives signaled its willingness to accept responsibility by its pointed refusal to reaffirm the Crittenden–Johnson Resolutions of July. Those resolutions
pledged the government not to overthrow or interfere with the "rights or established institutions of the States," that is, slavery. Confiscation had breached the principle in any event, and upon Thaddeus Stevens' motion, the House tabled and killed the reaffirmation. On the same day, December 4, Henry Wilson introduced in the Senate a joint resolution aimed at releasing some 60 fugitives interned in the District's jail, charged with no crime and held only on the suspicion of being fugitive slaves.¹⁹

What to do with fugitive slaves was the central question in early December. Antislavery men in Congress had little desire to put the army in the fugitive slave business, arresting slaves they ought to be confiscating. The Administration had directed General McClellan to confiscate escaping slaves reaching his lines under the terms of the August law. District officials, however, continued to arrest fleeing slaves as fugitives. Responding to this, Secretary Seward ordered that persons arresting escapees as fugitives were themselves to be arrested by the military. Slavery might yet exist in the District of Columbia, but neither the Administration nor antislavery congressmen wanted the fugitive slave law rigorously enforced in the nation's capital or to permit the District's jailers to negate confiscation. Jails were intended for criminals, and despite
efforts of the District marshal and warden, they were not to be used to control the slave and freedmen population. 20

Senators Wilson and Sumner were particularly intent upon questioning the whole system of justice as practiced in the District. They cited the black codes then in force as an example of the system's inherent evil, and Wilson offered a resolution reviewing all laws regarding blacks and suggesting the expediency of abolition within the District of Columbia. William P. Fessenden, a moderate Republican from Maine agreed that a complete overhaul of the system of justice at the seat of government was in order. Because of the proximity of thousands of potential contrabands, and because the marshal of the District continued to presume blacks to be slaves, Congress was forced to address slavery in the District. 21

At precisely the same time, leading antislavery figures in and out of Congress were making their argument against slavery ever more forcefully. With President Lincoln in attendance on December 11, Charles Sumner eulogized his former colleague Edward D. Baker, a Union officer killed at Balls Bluff. There was no need to appoint a committee to discover Baker's killer, Sumner declared. The guns and the men at the battle were of little importance in his friend's death. It was the power behind the men and guns, behind the rebellion,
that had taken Baker's life. That power was slavery. In the President's hearing, the killer--no, murderer--was named. So heinous an evil, slavery now took the lives of white men as it had always oppressed the lives of blacks. 22

Gerrit Smith wrote Representative John Gurley (R, Ohio) criticizing the special powers Gurley wanted the government to assume over the liberated slaves. "The greatest sin of our country," Smith wrote, ". . . is the assumption of special powers by her white race over her other races." A mass removal of freedmen to the unfavorable climate and soil of southern Florida, as Gurley advocated, would doom the freedmen to failure and ordain future oppression. Rights should be equal regardless of race, Smith emphasized. Congress must not only abolish slavery but entrust blacks with "all the rights of manhood." 23

No longer could leaders presume to make rules for freedmen without some acknowledgment of their right to be consulted and decide upon their own future. Antislavery leaders began regular lectures at the Smithsonian Institution in Washington, featuring Horace Greeley and Wendell Phillips. The government ordered Washington police not to capture fugitive slaves. All the antislavery arguments, speeches, and hopes reached a central conclusion: slavery was based upon, and had become in itself, a dehumanizing philosophy. It enslaved millions.
In slavery's attempt to attain absolute supremacy, it dehumanized whites, first by leading them into the sin of racism and then by killing them in civil war. Charles Sumner's point was exactly this--rebels did not kill northern soldiers, slavery did. Treason did not threaten the Union, slavery did. Slavery was anti-human and had become malignantly anti-Union. Lincoln pondered what he had heard, what went on around him, and sought a scalpel for the cancer.\textsuperscript{24}

In January 1862, fugitive slaves were again the medium by which Congress discussed slavery in the District of Columbia. James Grimes of Iowa called up a resolution reforming the District's system of justice and discharging all unindicted persons in District jails. Kentucky's Lazarus Powell (D, Kentucky) moved to amend the resolution by excluding fugitive slaves from the dismissal order. In answer to Powell, Grimes pointed out the injustice of the existing system that gave cash incentives to District officials to capture and imprison every Negro they saw as a fugitive. Fellow Republican Lot Morrill observed that the judicial reform resolution was not emancipation but simply a dismissal from imprisonment. Conservative Maryland senator James Pearce agreed with Morrill, asking for a more precise wording to clarify the resolution's meaning. Yet the resolution's
relationship to slavery in the District was clear to all.\textsuperscript{25}

The lengths to which Powell might travel (at least rhetorically) to safeguard slavery were remarkable. The Kentucky senator argued that a black suspected of being a fugitive slave, and therefore imprisoned, could always sue for a writ of habeas corpus to secure a hearing on his freedom. Jacob Collamer (R, Vermont), in disbelief at what he had just heard, rose and inquired whether Powell accepted the \textit{Dred Scott} decision, in which Chief Justice Roger B. Taney declared that a black person had no rights that white men were bound to respect. Powell's answer, surprising in light of contemporary thinking and subsequent events, was to distinguish political and civil rights. The Court referred only to political rights in its 1857 decision, Powell maintained. Civil rights were unmentioned. The distinction, though plausible, must have sounded as disingenuous to congressmen, for Powell's amendment to exclude fugitives from the discharge order was defeated overwhelmingly. White southern endorsement of civil rights for free blacks was barely imaginable, and not from Lazarus Powell. With slight modification, the bill to discharge the jail's occupants passed the Senate 31 to 4.\textsuperscript{26} Although the measure was soon lost in the House, subsequent congressional attention to slavery in the District was more determined. By its adoption
of Grimes' bill, the Senate had demonstrated its willingness to legislate on the subject of slavery. Yet District marshal Ward H. Lamon had not noted the changed feeling regarding slavery. His behavior, which had heretofore been the expected, now was found insolent and unacceptable. As the possibility and desirability of "transforming every slave into a man and a freeman, henceforth to be protected as such under the national ensign" was openly stated and advocated, even those who did not agree with such a far-reaching proposal sensed the changed atmosphere that allowed the proposal to be made in the first place. Commenting on Dr. Henry T. Cheever's antislavery lecture at the Smithsonian, the National Anti-Slavery Standard's Washington correspondent summed up the situation: "It will seem hard to go back to the Old Union, if the slavemasters and their manners are to come back with it!" 27

Several bills to abolish slavery in the District of Columbia were introduced at the beginning of the session. Attention focused immediately upon the fugitive slave issue both for its more emotional appeal and its safety. Lazarus Powell had been only partially correct in his objection to the Grimes' resolution discharging fugitives in area jails. The discharge would have been only a glancing blow at slavery, and Republicans were only willing to take that tentative
step. Outright abolition was a momentous step, and the fear of border state reaction dampened antislavery initiative.\textsuperscript{28}

As January passed into February the general feeling was that the time was approaching when the government must crush the rebellion or acknowledge the separation as final. Abolitionists still welcomed the war for the possibilities it brought forward, but they showed increased concern that compromise might yet deny the necessity of striking at slavery. This danger of a "miserable patch-up" with the Confederacy doubtless spurred antislavery leaders in Congress to act while they were able. As with the fugitive slave dischargement bill, the Senate was more willing to act against slavery than the House. On February 13, the upper chamber reported Henry Wilson's bill to abolish slavery in the District, and began consideration as in Committee of the Whole.\textsuperscript{29}

The bill was slightly altered from Wilson's original, first introduced on December 16. Its major feature remained intact, however. S. No. 108 abolished slavery in the District and granted compensation to slave owners. Some Republicans opposed compensation to slaveholders, yet it was generally conceded that compensation to loyal masters was a provision necessary to secure passage in the more conservative House. The Senate took up Wilson's bill on February 27, and scheduled debate for the following week.\textsuperscript{30}
Another bill, introduced at the same time by Wilson, is important to understand his abolition bill. On February 24, the Massachusetts senator called up his bill to repeal "certain laws and ordinances in the District of Columbia relating to persons of color," that is, the District's black code. The Maryland state law on slavery and color discrimination was extended over the District when first founded to sanction slavery and later used to discriminate in treatment for blacks, slave and free. Wilson's bill repealed it, and would specifically withdraw authority from the Washington and Georgetown city councils to legislate on blacks. Previously enacted municipal race laws would be voided. Finally, the measure required equal treatment before the law for whites and blacks.

Wilson's language was aimed toward repealing the effects and concomitant attributes of slavery rather than at positively securing rights for blacks. The races would be equal before the law as the logical result of the black code's repeal. Abolitionists outside government had already raised the issue of the post-slavery status of blacks, positing a somewhat hazy vision of a color-blind society. They noted Wilson's proposal to repeal the black code and termed it "of full equal importance" with his abolition bill. The repeal of the black codes, linked with Wilson's bill, was the
first attempt to give legal form to the abolitionist vision, to legitimize a policy spoken of only in radical circles. It gave an important definition of freedom for the freedmen and confirmed the long-held view that slavery could not exist without positive law. Freedom, on the other hand, was natural and required no special legislation. Wilson's two bills suggested that the abolition of slavery meant something more than a limbo world of free and not equal. 31

Before Wilson's abolition bill was debated, the President sent to Congress his solution for the slavery problem. Briefly, Lincoln invited the individual states to begin gradual, compensated emancipation, with the federal government paying the cost. Two serious differences between this proposal and Wilson's, aside from the national reach of Lincoln's idea, were the locus of power and the time required for that power to work. Under Lincoln's proposal the states, and not Congress, were the agents of emancipation; the federal government's presence was limited to that of accountant only. This hardly created the protector's role that abolitionists contemplated. Perhaps of more importance, state-sponsored emancipation would require years to complete, so as not to disturb unduly the social and economic fabric of the border states. Lincoln's proposal displayed consti-
tutional principles and a need to assert control over events. Yet, if anything was true about the first year of the war it was the power of events to shape and force change from often unwilling participants. Abolitionists recognized this and applauded; conservatives recognized and trembled. "The power of events more mighty than President or Congress" were at work. Lincoln's gradual, compensated, state-sponsored emancipation plan was duly noted, commented upon, and proposed to the states. The same powerful events allowed its emergence because they allowed any attack upon the engine of rebellion—slavery. And yet, it only obscured the horizon. In a real sense, Lincoln's proposal was irrelevant. 32

In the renewed bitterness that the antislavery measures engendered between radicals and more conservative members of the Unionist coalition, Congress finally debated the District abolition bill. The New York Times, in support of Lincoln's gradual proposal, assured its readers that slavery would never resume its former power, although the Times did not assume slavery's total destruction. The Liberator warned against an evasion by the President or Congress of the solemn duty to proclaim liberty, citing Lincoln's proposal. And a great emancipation meeting at the Cooper Institute in New York heard letter from senators Sumner, Wilson and David Wilmot (R, Pennsylvania) calling for new vigor in the fight
against slavery, the "omnipresent traitor." Wilmot, the man who had lent his name to the anti-extension of slavery proviso that became the heart of Republican pre-war ideology, boldly stated Congress' duty to "uproot and eradicate forever any local institution, law, custom, usage" that endangered the country. He meant slavery. Sumner, already proposing a theory of reconstruction, remarked that if slavery had not died by the rebel states' suicide, Congress might prohibit the peculiar institution by the language of the Northwest Ordinance.

As debate on Wilson's abolition bill began, the Senate agreed to the first amendment proposed by the District committee. S. No. 108 was rephrased to emancipate those persons held to service "by reason of African descent." Then, using the language of the Northwest Ordinance, "neither slavery nor involuntary servitude" would be allowed within the District. Compensation was set at $300/slave for loyal masters who filed for payment. Other committee amendments included making attempted re-enslavement a felony, with a five to twenty year prison sentence, and repeal of all acts of Congress or Maryland inconsistent with the abolition of slavery in the District.

Immediately upon the Senate's consideration of the bill, Garret Davis (D, Kentucky), a noted conservative, moved to
amend the proposal by forcing colonization of all District freedmen. Claiming that he knew well the "negro nature," Davis argued that freedom would guarantee freedmen's indolence and lead to a race war. Fearing the general policy of emancipation without compulsory colonization, the border state senator prophesied a future time when southerners would deal with liberated slaves remaining in the United States: "the moment you reorganize the white inhabitants of those [southern] States as States of the Union, they would reduce those slaves again to a status of slavery."³⁶

There was no concern for ex-slaves in Davis' remarks; the obvious intent of his amendment was to kill District abolition by attaching mandatory colonization. The importance of Davis' prophecy lay in the educational value it held for Republicans. The intransigence with which Davis and other conservatives fought any attack on slavery and the forthright announcement of southern intentions to overturn, at the end of the war, whatever antislavery measures had been taken, must have deeply impressed congressmen in 1862. Davis' prediction and others together with subsequent actions in Congress and across the nation were crucial in shaping Republican attitudes about abolition and the quality of freedom to be secured for blacks. Davis' one remark might have appeared isolated and been forgotten had not a long four
year war history and post war actions confirmed southern intrinsigence in every detail.

Consideration of S. No. 108 resumed on March 18. Garret Davis' amendment for compulsory colonization was itself amended by James Doolittle (R, Wisconsin), whose addition made the colonization feature subject to the freedmen's choice. Senator John Hale (R, New Hampshire), a long-time antislavery leader in Congress, urged the senators around him to do what was right and not draw back from abolition because of possible negative consequences. Fear was no reason to forestall freedom.

The three senators, Davis, Doolittle, and Hale, saw the District's abolition bill as an experiment for the nation, yet each approached the experiment's results with different expectations and predictions. Davis opposed abolition. Hale, on the other hand, favored it. For James Doolittle, however, the issue was not so clear cut. Doolittle was a strong proponent of freely chosen colonization, but he also accepted to a great degree radical notions about freedom. The Wisconsin senator declared that the freedom given the slaves ought to be more than "a thing in name, it should be a thing in substance, freedom in fact." For that kind of freedom the slave had to be freed from his master and from the control of white racism. This was a succinct statement of
the abolitionist theory and program. Yet Doolittle also accepted the reality of Garret Davis' America, believing that the qualitative freedom he desired for the ex-slave could not be created within the environment of the United States. The antagonism between the races was too great, southerners' intransigence too pronounced, and Doolittle's own faith in the future too weak to allow him to believe in the possibility of freedom for the black in America. Even those who wanted substantive freedom for blacks had to reckon with the "negro hate" endemic to the American political and social environment. Conservatives who wanted the Union preserved as the time-tested means of protecting slavery had to be dealt with. To drive the hate from them would take a mighty act. "Not even death or hell could do it," wrote one abolitionist, "in fact only God alone by a miracle can do it." In the absence of a miracle, James Doolittle abandoned hope.

Despite warning from border state men that slavery's demise at the seat of government would drive their constituents out of the Union, the Senate adopted Doolittle's amendment to Davis' colonization proposal. It was a compromise to bring into the abolition coalition conservative elements. Doolittle's amendment was opposed by members of the most conservative and most radical camps, each for his
own reason, opposing a compromise that made abolition with colonization more certain. Yet, once having adopted Doolittle's ameliorating language the entire colonization proposal was defeated when a Senate tie was broken by Vice-President Hannibal Hamlin's vote. The episode had shown, however, the Senate's sympathy with some form of colonization, and its less than total endorsement of immediate, unconditional abolition.³⁸

Although losing the first round, Garret Davis and his conservative colleagues were unwilling to concede the issue. The goals of the war were changing, Davis charged, in direct contradiction of the Crittenden-Johnson Resolutions. Republican senators were experimenting with the District to see how far moderate men might go along the radical path; abolition in the District was only the "entering wedge" for universal abolition. "You want to get the head in, and then you intend to push the monster through," Delaware's Willard Saulsbury declared. Representing the least populous slave state and the state with the fewest slaves, Saulsbury demonstrated his unqualified commitment to the idea of slavery by introducing an amendment to require freed District slaves to emigrate to free states within thirty days of their release from servitude. Clearly a delaying tactic and one meant to embarrass Republicans by pointing up northern racism,
Saulsbury's amendment was typical of conservative opposition to any move against the institution of slavery. 39

Republican perceptions and expectations for abolition were interesting in the light of conservative opposition. Divisions between radicals and moderate elements were apparent. Henry Wilson spoke against a Washington city ordinance that presumed color as a sign of slavery. Abolition, Wilson argued, would convert personal chattel into free men and wipe out hateful laws that oppressed all blacks, slave or free. Remembering Wilson's sponsorship of the anti-black code bill, his view of freedom appeared broad and comprehensive. 40 His repealer of the black code only made explicit what abolition itself would achieve.

On the other hand, there was James Doolittle, already discussed. The middle ground was occupied by men like Iowa Republican James Harlan. Harlan carefully emphasized the limited scope of freedom gained by abolition, particularly noting the lack of political rights and the franchise. Freedom required "simply the right to enjoy as they [freedmen] choose the proceeds of their own labor." Yet Harlan's "simple right" appeared hardly simple at all to conservatives who looked backward to the days when blacks had "no rights which the white man was bound to respect." Harlan's "simple right" was nothing less than the foundation principle of
American middle class society. Each person reaped the benefits of his own work. Harlan himself made clear the implications of his view when he criticized the fears of border state senators Saulsbury and Anthony Kennedy (D, Maryland). Instead of the race war they predicted upon slavery's abolition, why should not the government protect the ex-slaves if in fact they were the weaker elements of society? Would not whites do as much for the weaker members of their own race, Harlan asked. Although Harlan did not specify whether the locus of protection might originate at the state or federal level, the idea of government intervention for the protection of blacks was novel, innovative, and, depending upon perspective, entirely hopeful or despairing. Republican moderates were open to the new situations the war created and their position allowed for movement toward a more radical vision. In attempting to delimit political freedom, Harland endorsed an activist government role to protect the freedmen in their civil freedom. One can imagine border state and conservative fears when moderates, attempting to voice their moderation, ended up being radical. But that was the nature of the war.41

To be sure, other Republicans expressed no sympathy with innovative concepts of freedom and refrained from seeing any wider implication for abolition in the nation. Yet all acknowledged S. No. 108's importance. While its provisions
might not meet exact hopes and philosophies, it was acceptable to a broad antislavery coalition in Congress. No less a radical than Charles Sumner, a man who glori ed in his own prophetic stance, saw the incremental nature of abolition in the District of Columbia. Sumner supported compensation for loyal masters not from any belief in the slaveholders' right to reimbursement, but from the knowledge that Congress must act "in the light of existing usages, and even existing prejudices, under which these odious relations [slavery] have assumed the force of law." Sumner's magnanimity doubtless resulted in part from confidence that the votes existed to abolish slavery in the District, and he was careful to distinguish compensation (which he supported) from ransom (which he opposed). Once slavery was gone, Sumner believed a fundamental change would occur in America. Society, courts, and laws would be refined, purified, and elevated. Like his Massachusetts colleague Henry Wilson, Sumner also envisioned the dawn of substantive freedom for blacks--marking them not as ex-slaves (freedmen), but as co-heirs with whites of the possibility of America---free men: "What God and Nature decree rebellion cannot arrest."42

The length and depth of feeling connected with the Senate's debate on abolition highlighted the bill's importance. The pro-colonization Washington National Intelligencer noted
that both supporters and foes of the measure saw it as something more than its specific provisions, either as an "entering wedge" for more radical projects, or a symbolic "ban of interdict" against the social system of the slaveholding states. The National Intelligencer, like other supporters of Lincoln's gradual, compensated, state-sponsored emancipation, did not question congressional power to abolish slavery in the District, only congressional wisdom. Noting that the District's Board of Aldermen opposed abolition and found the District "an asylum for free negroes, a population undesirable in every American community," the newspaper urged referral of any abolition bill to the people of the District for their concurrence. Although left unstated, such a move would have been the death of abolition, for the District's whites (the only qualified voters) would never approve the measure. When Senator Waitman T. Willey (Unionist, Virginia) proposed a District referendum on abolition, the Senate rejected the amendment convincingly.

Various attempts were made to amend S. No. 108 while in Committee of the Whole. Originally, no provision was included for enforcement of freedom for the ex-slaves. The assumption that color was a sign of slave status would be abrogated in the District, and that would be enough. Nor was there provision for government intervention to secure
freedmen's rights. Abolition destroyed slavery, and with slavery gone, freedom and rights revived automatically. Blacks would then take care of themselves. Gradually, modifications were made to this absolute laissez-faire attitude toward freedom. The abolitionist concept of a bi-polar world of free or slave, without any room for areas of gray worked in theory (and certainly was held as the ideal by many in and out of Congress). But by their nature as lawyers and their profession as legislators, congressmen were pre-disposed to establish some rules for protecting blacks in their newly won freedom. Therefore, amendments were added to S. No. 108 which secured freedmen the right to testify at compensation board hearings, thereby safeguarding their interest in freedom and providing a check against payment to disloyal slaveholders. Ex-slaves would receive certificates of freedom, not because they would be needed in the District, but in recognition of the continuing slave status of surrounding Maryland and loyal Virginia.

On April 3, S. No. 108 came to the Senate propoer from the Committee of the Whole. Just prior to passage, James Doolittle successfully attached his colonization amendment to the bill, authorizing $100,000 for the voluntary colonization of the District's blacks. The amendment passed the Senate 27 to 10, all ten nays coming from Republicans.
Colonization was a feature needed to gain enough moderate votes to ensure the bill's passage. So as S. No. 108 stood in final form, moderates had demanded and received significant concessions on two key issues. Compensation would be given to loyal masters, and colonization remained a possibility. Radicals had only retained one major characteristic of their original proposal—abolition would be immediate.\textsuperscript{45}

These compromises were insufficient to win over die-hard conservatives. Both Lazarus Powell and James Bayard (D, Delaware) made long anti-abolition speeches, despite the majority now solidified behind abolition. In his final effort to halt passage, Bayard called his colleagues back to a consideration of the founding principles of the republic. He did not suppose that Americans of 1862 were more moral, or wise, or understood constitutional law better than did their forefathers. Those past leaders would not approve what was about to happen. They would not understand, as Bayard himself did not understand, a perspective oriented toward the new rather than the old, toward the possible and not the impossible, from the forfathers themselves to the present generation and its children. The past no longer exercised its iron rule upon the needs of the present. Bayard and his compatriots did not grasp the point, had in fact been caught up in history, and now were being left behind. Those with
eyes had seen and with ears had heard. A majority of the Senate had seen and heard. On April 3, the Senate passed the abolition of slavery in the District of Columbia 29 to 14. The New York Tribune put it squarely: "The world does move." 46

The abolition bill went to the House of Representatives amid conservatives' undying hopes that drastic alterations might yet be made and amid radical trumpeting of the bill as a turning point in the fight against slavery. 47 The members of the House were confronted with novel and momentous questions in which they would apply the Constitution to the "new condition of things." Representative Benjamin F. Thomas (R, Massachusetts) was content to allow the executive, acting through the war power, to attack slavery in the rebel states. Where Congress had power, as in the territories and the District, it should act. While supporting abolition, congressman John T. Nixon (R, New Jersey) preferred a gradual approach. Even so, Nixon warned, the slave power must not expect unlimited conciliation. The South had to be taught that the Union would be preserved. To accomplish that goal, every slave might be armed against his master, and every white driven from the Gulf Coast. The South would become a land of enfranchised Negroes. Of course, this was not Nixon's recommended policy. Rather, it was the limit he would go to
preserve the nation. Rhetorically at least, it was far indeed. 48

Francis P. Blair (R, Missouri), the first Republican congressman elected in a slave state, exhibited the racial tension that permeated segments of the northern alliance. Blair favored emancipation but only with colonization. The rebellion, Blair maintained, did not start over the slave question but over the racial issue of Negro equality. Southerners feared forced emancipation and subsequent amalgamation, and rebelled in order to preserve white superiority. Put that way, it was easier to understand the war that raged across the nation; it would have been a crime not to have rebelled if preservation of white superiority was the goal. Blair’s own racial attitude was so limiting that he, like other proponents of colonization, could not conceive of freedom for the ex-slave protected by law alone without the moral sense of the people backing equality. How long would the North support an army trying to make the races equal? Blair doubted the effectiveness of law or arms as means of maintaining the freedmen’s liberty. Proponents of colonization observed and/or shared their countrymen’s despair over coexistence between the races. Although supporting colonization, Blair assumed that there would be both government intervention by law to secure liberty and also
efforts to create some type of equality between the races.
He believed those efforts doomed to failure; he did not
argue against a non-existent option.49

John J. Crittenden and others opposed abolition, fearing
alternately the effect it would have on white southerners
and on the slaves themselves. "Men cannot learn to be free-
men while they are slaves," said Representative Edward H.
Rollins (R, New Hampshire), putting aside the antislavery
argument that freedom was natural and inherent and that
slavery was a condition learned only through positive law.
Congress extended that positive law over the District early
in the century. If Congress now abolished it, the natural
condition of the person would be restored. The Constitution
was a "new Magna Carta to mankind," according to Judiciary
Committee chairman John Bingham. The original Magna Carta
pertained to freemen only; the Constitution's wording was
broader, referring to persons. Bingham believed "person"
referred to slaves as well as free. Rights to life and liberty
were held equally before the law, and the slave, who Bingham
believed as a natural born citizen, possessed those rights.
Citizenship did not depend upon possession of the franchise
or eligibility for office. These privileges might flow from
citizenship, but could not define it, since women and children
did not vote and yet were undeniably citizens. The principles
found in the teachings of Jesus and the Declaration of Independence—that all are created equal—was also implicit in the Constitution, Bingham maintained. Abolition would, according to like-minded congressman Samuel C. Fessenden (R, Maine), transform the slave whose rights were denied into a free man with rights "upon which none can trespass with impunity." Free people, black and white, would be secured in their freedom by the same shield of the "nation's majesty." 50

James Ashley (R, Ohio), who had worked with Senator Morrill in framing the abolition bill, disliked some of the Senate's amendments, especially the colonization feature. Still, he urged the House and all friends of emancipation to support the bill. The resistance to abolition in the District was futile. "God is marching on," Ashley concluded, quoting from Julia Ward Howe's new poem, "Battle Hymn of the Republic." Owen Lovejoy, a staunch antislavery leader, revealed the emergent consensus against slavery founded upon a shifting mixture of constitutionalism, law, and moral principle: "I am tired of all the twaddle about due process of law for the master when everybody knows that every slave in the District of Columbia and in the United States has been robbed of his freedom without process of law." After only two days of debate on the House floor, the abolition bill passed 92 to 38. Negative votes came from Democrats
and other conservatives who had unsuccessfully tried (as in the Senate) to kill the measure by adding a mandatory District referendum. Unyielding though they were, conservatives in the House could not change the inescapable fact that the war had significantly altered the realm of the possible and had given those who were willing to act, the chance to act.51

"Let Ethiopia lift up her hands to God, for a great good is coming out of this war," exclaimed the black minister at Washington's Bethel Church. In the shadow of the Capitol, two to three hundred blacks gathered to give thanks for their liberation with such exuberance that one white man present called it "a spectacle for men and angels." The dawn of freedom, the new presumption of liberty rather than slavery, was greeted with similar enthusiasm among the anti-slavery elements of the Unionist coalition. Confident of the President's approval despite the bill's immediate rather than gradual approach, antislavery leaders believed that abolition in the District was the first profound result of the war. In the face of the suffering and misery already experienced and that yet to come, "I thanked God even for this war," wrote a correspondent to the New York Tribune. The continued suffering would, indeed, have its purpose, as the Washington columnist for the National Anti-Slavery Standard noted; abolition in the District of Columbia was only the
first step of the government toward "universal emancipation." 52

Conservative opinion accepted the abolition of slavery in the District with resignation, unceasingly expressing fear about the future. Both the Washington National Intelligencer and the New York Times had supported gradual emancipation rather than immediate abolition. Both now expected sever disruptions in District society. Slavery might well be doomed as an institution, but "turning loose" two thousand slaves unprepared for freedom betrayed conservative concerns. They were afraid for white society and government. Members of the Unionist coalition who tolerated abolition as long as it took years for fulfillment or if it was coupled with colonization shared the backward looking and essentially pessimistic psychology of pro-slavery advocates, at least to the extent that each group despaired over a future linked with abolition. Pro-slavery forces rejected emancipation and abolition outright; gradualists and colonizationists were forced to accept abolition but did not like it. The interplay between these conservative elements of the northern coalition with the more moderate and radical members provides a key for understanding the Union's movement toward emancipation, abolition, and freedom. As the North looked for more effective means to defeat the
South, the Republican-abolitionist view of the slave power suggested the area to strike.\textsuperscript{57}

Yet conservatives' fears illustrated the tension that existed not only within the political coalition ruling the North, but also within northern society. A correspondent of Treasury Secretary Salmon Chase, though favoring the District abolition bill, proposed the new freedmen work as grave diggers at the plains of Manassas. This employment was "immediate and suitable" and allowed "judicious surveillance" of the freedmen as they prepared for citizenship. Some white also saw justice in black men burying white soldiers as a form of repayment. White ambivalence toward freedmen confined the great shouts of hallelujah to churches and private places. When two blacks serenaded Secretary Chase with a private concert, they apologized that the concert was not public and "more brilliant." They demurred because of the "present excited state of the public mind."\textsuperscript{54} Private concerts and graveyard details were. sobering reminders of the reality of American society.

Abolition in itself, as momentous as it was, existed in tension with the prevailing fears and prejudices of the time. The bestowal, or rather, reaffirmation of freedom for the black would gain meaning through experience and not soley by intention. The reality of freedom would be the conjoining
of experience and intention. Already in April of 1862 some Republicans had learned from their experience of southern and conservative fearfulness. There were members of the Unionist coalition who already realized there could be no limbo of neither slave nor free; "ex-slave" and "freedmen" were inadequate substitutes for the status of free person and citizen. The accomplishment of the embodiment of freedom is the history of the war itself. Some Unionists realized early in the war that the freedom given blacks meant more than the mere absence of legal bondage. Rather, it embraced the possession of equal rights before the law. A more general acceptance of this abolitionist vision of war possibilities required far more time for fulfillment than had abolition itself. Yet the two were linked from the beginning and remained linked throughout the war era. As with abolition, the issue of qualitative freedom also emerged first in the District of Columbia. Begun during the debate on the abolition bill, it continued long after abolition's passage. "Of course" the District's black code must now be swept away, one abolitionist wrote. It was the only way blacks had a chance for survival.55

Lincoln's approval of the District abolition bill on April 16 set the compensation procedure in motion, and three commissioners appointed by the President began hearings
late in the month. Congressional attention did not focus on the mechanics of compensation (save for an explanatory bill passed in July), but upon the questions arising as a consequence of abolition. During the debate on the abolition bill, Republican senator John Sherman had described the District as the place where prejudice against the black was least. Subsequently, he argued, it was a perfect place to experiment and see the highest possible degree of self-government blacks might attain. Sherman's view made sense, not because of any marked lack of prejudice, but because Congress possessed unquestionable power to experiment in the District. How to conceive the consequences of freedom proved more difficult, however, than recognizing that they were present.

While abolitionists led the rest of the Unionist coalition and Congress to abolition in the District, they did not have nearly so unified a viewpoint when it came to dealing with freedom's consequences. Gerrit Smith and Henry Cheever, among others, maintained that freedom was freedom and if the Constitution was interpreted correctly, no special laws or constitutional amendments were necessary. So long as oppressive hands were kept off the former slaves, they might be left alone "where the rest of us are in the hand of God, and subject to the great law which feeds the industrious and
sometimes lets the idle starve—." This passive, non-
governmental approach to freedom was popular among religious-
based, educational efforts as had already begun at Fort
Monroe and Port Royal.59

But the key condition necessary for the non-governmental
approach to succeed was the absence of oppression. Even
hesitant antislavery partners recognized the problems posed
by oppressive, race-minded laws that existed in many northern
states. In particular, the new constitution of Illinois
drew wide ranging criticism for its exclusion of black
immigration and suffrage. Horace Greeley's New York Tribune
viewed the anti-black clauses with sadness, hoping their
authors might yet live to be ashamed of their work. The
Washington National Intelligencer, though hardly in favor of
racial equality, suggested the tenor more radical coalition-
ists took when it remarked that the "barbarism of Illinois
shall not long survive when the barbarism of South Carolina
is no more."60 Although preferring the Constitution and laws
as they were (if correctly interpreted), Gerrit Smith was
aware of the reality of oppression in race-centered laws that
jeopardized the quality of newly won freedom. Believing that
slavery once abolished would never return, Smith nevertheless
reserved for the federal government the role of guarantor
and shield for the rights of all. The guarantee of a repub-
lican form of government ruled out black laws like those of Illinois and other states. The citizenship rights of all must be preserved in spite of those laws. The Dred Scott decision was repealed, Smith explained, and qualifications for civil and political rights now must be the same for both races:

Men will then buy and sell, and exercise all the rights of citizenship, not because of their complexion, but simply because they are men . . . . The denial to manhood of the rights of manhood will then be seen to be the guiltiest and meanest crime.61

Similarly, the New York Times (not a member of the radical vanguard) recognized the need to do something for the freed blacks and accepted the responsibility as a northern one. Putting aside for the moment the question of congressional authority, the Times' editor saw two alternatives. One alternative, proposed by Charles Sumner, would consider rebel states as territories, giving Congress a plenitude of power to secure freedmen's rights. Yet this option would not please Lincoln, a cautious man and not one for constitutional "shell games." The Times' editor dismissed that option. He also rejected out of hand an abandonment of the former slaves to their own devices from fear that southern intransigence would surface the moment the war ended. The editor feared that the intransigence might go so far as southern
judges declaring that the war had not abrogated the right
to hold property in men. To prevent that calamity, the
*Times* editor suggested that freedmen be made wards of the
federal government, removed from state court jurisdiction,
and given protection through federal courts or special courts
created for the purpose. The proposal, in many ways similar
to the Freedmen's Bureau courts and access to federal courts
guaranteed in the Fourteenth Amendment, illustrated how
seriously some members of the Unionist coalition took the
question of blacks' future. Once the option of colonization
was dismissed and the reality of an emergent bi-racial society
acknowledged, the question of how to secure black rights
arose. Congress addressed some of these issues rather
quickly, again in the nation's laboratory, the District of
Columbia.62

In May Congress reformed the law governing jurors in
the District. Limited to white male citizens between 21 and
65, the reform aimed to prevent those who were known to hold
rebel sympathies from serving on grand or petit juries. No
debate centered on the racial aspect of white only jurors.
Presumably the judicial process was to remain under absolute
white control. Yet two months later, in the supplemental
act to the abolition bill,63 Sumner inserted an amendment
that guaranteed participation of witnesses in all District
judicial proceedings without regard to color. The right to testify before compensation board meetings had been secured for blacks by the original abolition bill. Sumner's amendment guaranteed black testimony in all judicial hearings and trials, a small but important step toward the civil equality he and other abolitionists envisioned. His proposal was adopted by both houses. 64

Even before the abolition of slavery in the District, James Grimes had proposed the creation of an educational system for the District's blacks. The system was segregated and, though it was the first created to secure education for black children, its step toward equality would have been debatable at best had not Henry Wilson successfully attached an amendment to the measure. Retrieving a section from his bill to repeal the black code in the District, Wilson's amendment struck down all District and city provisions that distinguished crimes and punishments on the basis of race. This provision, accepted without debate in both houses, marked the beginning of the legal presumption of freedom, so color was not to be the reason for crime or more severe punishment. If an act was a crime, it would be so for both races, and the punishment would be the same. In these tentative steps blacks began the long process toward equality before the law. 65
These steps were small, indeed, when judged against the standard of complete equality. And yet, small as they were, these steps were a startling advance over what was imaginable hardly a year before. The contours of struggle were formed in surprising detail by mid-1862. Equality before the law, government power, and direct federal-individual relationships were all present as legitimate options for the consideration of policy makers. The government had only to assess their benefits in light of opportunities and necessities.

If there are such things as currents of history, unfolding struggles, or divine plans, if men and women do learn from experience, shaping and being shaped by it, then the opening of freedom may be easier to understand. Yet understood, it is no less profound. The evolving notion of what abolition must mean was the first fruit of the lived experience of war. No greater sign of the change in America could be found than the abolition of slavery at the seat of government one year after the firing at Charleston harbor.
1. Edwin Stanton to General William Robinson, printed in the Washington National Intelligencer, January 21, 1862. Stanton quoted Matthew 16:18, the text that eight years later Vatican Council I used to define the doctrine of papal infallibility. For Confederate designs on Washington, see OR, Series I, 51: part 2, 391.


3. Edward L. Pierce, Enfranchisement and Citizenship: Addresses and Papers (Boston: Roberts Brothers, 1896), 19, 22-23. Although published in November 1861, Pierce wrote his article in August. A. W. Stevens, who edited Enfranchisement and Citizenship in 1896, noted that the essays therein covered the times when the nation "first groped and stumbled and then decisively acted" for the freedmen, ibid., iii-iv. In his original version to the President, Secretary of War Cameron contended that contraband slaves were entitled to "freedom and protection" by the federal government. This section of the report was suppressed in the final, official version. For questions over Cameron's antislavery motives, however, see National Anti-Slavery Standard, December 7, 14, 1861.


6. National Anti-Slavery Standard, November 30, 1861; Washington National Intelligencer, December 5, 1861, February 7, 1862. Herman Belz argues that the disposition of the freed slaves was a "great unresolved issue in 1862" noting that most comment focused on where freed slaves would reside, not in
their status or rights, Belz, "Protection of Personal Liberty in Republican Emancipation Legislation of 1862," Journal of Southern History (1976), 42:398. This seems true enough for some Republicans of the Unionist coalition, but not all and certainly not for abolitionists. See below the sentiment expressed by Gerrit Smith in his letter to John A. Gurley in the National Anti-Slavery Standard, January 4, 1862.


8. Lincoln, Coll. Works, 4:267; Washington National Intelligencer, December 7, January 21, 1862. See also generally, Hyman, More Perfect Union, 3-16, for the idea of the Constitution shaping quarrels.


16. Ralph Waldo Emerson, Journals of Ralph Waldo Emerson, with Annotations, edited by Edward Waldo Emerson and Waldo Emerson Forbes (Boston and New York: Houghton Mifflin Company, 1913-14), 9:448; National Anti-Slavery


18. Ingle, Negro in D. C., 11; National Anti-Slavery Standard, December 28, 1861, April 26, 1862; Liberator, April 11, 1862.


20. National Anti-Slavery Standard, December 7, 14, 1861. There was a report that an Arlington "madam" kept her Virginia slaves boarded in the District jail, having moved from Secession to the District, ibid., December 7, 1861.


22. Ibid., 50, 55.


24. Ibid., January 4, 11, 1862.


26. Ibid., 318-19, 321.

27. A resolution citing Marshal Lamon for contempt of Congress for refusing to allow senators to inspect the District jail passed without division, ibid., 444. See also National Anti-Slavery Standard, January 18, 25, February 1, 1862.

29. *National Anti-Slavery Standard*, February 1, 8, 22, March 1, 1862; *Cong. Globe*, 37:2, 785. The House of Representatives was occupied with consideration of a tax bill, and Speaker Galusha Grow, when appointing committees in July, had placed too many conservatives on key committees, such as Judiciary and Territories, *National Anti-Slavery Standard*, March 8, 15, 1862.


32. Hans L. Trefousse, *The Radical Republicans: Lincoln's Vanguard for Racial Justice* (Baton Rouge: Louisiana State University Press, 1968), ch. 6; *National Anti-Slavery Standard*, March 15, 29, 1862. See also Betty L. Fladeland, "Compensated Emancipation: A Rejected Alternative," *Journal of Southern History* (1976), 42:170, for the view that any form of compensated emancipation was dead before the Civil War. For conservatives' fears see Amos Kendall to Lincoln, in the Washington *National Intelligencer*, February 22, 1862. For conservative support of gradual emancipation, see the editorial in *ibid.*, January 20, 1862, which observed that change must be gradual to be "beneficial and permanent," since this was the way of human progress. See also the *National Intelligencer* for March 11, 13, 1862 and the *New York Times* for other opinions of gradual emancipation current at the time. Lincoln's gradual, compensated emancipation plan passed, but almost all border state men voted against the proposal, another example of southern intransigence on the issue of slavery. The *New York Times* called that vote a "source of mortification," April 3, 1862; see also *Cong. Globe*, 37:2, 1589. One editor remarked that Lincoln's proposal opened up "a chapter of various possibilities," and warned slaveholders that this was their last chance for compensation. "To sell, or not to sell. That is the question!" Then, the editor made his point—if slaveholders accepted the proposal, it would give slavery a new lease on life due to the proposal's gradualism. If rejected, the emancipation of the slaves ought to be "proclaimed by the President, enacted by the Congress, and Enforced by our armies," *National Anti-Slavery Standard*, March 29, 1862.

33. *New York Times*, March 6, 7, 1862; *Liberator*, March 14,
1862. The phrase "omnipresent traitor" is Sumner's. Wilson termed slavery the "Great Criminal."

34. New York Times, March 7, 1862. Sumner's suggestion of extending the language of the 1787 Ordinance is significant, since the Thirteenth Amendment did just that. See Chapter V below for Sumner's own proposed constitutional amendment to abolish slavery.

35. Cong. Globe, 37:2, 1191. Representative James Ashley reported to the House on the same day a bill to abolish slavery in the District, but the measure was recommitted to committee. Demonstrating its conservative alignment, the House Judiciary Committee had decided that Congress held no power to abolish slavery in the states by legislation, and rejected all emancipation and confiscation bills, Cong. Globe, 37:2, 1192; National Anti-Slavery Standard, March 8, 1862. See also Curry, Blueprint for Modern America, 37-40.


38. Cong. Globe, 37:2, 1300-1301, 1333-34.

39. Ibid., 1338, 1356, 1379; National Anti-Slavery Standard, April 5, 1862. When Saulsbury's amendment came up for the vote, it lost 0 to 35. Even Saulsbury voted against it.


41. Ibid., 1357, 1359; Dred Scott v. Sandford, 19 Howard, 407.

42. Cong. Globe, 37:2, 1375 1379, 1446, 1449-51; see also David Donald, Charles Sumner and the Rights of Man (New York: Alfred A. Knopf, 1970), 58. The New York Times, April 1, 1862, criticized Sumner for going too fast, not seeing the practical problems involved with District abolition and suggested that the rapidity which radicals brought up abolition in Washington betrayed their fear that the slave power would soon return to power. The Times urged gradual, compensated emancipation as the recommended "example to the slave states." See also Cong. Globe, 37:2, 1473. Fessenden
confirmed the Times' observation that the time to act was upon antislavery forces; no one knew what the future held.


44. Cong. Globe, 37:2, 1474, 1518, 1520, 1522.

45. Ibid., 1522-23.

46. Ibid., 1523-26; Washington National Intelligencer, April 12, 1862; New York Tribune, April 4, 1862. See also George S. Henry, "Radical Republican Policy toward the Negro, 1862-1872," (unpublished thesis, Yale University, 1968), 33-38. Henry's conclusion that Senator Wilson differed significantly in his concept of freedom from that of Charles Sumner seems incorrect. While Wilson did vote for colonization and Sumner voted against the amendment, Wilson's bill to repeal the black code carries great weight in assessing his view of freedom. In regard to compensation, Sumner himself was not above political compromise, as pointed out above. A similar conclusion seems appropriate for Wilson and the colonization issue. Radical uneasiness with the colonization feature of S. No. 108 was nevertheless apparent. Some senators thought about removing the amendment before sending the bill on to the House, although nothing came of that speculation. Wilson received only praise for his role in abolishing slavery in the District, New York Tribune, April 7, 1862; Liberator, April 11, 1862.

47. New York Times, April 4, 1862; National Anti-Slavery Standard, April 12, 1862. The Times hoped that the House would make abolition in the District gradual rather than immediate.


50. Cong. Globe, 37:2, 1634-35, 1638-39, 1642-43, App., 91, 94, 101-103. Commenting on John J. Crittenden, the National Anti-Slavery Standard, April 19, 1862, remarked: "'It seems as if God Almighty could not thunder his truth loud enough to break the old man's deafness!'" referring to Crittenden's political stance: the Kentuckian was loyal to the last, but also pro-slavery to the last.


52. New York Tribune, April 15, 16, 17, 1862; National Anti-Slavery Standard, April 19, 26, 1862; New York Times, April 15, 1862; Curry, Blueprint for Modern America, 43.

53. Washington National Intelligencer, April 12, 1862; New York Times, April 17, 1862. See also the opinion in Ingle, Negro in D. C., 42: "A premature law, that is, a law forced upon a people instead of springing from them, may not always be pernicious in its effects, but it is a dangerous experiment."

54. Frederick Edge to Chase, April 18, 1862, Alexder [sic] and James W. Hays to Chase, April 19, 1862, Salmon P. Chase Papers, DLC.

55. National Anti-Slavery Standard, April 19, 1862. Herman Belz, writing generally of Republican attitudes toward emancipation, argues that they did not see emancipation as a matter of securing civil rights and personal liberty, but as a way of depriving the South of labor and aligning blacks with the Union, Belz, "Personal Liberty," Journal of Southern History, 42:396. By not considering the North as a coalition, Belz fails to point the interplay and dynamism within the coalition. Isolated components, whether colonizationist, Republican, abolitionist, or pro-slavery, do not adequately represent the tension within northern ranks nor the value of experience as a teacher. Clearly, the military situation provided a major reason for abolition, but that does not
necessarily speak to the meaning of abolition either in 1862 or in 1865.

56. *United States Statutes At Large* (Washington; various publishers and years), 12: 376-78 (hereafter *SAL*); *National Anti-Slavery Standard*, May 3, 1862.

57. As he signed the abolition of slavery bill, Lincoln suggested a supplemental law that would cover certain "loopholes" he found in the original measure, primarily to prevent claims from being made after 90 days and also a provision for slaveholders that might be absent from the District, minors, or insane. The Senate waited two months before considering a supplemental bill (S. 351), and when it came before the body, the bill included other provisions explicitly declaring that labor within the District now emancipated. Henry Wilson, who originally introduced the bill, had provided that slaves formerly resident in the District but who had been sent away to escape the effects of abolition, would be freed. District of Columbia Committee chairman James Grimes spoke against the provision, arguing that Congress could not reach within a slave state to work emancipation. The provision was struck. The Senate passed the bill. All the "yeas" came from Republicans and one Unionist; all the "nays" from Democrats and one Unionist. James Ashley rushed the bill through the House, answering only one question. Work within the District now automatically freed a slave, but passage through the District on an errand did not. The bill passed the House 69 to 36, *Conc. Globe*, 37:2, 1680, 1686, 2674, 2879, 2933, 2992, 3136, 3138, 3215-16; *SAL*, 12:538-39.


60. Washington National Intelligencer, March 7, April 5, 1862; New York Tribune, April 9, 1862. Illinois also ratified the Corwin Amendment during this period, pleding the inviolability of state slavery.

61. Smith to Blair, April 5, 1862, in Liberator, April 18, 1862.


63. See above, note 54.


CHAPTER FOUR

WE CANNOT ESCAPE HISTORY

Abraham Lincoln wrote in his annual message of December 1862:

"Fellow citizens, we cannot escape history."

History then included the 1861 Confiscation Act, the abolition of slavery in the District of Columbia and the territories, a second confiscation act, recognition of the black republics of Liberia and Haiti, and the preliminary Emancipation Proclamation.1 These were facts, segments of the war's reality that highlighted the profound difference from antebellum America. Slavery was attacked, even destroyed in places, and millions of black people were called free by authority of the war power. Together with a myriad of other experiences, this was the history of which Lincoln wrote. "We cannot escape history" was descriptive.

Equally, the President's words suggested a future toward which events were pushing the country. The shared experience of war--history--propelled the nation along a road it could never otherwise have travelled. Lecturelike in its admonition, the President reminded his readers, and

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doubtless himself, that they could not escape the reality of fratricide. Continuing, Lincoln remarked:

We of this Congress and this administration, will be remembered in spite of ourselves . . . . We--even we here--hold the power, and bear the responsibility.

More than merely observing the history that surrounded them, Lincoln believed Congress and his administration should act in a manner that accepted the reality created by civil war. And more than accept, the government ought to affirm and work within that new reality. "We cannot escape history" was also predictive.

The inescapable history of the civil war focused upon the slave. The President made that conclusion directly when he wrote: "In giving freedom to the slave, we assure freedom to the free--honorable alike in what we give, and what we preserve."² Revealingly, freedom for those already free--whites--loomed large in the President's thinking, somehow connected with freedom for the slave and yet somehow separate.

Lincoln still wanted a form of compensation for loyal masters--only paragraphs before the words quoted he proposed three constitutional amendments guaranteeing gradual abolition (by 1900), compensation, ex-slaves' freedom, and the possibility of colonization. The Emancipation Proclamation, issued September 22, was preliminary; repent, and return
home before the Proclamation went into effect on January 1, 1863.³ Border states had been noticeably lacking in enthusiasm for Lincoln's gradual, compensated emancipation scheme, first proposed March 6, 1862 and suggested again in July. The idea appeared again in Lincoln's message to Congress in December. Viewed from this perspective, the President seemed not to have grown since abolition in the District of Columbia.

Nevertheless, Lincoln did issue the Emancipation Proclamation with its promise, under certain conditions, that all persons held as slaves in rebel areas would be "thenceforward, and forever free." Lincoln also pledged the executive branch of the federal government to "recognize and maintain" the former slaves' freedom.⁴ This expansion in the universe of liberty occurred at the same time that the President espoused his essentially backward-looking proposals of gradual, compensated emancipation and colonization. Indeed, the Proclamation itself lost much of its luster when the limitations it contained were measured against its promise. Some of Lincoln's most stirring rhetoric was reserved to recommend his gradual compensation plan:

The dogmas of the quiet past, are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise to the occasion. As our
case is new, so we must think anew, and act anew. We must disenthral ourselves, and then we shall save our country.  

The ambiguity in Lincoln's thought on slavery and race is puzzling. Certainly the nation's leader was torn by profound and powerful emotions. Certainly he possessed, as one contemporary remembered, "a marvelous blending of sunshine and shadow." Drawn to Shakespeare's tragedies, Lincoln identified with Claudius, usurper of the throne of Denmark by his brother's murder, and Macbeth, slayer of his cousin King Duncan. The President's own election followed by the multiple brothers' deaths in the war pressed him down. With the death of his beloved son Willie in February 1862, a loss from which Lincoln never fully recovered, the President's quest for meaning in the engulfing tide of death led him on an ever intensifying search of himself and finally, of God. He was slow to understand the war as a working out of Divine Judgment, the great cathartic expiation for the sin of slavery. Lincoln was both willing and unwilling to see himself as that instrument for national salvation and spiritual cleansing. He struggled with the awful will of God as only those who recognize the truth struggle when they wish to turn away. Perhaps he did turn away in those moments when he despaired of a future for the coexistence of black and
white in America on terms other than master and slave. Or Perhaps he merely followed the light given him, interspersed as it was in the darkness that colors all human perceptions. Lincoln's is a mixed, tortured legacy of doubt and affirmation. Contradictions existed in the President's policies and actions because they existed within the man.7

Contradictions of policy exemplified by the Emancipation Proclamation and by gradual, compensated emancipation manifested themselves in Lincoln's rhetoric. Abolitionists had urged new thoughts and actions upon the Unionist coalition from the beginning of the war. The President's new thoughts and actions, however, were in support of the narrowest and least expansive antislavery changes then possible. Yet Lincoln determined that the people must "disenthrall" themselves to save the Union. Disenthrall—to free from bondage. The interplay of meanings of this word proved vital. Ideas freedom from the bondage of form were not enough; men must also be free. This was the message of Lincoln's words, and yet, the tension within his policies and statements indicated that the President had not yet taken to heart the full meaning of his own words: "We cannot escape history."
The war went on. It went on molding reality and Americans perceptions. By June 1862 it was, in Sidney George Fisher's words, "getting to be a fearful thing," as the future became more obscure and change more certain. Southern hatred for the North was more intense than ever, as was northern determination to conquer treason and subjugate rebellion. Fisher could not help but wonder about the fate of constitutional free government. Abolition of slavery in the District of Columbia was only a first step in the continuing assault of free institutions upon a slave government. There had been "too much state law, too much state rights, too much of State slavery," according to Sinclair Tousey, a Republican antislavery activist. The situation demanded "NATIONAL LAWS, NATIONAL INSTITUTIONS, NATIONAL FREEDOM . . . THE NATION MUST BE SUPREME. The States must be subordinate."8

And so the frustrations of war worked upon the Unionist coalition, calling forward increasingly radical statements from some members. Leaders of the antislavery vanguard in Congress pressed for broader and deeper measures to secure the principle of national freedom, and a barely possible sectional slavery. Illinois Representative Owen Lovejoy's proposal for freedom in the territories emphasized that wherever the federal government exercised exclusive
jurisdiction, freedom reigned. Charles Sumner's measure did the same, using the language of the venerable Northwest Ordinance. As a result of these proposals, the "rights" of states dimmed in comparison to prewar claims of near omnipotence. The twin questions of what to do with freedmen and what to do with the South were seen as aspects of the same question, and the fear of experimentation began slowly to fade. Charles G. Leland, editor of the Continental Monthly, wrote of the need for "Union-izing" the South once the war was over. Colonization was the key, but with a twist. Rather than deport blacks, Leland proposed to export northern whites to the South to take the freedmen under their tutelage and to counterbalance southern white treason.  

Abolition of slavery in the District of Columbia did not satisfy abolitionists. Throughout the months between the law's enactment in April and Lincoln's Emancipation Proclamation in September, radicals in and out of Congress pressed for greater efforts against slavery. Congressmen, geared to legalistic and practical efforts, focused attention on the banning of slavery from the territories and a better, more effective confiscation law. Radicals outside of government continued to influence opinion, driving home the point again and again--the fruit of war must be the death of slavery. Such messages made impressions. Men not known for abolitionist
views observed the force of the radical analysis of the war and found it persuasive, at least in part. It was persuasive, because it fit the reality created by the war. The *North American Review* lectured "over-scrupulous moralists" squeamish about the "unchristian title of war." It was not war at all, the *Review* observed, but the self-defense of the nation "against anarchy."\(^1\)\(^0\) William Whiting, shortly to be appointed War Department Solicitor by Lincoln, wondered whether any right of property, or claim of local law, or construction of the Constitution could be superior to the nation's survival. He answered his own question with a resounding "no," making the connection abolitionists had suggested all along: "Slavery is no longer local or domestic after it has become an engine of war."\(^1\)\(^1\)

To defend the nation, attack slavery, was the simple message radicals preached to their countrymen. And yet, it was only a first level of meaning. To awaken the power of the government and direct it against the South and slavery even during war was no mean feat. The abolitionist program envisioned more than the end of slavery, but the inertia of history was something to be reckoned with seriously. "Seventy years has the Union postponed the negro," Wendell Phillips declared. "For seventy years has he been beguiled with the
promise, as she erected one bulwark after another around slavery, that he should have the influence of our common institutions. I claim it to-day." Common institutions; common, free institutions for men and women of both races, for both sections, in one nation. This was the essence of the radical platform, the positive side of the end of slavery. As the Constitution forbade states to confer titles of nobility, so too should it forbid title of property in man. To achieve this goal, something more than a mere end of slavery was required.13

Phillips probably did not contemplate at this time an amendment to the Constitution as the vehicle for his vision. Interpreted correctly, there was no need for an amendment. Interpreted in the light of America's truest principles, the Constitution would serve well. John S. Rock, a lawyer, abolitionist, and black from Boston, visited the District of Columbia shortly after abolition. While there he was spat upon, assaulted, and threatened with death. District law did not sanction these abuses; it positively forbade such acts. Abolitionist Rock knew that law without spirit, however, had little meaning. The abolitionist program sought to animate the law with the spirit of Liberty. As Rock said:

The Abolitionists believe in the Declaration of
Independence. It is our great charter; and we hope that, ere this closes, the whole nation will believe in it, and accept the great truths it teaches.\textsuperscript{14}

Phillips hoped that the vast majority of southern whites who were not slaveholders would recognize in the North their true friend, and in the slaveholding class their true enemy. With that awareness the fate of freedmen might be secured. Without it, other abolitionists were less hopeful. Granting that prejudice against the black would exist as long as he was enslaved, one writer to the \textit{Liberator} did not believe the prejudice would evaporate immediately upon freedom. When slavery was destroyed the political and social fabric of the South would need reconstruction in order to "secure and maintain [the freedmen's] equal rights against the obstacles two centuries of enslavement have imbedded in the pathway of his progress." Liberty, albeit the natural state of men, could not exist without some aid in the southern soil so long contaminated by slavery. Just as Rock experienced law without spirit, so could spirit without law yield similar bitter fruit in a post war South where slavery had ended but freedom had not been born.\textsuperscript{15}

And southern blacks would remain on southern soil. Gradually, even conservatives began to see the hopelessness of colonization as a solution to the question of "what to
do with the freedmen." The impracticality of moving four
million people seemed overwhelming and was itself a convincing
argument against the idea. Conservatives, of course, despaired
of the vision abolitionists proposed. Instead, conservatives
proposed an ameliorated or "regulated servitude" as an
alternative to abolition. Something less than the harsh
slave system, it hardly qualified as freedom in radical
eyes. The President remained a devoted proponent of colon-
ization, but neither his support for removal nor conservative
counter-proposals deterred antislavery leaders from publicly
proclaiming their vision of a bi-racial nation. Blacks
were not inherently lazy and ill-prepared for freedom, stated
Republican pamphleteer Lorenzo Sherwood. The public mood
might yet for a time make anti-abolition sentiments fashion-
able. But a time was soon approaching, wrote Sherwood, for
the white American to show his bravery and accept abolition.
The American was not yet finished "with the business of
disenthrallment. His language is the language of liberty."
Sherwood allowed that colonization efforts might be made.
Yet he called white America to something greater and
ultimately more compelling:

   Every humane consideration clusters to the policy
   of disenthralling the colored man, and of making him a
   being of power. Nothing can oppose it but the pro-
slavery spirit that seeks to enslave the American mind to barbarism and the colored millions and their increase to perpetual bondage.\textsuperscript{16}

What of the pro-slavery spirit? What of those in the North who were bent upon reunion based upon an alliance of the white South and the northern Democracy? It was the fear of exactly this alliance that sparked many to advocate abolition, so that "the cause of the war may not become active again." To rally the nation to that standard, conservatives adopted for their motto the pithy expression that also was their platform—"the Union as it was, the Constitution as it is." Short and to the point, the conservative platform contained, on the other hand, no real program. A backward-looking embrace of all that was, conservative members of the Unionist coalition raised nostalgia to the level of constitutional and libertarian principle.\textsuperscript{17}

Cautious toward Republican innovations from the beginning, some Democrats held out the fond hope of a compromised settlement between North and South, wherein the South would give up its pretended independence and the North its pretended power over slavery. The Union and only the Union was the acceptable goal for the war effort. Anything else would drive the South to ever greater resistance (civil war did not seem enough proof of southern resistance to reunion).
Indeed, the war that began by the firing on Fort Sumter really was not caused by the South at all but because northern "ultras" prevailed. The only southern crime was not fighting the antislavery heresy within the Union. "The Union as it was, the Constitution as it is" was motto, platform, and ideal. It was a device of calculated effect, for who could argue with the sentiment. The war was for the Union and the maintenance of the Constitution. Wendell Phillips also called for the Constitution "as it was." But the phrase was not value-free, for each group brought to it its own definition of Union and Constitution. While conservatives lacked a program, they did possess a hidden agenda and a none too subtle message behind the motto. Once expressed, all else fell into place: "the Constitution as it is, the Union as it was, and the Negroes where they are."  

Rejecting both Republican policy initiatives and antislavery policy options occupied increasing amounts of conservatives' talents. Safeguarding a South-North alliance that many Republicans saw as the reason for the war, conservatives earned their reputation as "the ever-mischief-making, ever-meddling, and never-contented politicians (who continue to believe that the millennium would at once arrive were Emancipation only extinguished)." Equally tenacious were Republicans and abolitionists who declared "never more
will the South come back to be served and toaded to."\textsuperscript{19} In truth, the Unionist coalition was breaking apart as conservatives increasingly rejected greater change. Not only did conservatives negate policies, they seemed to negate reality itself by refusing to acknowledge the new situations war produced. By such attitudes they opened themselves to Phillips' devastating parody of their platform: "'Lay the pieces carefully together in their places; put the gunpowder and the match in again, say the Constitution backwards instead of your prayers, and there will never be another rebellion!'"\textsuperscript{20}

Republicans may have been harsh in judging conservatives. But conservatives spoke from narrowness and ignorance. The breadth of opposition was as great as the war itself. Circulation of paper "greenbacks," declarations of martial law, abolition in the District of Columbia and the territories, even Lincoln's March 6 proposal for gradual, compensated emancipation—all were opposed by elements of the emergent border state conservative/Democratic alliance. Conservatives favored the enforcement of the fugitive slave law. If Republicans wished to exercise the Constitution's power, they must also fulfill its duties. Therefore, conservatives urged the return of fugitive slaves to their loyal masters. Anything less was not merely unconstitutional but a "fraud."
Whatever changes might occur in the nation, conservatives reminded their countrymen that the Constitution and state laws would be the same as before the war. Only changes that the states agreed to would have any effect. So not only were Republican antislavery policies wrongheaded, dangerous, heretical, or treasonable in themselves, they were irrelevant. State authority reigned triumphant before, during, and presumably after fighting a war to establish the supremacy of the nation.\(^{21}\)

Little wonder that the Unionist coalition fragmented along lines of perception and policy. The wonder was that coalition had existed at all. Republicans suspected that conservatives opposed something more than war measures—-that some opposed the war itself. If Charles Ingersoll, a Philadelphia Democrat and cousin of Sidney George Fisher, supported the war he would uphold paper currency and other measures. But Ingersoll opposed the war, and therefore, opposed measures designed to prosecute it. Republicans began to group together traitors and opponents of the Administration. While undoubtedly unfair to principled persons who opposed war policies, the grouping made sense. War shaped the Union and the Constitution in profound ways. Republicans and abolitionist allies became colleagues in their acceptance of and openness to that new reality. As
the war continued the Unionist coalition shifted leftward becoming ever more reality-oriented. There was a growing awareness of the convergence between vision and reality. Those who did not share the vision, could not cope with the reality.\textsuperscript{22}

Events during the summer and early fall of 1862 brought about the fragmentation of the Unionist coalition. Until then the coalition seemed more like two polarized camps held together by ever loosening threads. The President was in the untenable middle, as he had been from the outset of the war. A moderate when moderation's virtue was losing its appeal, Lincoln clung to his perceptions, principles, and forebodings. Moderate conservatives believed that he was amenable to their arguments. Democratic party chairman August Belmont urged the President to "equally crush the secessionists of the South and the fanatical disorganizers of the North, who [were] both equally dangerous to the country and its institutions."\textsuperscript{23}

Belmont's plea had a chance of success. A moderate leaning to conservatism might hope to find common ground with a moderate leaning to antislavery. A modus vivendi for the sake of the Union was not unreasonable. Lincoln gave indications of his displeasure with radical solutions for the war's problems and the reluctance with which he "accepted
this issue of battle forced upon me." In May 1862 Lincoln responded to General David Hunter's order freeing slaves in Georgia, Florida, and South Carolina by letting it be known that no general could take such an action without his approval and support. Lincoln did not give Hunter that approval and support, and revoked the general's order. The President held firm to his action despite loud protests from abolitionists.24

Lincoln was unwilling to abandon his plan for gradual, compensated emancipation or to abandon the hope of colonization; positions that were themselves radical for a more peaceful time. Antebellum southerners did not separate colonizationists from abolitionists, since both wanted emancipation. The key, however, lay in the fact that the times were not peaceful and that solutions that had been radical in peace paled in war's light.

Abolitionists at home and abroad viewed Lincoln with mixed emotions. While his heart was clearly in the right place, his policies seemed anachronistic. Gradual, compensated emancipation might be tolerable as a first step—but only just so. Yet abolitionists were growing impatient with Lincoln's persistent attachment to the least radical option. In June Lincoln's friend Charles Sumner defended the President and recommended a review of what already had been accomplished
and what the President had approved. Abolition in the District of Columbia and recognition of Liberia and Haiti were important signs of the President's commitment to anti-
slavery. Beyond Sumner's defense, perhaps a greater source of hope for abolitionists was Lincoln's explicit determination to win the war, or die: "I expect to maintain this contest until successful, or till I die, or am conquered, or my term expires, or Congress or the Country forsakes me."

Yet the President was very reluctant to accept the burden that abolitionists and other radicals demanded he carry. When a group of Quakers from Pennsylvania petitioned him to emancipate slaves, Lincoln balked. Arguing against resolutions drafted with the aid of William Lloyd Garrison, Lincoln told the Friends that a decree of emancipation could not abolish slavery. If it could, then John Brown would have done so long ago. The South refused to accept the Constitution, how could anyone expect it to heed an emancipation proclamation? The President assured his guests that he was aware of the magnitude of the tasks before him, that he might in fact be God's instrument in accomplishing "a great work." But he was not sure that God's way was necessarily their way. And so he hesitated.

In rebuttal abolitionists pointed out the difference between John Brown and Abraham Lincoln. The former was one,
brave, martyred soul. The latter was President of the United States. Brown's power to enforce freedom extended only so far as the range of his guns at Harpers Ferry. Lincoln's jurisdiction, however, "buttressed by law, duty and necessity ... reaches further than his armies." As commander in chief of the military, Lincoln's "fiat [was] irrevocable unless the whole nation perishes with him." Brown's decree was abnormal and revolutionary. Lincoln's would be the normal and lawful because his position and power were of a different order.26

Lincoln was not convinced. On July 12, 1862, he appealed again to border state sentiments, hoping to secure support for gradual, compensated, state-sponsored emancipation. The President understood the military importance of the border states and was himself a son of Kentucky. Those facts convinced Lincoln that he understood the country's peril all the more clearly. Addressing congressmen from the border, he observed that they held "more power for good than any other equal number of members." If they had all voted for his gradual emancipation plan in March, the war might very well have been finished, or at least "substantially ended." He warned them that "the incidents of war" could not be avoided forever. If the war continued slavery would be abolished "by mere friction and abrasion." Compensated emancipation was
best solution open to the border states, and therefore, to
the country. He wanted these congressmen to understand him:
he did not "speak of emancipation at once, but of a decision
at once to emancipate gradually." Lincoln was close to
embracing the old abolitionist slogan of "immediate emanci-
pation, gradually accomplished." Yet he was still not an
abolitionist. Lincoln realized that he had given "dissatis-
faction, if not offense" to radicals by his repudiation of
General Hunter's emancipation. Those offended were also
important members of the Unionist coalition. Conservatives
must realize that he did not want to alienate radicals any
more than he wanted to alienate border men. Congressmen
from the border region could relieve much radical pressure
on the President if they agreed to his proposals--now, without
delay. 27

They did not. A clear majority refused to endorse the
President's plan. Embodied in H. R. 576, Lincoln's gradual,
compensated emancipation scheme died from lack of congressional
interest. 28

Was Lincoln out of touch with reality; had he mistakened
cautions for leadership? Wendell Phillips thought so.
Phillips admitted that the President was an honest man who
tried to do his duty. "But Mr. Lincoln is not a genius; he
is not a leader." As servant of the people, Lincoln looked for the political trend rather than leading the nation in new directions. As the country was not ready for emancipation, so neither was Lincoln. Abolitionists believed Lincoln went against his own beliefs, that he knew slavery lay at the bottom of the rebellion, and yet he refused to take the opportunity to strike at the war's cause. Lincoln was not an abolitionist; that much was clear. By his constant refrain of colonization, however, the President was not a mere cipher in the struggle for liberty but a positive force for evil. He recognized and encouraged white racism every time he endorsed colonization.29

A harsh and undoubtedly biased assessment, the abolitionist view was only one possible reading of Lincoln the man and the President. But it was a disturbing reading. Prudence is not a fault in character or in leadership, and certainly Lincoln was prudent. Was he too prudent, too concerned with border state sensibilities, too aware of political balances? He was of the border, yet he hated slavery. He possessed greater power than any other President yet he failed to strike at what he hated. He loved the Constitution, fought to defend it, and grieved over the death his decisions caused. Abolitionists, Democrats, border state men, and Republicans all
doubted his leadership, if not his ability to lead. But despite disagreement over policy, over constitutional views and philosophy, the truly disturbing fact may have lain elsewhere.

When his allies looked beyond Lincoln the President to Lincoln the man, they were not sure what they saw, but they were all too sure of what they did not see. Abraham Lincoln had no vision, no great hope for black and white, no great dream for what America might be. He fought only to save a hollow shell called Union. During the summer of 1862 Lincoln struggled with himself, his God, and his country to find a vision, a liberating justification for fighting and death. He progressed and retreated, stood still and moved forward. Finally, caught up by events and his own personal search, the President of the United States learned that he, too, could not escape history.\textsuperscript{30}

The enactment of the second confiscation law on July 17, 1862 was an important event for Lincoln and the nation. The first Confiscation Act of August 6, 1861, treated slave property gingerly, declaring only those slaves used for insurrectionary purposes to be confiscable. The narrowness of that law's scope was clear from the outset, and its author, Lyman Trumbull, moved quickly to remedy the legal
situation. When Congress reconvened in December 1861, he introduced another confiscation bill, much broader than the first. The bill languished in committee for months before Congress turned its attention to it. In the interim the national legislature had abolished slavery in the District of Columbia and the territories, had recognized Haiti and Liberia, and had prohibited army officers from returning fugitive slaves. Lack of immediate congressional attention did not, however, signify lack of interest either in Congress or the country at large. But the issue was so controversial that in February 1862, the House Judiciary Committee decided not to consider any bill dealing with confiscation or slave liberation.31

Despite the House committee's refusal of responsibility, public debate continued on the issue of confiscation. The need for a decision upon the matter of massive confiscation did not recede. And massive confiscation was precisely what Trumbull proposed. The Philadelphia Press correctly observed that the time to accept or reject confiscation had arrived, and that "in the way we signify either our acceptance or rejection, we shape the policy of this war." The Press went on, linking the power to confiscate with the ability to wage war, for "if confiscation is wrong in theory, then the war is
wrong." Every power must be used to defeat the South, and common sense indicated that rebels' slaves should be released from service to treason. Anything less indirectly sustained the rebellion.\textsuperscript{32}

Not everyone agreed. Opponents of confiscation anchored their argument on two foundations. Many pointed to the Constitution's strict definition of treason, the punishments it allowed, and its prohibitions against bills of attainder, ex post facto laws, corruption of blood and forfeitures of property beyond the life of the convicted. Confiscation of traitors' property might be allowable, but the accused had first to be convicted of treason. Yet the essence of the rebellion lay precisely in the regional suspension of United States law and authority. No courts could function in the South and no one could be convicted of treason because treason was so massive. To that extent the rebellion's aim, to revoke the Constitution's authority over the South, was successful. Nevertheless, some northerners would bind the government by constitutional safeguards, the net effect of which protected the rights of people who no longer claimed rights, immunities, or protections under the Constitution.\textsuperscript{33}

Opponents of confiscation also grounded their arguments in distinctions between belligerent and municipal powers
available to the government. Southerners in rebellion might be viewed either as traitors or enemy aliens. The Constitution, narrowly conceived, severely limited what the government could do to traitors. Confiscation as a penal statute involved question of citizens' constitutional rights. Massive confiscation, a measure "absolutely novel in our legislation," might be justified as a use of the war power--a belligerent right against a de facto enemy. 34

Some opponents emphasized restraints the Constitution placed upon Congress, pointing especially to the prohibitions on property forfeiture beyond the natural life of the convict. For Congress to punish an act more severely by not calling it treason, thereby skirting constitutional prohibitions, "degrade [those prohibitions] into a mere quibble about the nomenclature of criminal law." Congress could punish treason by death, but the traitor's estate was safe. But Congress did not exercise authority over the South, and therefore, could not justly require individuals' allegiance. Precedent seemed clear. The British had occupied American territory during the War of 1812. American courts had subsequently held that the allegiance of affected Americans was temporarily suspended. The government could not protect them; the citizens' duties were thereby absolved. Viewed from that perspective,
Congress could not punish treason with confiscation because there was no treason.\textsuperscript{35}

If sovereign, municipal power did not justify confiscation did the war power? To rely on belligerent rights under the law of nations required the assumption of the rules of civilized warfare. These rules, as they had evolved, distinguished between public and private property. The former was subject to confiscation. The United States, however, had always maintained that private property of enemy aliens was exempt. Again the War of 1812 offered precedent. Americans (especially Secretary of State John Quincy Adams) argued that British decrees of emancipation based upon the war power were illegal and did not free American slaves because slaves were private property.\textsuperscript{36}

If the United States repudiated this doctrine, conservatives argued, and chose to confiscate private property, another distinction arose. The title to real property did not pass to another through mere occupation—only the right to use the property. Once the rebellion ended and the usurped power of the federal government was restored, the captured property reverted to its titular owner. The other type of private property, personal, included chattel slaves. In that case, title was transferred but only through actual possession and physical removal to a place of safety. Mere decrees did
not affect slaves' status. The only sure way to possess and remove slaves was through the army. Therefore, personal property might be confiscated only through the war power of the President, manifested in the army. 37

Other opponents believed that the federal government possessed both municipal and belligerent powers in fighting the rebellion. But could Congress treat southerners as both citizens and enemy aliens simultaneously? Put another way, was it possible to confiscate treason? Two answers were given—an abrupt "no," and a problematic, "yes, but--."

Pamphleteer Anna Ella Carroll denied that Congress could exercise the war power over southern property. To do so, to treat rebels as enemy aliens would be an admission and recognition of the Confederacy, the rejection of which was the point of the war. Legally, Carroll believed that Congress could not "war" with its own citizens. As Union armies captured southern property, the Constitution's authority was immediately restored. The ancient right of postliminium, whereby property and people returned to their former status when recaptured, nullified attempted changes in property status. Carroll warned that unless "wise counsels shall prevail, or unless restrained by the President, Congress 'unchained by the Constitution,' will move its armies swiftly over the liberties of the country, both South and North." 38 Therefore,
opponents of confiscation concluded that Congress could not
confiscate property; the President might but only under very
specific circumstances.

Proponents of confiscation were hard pressed to rebut
conservatives' strict construction. The letter of the
Constitution seemed clear and unmistakable. Massive treason
would go unpunished if the Constitution was perceived as an
obstacle.

The fundamental error opponents of confiscation made,
advocates argued, was ignoring the context in which the nation
found itself. Confusing the law of peace and the law of
war deprived the government of any chance to vindicate its
existence. Self-preservation, "must override all those laws
and constitutional provisions which regulate the exercise,
in peace, of its dormant, undisputed authority." Regular
constitutional obligations and rights, the jus paci, were
suspended until the status pacis returned. The Constitution
forbade the common law practice of attainder rather than
legislative enactments. Neither did the Constitution limit
Congress' ability to design punishments for treason. And
there was treason. Under the circumstances, confiscating
slaves was legitimate punishment. After all, state law
defined property, and by that reckoning, slaves were property.
Justice sanctioned the ironic twisting of slave laws against slave society. By that approach confiscation and/or military emancipation were tools for carrying out the war's goal—preservation of the Union.\textsuperscript{40}

William Whiting presented the best case for congressional power to confiscate. Whiting began with the useful distinction of emancipation through confiscation and abolition. The former affected individual slaves; the latter would operate "on all citizens residing [in slave states], and effects a change of local law." Congress might confiscation private property—even slave property—if the public necessity warranted it. Congress might even abolish slavery by law if it became more than a domestic institution and intruded upon the nation's "rights, interests, duties or obligations," or impeded the execution of the laws or infringed on the rights of United States citizens.\textsuperscript{41} After such a sweeping claim of power, actual confiscation seems restrained. Whiting's diligent justification of the power to confiscate reenforces the view of Americans wedded to the form and substance of law as the defining means of political life.

Whiting found the power of eminent domain a useful source for constitutionally authorized confiscation. Property could be appropriated, and the only requirement was public
use and indemnity to the owner. Legal title to the taken property transferred. Significantly, Whiting defined public use as any seizure for the benefit of the United States. Benefit did not necessarily imply use, for the taken property could be "disused, removed, or destroyed." Nor were there any restrictions upon the kind of property Congress might seize—slaves included. Pointing also to Congress' charter to promote the common defense, Whiting argued that masters might not be entitled to compensation if Congress decided to draft slaves into the army, incidentally altering their property status. Slaves, like other residents, were subjects of the United States, owing allegiance and service. 42

The fate of slaves captured through military engagements should be determined by Congress, Whiting argued, and the President should execute the laws. There was no conflict between presidential and congressional powers. Congress and the executive both possessed war powers. While the President through the army might emancipate, congressional confiscation was also authorized through the war power. Whiting maintained that there was a difference between confiscation as punishment for a crime during peace, and confiscation as a tool to suppress the rebellion. The fact of civil war allowed Congress to exercise belligerent rights against its own citizens. Whiting reasoned that traitors were those who levied war against the
United States. War legally existed, and therefore the rebels were traitors. At war, the United States possessed all belligerent powers plus sovereign powers it held over all its subjects. War freed the President and Congress from having to see rebels only as subjects and not also as enemies. By the rebels' actions northerners and southerners were co-belligerents. Yet the law of nations that governed how belligerents might act toward one another, did not limit the United States in how it treated subject traitors. Belligerent rights allowed the United States to take enemy property, and title transferred ipso facto. Whiting's theory provided the best of both words—southerners were traitors and belligerents. What could not be done to one could be done to the other. As Whiting declared, "The rights of war and the rights of peace cannot coexist. One must yield to another." Citizens might be protected by the Constitution during war and peace, but the rights protected differed according to the circumstance.43

Congress possessed "plenary authority" to pass confiscation laws against belligerent enemies for the public good. When used in tandem with the President's war power, it made property lost by rebels during the war lost for good. Even individual loyal citizens living in the Confederacy might have to yield their property because the national safety superseded
individual rights. Keeping Whiting's distinction in mind, that confiscation and/or emancipation was not abolition, he nevertheless sketched an expansive and forceful view of government power. 44

Commentators differed on the long-term effects of military-sponsored emancipation. Without the intervention of federal power, a contributor to the North American Review noted, freedmen might revert to slave status if they were claimed because there was "no right to freedom . . . under the laws of the United States." On the other hand, a writer for the Monthly Law Reporter maintained that military emancipation did not transfer title but altogether destroyed property. Once destroyed, like a ship sunk during battle, the property could not impede the army, could not be resurrected, and restitution could not be made. The status was destroyed, and the person remained. This might obtain for military emancipation, complementary to but distinct from confiscation. The latter required legislation. On the chance that the more cautious opinion might prove correct, that military emancipation might not destroy property but only hold title in abeyance during the army's presence, proponents believed confiscation was necessary as a legal procedure. Property rights were too important to take massive confiscation
lightly. It was difficult for proponents not to feel some measure of guilt for the war, difficult not to believe the rebellion was the "wrath from an offended God; for our treading the negro in the dust in contradiction of our Declaration of Independence."45

The second confiscation law, first proposed in December 1861, took seven months to pass. During that time other issues gained temporary preeminence. Confiscation, because of its divisiveness, was referred to special committees in both houses. Republicans differed on the focus and ultimate purpose of the bill. Some looked for the substantive change in southern society that would follow massive confiscation and property redistribution. The South would be fundamentally changed, the slaveholder aristocracy displaced, and the Union restored not as it was, but as it ought to be. Some moderate Republicans saw in confiscation a means to punish rebellion and insisted upon judicial proceedings to determine individual guilt.

Both houses of Congress considered various confiscation bills until May 1862 when the Senate postponed its bill indefinitely and took up other business. Thereupon the House passed its confiscation bill, sending it to the Senate. The
Senate considered the bill in late June, substituted a more conservative measure in its stead, and returned the matter to the House for concurrence. Almost immediately the House refused and sent the confiscation proposal back to the Senate. In order to end the deadlock, each house appointed three members to a conference committee on July 8. Resisting radical efforts for a more sweeping bill, one without judicial proceedings for seized property, the conferees reported a compromise on July 11. Omitting two-thirds of the Senate version, the compromise contained provisions for confiscation as punishment for treason and inciting insurrection, prohibited the return of fugitive slaves except to loyal masters, provided for the enlistment of blacks into the army, and left open the colonization of freed blacks. *In rem* judicial proceedings (in which the seized property itself, and not the owner, is put "on trial") were adopted as the normal method of confiscation. This allowed confiscation to proceed even if the owner of the property was not in attendance before the court since it was unlikely that rebels would present themselves before federal authorities. And the conference committee included a new section emancipating slaves of persons engaged in or aiding the rebellion.46

The constitutional prohibition against corruption of blood and forfeiture beyond the life of the person convicted
weighed heavily upon conservative members of Congress and the President, as did the resort to in rem proceedings. Indeed, Lincoln had prepared a veto message for the second confiscation act. The President objected to a phrase that suggested that conviction of treason or incitement to treason freed rebels' slaves. He preferred to argue that the title to slaves first passed to the nation. The government might then dispose of the title as it saw best. Additionally, Lincoln wished an explicit method outlined for determining whether slaves seized met the conditions for freedom specified in sections one, two, and nine of the bill. Most worrisome for the President, however, were the possible corruption of blood and ex post facto features of the confiscation measure. Aware of his displeasure, Congress passed an explanatory resolution to the effect that no forfeiture of property would go beyond the life of the offender. Satisfied, Lincoln signed the confiscation bill on July 17.47

Conservatives continued to stress the constitutional limits on confiscation. They emphasized the necessity of convicting the accused person of treason before confiscation of property as a penalty. (This argument, of course, missed the mark as the genius of in rem proceedings obviated the requirement of trial and conviction of a person for treason.)
Abolitionist goals, according to conservatives, were either "philanthropy or treason, call it what you please," when the Constitution was violated. Conservatives believed the Constitution was violated. Some were so sensitive about white civil liberties that one writer for the North American Review would have preferred arming the slaves and inviting a slave revolt rather than violating any constitutional right for whites. 48

William Whiting made an extensive defense of the Second Confiscation Act in an appendix of his The War Powers of the President and Legislative Powers of Congress. After a detailed examination of the English common law meaning of bill of attainder, Whiting concluded that a congressional statute had to contain four provisions before it became an attainder and therefore unconstitutional: 1) the death penalty (or banishment); 2) punishment ex post facto; 3) guilt determined by legislative act; and 4) the penalty must work corruption of blood and forfeiture beyond life estate. Whiting carefully distinguished between punishment for treason and the effects that an attainder of treason had in English common law. The former, he maintained, was not limited. Only the manner of punishment, the legal mechanism employed, was controlled by the Constitution. Accepting the conservative claim that confiscation was limited by the treason clauses of Article III,
section 3 of the Constitution, (and ignoring the defense that in rem proceedings affected property, not persons), Whiting concluded that the Second Confiscation Act was constitutional and a suitable weapon to suppress the rebellion.49

By making all rebel property liable to confiscation the scope of the 1862 law was broad indeed. Whiting was justified in claiming the law as "one of the most important penal acts ever passed by the Congress of the United States." At least in one of its particulars, the act hit a very sensitive nerve. Slaves of rebels were freed, not in in rem proceedings, but by military action as they came behind Union lines. Congress did not sanction slave confiscation so much as slave emancipation.

The President of the United States brooded about slavery. On June 18 he confided to Vice-President Hannibal Hamlin his tentative decision to free the slaves. On July 12, with the confiscation bill and its emancipation clause nearing passage, Lincoln appealed to border state congressmen to agree to his plan of federally supported, state-sponsored, gradual, compensated emancipation. "Friction and abrasion" alone, Lincoln warned, would destroy slavery no matter what border residents or he wanted.
Even before the men from Kentucky, Missouri, Maryland, and Delaware rejected his offer, Lincoln began the process by which he personally would ratify what had thus far been achieved during the war. The slave and his relation to the Union was the inescapable fact the President had to face. Torn between his hatred of slavery and his constitutional caution, Lincoln confronted the question that Wendel Phillips put so forcefully:

Hitherto the negro has been a hated question. The Union moved majestic on its path, and shut him out, eclipsing him from the sun of equality and happiness. He has changed his position to-day. He now stands between us and the sun of our safety and prosperity.50

Returning on July 13 from the funeral of Secretary of War Edwin Stanton's infant son, the President occupied a carriage with Secretary of State William Seward and Navy Secretary Gideon Welles. Unexpectedly, the President remarked that he had about concluded that emancipation of rebel slaves was a military necessity.

Surprised, since Lincoln had previously opposed emancipation by the federal executive, Seward and Welles readily agreed with the President, saying that emancipation was "justifiable ... expedient and necessary." The President requested the secretaries' opinions since his proposal to border state men (made only the day before) was still out-
standing. Any notice of emancipation in rebel states might severely harm chances for the border state proposal. Still wedded to gradualism as the best method for emancipation, Lincoln's "native sagacity and power of thought" now drew him to a more radical conclusion, at least for the rebel states.

The next day, July 14, Lincoln's friend Illinois senator Orville Browning brought the President a copy of the confiscation law just enacted by Congress. Browning urged the President's veto of the measure, believing that it was much too radical. Lincoln disclosed nothing of his own struggle with the question of emancipation but signed the confiscation act after Congress passed an explanatory resolution.51

On Monday, July 21, the Cabinet assembled at 10:00 a.m. For the first time, Lincoln gave general expression to his new thoughts about slavery, speaking of his determination to take "some definitive steps" on the subject. He outlined several proposals, including the use of black laborers on military works and the need for an effective colonization program. At that time he opposed using blacks in the armed forces, despite General David Hunter's request for that authorization. The Cabinet meeting broke up, but the secretaries reconvened the next day, July 22, to continue the discussion.
Lincoln's colonization plan was dropped, and despite Secretary Chases's strong advocacy the President still opposed arming freedmen. The recently passed Confiscation Act loomed large in Lincoln's thinking, and he then proposed to issue a proclamation of emancipation based on that law. The act's sixth section declared that after sixty days from the President's promulgation, the property of southerners still in rebellion against the Union would be subject to confiscation. Lincoln told his Cabinet that he intended in his December annual message to Congress to renew his plan for gradual, compensated emancipation in the border states. He would include any repentant rebel states also. In any event the President intended that slaves held by rebels would, on January 1, 1863, "thenceforward, and forever, be free."

Reaction in the Cabinet to Lincoln's proposal was mixed. Chase thought the matter of compensation for loyal masters should be dropped. Instead, he suggested emancipation through a relatively quiet, piecemeal approach, allowing each commanding general to free slaves in his military department. The proclamation Lincoln proposed might cause severe financial instability. Seward, too, surprised the President with his strong argument against the proclamation of freedom at that time. Without a Union victory upon which to base the edict, Lincoln's measure might seem to Europe like
the last gasp of a failing government. To avoid the semblance of desperation Seward urged forbearance. Postmaster General Montgomery Blair also echoed Seward's concern about foreign reaction. Blair further suggested that there was no need for a proclamation, that even the most radical Republicans did not then demand emancipation. Playing upon the President's sensitivity to the border states, Blair argued that emancipation of rebels' slaves was tantamount to universal emancipation. Almost everyone agreed that slavery could not exist in the border states alone. To keep the border loyal Blair maintained, Lincoln must forbear.

The President reluctantly agreed, leaving emancipation for "further consideration." He hardly seemed to be the tortured, self-doubting Lincoln searching for a solution to slavery and the war. With reluctance, the President held emancipation in abeyance. His reasoning had gone to freedom and the use of black recruits for the war effort. The Union's chronic need for manpower was an ever-pressing concern, and the President could justify taking and the use of black laborers in most instances. Nevertheless, Lincoln still opposed the use of black troops, rejecting in August two black regiments from Indiana.53

The enigma of thwarted emancipation grew. The Confiscation Act's sixth section under which Lincoln first pro-
posed to issue a proclamation of freedom, required the President's public promulgation to include a sixty day warning period before the proclamation went into effect. Lincoln issued that proclamation on July 25, eight days after he signed the Confiscation Act and three days after postponing emancipation. Yet the July 25 proclamation was taken from the first draft of the proposed emancipation order. Lincoln omitted a final paragraph emancipating slaves before issuing the order. The July 25 proclamation set a sixty day period after which rebel slaves (and other property) could be seized and forfeited. Yet the confiscation and emancipation features of the 1862 confiscation law were distinct; slaves were specifically declared free, not just confiscable. Lincoln's original emancipation proposal continued in the first confiscation law's tradition. The President proposed to maintain the useful legal fiction that slaves were property (state law defined property), applying congressional war power to this property. In tandem with congressional authority, Lincoln would also use his authority as commander in chief to free all persons held as slaves in rebel areas. Since the President would have relied partially on the "slaves are property" argument, his July 25 proclamation can be seen as an emancipation edict of sorts. In sixty days slave property in rebel areas would be subject to seizure
and forfeiture. 54

But it was not seen as emancipation. 55 The President was criticized by antislavery men as little more than a tool of the border states or, at least, as a captive of his own fears about their alienation. Lincoln, however, was rapidly losing patience with the border position and professed friends from the region who "hold my hands while my enemies stab me." Their appeals had "paralyzed me more in this struggle than any other thing." Lincoln let Reverdy Johnson, former attorney general and special State Department agent to New Orleans, know that he would not lose the war "leaving any available card unplayed." On the other hand, Lincoln's own misgivings about emancipation were clear when he wrote a New Orleans resident on July 28: "I shall do nothing in malice. What I deal with is too vast for malicious dealing." With such warnings issuing from Lincoln and others, word leaked out that a change in policy was in the offing.

Writing to New Orleans commanding general Benjamin Butler, Secretary Chase detailed his own views of emancipation, characterizing the President's compensation proposal as a dying idea. Chase upheld the freedmen's rights to "life, liberty and the pursuit of happiness by the same laws which protect[ed]" him. Recognizing that many in the North disagreed with him, however, Chase suggested that the South
be made the area for black settlement, so that the blacks already in the North would "slide southward" and leave behind no questions for whites to quarrel about. Chase went on to tell Butler that the nullification of General Hunter's emancipation order in May was a mistake that would not be repeated. "The truth is, my dear General," the Secretary wrote, "that there has been a great change in the public mind within the last few weeks." Was the change in the public mind or in Lincoln's? Chase had an intimate knowledge of the President's thinking. Clearly, Chase meant to prepare Butler for a dramatic alteration of Administration policy.56

But the change did not come. Seward's prerequisite of a Union military victory proved to be a formidable requirement. Given the time to ponder and brood over the question, Lincoln began to sound less like a would-be emancipator and more like a man looking for an escape. Chase followed up his letter to Butler by pressing Lincoln hard for emancipation and the use of black troops. On August 3 Lincoln told the Cabinet that he was "pretty well cured of objections to any measure except want of adaptedness to put down the rebellion . . . ."

Military necessity remained the key that would unlock the presidential war power, the power by which persons who were slaves would become free.
The President had few kind words for the candidates for freedom. Addressing a delegation of free blacks on August 14, Lincoln painted perhaps his grimmest picture of America. Each race suffered by the presence of the other, and the future offered little more than the past or the present:

... even when you cease to be slaves, you are yet far removed from being placed on an equality with the white race. You are cut off from many of the advantages which the other race enjoy. The aspiration of men is to enjoy equality with the best when free, but on this broad continent, not a single man of your race is made the equal of a single man of ours. ... I do not propose to discuss this, but to present it as a fact with which we have to deal. I cannot alter it if I would ... . See our present condition--the country engaged in war!--our white men cutting one another's throats, none knowing how far it will extend; and then consider what we know to be the truth. But for your race among us there could not be war, although many men engaged on either side do not care for you one way or the other. Nevertheless, I repeat, without the institution of Slavery and the colored race as a basis, the war could not have an existence.

It is better for us both, therefore, to be separated.57

Lincoln's remarks shocked abolitionists. In the President's view, the black did not fit into the scheme of America and was, indeed, the cause of the present blood-letting. Disturbingly, the President's repulsion lay with "white men cutting one another's throats," not with the suffering slaves had endured for decades. The Liberator bluntly denounced Lincoln's address as a "tissue of absurdities and false assumptions." A meeting of New York blacks gave the
lie to the assumptions. Blacks were not "a different race of people," they maintained. They were Americans, born in the land. The United States was their native country. There was no reason they should leave the land they loved. Despite its faults, despite the racism and slavery and discrimination, America was their home as much as the white man's. If they were to be "colonized" anywhere, it would have to be in a South free of slavery.

What was the President's attitude toward slavery, the black, and the war? Responding to Horace Greeley's "Prayer of Twenty Millions," on August 22, Lincoln gave the best statement of his pragmatic Unionism. Whatever was necessary to restore the Union, he would do. Freeing all, or none, or a part of southern slaves--those were all clear options for the President. Or at least he wished the public to believe. Exactly a month before Lincoln had told his Cabinet of his disposition to free slaves in order to win the war. In the interim he proposed colonization in his most forceful statement on the subject and at least publicly kept open the option of continued bondage for southern slaves. Was the President maneuvering for political room, putting pro-slavery elements off-guard by appearing to side with their own anti-black prejudices?58
Abolitionists and radical Republicans were dismayed at Lincoln's words, if not despairing. William Lloyd Garrison grew skeptical about the President's honesty, suggesting his control by the "satanic democracy of the North, and the traitorous 'loyalty' of the Border States." The situation appeared on the surface much as the North American Review described it: rebel states would resume all their rights once the war ended. Only continued tenacious rebellion could possibly play into the abolitionists' hands.59

Tenacious rebellion—this was the key, not only to the war's incredible length, but also to Lincoln's thinking. The military victory long sought as Seward's sine qua non for emancipation eluded. No—it did not even approach. Second Bull Run was yet another Union disaster, not so much in abject defeat (though there was that, too) but in lack of victory. Numerous reasons were cited for the galling fact—poor generalship, congressional interference with the army, insufficient troop strength. To Lincoln and undoubtedly to many it seemed—perhaps—a sign of Divine displeasure. In the aftermath of Second Bull Run, in the bitterness and creeping fear that join with confusion, Lincoln looked for the reason—the one reason—to explain all the war, death, suffering, and agony the nation endured, and to explain his own agony:
The will of God prevails. In great contests each party claims to act in accordance with the will of God. Both may be, and one must be wrong. God can not be for, and against the same thing at the same time. In the present civil war it is quite possible that God's purpose is something different from the purpose of either party—and yet the human instrumentalities, working just as they do, are of the best adaptation to effect His purpose. I am almost ready to say this is probably true—that God wills this contest, and wills that it shall not end yet. By his mere quiet power, on the minds of the now contestants, He could have either saved or destroyed the Union without a human contest. Yet the contest began. And having begun He could give final victory to either side any day. Yet the contest proceeds.

The will of God prevails—God wills this contest—yet it proceeds. Lincoln's crisis of faith did not center upon the Divine Will, for he followed a familiar affirmation, confusion, resignation, and acceptance pattern. Lincoln's crisis centered upon his will—what he would do. It is not entirely unfair to ask who Lincoln competed with more in "the great contest"—the South, or himself. In the end, Lincoln quit the contest, and gave the decision over to God. 60

"No tongue can tell, no mind conceive, no pen portray the horrible sights I witnessed this morning. God grant that these things may soon end," wrote a soldier upon viewing Antietam battlefield.

"Eye hath not seen, nor ear heard, neither have entered into the heart of man, the things which God hath prepared for
them that love him." (1 Cor. 2:9).

Two statements, striking in their difference, yet parallel in sentiment. The first written after a great battle; the second a vision of heaven. The first a plea for God's intervention; the second a promise of comfort. The first a soldier's reaction to the field at Antietam. The second an apostle's view of the peaceable kingdom. For Lincoln the two became one—Antietam was the sign of election and favor and, indeed, what God had prepared. By the outcome of the battle, it was clear that "God had decided the question in favor of the slaves." Therefore, Lincoln was convinced that his proclamation of freedom would be no papal bull against a comet. 61

The momentous deed of freedom was issued on September 22. Based upon his war power as commander in chief, Lincoln declared that on January 1, 1863 all slaves held in areas still in rebellion would be "thenceforward, and forever free." The executive would "recognize and maintain" ex-slaves' freedom. 62 It was "an exercise of extraordinary power," in Gideon Welles' phrase—a measure too profound to be based "on mere humanitarian principles." Justification lay rather in the proclamation's true purpose—preservation of the Union. Indeed, emancipation was to be a punishment for continued rebellion and its threat an inducement to lay down southern
arms. True, certain military benefits might accrue to the Union if it tapped the vast manpower potential of southern slaves. The greatest military benefit, however, and Lincoln's ultimate purpose, was to end the war. The humanitarian aspect of emancipation was secondary. God may have decided the issue of freedom and slavery, but as for future race relations, the Almighty apparently remained mute. The quality of freedom Lincoln pledged to recognize and maintain was an open question. The very next day, September 23, the President resumed his efforts to colonize American blacks. Although Lincoln would not tolerate compulsion or deportation, neither did he believe four million blacks could be Americans.63

Whatever Lincoln's personal views of emancipation and its aftermath, the Proclamation's effect was great. If nothing more, it was a tremendous claim for the President's authority. Because the Constitution authorized the war power, emancipation by the President (or by Congress as in sections nine and ten of the 1862 Confiscation Act) was a striking new link between the federal government and individuals. State governments were by-passed, though not ignored, because circumstances allowed and required it. The meaning of the war became clear with emancipation, despite the Proclamation's drawbacks and limitations. State law defined property, but freedom was national in scope. Freedom was the nation's business. Any
institution that sought to destroy the nation and the nation's business must itself be destroyed. If malignant slavery did not end, the nation, the nation's government, and the nation's liberty would. Because the Constitution belonged to the people of 1862 and not to those of 1787, emancipation was necessary to secure everyone's freedom. War had changed reality and required different answers. "Let it search," Ralph Waldo Emerson wrote, "let it grind, let it overturn, and like the fire when it finds no more fuel, it burns out." Events took on a life of their own, demanding new responses. For all its deficiencies, the Emancipation Proclamation was one new response.64

Abolitionists divided sharply in their views of the document. Some emphasized the limits and shortcomings of the Proclamation. Garrison granted that it was a cause for rejoicing "as far as it goes," but his concern centered on slavery's continued existence. Congressman James Ashley criticized the one hundred day interim before emancipation took effect, saying it was like apologizing beforehand. Lincoln recognized the truth of the remark, responding, "Ashley, that's a center shot." Writing in the New Englander, the Reverend N. H. Eggleston also faulted the Proclamation for its delayed effect, saying it would have been "more just, more dignified, more manly, and more Christian. As a war
measure, it would have been more effective." Still, it was better than nothing, much better than nothing in Gerrit Smith's view. Wendell Phillips remarked, "How decent Abe grows." 65

Republican governors meeting in Altoona, Pennsylvania, supported Lincoln's decision, calling the Proclamation "a measure of justice and sound policy." In general, the Republican press fell into line behind the decree. The Emancipation Proclamation was a "decree of fate rather than the utterance of any man," according to the Philadelphia American. The Chicago Tribune declared "so splendid a vision has hardly shone upon the world since the day of the Messiah." More radical Republican pressmen, however, emphasized the Proclamation as a beginning rather than a conclusion. The weight of the federal government was removed from the backs of the slaves, but they could not yet fight for themselves. The Proclamation was "rather innocent and harmless," observed the Perry (Pennsylvania) Freeman; force was still the chief means to conquer the rebellion—"by powder and balls, by bombs and bayonets, by sword and by fire." The Springfield (Massachusetts) Republican summed up the radical position concisely in its statement. Years of struggle were still ahead, "not all of it bloody, but all of it bitter":

The destruction of slavery involves the reconstruction of states and State constitutions. The liberated men are to have rights before the law—laws made for the regulation of their relations to each other and to the white proprietors of the soil.66

The best thing about the Proclamation in radical eyes was its existence. No longer could northern politicians avoid the issue of slavery and freedom. The Proclamation worked its effect while men slept, armies rested, and generals waited. In a sense, the battle shifted from Richmond to Boston: "For there can be no durable peace, no sound Constitution, until we have fought this battle . . . . It were to patch a peace to cry Peace whilst this vital difference exists."67 Men who for years had feared the appellation "abolitionist" because of its political opprobrium were freed along with the slaves. Secretary Chase and friends sat together one evening and merrily called one another abolitionists, reveling in "the novel sensation of appropriating that horrible name." As the Liberator noted emancipation brought out the tendencies on the other side, turning "every pseudo-loyal toad . . . into a semi-rebellious devil without disguise." Border state men, once allies in the war effort, might well become opponents.68

Conservatives were skeptical about Lincoln's "new policy," openly questioning its worth. The Proclamation's one hundred
day delay convinced some that the measure was a sop to radicals. At least this was the hope, for if the emancipation measure was more than a placating move, it raised issues "too tremendous, and . . . fraught with consequences . . . to admit to calculation or forecast." Democratic newspapers, however, were quick to forecast a future of "darkness and blood," in the words of the New York Journal of Commerce. The Proclamation was illegal and unconstitutional, for it confiscated slave property without conviction for treason, suspended state laws, and invited slave insurrection. Most conservatives felt betrayed by Lincoln's new policy.

The Philadelphia Journal described the decree as a thunderbolt to conservatives, and a joy only to a set of "insane fanatics."

To comfort its readers, the St. Lawrence (New York) Advance assured that the Proclamation "will prove to be a dead letter and an abortion," serving only to intensify southern resistance and making reunion all the more difficult. Hence, emancipation was wrong on legal, constitutional, political, and military grounds. Emancipation, along with previous antislavery measures, only confirmed the Democratic view that abolition had raised its "hydra-head" in the war.69

Democrats and conservatives in general continued to call for "the Union as it was, the Constitution as it is," hoping that through this device the South could be restored to the
Union with her rights (that is, slavery) intact. Once restored, there might be a need for constitutional revision, Democratic party chairman August Belmont suggested. But revisions would seek better definition of the limits of federal and state power and be aimed against the "ultra and arbitrary spirit" of the present Administration. Many conservatives who had given Lincoln the benefit of the doubt now spoke in opposition. In the congressional elections of October and November, 1862, Democrats made their best showing in years, adding thirty-five seats in the House of Representatives. Allies of the Administration attempted to counter conservative attacks by re-emphasizing the connection between the rebellion and slavery. How did they want to fight the war, "what do the anti-energy, anti-action, anti-contraband-digging, anti every thing and go-ahead in the war gentlemen propose?" In the end all antislavery men could hope for was education. Just as the war had impressed them with the necessity of ending slavery, so might northern Democrats and other conservatives learn to let go of slavery, to let go of attachment to a system they sometimes held more dear than slaveholders. The devotion to slavery was passing away and had been ever since "Saint Sumter's Day." Republicans, radicals, abolitionists, Lincoln—all waited for history to make the inescapable indisputable.
More disturbing was former Supreme Court Justice Benjamin R. Curtis' opposition to the Emancipation Proclamation. Curtis, one of two justices to dissent from the *Dred Scott* decision, embodied the conservative principles of constitutional construction dear to the hearts of many Americans. Although he supported the war, Curtis' narrow legalism made effective prosecution difficult and certainly ruled out the Proclamation. Curtis asserted that the Emancipation Proclamation repealed and annulled state laws, thereby failing to distinguish between emancipation and abolition. That the Proclamation did not abolish slavery was a key point in Whiting's argument and a reason Garrison was disappointed with the decree. Substantially, Curtis dismissed the notion that there was anything like a "war power" under the Constitution, fearing that if invoked, the "gigantic shadow" of presidential war powers might blot out northern as well as southern constitutional rights.\(^7\)

Another constitutional conservative had misgivings about the Proclamation, though his reactions assumed the color of his recent thinking. Lincoln's first public response to emancipation was, "I can only trust in God I have made no mistake." Lincoln remained unsure of his decision. Unless the North responded properly, not with "breath alone [that] kills no rebels," but with troops to crush out the rebellion,
Lincoln feared his Proclamation would be a failure. He continued to push for colonization ventures to Central America and Haiti, for colonization like every other action, like emancipation itself, was aimed toward restoring the Union—nothing more, nothing less. There was much support for the Proclamation and the Proclamation’s President:

Now who has done the greatest deed
Which History has ever known,
And who, in Freedom’s direst need,
Became her bravest champion?
Who a whole continent set free?
Who killed the curse and broke the ban
Which made a lie of liberty?
You--Father Abraham--you're the man! 72

Yet Lincoln's own words seem truer to the mark, and a more fitting summation of the enigma of emancipation:

If I had had my way, this war would never have commenced; If I had had been allowed my way this war would have ended before this, but we find it still continues; and we must believe that He permits it for some wise purpose of his own, mysterious and unknown to us.73

Some wise purpose. The months of July through November were times of discovery for the government—Congress and President. The Second Confiscation Act accepted the idea of massive seizure and redistribution of property as a punishment for rebellion and a means to reconstruct the South. Emancipation fostered by that law was a significant
step forward, yet suffered from the same war circumstance that made it possible. Confusion about slaves' status—whether person to be set free from treasonable bonds, or property to be seized and adjudicated—lessened the visionary quality of this approach to emancipation. The President's Proclamation allowed an ambiguous interpretation. Persons by Lincoln's reckoning, slaves were not so clearly Americans. To be sure, each measure, proclamation, and statute, were necessary, incremental steps toward freedom. Each step was beyond anything that might have been imagined a mere two years before. Blacks might be free; they were not yet part of America, the special status of "freedmen" marking a subtle yet profound difference from average freemen. To have meaning, freedom must exist within a context, in connection with a place, society, and culture. This was the component missing from confiscation and emancipation; this was the part of the abolitionist ideal not yet implemented. And for this, there was a hollowness to emancipation, a certain lack. As there was no vision, so there was no joy.

What to do with the blacks now that they were free? A constant question from 1862. A war was fought, laws enacted, schemes were concocted—all failed to answer that question.
Truly may it be said that Africa has invaded and conquered our country, and though we may call the negro a slave, he is the master of our destiny.\textsuperscript{74}

We cannot escape history.
NOTES FOR CHAPTER FOUR

1. On June 5, 1862, Congress granted diplomatic recognition to Haiti and Liberia. Slavery was abolished in the territories of the United States on Jun 19, 1862, SAL, 12:421, 432.

2. Lincoln, Coll. Works, 5:537. I have eliminated the emphasis of the original.

3. Ibid., 5:530-36.


6. Don E. Fehrenbacher notes that "if the United States had a patron saint, it would no doubt be Abraham Lincoln." Stephen B. Oates, Lincoln's most recent biographer, observes the tendency to characterize Lincoln either as the "Great Emancipator" or as the "great ancestor" of racist white citizens' councils and the Ku Klux Klan. Resolution into neat and overprecise "either/or" categories drains meaning from ambiguity. Lincoln was neither incarnate racist nor noble equalitarian; he was both. Fehrenbacher, "Only His Step-Children." Civil War History (1974), 20:292; Oates, "The Man of Our Redemption: Abraham Lincoln and the Emancipation of the Slave," Presidential Studies Quarterly (1979), 9:15. See also the entire issue of the Papers of the Abraham Lincoln Lincoln Association, volume 2 (1980), dealing with the topic of Lincoln and race; Benjamin Quarles, Lincoln and the Negro (New York: Oxford University Press, 1962), especially chs. 5 and 6.


13. Ibid., 313.

14. Liberator, June 20, quotation, July 18, 1862.


17. Quotation, Fisher, Diary, 424; Sidney George Fisher,


22. Fisher, Diary, 430-31; Whiting, War Power, 129.

23. Belmont, Letters, 84.


31. *SAL*, 12:319; *DNA*, RG233, House Judiciary Committee minutes, 37:1, 211.

32. Philadelphia *Press* reprinted in *Liberator*, May 9, 1862.


35. Ibid., 471-79.

36. Ibid., 480-86.

37. Ibid., 486-93.


42. Ibid., 17-24.

43. Ibid., 29-30, 37-49, quotation, 51.

44. Ibid., 52-54, 56-59, quotation, 54. On the adequacy of the Constitution in general, see Hyman, More Perfect Union, ch. 8, and for a similar view, though contemporary, see Leonard Bacon, "Reply to Professor [Joel] Parker," in New Englander (April 1863), 22:191-258.


46. Curry, Blueprint for Modern America, 70, 78-94; Belz, Emancipation and Equal Rights, 33-38; Syrett, "Confiscation Acts," 24-25, and generally chs. 2 and 3; Lucie, "Confiscation," Civil War History (1977), 23:311-13. Lucie suggests that the emancipation clauses of the Second Confiscation Act provided the slaves with possible avenues for securing their freedom through United States courts by habeas corpus proceedings. This possibility was soon superseded, in Lucie's judgment, by the Emancipation Proclamation, ibid., 316-20; Donald, Sumner and the Rights of Man, 60-67. On the emancipation bill lost in the Senate, see Herman Belz, A New Birth of Freedom (Westport, Connecticut: Greenwood Press, 1976), 7-9.


48. North America Review (October 1862), 95:522-33; Lucie, "Confiscation," Civil War History (1977), 23:312. See the Liberator, September 26, 1862, for the observation that the Second Confiscation Act was "substantial emancipation."

49. Whiting, War Power, i, 86-89, 91-92, 97-106, 109, 113-14. Although Whiting predicted that in rem proceedings would be an effective means of enforcement (ibid., 124-28), the Second Confiscation Act, like its predecessor, was not vigorously enforced. Lyman Trumbull remarked in March 1864 during debate on the Thirteenth Amendment, that he did not know of one slave freed by the first confiscation act, and the second law was not enforced for a long time after its passage. The United States attorney for Kentucky had not received


52. Donald, *Inside Lincoln's Cabinet*, 95-96, 98-99; Lincoln, *Coll. Works*, 5:336-38; *SAL*, 12:590; Belz, *Reconstructing the Union*, 103. Interestingly, Lincoln's proposal for emancipation rested upon the Confiscation Act (and therefore the Congress' war power) and his own power as commander in chief.

53. Donald, *Inside Lincoln's Cabinet*, 99; Oates, *With Malice Toward None*, 310-12, 331; Montgomery Blair opinion dated July 23, 1862 in Salmon P. Chase Papers, DLC; Lincoln, *Coll. Works*, 5:338, 356-57. The only circumstances Lincoln found completely objectionable was the taking of slaves not capable of work, from loyal masters, without their consent.


55. A few saw irony in the timing of Lincoln's emancipation edict. The sixty days of warning established in the July 25 proclamation of the Second Confiscation Act would expire three days later, September 25, making all rebel-owned slaves (if property) subject to confiscation/emancipation. Some believed that Lincoln's Emancipation Proclamation gave
the rebellious South until January 1, 1863 before freeing
the slaves—one hundred more days of servitude—because the
President chose to assert the presidential war power and
regard slaves as persons, Liberator, September 26, 1862.
The Liberator failed to realize that the Second Confiscation
Act did not confiscate slaves, so much as free them. The
abolitionist point remained, however: Lincoln's interposition
of executive power delayed the freedom of rebel-owned slaves
for another one hundred days.

56. Joseph Geiyer to Chase, July 26, 1862, Salmon P.
Chase Papers, DLC; Lincoln, Coll. Works, 5:343, 346; Oates,
With Malice Toward None, 311; Chase to Butler, July 31,
1862, in Butler, Correspondence, 2:132-34.

57. Donald, Inside Lincoln's Cabinet, 105-106; Lincoln,

58. Liberator, August 29, 1862, September 12, 1862;
New York Tribune, August 20, 1862; Lincoln, Coll. Works,
5:388; Oates, With Malice Toward None, 312-13; See also
British and Foreign Anti-Slavery Society, Anti-Slavery
Reporter, 10:263; James M. McPherson, The Struggle for
Equality: Abolitionists and the Negro in the Civil War and
Reconstruction (Princeton, New Jersey: Princeton University

(October 1862), 95:517. For Lincoln and the border, see also
Donald, Inside Lincoln's Cabinet, 105, 136; Randall, Lincoln
and the South, ch. 2.

60. Quotation in Lincoln, Coll. Works, 5:403-404;
Oates, With Malice Toward None, 314-17; North American
Review (October 1862), 95:519-21; Donald, Inside Lincoln's
Cabinet, 150; Welles, Diary, 1:143. See Niebuhr, in Nevins,
Lincoln and the Gettysburg Address, 75: "Lincoln ... put
the whole tragic drama of the Civil War in a religio-dramatic
setting."

61. Antietam quotation, in E. B. Long, The Civil War
Day by Day: An Almanac (Garden City, New York: Doubleday and
Company, 1971), 268; Welles, Diary, 1:143; Lincoln, Coll.
Works, 5:420.
62. Lincoln, Coll. Works, 5:433-36. Seward's suggestion was the phrase that the government ought not only to recognize but "maintain" freedmen's liberty, Donald, Inside Lincoln's Cabinet, 151-52; Welles, Diary, 1:143.

63. Welles, Diary, 1:144, 152; Donald, Inside Lincoln's Cabinet, 147, 149-52, 156. Lincoln's efforts to secure by treaty land for black colonization in Central America failed, British and Foreign Anti-slavery Society, Anti-Slavery Reporter, 10:263; Oates, With Malice Toward None, 330. Seward also insisted that colonization be voluntary. Bates and Blair disagreed, but the President sided with Seward on this issue also. On September 23, Blair asked that papers with his disagreement over the timing of the Proclamation not be filed, Blair to Lincoln, Abraham Lincoln Papers, DLC. See also George M. Fredrickson, The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914 (New York: Harper and Row, 1971), 153, 155-57, 159-64, for abolitionists who also viewed America as a white man's country.

64. Lincoln, Coll. Works, 5:435; SAL, 12:591-92; Fisher, Trial of the Constitution, 90, 96, 187; Whiting, War Power, 6-7; Emerson, Journals, 9:462; F. P. Stanton, "The Freedmen of the South," in Continental Monthly (December 1862), 2:730. For an extended defense of the President's war power to emancipate, see Whiting, War Power, 60, 67-82, and for a historian's contrary view, see Clarence A. Berdahl, War Powers of the Executive of the United States ([Urbana, Illinois]: University of Illinois Studies in Social Sciences, volume IX, Nos. 1 and 2, c1921, 1970 reprint), 268. Note the following from N. H. Eggleston: "New convictions have seized the public mind and have been wrought into it with wonderful rapidity and force," Eggleston, "Emancipation," in New Englander (October 1862), 21:786.


68. Rutherford B. Hayes, *Diary and Letters of Rutherford Birchard Hayes* ([s. l.]: Ohio State Archaeology and History Society, 1924), 50; *Liberator*, October 3, 1862; Welles, *Diary*, 1:158-60. See also Fisher, *Trial of the Constitution*, 283-84, 289-93, 306-10, and the appendix Fisher attached to Lincoln's Proclamation. Before the Proclamation was issued, Fisher suggested gradual emancipation along the lines of the schemes northern states adopted in the late eighteenth century, making children born after a date certain free.


CHAPTER FIVE
WE ARE MAKING HISTORY

Five weeks after Lincoln issued the Emancipation
Proclamation, a month before it became effective, Attorney
General Edward Bates delivered an opinion to Secretary of
the Treasury Salmon P. Chase. He stated that free blacks
born in the United States were citizens of the United States,
and of the states where they resided.¹ Little noted at
the time, Bates' opinion provided a key, incremental step
in the fulfillment of freedom for blacks in America.

It is characteristic of the advance in thinking brought
about by the war that Bates' decision caused little immediate
stir. Yet before the war, the question of black citizenship
had prompted intermittent discussion and some controversy.
In 1790 Congress limited naturalization to whites, and in
1813 distinguished United States citizens as a class from
free blacks by limiting seamen on American vessels to United
States citizens and free persons of color born in the
United States.² Missouri's admission to the Union in 1821
caused debate for, among other reasons, the new state's
constitutional provision prohibiting the immigration of
free blacks. Congressmen from states where free blacks were

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citizens objected to the apparent violation of the Constitution's guarantee of the privileges and immunities of the United States citizens in the several states. The discussion pointed up the confusion concerning black citizenship and also on the precise nature of the privileges and immunities of United States citizens—a confusion that existed through the 1860s. Did possession of rights determine status, that is, citizenship, or did status determine rights? Did birth determine status? Congress in 1820 did not answer these questions, admitted Missouri, and passed a "Pontius Pilate" resolution disclaiming responsibility for violations of the United States Constitution. In 1821 Attorney General William Wirt confirmed the argument that status flowed from rights. In an opinion concerning Virginia free blacks Wirt maintained that they had discernibly fewer rights than white residents. Therefore, blacks were not citizens of Virginia, and there-fore, not citizens of the United States. Since United States citizenship would imply eligibility for federal office, Wirt also found this a compelling reason to deny blacks United States citizenship.3

Wirt's opinion remained the view through the intervening years down to the Civil War. It was formidabley supported in the Dred Scott decision of 1857, particularly by Chief Justice
Roger B. Taney. Taney's reasoning was at best complex. Although he seemingly denied the "status follows rights" idea, Taney did believe that discriminatory legislation in the states was evidence that blacks were not intended to be citizens of the United States. The result was the same. Blacks were not citizens of the United States, they were not persons in the meaning of the Constitution, and they had no rights that white men were bound to respect.

Reaction to the Dred Scott decision brought divergent northern and southern views into focus. The southern view of the question triumphed in Taney's opinion, although many southerners thought Taney had not gone far enough. Northern opinion had found expression even before the Dred Scott decision, primarily in personal liberty laws (really anti-fugitive slave laws) designed to protect northern states' own black citizens. Before 1857, free blacks might hope for passports and federal pre-emption lands in the West. After 1857, the executive branch of the federal government was more consistent in denying all privileges of United States citizenship to blacks. Republicans, on the whole, believed the Dred Scott ruling on black citizenship and the unconstitutionality of the Missouri Compromise were mere obiter dicta--opinion only--and not binding constitutional interpretations. They had little choice. If accepted, the
Dred Scott opinion undercut the entire basis of Republican prewar constitutional ideology, that is, Congress' power to prevent the extension of slavery in the territories. If Congress did not possess that power, Republican politics would be irrelevant.4

Because reaction to the Dred Scott decision was so mixed, white Americans were confused about the status and rights of free blacks in the several states. Ohio, New York, and Massachusetts allowed blacks to vote in the 1860 presidential election. One northerner thereupon declared Lincoln's election invalid because blacks, a people who "are not and cannot be" citizens, voted. This claim arose from misunderstanding the connection between citizenship and suffrage. As Attorney General Bates later stated, the two were not necessarily connected at all. Indeed, Wisconsin, Indiana, Minnesota, and Oregon all allowed aliens to vote in their state elections.5

The status of free blacks remained a question throughout the first year and a half of the war. With the Emancipation Proclamation, however, the question became much more important since millions of southern slaves would become freedmen on January 1, 1863. Would they also be citizens? On November 29, 1862, Bates answered Treasury Secretary Chase's inquiry about
the legality of a black man's commanding an intra-coastal ship. The law required the position of captain to be filled by a United States citizen. Thus two elements of an important question were brought together: were blacks citizens of the United States; indeed, could they be? Shortly before Bates delivered his opinion, William Whiting, War Department Solicitor, concluded that blacks had always been citizens in some of the states and enjoyed the rights of citizenship. Nothing, therefore, barred blacks as a class from United States citizenship since Whiting believed that state citizenship determined national status. He used the standard view that states created citizens and came close to endorsing the view that possession of rights determined citizenship.

The key to Bates' 1862 opinion, however, lay in the division of status from rights. Finding no "clear and satisfactory definition of the phrase citizens of the United States," in law books or court records, Bates gave his own definition. Privileges or rights were not useful characteristics in defining status, since some rights might be exercised by non-citizens (aliens could be elected to office, for example) and citizens (women and children) did not have the right to vote. Because the lack of correlation between rights and status was apparent, Bates concluded that the Constitution's
use of the word citizen referred only to the individual's relationship to the nation. A citizen was "neither more nor less than a member of the nation," and within that status all were equally citizens. Every citizen of a state was a citizen of the United States, and every United States citizen was a citizen of the state where he lived. The Attorney General broke the dependence of United States citizenship upon state citizenship, finding instead a primacy for the former. Membership in the nation (citizenship) derived from birth in the United States. The Constitution said "not one word, and furnish[ed] not one hint, in relation to the color, or to the ancestral race, of the natural-born citizen."6

Secretary Chase had not asked whether a slave was a citizen of the United States, so Bates skirted that issue. Yet the Attorney General observed that the Constitution placed no color bar on citizenship. To say it did was a "naked assumption" not warranted by the Constitution's language. Bates appeared to accept much of the abolitionist view of the issues. Blacks, if born free in the United States, were citizens of the United States. But what did that mean? What rights and privileges were thereby secured? Concerning these questions Bates' innate conservatism emerged.

Referring specifically to William Wirt's 1821 opinion,
Bates dismissed the view that blacks were not citizens of the United States because they did not share full rights and privileges with white Virginians. State law discriminations concerning rights and privileges did not affect status and could not affect the right of United States citizenship. Bates' opinion did not mean, however, that all United States citizens possessed the same rights. He distinguished between certain unspecified political rights all citizens had, and those political powers held only by some, the franchise and eligibility for office as example. The Attorney General did not specify what the privileges and immunities of United States citizenship were, although he again stressed that possession of rights did not affect status. In the end, Bates dismissed the Dred Scott decision, finding nothing in it to bar free blacks from United States citizenship.7

In a sense, Bates defined away much of the crucial nature of the question. Free blacks might well be citizens of the United States, whatever that meant. The exact nature of the rights that adhered to the status of United States citizen was left ambiguous. The Attorney General chose not to cite the small body of precedent that listed rights of United States citizens, a list most developed in Justice Bushrod Washington's circuit court opinion in Corfield v.
Corvell (1823). Washington had included among those rights protection by the government, acquisition of property, enjoyment of life and liberty, transit and resettlement, writ of habeas corpus, and access to the judicial system. This list was similar to the rights abolitionists envisioned for the freedmen, although abolitionists more often referred generally to human rights. Yet Bates by-passed the question of rights and the immediate reaction to his opinion suggested that the practical effect for blacks was "small at most." 8

Nonetheless, Bates' opinion was important. His conservatism led him to skirt the critical issue of rights, but his conservatism found no problem declaring free blacks to be United States citizens. Bates' opinion ratified what had occurred during the first year and a half of the war, and acknowledged the legal status of free blacks for the first time. The Attorney General side-stepped important corollary questions. Did slaves, once emancipated, become natural, free-born men and therefore citizens? If they did not, must Congress naturalize ex-slaves by statute? Still, Bates' opinion broke the legal and psychological barriers that had kept the status of blacks in constant indecision. He stated flatly that nothing in the Constitution barred blacks as a class from United States citizenship. Once citizenship was recognized, security would follow, at least protecting blacks
against forced deportation or colonization. The question of
the rights of black citizens was more problematic but not
without hope. Abolitionists predicted the war would solve
this problem, too.⁹

"Progress! Ordinarily we must take some microscope to
watch it." Wendell Phillips marveled at the changes that had
occurred in America since the war began. "What vast progress
in these two years," he continued, "what immense progress! And
all of it the PEOPLE'S progress." Confiscation of rebels'
property, abolition of slavery in the District of Columbia
and the territories, black citizenship, and the final
Emancipation Proclamation of January 1, 1863—all had occurred
in two years. What progress, indeed. Coupled with Lincoln's
decision to enroll black soldiers in the federal army, each
innovation had changed the condition of blacks. Each change
tended to alter their legal and moral status. Abolitionists
had long maintained that there was no limbo between slavery
and freedom. Bates' opinion on citizenship supported their
view. American law made no provision for "denizens,"
inhabitants who were neither citizens nor aliens. Slaves were
not aliens, and Bates declined to say whether they were
citizens. But ex-slaves were another matter altogether.
Given the choice of two categories, alien or citizen, freed blacks had to be citizens. But this conclusion did not crystallize immediately. The progress of war called forth this conclusion. Abolitionists were correct in believing there was no limbo of "neither slave nor free." But the pilgrimage from bondage to liberty could not be made overnight.10

The final decree of emancipation on January 1, 1863, marked a decisive change in the war's object. After the hundred day grace period announced on September 22, 1862, Lincoln decided that "broken eggs can not be mended. I have issued the emancipation proclamation, and I can not retract it." The President had struggled nearly a year and a half to fight the war without touching slavery. Now that necessity had brought him to emancipation, he would not turn back.11 Edward Everett Hale summed up well when he wrote, "there is no more Egypt for us, even if we wanted it. We are asked, simply, whether we will go now into the promised land, by one vigorous effort." America's exodus from slavery to the promised land of equal opportunity--Hale's vision--was still too radical for many northerners, including Lincoln. The President proclaimed the finality of emancipation and in the next thought conjured up a "system of apprenticeship for the
colored people." Gideon Welles awaited the results of events "deep as they may plough their furrows in our once happy land." The war shook the civil fabric, subduing the errors "which no trivial measure could [have] eradicate[d]." A land of freedom did not yet exist, only a promised possibility of good and evil: "The seed which is being sown will germinate and bear fruit, and tares and weeds will also spring up under the new dispensation." 12

The fruits and weeds of emancipation were readily apparent to Americans; whether freedom was fruit or weed depended upon one's point of view. South Carolina blacks behind Union lines welcomed freedom with a rendition of "My Country 'tis of Thee," a song never quite appropriate until emancipation. The spirit with which they sang did not guarantee their future happiness or security. For that, government intervention would be needed. And for that, the Constitution must be seen, in Congressman James Ashley's words, as a "charter of national liberty." Interpreted in that way, there was no need for a constitutional amendment to abolish slavery. With the power war provided slavery could be destroyed. But the existing generation would have to decide.

So must Lincoln. The President gained respect from abolitionists immediately after January 1, 1863, that "bright
and brilliant day." Henry W. Bellows, Unitarian clergyman and president of the United States Sanitary Commission, reminded his countrymen of Isaiah's prophecy: "and the government shall be upon his shoulders." While the prophecy was usually applied to the Messiah, Bellows suggested its appropriateness for Lincoln and urged Americans to support the President in bearing his burden. Sidney George Fisher, although no abolitionist, thought Lincoln "the only man of confidence in the government." Abused as Lincoln was by Democrats (and later by disillusioned abolitionists), Fisher believed that all eventually would be forced to recognize the President's leadership.13

Supporters defended Lincoln's use of extraordinary power. In an anecdote worthy of Lincoln himself, New York lawyer Grosvenor P. Lowrey made the point:

"I guess this is the law," said an indiscreet practitioner, before the chief-magistrate of a western village. "I guess it ain't," said the irate dignitary, "and I have the last guess." The Commander-in-chief who must bear the final responsibility, and is clothed for the occasion with all the discretion of the nation, has exercised it finally.14

In a direct attack on Benjamin Curtis' pamphlet, Executive Power, Lowrey insisted that "rebels in arms against the Constitution, must not be spoken of as men having constitutional rights." "Ordinarily," Lowrey explained,
"the mind stops at the Constitution, the Alpha and Omega of American liberty . . . ." Yet these were not ordinary times, and the mind sought the higher law behind the Constitution "which shall sustain and be in agreement with it." The President had reached beyond the usual limits of power to meet a completely novel situation. The Emancipation Proclamation was the result, and the duty of citizens was to accept it. This was the essence of loyalty, as Horace Bushnell described it:

No real statesman will undertake to be a mere lawyer, standing fast in the letter, when eternal doom has pushed it by. Every man can see that, under the doom of war, we were bound to [reach] just the crisis we have reached, proclamation or no proclamation. It was right, for a time, to say, "the Constitution as it is," but it could not be always . . . . When affairs move rapidly, the real statesman keeps up with affairs. Nothing is now left us . . . from the first nothing was finally to be left us, but to champion the liberty of the slave . . . . These throes of civil order are but the schooling of our loyalty . . . . What loyalty was we did not even know before.15

The changes were dramatic not solely in attitudes but in categories of meaning. Toward the end of 1863 Sidney George Fisher noted how many people, once indifferent to antislavery, now favored emancipation: "the term 'abolitionist' has ceased to be one of reproach."16

Not so with conservatives. Just as the war ought not liberate slaves, so the war did not free some lawyers from their
dependence on literalism. George Ticknor Curtis, brother of Benjamin Curtis, a counsel for Dred Scott, and a leading lawyer of the day, scoffed at the "war measure heresy" that treated the Constitution as "a thing made of India-rubber, to be stretched in one direction in time of peace and in another direction in time of war." The *Monthly Law Reporter* featured a lengthy article in January 1863 attacking the war powers doctrine of William Whiting. Point by point the claim of national power to confiscate and emancipate was denied or tempered in such a way as to leave the government little room to maneuver. The Constitution guaranteed compensation for seizure and reserved power to the states. Belligerent rights were circumscribed by civilization's rules, and the government had no business trying to foment slave insurrection southward, the article maintained. The Emancipation Proclamation, in the anonymous writer's opinion, was problematic. If illegal, it was of no consequence. And to determine its legality, one should search the precedents, studying the past for a guide to the future. The past—the law—ruled the present.18

This begged the question. The matter at issue was what was the law. To invoke the standard of "this is a government of laws and not of men," as the *Monthly Law Reporter* writer
did, failed to solve the problem of what was the law. Similarly, conservatives' quibbles over the Proclamation demonstrated legalism at its worst. Because Lincoln referred to himself as the "executive" rather than the "commander-in-chief," the Washington National Intelligencer suggested the possible invalidity of the Proclamation. Samuel F. B. Morse, on the other hand, rejected emancipation outright. He believed that the Proclamation did not attack the cornerstone of the Confederacy because slavery was not the key. Rather, Morse believed that the foundation of both northern and southern societies was the inequality of the races. Lincoln himself had said as much, Morse pointed out, in his address to free blacks in August 1862. No government policy could change the biological superiority of whites. With that in mind, Morse believed that the war might be ended when both sides recognized their ultimate agreement in racial principle, left slavery and race relations alone, and avoided the "irritating busybodism" of emancipation.19

Despite pleas for unity from Administration supporters, Democrats and other conservatives increased their vocal opposition to the war's "sudden" turn. James Ashley misread the situation when he termed conservatives an "unnatural coalition" of pro-slavery and timid men. Nothing was more
natural than the coalition of genuine pro-slavery advocates and those afraid of the black. Fears of black insurrection were fears of slavery and not of emancipation, the Reverend N. H. Eggleston noted in reference to the race uprising at Santo Domingo. But Americans fearful of the shadow blacks cast upon their land could not make the distinction. Fear was an easy sentiment to cultivate, nurture, and attempt to build into a consensus. Democrats counted on growing opposition to Republican-abolitionist policies—a strategy already proved by the dramatic gains made in the 1862 elections. So fearful was Ohio state senator Isaac Welch, that he suggested Lincoln call a special session of Congress. If Democrats could form a working majority, then Republicans ought to let them run the war. With their hands full, coping with reality rather than sitting on the sidelines, the Democrats themselves would "ultimately make a good enough war party." 20

But Democrats as a whole were not in power and even those few who held high office displayed none of the elasticity that characterized Republicans. Andrew Johnson, military governor of occupied Tennessee, set the tone of racial hostility for those who supported the war effort. He was, first, for the government with slavery under the Constitution as it was; second, Johnson favored the government without
blacks and with the Constitution as it was. "If as the car of state move along, the negroes get in the way," he remarked, "let them be crushed. If they keep out of the way, let them remain where they are." With sentiments like these issuing from a Unionist, presidentially appointed military governor of conquered Tennessee, there can be little wonder at the depth of racial antagonism within the northern coalition. Such sentiments could not help but encourage less loyal men in their opposition to war policy. This type of encouragement was the "meanest kind of disloyalty," in Horace Bushnell's phrase, the disloyalty that "keeps just within the law ... which takes on airs of patriotic concern for the Constitution, when it really has none for all the wrong that can be done by enemies openly fighting against it."

By mid-1863 the resurgence of the Democratic party was remarkable, especially in the wake of the Union victories at Vicksburg and Gettysburg. More disturbing was the New York City anti-draft, anti-black riot of that same July, 1863. As if in answer to the nation's situation, the Democrats presented their platform without a program in the same week that rioting shook New York:
The country we so dearly love,
which love shall still remain,
To warm the hearts of Democrats,
and make it one again;
The Nation cries aloud on those
Who ask for honest laws,
The Constitution as it is,
The Union as it was.

The North and South have acted wrong,
And wrong they will remain
Till honest old-line Democrats
Will make them right again
A million voices then will shout
Amid the world's applause
The Constitution as it is,
The Union as it was.

And lest antislavery advocates miss the point, one particularly bluff correspondent wrote Ohio's Ben Wade: "It is your purpose to instruct your sucking blood abolitionists to destroy the Union with slavery. Well you will be responsible for a severe penalty by death when the old Union is restored but not by your party." 21

Supporters of the war countered with renewed visions of a new Union of "hearts, no less than interests," that might transcend the catchwords Democrats proposed. The Union as it was appealed "only to the ignorant and unthinking."
Unfortunately, many were just as happy not thinking about issues that the war raised. Their opposition to the war and antislavery-related measures led antislavery men to frustration. As one chaplain prayed, "Overturn all their wicked and treason-
able de[s]igns, and in brief, play hell with them generally."22

Republicans aided the Almighty in playing hell with conservatives' attitudes about the black. Lincoln's decision to enlist blacks into the federal army was an important step toward functional and psychological equality. Although the enlistment of blacks was prompted by the great need for troops, the effect of blacks fighting with whites demonstrated that blacks were neither incapable of winning their freedom nor uninterested in the war's outcome. Opposition to black troops remained, especially when abolitionists made explicit the claim for equality based upon black participation in the war. Nevertheless, northern whites learned that black troops were effective and discovered the stereotype of black behavior to be incorrect. That true, white attitudes and behavior began to change.23

Perhaps most significant was a little noticed law passed by Congress on March 3, 1863. As early as May 13 the previous year, Congress considered a bill to extend the charter of the Washington-Alexandria Railroad Company, allowing it to cross the District of Columbia and connect in Maryland. The bill had no trouble passing in the House, but bogged down in the Senate. Laid over until the third session of Congress that began December 1, 1862, the Senate adopted several unimportant amendments before Senator John C. Ten Eyck objected. The
legislation would extend a Virginia charter company through the District, and Ten Eyck doubted Congress' power to authorize the extension. Lot M. Morrill (R, Maine), the bill's sponsor, countered, and Ten Eyck dropped his opposition. In the wake of this brief debate, Charles Sumner offered a momentous amendment. Reacting to a rumored statement from a member of the House, Sumner denounced the racial discrimination that occurred on the District tram lines. An aged black person reportedly had been dropped off one of the tram cars into the snow and mud. As Congress considered the extension of the Washington-Alexandria Railroad, Sumner argued it should also intervene and end the discrimination.

Timothy Howe of Wisconsin suggested that the law already made a rail company liable if it refused service to anyone with the proper fare. Sumner's proposed amendment, "that no person shall be excluded from the cars on account of color," was unnecessary in Howe's opinion. Up to a point, Sumner agreed that the law did make the company liable. But the Massachusetts senator went on to declare:

that liability is not recognized here; and the Senator knows very well that whenever slavery is in question, human rights are constantly disregarded--these principles of law which he recognizes are constantly set aside; and therefore it becomes the duty of Congress to interfere, and specially declare them.
Without further debate the Senate adopted Sumner's amendment, 19 to 18. No Democrat or Unionist voted for the measure. Every border state senator voted against it, along with northern Democrats and four Republicans. The bill passed the Senate the same day and the Senate's changes were agreed to by the House. Discrimination on the Washington-Alexandria Railroad line became illegal on March 3, 1863.24

The District of Columbia served as a testing ground for radical programs. Sumner's remarks, moreover, offer a key to understanding the abolitionists' perception of reality. Sumner spoke of slavery in the present tense when addressing the issue of discrimination in the District. But the status of "slave" had been abolished almost a year before. The discrimination Sumner protested remained essentially slavery, however, because discrimination like slavery itself denied human rights. Slavery was the denial of rights. When the law was silent or when men chose to ignore its force, then Congress must declare that human rights belonged to all free persons. Even some who held the black as "degraded" recognized him as a person with certain fundamental rights that should be guarded against the "almost universal" popular prejudice. Just as ex-slaves should not be left to the "tender mercies" of former masters, so freedom should not be
abandoned to prejudice. With the slave institution dying the "almost universal" prejudice against blacks loomed ever larger as a problem. But prejudice was no discrete phenomenon, no creature without a history. Slavery itself bred prejudice, and, in a sense, lived on through it. William Lloyd Garrison phrased the idea precisely: "Slavery has done a deadly and most atheistical work in engendering this spirit. It is to the soul as leprosy to the body." It was the spirit of selfishness and fear, of men who worried about their own liberties and simultaneously fastened upon blacks the shackles of bondage. It was the spirit of self-destruction for southern society. It was the spirit of slavery, and it was precisely the point that Sumner made: to end slavery, form and spirit must be abolished. Salmon Chase summed up the opportunity the war presented and the meaning radicals drew from it: "this war came upon us in order that the nation might be born again into a new life, ennobled and made glorious by justice and freedom."25

By the end of 1863 there had been an important change in attitude toward the black. Fighting for their freedom, blacks increasingly won the respect if not admiration of whites. The vicious New York City draft/race riot of July notwithstanding, a kind of "revolution" had occurred. It
was a revolution that assumed, for the first time, a permanent place for large numbers of free blacks in the United States and a growing acceptance of civil equality, protection of personal liberty, and the rights of citizenship for both races.26

"The trial of the Constitution has been in progress ever since it was adopted," wrote a reviewer of Sidney George Fisher's *The Trial of the Constitution*. During the Civil War the Constitution was evolving "more rapidly and more beneficially" than at any other time in the nation's history, according to the *North American Review*. That often unfortunate history had witnessed states exercising much power, "reserving to the United States" only the extra powers states could not execute separately. That division of power, the *Review* noted, was exactly the opposite of the Framers' intentions. But war changed that, redirecting attention toward the federal government and the powers it possessed. Fisher, as usual, put it best. The Constitution "was obliged to yield to necessity." But contrary to conservative arguments, the Constitution was not overthrown and in that sense, did not actually "yield" to necessity. Rather, interpretations of limits and powers gave way to the imperative of survival and, more gradually, to the imperative of freedom.27
By December 1863 Congress and the President had taken large steps to ensure the survival of the nation and the triumph of freedom. Were these measures constitutional? This was not the same question that might have been asked in 1860. Then, if unconstitutional, an action could not be done. Yet in 1863 confiscation, emancipation, abolition—all were done or being done at some place in the Union. To ask if actions were constitutional now meant, would they still be done, would their effects continue on after the war ended.

Emancipation was constitutional; commentators said so and, more important, Lincoln believed so. But the question became how to ensure it, to make it work; in short, how to enforce emancipation? There would be, no doubt, "an unprecedented crop" of lawsuits questioning the Proclamation, seeking the Supreme Court's declaration on its effect. How would the Court decide, even granting likely changes in its membership? More generally, what was the most effective means to make emancipation, confiscation, territorial abolition, anti-discrimination laws constitutional, that is, permanent? Would the means be, as Chase suggested, to send loyal southerners, converted to antislavery by the war, back home to amend slave state constitutions into free ones? What them of federal efforts for the black and federal enforcement of
emancipation? Concerned, Henry Wilson pointed to congressional actions to ensure "equal and impartial liberty"—abolition in the District, repeal of its black code, allowance of black testimony in its courts. Were these experiments to be abandoned, never to be made national? What, in sum, of the national commitment to freedom? There had to be a symbol of the government's, and therefore of the nation's, conversion from slavery to freedom. Abolition of slavery "in solemn form, would unquestionably be decisive against all attempts to nullify the Proclamation through new compromises, or to perpetuate a remnant of the slave system," Garrison wrote to Gerrit Smith. "I fear nothing for the cause of the slave while war last; only when peace is won, and political intrigue shall begin its desperate work." As the nation's most solemn expression of principle was the Constitution, the most solemn lessons of war—survival and freedom—required constitutional expression.28

Constitutional expression demanded congressional involvement and action. A government dedicated to freedom must actively discourage slavery. To do nothing would favor the institution, and favoring slavery would "impair and destroy the freedom of all."29 The war impressed this lesson upon congressmen as they assembled for the first session of the
Thirty-Eighth Congress in December, 1863.\textsuperscript{30} Secession, based upon slavery, had attempted the nation's overthrow. The slave power's long history of denying civil rights to antislavery northerners confirmed the conclusion. Suppression of free antislavery speech in the South, censorship of the mails, mob violence against antislavery advocates, and finally the war itself proved that slavery and freedom were incompatible. The Republican platform of 1860 cited Bill of Rights grievances against the South and slavery. By December 1863 the realization had grown that slavery violated not only the rights of white northerners, but also black southerners. The war was making freedom universal. As Emerson noted, "A civil war sweeps away all the false issues on which it began, and arrives presently at real and lasting questions."\textsuperscript{31}

Eight months earlier the \textit{North American Review} had suggested the need to advance "to the very utmost limit of power." Congressmen assembled in December took that advice, and began reshaping the nation's fundamental charter to reflect the newer reality. A constitutional amendment to abolish slavery throughout the United States would complete what the war had begun.\textsuperscript{32}

Relatively few amendments had been proposed since the Constitution went into effect in 1789. During the secession
winter congressmen made two hundred and twenty-seven attempts
to alter the fundamental charter. After Sumter through 1863,
however, Congress considered only eighteen amendments; none
was seriously debated. On December 14, 1863, three significant
proposals came before the House of Representatives. Ohio
congressman James Ashley proposed the first constitutional
amendment to abolish slavery in the states and/or territories.
Following the pattern established in his proposal for abolition
in the District of Columbia in 1862, Ashley used the language
of the Northwest Ordinance. Within minutes of Ashley's action,
James Wilson, Republican from Iowa, also submitted a constitu-
tional amendment abolishing slavery throughout the country.
Noting that slavery was "incompatible with a free government,"
Wilson's measure abolished slavery and included a second section
giving Congress "power to enforce the [abolition of slavery]
by appropriate legislation."

Between the time each constitutional amendment was
proposed, Illinois Republican Owen Lovejoy introduced a bill.
Although not a proposed constitutional change, Lovejoy's bill
would "give effect" to the Declaration of Independence and
certain provisions of the Constitution so that all slaves
would be freed and protected "as all other citizens" from
unreasonable search and seizure, and given standing in judicial
proceedings. In his attempt to "constitutionalize" the Declaration of Independence, Lovejoy reflected his radical principles. Ashley's and Wilson's constitutional amendments were less explicit about the status of former slaves. Yet Lovejoy's bill and another concerning freedmen's rights introduced the same day by Massachusetts Republican Thomas D. Elliot, demonstrated congressional concern over the freedmen's condition. The issue of freedmen's rights was known to Congress.\textsuperscript{33}

No abolition amendment appeared in the Senate until a month later, in January 1864. On the eleventh, Missouri Unionist John Henderson introduced a constitutional amendment that employed the Northwest Ordinance formula; it was sent to the Senate Judiciary Committee. After these three proposed amendments, the judiciary committees of the two houses quietly considered the issue. Another month passed and Charles Sumner introduced yet another constitutional amendment abolishing slavery. Sumner's language, however, differed from that in the Northwest Ordinance. Instead, Sumner's amendment declared that "all persons are equal before the law, so that no person can hold another as a slave." The proposed amendment would apply to state law as well as federal law. Like Lovejoy's earlier measure, Sumner's amendment was grounded in his
abolitionist belief that slavery and freedom were incompatible and that all men were meant to be free and equal before the law. The words he chose expressed that belief. Yet they were unfamiliar words, certainly in comparison to the language of the Northwest Ordinance. And because of their unfamiliarity they proved suspicious. Attorney General Bates wondered just what "equality before the law" was and questioned Sumner's conclusion that equality would ipso facto prohibit slavery. Citing the Northwest Ordinance itself, Bates pointed to servitude as punishment for crime, an exception that the other proposed constitutional amendments retained.

Bates had hit upon the key sticking point that had prompted Sumner's language in the first place. There was not total incompatibility between freedom and slavery in the Northwest Ordinance. Nor did it assume freedom as the natural condition of men, thereby making slavery impossible. In the states first affected by the Ordinance, slavery had continued for a time.34

The contest for the amendment's language was important as the vehicle of interpretation. Sumner's proposal went to the Senate Judiciary Committee where other proposals were already under discussion. Ironically, an earlier proposed thirteenth amendment was still before the states, offered as
the last gasp of the secession crisis Congress. That amendment would do exactly the opposite of the new amendment under consideration, that is, guarantee forever the existence of slavery in the states. Senator Henry B. Anthony suggested withdrawing the former proposition, noting the dramatic reversal in the nation's thinking during the past two years. "What the Republican party could not do," Anthony stated, "what no election could do, what no peaceable movement would have been able to accomplish in many years, slavery has done of itself. It has sealed its own doom . . . . It has committed suicide." The former amendment was not withdrawn, however, Bates questioning whether once proffered a proposed constitutional change could be recalled. The business of amending the Constitution was a precise one, with caution marking the majority's movements. The first attempt to achieve a specific political reform through a constitutional idiom continued.  

Theorizing about freedmen's rights, always part of the abolitionist vision, had spread into the popular press and, to a lesser degree, into the halls of Congress. Sumner's and Lovejoy's bills reflected their concern with postwar freedmen's condition. The discussion was necessary and inevitable as the Congress began serious consideration of the abolition amendment. Although the consensus in Congress and
country for abolition flew throughout the last year and a half of war, the required two-thirds majority of both houses to pass a constitutional amendment took a full year to achieve. Of more importance than the decision for abolition, however, was the new question of the meaning of abolition. The ensuing history of the Thirteenth Amendment, like the history of the war to that time, was a contest for meaning beyond form.

Conservative commentators, even those who supported the war, worried over what they perceived as a tendency to ignore the rights a postwar South might still enjoy. The continuing preoccupation with white civil liberties played nicely into the hands of the extreme anti-war, anti-freedom elements of the North, exemplified by Samuel F. B. Morse. It was Morse who reversed the moral of the war experience that had led so many others to choose abolition. "It is not slavery," he said, "it is Abolitionism, that is our national sin."36

But it was slavery that continued to eat away at the war effort despite confiscation and emancipation. Kentucky treated freedmen as runaways, specifically flouting the Emancipation Proclamation. Behind Union lines in Arkansas, A. C. Rogers, an applicant for the post of military governor, spoke against the changed circumstances that allowed freedmen to defend themselves by arms against their former masters.
Duly reporting this to Senate Judiciary Committee chairman Lyman Trumbull, G. T. Allen asked how such a man could be made governor of a state "striving to pass the chrysalis from slavery to freedom? We must blot out slavery or perish as a nation," Trumbull's frequent correspondent concluded.\textsuperscript{37}

Abolitionism had grown in stature and in power, at least to the extent that more and more Americans concluded that slavery must be destroyed, that "the rights of human nature are unitary, that oppression is of one hue the world over, no matter what the color of the oppressed." Contrary to Morse's view, the war was not an assault of northern fanatics against southern institutions, but "between downright slavery and upright freedom, between despotism and democracy, between the Old World and the New." In that context, as \textit{Continental Monthly} editor Charles Henry put it, conservatism "means nothing but the saving of slavery."\textsuperscript{38}

Some political commentators began seriously to consider the question of freedmen's rights. Two articles appeared in January 1864 that distinguished between civil (or natural) rights belonging to all citizens and political rights. Orestes Brownson concluded that rebels might retain their civil rights yet forfeit political participation as a penalty for the war. Brownson explicitly left the way open for this
formula to be applied to freedmen. A more detailed treatment of the question of freedmen's rights was made by Yale professor George P. Fisher. Arguing that natural rights were separate from political rights, Fisher listed those natural rights that freedmen were entitled to: justice, liberty, the fruit of labor, family, and education, among others. The right to participate in the community's or the nation's political life was not a natural right, in Fisher's opinion. Yet the professor remarked that there must be some legal guarantee that natural rights not be violated. That guarantee might even be in the form of conferred political participation so that an oppressed group could maintain its natural rights. Curiously, Fisher suggested that each community be allowed to decide whether freedmen would have political rights, reminding his readers that "to vote is to rule." Fisher was firm, however, in stating that there could be no option regarding blacks' natural rights.39

The Senate Judiciary Committee considered John Henderson's proposed constitutional amendment (S. No. 16) for a month before reporting it back to the Senate on February 11. Reaction in the capital was low-key, several days passing before the conservative Washington National Intelligencer
or the pro-Administration Washington Daily Morning Chronicle noted S. No. 16 or Sumer's abolition proposal. The Intelligencer's editor preferred a constitutional convention after the war if the Constitution had to be amended. In that manner, he argued "one-sided amendments" would be avoided. All states (including southern slave states) would have their voices heard. An amendment to the Constitution ought to be the last step of "regeneration and reconstruction," not the first. The war must first end; for Congress to propose an amendment abolishing slavery without the South's participation would be a "solecism and an anachronism in American politics," the Intelligencer concluded.40

Although staunchly antislavery, the Chronicle at first doubted the desirability of a constitutional amendment abolishing slavery. Alternately, it favored separate slave state action whereby reconstructing rebel states would individually abolish slavery. The Chronicle maintained that if slavery died (as was certain) the part of the Constitution relating to slavery would simply lose its relevance. When the Senate Judiciary Committee reported S. No. 16, however, the newspaper accepted the measure immediately, noting its excellent chances of passage in the Senate, and its less excellent prospects in the House. Like the Intelligencer,
the Chronicle called for a constitutional convention, though the Chronicle's editor did not intend the convention to be a delaying tactic. Instead, he wanted the convention assembled quickly, wasting no time to complete "this important reform." Both newspapers favored a constitutional convention, but for opposite reasons. The Intelligencer feared congressional action; the Chronicle feared there would be none. The Intelligencer ultimately revealed its conservatism, noting that the true conservative "must resist any such encroachment in the organic law of the land" when radicals proposed to strike at slavery "through the vitals of the Constitution." The Chronicle's lack of faith in congressional action is more difficult to explain, particularly in light of its words of assurance to readers about the issues brought about by the war:

Let us be patient--doing our whole duty in our time according to the lights of history, reason and intuition. That is all that is required of us. That is all we can do.

After the committee's initial report, the Senate waited another month and a half before beginning debate on S. No. 16. The amendment reported by the committee differed from Henderson's original text in that it now had two sections. The first section contained the actual abolition and prohibition
of slavery, following the language of the Northwest Ordinance. Apparently borrowing from the proposal made in the House by James Wilson, S. No. 16's second section gave Congress the power to enforce the abolition of slavery by "appropriate legislation." The amendment to the Constitution read as follows:

Neither slavery nor involuntary servitude, except as punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have power to enforce this article by appropriate legislation.44

In his initial speech favoring the proposed amendment, Judiciary chairman Lyman Trumbull reiterated the fundamental lesson of the war--slavery itself caused the antagonism between North and South. The final result of that antagonism was the existing war. Congress and President had attempted early in the war to attack slavery. Yet each measure, the two confiscation acts, and Lincoln's Emancipation Proclamation, had serious deficiencies in the Senator's view. Confiscation had proved ineffective and even in theory only released slaves of disloyal masters. Alone confiscation would not "extirpate" slavery. Similarly, the Emancipation Proclamation left portions of slavery behind Union lines untouched. Trumbull's purpose was the complete eradication
of the system—the cause of the war and the nation's long history of political troubles. What he now sought was a "more efficient" means for accomplishing his goal. The effect would be to "take this question entirely away from the politics of the country. We relieve Congress of sectional strifes" and restore freedom to an entire race. Trumbull believed a constitutional amendment was the only way to ensure that slavery would not be resurrected, that conquered slave states could be readmitted to the Union more easily once they were free. The amendment would "secure to us future peace." 45

Most other Republican senators supported Trumbull's analysis. Henry Wilson, more radical than the Judiciary Committee chairman, echoed the refrain that slavery was responsible for America's struggle with rebellion. The constitutional amendment would "obliterate the last vestiges of slavery in America," prohibiting it the refuge that it then enjoyed in places like Kentucky. New Hampshire's Daniel Clark pinpointed the cause of the war as the 1787 constitutional convention. When the Founders admitted into the "bond of Union . . . antagonistic forces which have well nigh rent the Union asunder," the great mistake was made. Americans were now reaping the results. Through previous
antislavery measures Congress and President had freed individual slaves, but they had not overturned the rotten system itself. The proposed constitutional amendment, on the other hand, was "of wider scope and more searching operation. It goes deep into the soil, and upturns the roots of this poisonous plant to die and wither."\textsuperscript{46}

Clark's point raised the question of the amendment's scope and purpose. Trumbull had spoken in terms that suggested the amendment would enforce itself, that once ratified slavery would cease to exist. The Illinois senator mentioned the enforcement clause only in passing as he explained the amendment's language. He never expanded on the new grant of power given to Congress in section two. Clark's remark suggested a more activist approach to abolition, conditioned by the realization that slavery was deep-rooted.\textsuperscript{47}

The Senate was aware that the constitutional amendment involved something more than technical status (free or slave). It also addressed the question of qualitative freedom for blacks. In his remarks Wilson explicitly recognized free blacks as United States citizens, citing Bates' November, 1862 opinion. Combating that opinion, Kentucky's Unionist senator Garret Davis submitted an amendment specifically barring blacks from citizenship and officeholding. His attempt was
overwhelmingly defeated 5 to 32, showing that the Senate implicitly admitted Wilson's main argument--freedom brought citizenship.⁴⁸ A constitutional amendment securing freedom for all blacks also secured citizenship.

Reverdy Johnson, a former attorney general and presently senator from Maryland, supported that interpretation by inference. During the time S. No. 16 was before the Senate, that body also considered a bill to organize the Montana territory. Minnesota senator Morton Wilkinson proposed an amendment granting the vote to "every free male citizen of the United States" over 21 years of age. Johnson opposed the amendment precisely on the grounds that by excluding the word "white," and in light of previous congressional acts, presidential proclamations, and the proposed constitutional amendment, the vote would be given to any black who might journey to Montana. Willard Saulsbury of Delaware opposed the entire Montana bill because blacks were already citizens according to those now in charge of the government. Wilkinson's amendment was adopted 22 to 17, and Johnson immediately tried to retreat, arguing that blacks could not be citizens because of the Dred Scott decision. Charles Sumner dismissed that argument forthrightly: "God forbid that Congress should consent to wear the strait-jacket of the Dred Scott decision."⁴⁹
Border residents attempted to maintain the old dichotomy between freedom and civil equality. Reverdy Johnson opposed black citizenship, yet favored abolition by constitutional amendment. West Virginia senator Peter Van Winkle spoke against the "direct and indirect" efforts to raise the black to citizenship, but he also supported the constitutional amendment. Republican Timothy Howe of Wisconsin, on the other hand, did not believe the amendment went far enough in specifying freedmen's rights. Republicans in general, however, no longer accepted the divergence of freedom from rights, and border state men's attempts to divide the two were unsuccessful.

Opponents of the constitutional amendment centered their arguments on the proposed breach of traditional barriers between the federal government and individuals. Saulsbury commented that if relations between master and slave could be regualted (abolished), so might that of parent and child, or husband and wife. Hyperbole aside, Saulbury's emphasis on the essentially radical character of the amendment was correct. The federal government would through the proposed constitutional change by-pass state governments and state laws to declare that property held in persons was no longer possible in the United States. For good measure, Congress would have
new power to enforce the new relationships freedom would bring. To abolish slavery and prevent its reestablishment was, in Lyman Trumbull's words, "the great question." In answer, Kentucky's two senators, Davis and Lazarus Powell, proposed amendment after amendment in dilatory efforts to block a vote on abolition. California Democrat James McDougall opposed the constitutional amendment because it detracted, in his opinion, from the main object of defeating the South. The war's chief lesson was lost upon these opponents of abolition as they continued to spin fine, legalistic distinctions between expressed and reserved powers, spheres of sovereignty, and the means of conquering treason. 51

The Senate disposed of Davis' and Powell's amendments and, as in Committee of the Whole, reported the constitutional amendment to the floor on April 6, 1864. The following day Democratic senator Thomas Hendricks of Indiana made the key argument, as yet unstated, against the abolition amendment and its philosophy. Countering the joy of New Hampshire's John Hale over the propect of abolition, Hendricks lamented the death and destruction that war visited upon white Americans. Freedom for four million slaves did not seem worth the price, nor was freedom to be so broadly conceived as abolitionists envisioned:
... [equality] may be preached; it may be legislated for; it may be prayed for; but there is that difference between the two races that renders it impossible. If they are among us as a free people, they are among us as an inferior people.52

The chronic and acute racism of many if not most white Americans, North and South, was the fundamental fact at variance with abolitionist hopes. Even those who were willing to grant blacks their freedom, like the amendment's original sponsor John Henderson, still assumed and believed in white supremacy. With charity added in equal portion to racism, a laissez-faire attitude might emerge, holding that blacks were free and that there should be no obstacles in their path. But neither ought there be positive federal aid. Only as charity exceeded racism and united with government action could freedom for the black be seen in qualitative terms rather than as status.53

That approach appeared most clearly in Sumner's substitute amendment, which declared that "all persons are equal before the law," prohibited slavery, and gave Congress power to make "all laws necessary and proper to carry this decision into effect." Sumner preferred this language, copied from the French Declaration of the Rights of Man, over the committee's echo of the Northwest Ordinance because the former was more sweeping and the latter more legalistic.
Trumbull noted the disagreements in the Judiciary Committee over the amendment's language, suggesting the present text was a compromise. (The Senate committee had dropped Henderson's original motion and fused the texts of House members James Ashley and James Wilson.) Trumbull maintained, however, that rather than a liability, the committee's allusion to the Northwest Ordinance (and, therefore, to the Wilmot Proviso) fixed the constitutional amendment firmly in American tradition and history.

Sumner's reference to the French Declaration of Rights had little relevance to American experience and legal tradition, Jacob Howard commented. Trumbull concluded the rebuttal by noting that the language adopted by the committee "will accomplish the object."

None of Sumner's objections nor Trumbull's or Howard's defenses of the committee text centered on substantive issues. Each thought the other's language inappropriate but agreed upon the goal. Freedom must transcend slavery and become the nation's law. When Sumner acquiesced in the committee language, he did not consider his action a defeat or principle but of form.54 "Nothing against slavery is unconstitutional," Sumner declared. "It is only hesitation which is unconstitutional."55
Kentucky's two stalwart pro-slavery senators made final attempts to stop the amendment, as did California's McDougall, who characterized proponents as men "maddened with a present sense of power" trying to accomplish to-day what they fear may not be within their grasp tomorrow." Thereupon the Senate, the traditional fortress of southern opposition to antislavery agitation, voted 38 to 6 in favor of the abolition of slavery throughout the United States.56

Abolitionists might rightly take a measure of credit for pioneering the philosophy that validated the view that "the North must abolish slavery and slave labor, or the South will abolish freedom and free labor." The Washington Daily Morning Chronicle explicitly recognized William Lloyd Garrison and Wendell Phillips for lighting the "signal fires of freedom in the teeth of intolerance, nay, murderous public opinion." Orestes Brownson commended the abolitionists who had dared hold out the prophetic call of antislavery and urged his readers to accept the implication of freedom--civil equality between the races. The government had gone so far in the equal treatment of the races in the army, Brownson suggested, that the "wisest and safest plan" would be the abolition of all distinctions based on color in the areas subject to federal jurisdiction. Although opposed to a constitutional amendment only "for the negro," Brownson argued that all persons were
equal before the law. Similarly, the *North American Review* urged a minimum of guardianship for the freedmen so long as they were protected from injustice and abuse.\(^{57}\)

Moderate and some conservative elements of the Union coalition acknowledged what abolitionists had earlier proclaimed—slavery and freedom were antithetical and could not exist together. Moreover, the implicit issue of the quality of freedom blacks might experience had become explicit. In March 1864 Lincoln wrote to Louisiana governor Michael Hahn suggesting political rights for blacks as the logical extension of civil equality. To be sure, the President suggested that only some blacks—"the very intelligent, and especially those who have fought gallantly in our ranks"—be allowed to vote. Nevertheless, it was a significant step forward, made more so by Lincoln's heretofore stubborn moderation. Lincoln's own view of the war's progress indicates authoritatively his changing consciousness:

> I claim not to have controlled events, but confess plainly that events have controlled me. Now, at the end of three years struggle the nation's condition is not what either party, or any man devised, or expected. God alone now wills the removal of a great wrong, and wills also that we of the North as well as you of the South, shall pay fairly for our complicity in that wrong, impartial history will find therein new cause to attest and revere the justice and goodness of God.\(^{58}\)
As the Senate approved the constitutional amendment, as
the President spoke of limited black suffrage, as the Women's
National League circulated 15,000 petitions favoring abolition,
the focus shifted to the House of Representatives. There,
Democratic gains in the 1862 elections assured a closer
contest and made victory uncertain for the constitutional
amendment.59

The House began its consideration of S. No. 16 on May 31.
Republican Judiciary Committee member Daniel Morris made the
opening address. Morris acknowledged the divergence of views
on the amendment, even within his own party. Despite differ-
ences over how to achieve the end, the essential point was
clear—slavery must be destroyed to save the nation. Because
James Buchanan had been "an Executive steeped in slavery and
doomed to eternal infamy," and had allowed the slave power an
unchecked reign during his term as President, the United States
found itself engulfed in a civil war. Abolition would prevent
such a catastrophe from ever recurring.60 Still, abolitionists
had a sense of gratitude for the sin—the happy fault and
necessary evil—for without the treason of slavery, absolution
by abolition would not have been possible.61

New York Democrat Anson Herrick answered with the familiar
conservative litany. The Constitution was something to "reverence as a masterpiece of wisdom in statesmanship." Scorning an appeal to put slavery's "putrescent carcass out of sight," Herrick argued that altering the terms of the Constitution would "absolutely upset" the social organization of the slave states, disturb property rights, and prolong rather than defeat the rebellion. The Constitution ought to shape rather than be shaped by events that surrounded it. Republicans countered that Congress was the "ultimate tribunal" to discern whether states were following constitutional requirements--appealing to the guarantee of republican government clause. The ideological limits were set for the debate, and perception conditioned the Constitution's nature and function--reverenced and closed, or adaptable and open. Republicans scheduled the debate on the amendment to begin June 14.62

On that day each side reiterated its basic view and argument. Ezra Wheeler, Republican of Wisconsin, noted that war had given the nation a new manifest destiny, which was freedom for the slave and the power to enforce the prohibition of slavery in the states.63 Michigan's Francis Kellogg emphasized the tradition of the Declaration of Independence, its link with the Constitution through the latter's preamble,
and abolition as the means to establish a more perfect union of freedom. 64

It was clear that Democrats and other conservatives saw the proposed constitutional amendment as a significant, and therefore dangerous change in the American social system. William Holman of Indiana was especially forceful in his statement. Beginning with homage to the Constitution as it was, "the serene light of the past, with all of the sacred memories of the past ages clustering around it, sanctified by tradition and history," Holman explained in detail what he believed the proposed Thirteenth Amendment was really about and what effect it would have upon the country and its citizens:

But, sir, the amendment goes further. It confers on Congress the power to invade any State to enforce freedom of the African in war or peace. What is the meaning of all that? Is freedom the simple exemption from personal servitude? No, sir; in the language of America it means to participate in government, the freedom for which our fathers resisted the British empire. Mere exemption from servitude is a miserable idea of freedom. A pariah in the State, a subject, but not a citizen holding any right at the will of the government power. What is this but slavery? It exists in my own noble State. Then, sir, this amendment has some significance. Your policy, directed in its main purpose to the enfranchisement of a people who have looked with indifference on your struggle, who have given their strength to your enemies, and then the constitutional power to force them into freedom, to citizenship. If such be your purpose, why deceive a noble and confiding people? Your purpose in this amendment is not to increase the efficiency of your Army or to diminish the power of your enemies. No, sir, you diminish the one and increase
the other. You run the hazard of all that to gratify your visionary fanaticism, the elevation of the African to the august rights of citizenship. The Federal power to invade the States for this purpose, as proposed by this amendment, strike down the corner-stone of the Republic, the local sovereignty of the States ... Policy and prudence condemn it, and if it were possible, sir, the very ashes of the Revolution would cry out against this subordination of the States in domestic affairs to the Federal power. 65

Holman was right, incredibly right, notwithstanding the Republicans' lack of explicit theorizing about the amendment's effects. Much that Holman feared, much that he predicted as the future consequence of the abolition amendment, was already before Congress and in a matter of weeks became the law of the land. The previous day, June 13, the House had passed the army appropriation bill that equalized the pay of black and white soldiers. Between June 28 and July 2 Congress repealed the 1850 Fugitive Slave Act, the 1813 Seaman Act (which distinguished between blacks and United States citizens and was used by Taney in his Dred Scott opinion), incorporated the Metropolitan Railroad Company for the District of Columbia with an anti-discrimination clause, and prohibited discrimination against black testimony in federal courts. 66

Earlier, Wendell Phillips had made the point exactly:

If it were a negro, I should pray God that this war might last twenty years ... I should dread every victory on the part of the North; for I believe that this war,
while it last . . . is taking the rivets out of society; it is crumbling up the whole civil and social life into its original elements and when that work is completely done, no matter what may be the form of government that follows, the negro is always free.67

Both Phillips and Holman recognized the war for what it was, a revolutionary force in American history. Both say the war and its consequences as decisive for the fate of freedmen. Congressional actions and, most forcefully, the constitutional amendment confirmed the direction the country was moving. The ideology of the viewer determined whether the trend was regarded as favorable or unfavorable.

The House of Representatives could still succumb to racist impulses and fear of change, despite attacks on slavery and its incidents, and despite Republican assertions that the manhood of blacks had already been manifested and that the "America of the past is gone forever." The vision of "a new nation . . . born from the agony through which the people are now passing," a nation meant to be "wholly free" with "liberty, equality before the law" as its great cornerstone, was still a vision. On June 15 the House rejected the constitutional amendment abolishing slavery. Congressmen turned away from the capstone, the act of consolidation that would give constitutional expression to the supreme lesson of the war. Although a clear majority of 93 members favored the measure
and only 65 opposed it, two-thirds of the chamber, or 106 congressmen, was necessary for passage. Recognizing that they could not find enough additional affirmative votes, floor manager James Ashley announced on June 28 that the Republicans would not call up S. No. 16 for reconsideration until after the presidential election in November. By its action at the polls the nation would signal its decision on the amendment of freedom. 68 The reelection of Abraham Lincoln would be a referendum on the war's progress and on the nation's policy towards blacks.

Earlier, in June, the Union National Convention (composed of Republicans and war Democrats) had endorsed the anti-slavery amendment and made its adoption part of their platform. No sooner was Lincoln renominated than his pocket-veto of the Wade-Davis bill sparked a great furor about his antislavery commitment.

The product of Senator Benjamin Wade and Representative Henry Winter Davis, the Wade-Davis bill would have made slavery illegal rather than rely on the constitutional amendment route. Both men were noted for their radical views on slavery and on the plenitude and priority of congressional authority in reconstruction. Davis' reliance on and trust of congressional power was so great that he suggested to Wade the irrelevance
of the Thirteenth Amendment: "The constitutional amendment is
dead--as I always knew & said it was; and never could do any
political good." Davis preferred the approach followed through-
out the war of specific, incremental steps against slavery
and the Confederacy. Hence, additional clauses of the Wade-
Davis bill secured congressional control of reconstruction and
modified Lincoln's ten percent formula for allowing conquered
southern states to begin reconstruction. Just as disagreement
on means, rather than ends, prompted Davis' denigration of the
constitutional amendment, so disagreement on means sparked
Lincoln's pocket-veto of the Wade-Davis bill.69

Davis' insistence upon congressional action to enforce
the war's end--reconstruction--might be readily subsumed under
the constitutional amendment's section section with its grant
of new power to Congress. But Davis preferred reliance on
the war power that existed rather than wait upon new constitu-
tional power that did not yet exist. The war power may have
been sufficient for congressional control of reconstruction
while war lasted. But it was the time after the war that the
constitutional amendment was aimed towards. Without the
amendment, when the war power faded, Congress' authority over
southern reconstruction would also fade. Davis evidently did
not envision the war power disappearing in the near future.
Yet others questioned the wisdom of altering the Constitution. The *Monthly Law Reporter* followed Davis' reliance on congressional authority and the war power as adequate means to abolish slavery and maintain the Constitution "as it is." Other commentators argued that the war had freed the Constitution from many antebellum constraints. The *North American Review* observed that the time had come to dispense with excessive reverence for the document or "Constitution-worship." It was time to recognize the error the Founders made when incorporating a compromise with slavery into the national charter. What the Founders "saw in a glass darkly, we see face to face," the *Review*'s writer noted. Henry E. Russell, in the *Continental Monthly*, observed both the Thirteenth Amendment's defeat in the House and the Democratic party's continuing attachment to the slaveholding interest. Slavery, therefore, posed an enduring fundamental flaw in the Constitution. Both writers concluded that the Thirteenth Amendment was a necessary and proper consequence of treason.71

The amendment was necessary for two reasons. Throughout its ascendance in prewar America, the slave power had infringed upon the rights of white citizens; its suppression of free speech, free press, and free use of the mails was widely recognized. The Confederacy, avowedly based on slavery, was
the ultimate infringement upon white citizens' rights because it took life in attempting to destroy the nation. To protect white citizens, slavery and the slave power had to be destroyed and never return to life. The constitutional amendment would settle the question of reconstruction by securing the emancipation of slaves as firmly as possible. As Henry Russell put it, "to supplement and complete the work of reconstruction, we need to make impossible the presence of a power anywhere within the domain of the United States to hold a person in bondage." The Bill of Rights, formerly a mockery in the South, would become a "living power" to secure white rights and black freedom.72

The North American Review also favored a constitutional safeguard for black freedom and rights, noting that the benefits of the Emancipation Proclamation depended upon the willingness of the Executive to enforce its provisions. This, in truth, depended on the character of the President. It was by no means certain that Lincoln would continue to oversee emancipation. Moreover, once the war was over, the Review doubted the North's willingness to resume military action against southerners solely to defend freedmen's liberty. The writer concluded that the nation must have the power to protect all its citizens, white and black. Liberty was not threatened by the national government but by the states. As slavery was
the cause, so state rights had been the expression of southern discontent and ultimately of secession. State-inspired, the war was the greatest threat to liberty in the American experience. The abolition of the root problem and the maintenance of freedmen's liberty by the national government were the best means to ensure the liberty of all and the triumph of nation over section.73

The freedman's fate attracted more interest during the summer and fall of 1864. Joel Prentiss Bishop, a noted legal commentator, saw the newly freed southern slave as the only possible base for the reconstruction of southern states. Although Bishop believed that the Constitution was originally intended as a white man's document, he concluded that the North must turn to blacks in order to preserve representative government: "For the benefit of whites, then, [blacks] may spring up as freemen in the seceded states, and hold these states against the waves of treason."74 Bishop proposed as yet another lesson of the war that, in the face of massive treason, an original preference for whites must yield to bi-racial democracy. The Emancipation Proclamation was a promise to southern blacks of bi-racial democracy. If the North repudiated the promise, Bishop commented, then blacks ought to take arms against both South and North, for each then
would be "alike barbarians."\textsuperscript{75}

Similarly, Ralph Waldo Emerson and Henry Russell saw the dawn of bi-racial democracy to be based primarily upon the war experience of whites. Calling the war the "second American revolution," Russell noted that it presented the "vexed question of the negro, what should be done with him, or for him, or to him." Russell and Emerson agreed that the new basis for American government was equality of all before the law. Their invocation of Charles Sumner's failed alternate language for the Thirteenth Amendment and support for the language as proposed suggested the compatibility of the two approaches. It also suggested the essential identity of Sumner's language and the Amendment's text; freedom was more than the absence of slavery.\textsuperscript{76}

Sumner's Massachusetts colleague Henry Wilson illustrated the point when explaining why he had compiled his \textit{History of the Antislavery Measures of the 37th and 38th Congresses}. By documenting the attacks upon slavery and its incidents, Wilson wrote historian Benjamin Lossing, he hoped to show "our friends . . . how much had been done, and I wish to encourage them to further efforts for the final extinction of slavery."\textsuperscript{77} The extinction of slavery, status and incidental effects, lay behind the step-by-step approach
pursued throughout the war.

The step-by-step attack on slavery had achieved much during Lincoln's Administration. Yet Lincoln received little credit from the more radical members of the Union coalition. Orestes Brownson attacked the Emancipation Proclamation, perhaps the most important single gesture of Lincoln's presidency, as a "fritter[ing] away of the war power." Brownson doubted that any slave could plead the Proclamation before a court and secure his freedom. Not only were Lincoln's policies criticized and his commitment to antislavery openly questioned, Lincoln's character was often assailed and his leadership found incorrect. Compared with Andrew Jackson, Lincoln's leadership was criticized for being too weak, except when it was too strong. Wendell Phillips epitomized the ambivalence that many felt toward Lincoln the President:

As a citizen, therefore, I refuse to commit my future to the pleasant words of Abraham Lincoln. I rate him at the exact value of his acts—nothing more. I am willing to give him credit for what has been done, in the exact degree in which I think he has done it. When he has done anything only on compulsion, at the last moment, bayonetted up to it by public opinion, I give him no credit—none at all. But credit or not, his credit is not the question; his laurels are not in question. The question is, what does he mean to do in the future?

While Lincoln was not adored by radicals in Congress and country, their criticism of him paled into insignificance when
compared to the vitriol heaped upon him by Democrats.
Democrats tirelessly tied Lincoln and "the negro" together in rhetoric that evoked the fear, frustration, and racism that possessed many northerners during the summer of 1864. Lincoln was referred to as the man who made the Constitution obsolete—Abraham Africanus I—a general agent for Negroes, a man who gave the word patriot a new meaning as one "who loves his country less, and the negro more." In their attempt to degrade Lincoln, Democrats resorted to parody producing a new great commandment: "Thou shalt have no other God but the negro." At their hands the Lord's Prayer took on a partisan hue:

Father Abram, who art in Washington, of glorious memory—since the date of thy proclamation to free negroes, Thy kingdom come, and overthrow the republic; thy will be done, and the laws perish. Give us this day our daily supply of greenbacks. Forgive us our plunders, but destroy the Copperheads. Lead us into fat pastures; but deliver us from the eye of detectives; and make us the equal of the negro; such shall be our kingdom, and the glory of thy administration. 80

Democrats and conservatives were correct in their fears. The old Constitution, the constricting Constitution was already changed. The Thirteenth Amendment would make those changes permanent. More than simple words would change with ratification. A new Union, alive with power and possibilities,
was emerging as the necessary and proper effect of civil war. The Constitution would, though the Thirteenth Amendment, incorporate the new past and the experience of war. It was exactly this change that conservatives feared and hated. If antislavery men welcomed and blessed a reborn nation, conservatives viewed the rebirth as a degeneration into "Rouge et Noir--blood and negroes." They made the point starkly. Republicans would rename the United States "New Africa," recognizing only "abolitionists, mesmerisers, spiritual mediums, free-lovers and negroes" as the people. 81

Republican propagandists were not silent during the barrage and squarely faced the slur of Lincoln the "gorilla." Noting the ominous circumstances when he entered office, Lincoln's supporters emphasized the lessons that the entire country had learned during the interim. The Union could not "fight with gloves" because slavery was the cause and the strength of rebellion. Lincoln learned these lessons, Republicans argued, but had waited for the country to learn them also before acting. As a man of the people, Lincoln kept to the delicate balance between overbearing leadership and overcaution. 82

The argument was convincing. Lincoln's reelection had been a matter of grave doubt in the summer. His candidacy
resulted in a surprisingly wide victory for the President in November. Lincoln received 55 percent of the popular vote and a massive 212 to 21 electoral vote margin. The Republican-dominated Union party dramatically increased its strength in the House of Representatives from 102 to 149 seats against the Democratic decline from 75 to 42 seats. As James Ashley had said the previous June, the fall elections were a referendum of sorts. The people chose continuation rather than abrupt backpeddling. At the very least they registered their toleration of the emancipation-abolition sword. Even defeated presidential candidate George B. McClellan acknowledged that the people had chosen their course "with their eyes wide open."\(^83\)

Conservatives and radicals viewed the future with open eyes. Sidney George Fisher had been strongly antislavery to this time, chiefly as a war matter. Now, however, he saw danger from directions other than southward. "Excessive and extreme ideas & measures" and the "fanaticism of the abolitionists" loomed on the horizon, and Fisher feared their takeover of moderate Republican government.\(^84\)

At the same time, however, Lyman Trumbull received information of unrepentant treason in the supposedly loyal state of Kentucky, treason so great that "no union man's life would
be safe in a court of any kind" there. If white men could not be sure of their rights in the "loyal" South, how much less had blacks to expect, and how much more to fear. These reasons, among others, prompted Henry Wilson's support of Salmon Chase as a replacement for the late Chief Justice Roger B. Taney. Adding "some great lawyer of Anti-Slavery sentiment, and deep convictions as Attorney General, and Congress true," Wilson wrote Lincoln, "we shall soon have no State out of the Union and no Slave in the Union." With eyes open to the future and an appreciation of what had happened already, antislavery spokesmen adopted a new creed: "We believe that God Almighty is shaping a free and exalted nation out of this republic, by a law of progress which we did not make and cannot repeal."86

The second session of the 38th Congress convened on December 5, 1864. The same House members who had rejected the Thirteenth Amendment in June would have a second chance to endorse the measure during this session. A difference lay in the session's "lame duck" status which might relieve political burdens that had borne down too heavily in summer. Individual members lost their seats in the fall elections, the Republican-Union party increased its strength in the new
Congress, and the presidential election had been a referendum on the cause of the war. The constitutional amendment abolishing slavery was an integral part of the balloters' choice. The Administration was confident with its victory and could be expected to back strongly the amendment in the House.

The amendment's floor manager, Ohio Republican James Ashley, gave notice on December 15 that he would call for reconsideration of the measure on January 9, 1865. Because the amendment had failed to receive the requisite two-thirds majority, the House had first to agree to reconsider. But the decision to take up the measure again required only a simple majority. The outcome of this vote was never in doubt. Still, reconsideration would be of little use if Ashley and the Administration could not find enough congressmen to form the needed two-thirds margin to pass the amendment. It was absolutely imperative that every member who favored the amendment the previous summer be present when the vote came. To this end Ashley sent out a confidential circular, giving the estimated backers of the amendment as 108. With the expected whole number voting, however, this was still one vote short of the needed majority. Penning a note on the circular for Lincoln's attention, Ashley wrote: "you must help us one
vote. Don't you know of a sinner in the opposition who is on praying ground?"87

Intense lobbying occurred between December 15 and the expected vote on January 9. The President especially concentrated on border men where his contacts made him most effective. Greatest credit, after Ashley himself, went to Secretary of State William Seward, whose work with New York Democrats proved decisive. In a surprising turn of events, New York Democratic Governor Horatio Seymour refused to make the vote on the constitutional amendment a matter of party discipline, allowing each member freedom to make his own decision.88

While lobbying continued behind the scenes, congressmen received messages from the "free" South, messages that told how much southerners had still to learn about the rights of former slaves. These messages reminded northerners how much the Union needed free, loyal, rights-filled blacks.89 In the opinion of William M. Grosvenor, editor of the New Haven Journal Courier, the nation had passed through two crises. The first occurred in July, 1863 and was military—the battles of Vicksburg and Gettysburg. The second crisis was political and had occurred with the presidential election in November 1864. But in January 1865 the crisis became the effort to make a nation, to create one people. For that the "white-hot
crucible" of civil war had been necessary. Now constitutional reform must follow and be a part of the changed reality. As a colonel of a regiment of Louisiana blacks, Grosvenor no doubt agreed with Yale professor Alexander Twining that emancipation, even universal liberation, did not alter state laws and, in that sense, did not change anything. To accomplish that "essential purpose," the alteration of essence, that is, organic law, a constitutional amendment was required, the amendment of freedom. 90

On January 6, three days earlier than scheduled, Ashley asked for reconsideration of the House's rejection of the Thirteenth Amendment. In doing so the Ohioan maintained his firm belief that the Constitution, correctly interpreted, did not allow slavery in the first place. Ashley believed there was a fundamental link between the ideas expressed in the Declaration of Independence and the Constitution of 1787. The theory of state sovereignty had become the tool for the slave power, however, and this "fatal heresy" had lured otherwise good men into treason and war. The Thirteenth Amendment was necessary, therefore, to uphold the twin, fundamental principles of freedom and national supremacy.

Ashley's Republican colleague Godlove S. Orth spoke immediately afterwards and reaffirmed Ashley's views. The
constitutional amendment would prevent re-enslavement and was the "practical application" of the truth that "all men are created equal." The Thirteenth Amendment assured that Congress' responsibility "to see that the name and spirit of human bondage shall be erased from every state constitution, and personal liberty without distinction assured to everyone of their citizens," would be met. "Equal protection under the law" was the means to fulfill that responsibility, the call to "carry up higher and higher the work of the fathers." In this way America would survive the war and be re-born.\^91

Debate on the amendment continued for a week. In answer to the proponents, Democrats focused their opposition to two main areas--the increase of federal power, and race. New Jersey Democrat Andrew Rogers worried that if the federal government could touch slavery by constitutional amendment, it could also affect family relationships, marriage, private contracts, and state electoral laws. Rogers believed that Republicans would make the reserved powers of the states too fragile. Ohio's S. S. Cox feared federal intrusion in state affairs, wondering if it would end with nullification of all state discrimination against blacks. Cox's Democratic colleague Chilton White assured the House that blacks could never remain free in the South without continuing federal
military intervention. Blacks "will be free," said White, "just as long as the soldier sets his bayonet between the slave and the master, and no longer." 92

This was precisely why freedmen had to have civil rights. While Republicans accepted and expected an indeterminate period of occupation in the South, no one seriously looked to an indefinite federal military presence. New York Democrat Elijah Ward grasped the fact when he characterized the constitutional amendment as a measure making "all persons . . . equal under the law, without regard to color, and so that no person shall hereafter be held in bondage." 93 If that interpretation was correct the long military occupation of the South would be unnecessary.

Objections to lengthy military occupation of the South and to abolition and freedmen's rights as means to lessen the need for such an unwelcome military venture, illustrates the deep connection between the constitutional conservatism expressed in the House and the racist suppositions about blacks and whites. The divine sanction of negro inferiority and white superiority were common arguments against mortal intervention into the realm of race relations. 94

Most Democrats and conservatives were no longer pro-slavery in the sense of favoring the continuation of the formal status
of "slave" and "master." But the racism that nurtured their previous defense of the slave status remained and infused their opposition to changes. The system of slavery might be disposed of, although they believed a constitutional amendment the wrong method to achieve that end. Once the status of slave was destroyed, conservatives like Kentucky's George Yeaman hoped the other "dangerous schemes" of radicals including citizenship and political rights for blacks "associated . . . in the public mind as incident or necessary to [abolition's] accomplishment" would lose support. According to Daniel Voorhees of Indiana, the real issue was no longer abolition of status but of what civil and political rights freedmen would have. Recognizing that the tide was against the institution of slavery, conservatives attempted to preserve as much of the racial basis of slavery as possible by introducing the novel notion that freedom in America was nothing more than the absence of slavery. Status and condition would have no intrinsic bond.95

Republicans answered the argument by pointing out the great centralizing force had not been emancipation but slavery itself. The Supreme Court decisions in *Dred Scott* and *Ableman* increased federal authority vis-à-vis antislavery actions or desires. Finally, during the secession crisis the
other "thirteenth amendment" of 1861 would have given irrepealable federal protection to slavery in the states. If Congress had power to propose that amendment, New York antislavery Democrat Moses Odell argued, it could also destroy slavery by constitutional amendment. The Thirteenth Amendment would give to Congress the first new grant of power since 1787, power that would be in support of fundamental human rights. Robert Kasson argued that the rights of whites and blacks were unsafe without the safeguarding of spouse, children, and personal liberty. 96

Nature made all people free and equal before the law, Thomas T. Davis of New York declared. Liberty, as defined in the Declaration of Independence, gave vitality to the Constitution. It was the duty of government to reflect the natural order, just as conservatives argued. The primary law of nature, however, was not bondage but freedom. Blacks might not be equal with whites in ability, Davis conceded, yet the laws must treat them equally because all were (or would be) free. And equality before the law could only occur when "every vestige of African slavery" was removed from the republic. 97

Other antislavery-reconstruction legislation was complementory to the constitutional amendment. As the House debated the Thirteenth Amendment Republicans brought forward a new
reconstruction bill. It was explicit in regard to freedmen's rights where the constitutional amendment, by its nature, was only general and implicit. Concepts of "equality before the law" and "equality of civil rights before the law" paralleled consideration of the amendment. Rather than supersede the amendment, Thomas D. Elliot of Massachusetts made the connection clear when he spoke in favor of the reconstruction bill and yet pointed to the constitutional dimension: "Let [the southern states] establish their constitutions; let it [sic] prohibit slavery; let them grant freedom and equality of rights, and we need nothing else."98

James Ashley called up the constitutional amendment on January 28 after a two week long debate. The final vote was scheduled for three days later, on January 31. On that day Ashley yielded the House floor to various northern Democrats who announced their conversion to the amendment. New York Democrat Anson Herrick was typical in his reasoning. The time between June 1864 and this January day in 1865 had witnessed much change, chiefly Lincoln's stunning victory the previous November. In light of the different circumstances, there was not virtue in maintaining an "imaginary consistency." At about four o'clock in the afternoon, with members of the Senate and Supreme Court in attendance, the
United States House of Representatives reversed its decision of June 15 and approved the Thirteenth Amendment 119 to 56, two more than the necessary two-thirds margin. With that solemn action Congress sent the proposed amendment to the state legislatures. Its adoption and attendant social and legal support in three-fourths of the states would create and ratify a new reality for freedmen. It would, in Henry Wilson's words, prepare and welcome them for "the higher condition of life opening before them." 99

It was true that the times had changed. War had done that. It was true that great advances toward freedom had occurred by January 1865. War had done that, too. Yet the war as well as the advance toward liberty were made up of thousands, millions, of individual affirmations that the war could be won and that freedom was possible. In the tide of millions perhaps one human has little notice. But because the tide itself was the collective sum of individuals, people still shape their destinies. John F. Farnsworth, Republican congressman from Illinois, was correct in his conclusion about the vote on the constitutional amendment: "We are making history, and we are making it fast." 100
NOTES FOR CHAPTER FIVE


4. Fehrenbacher, Dred Scott, 67-68, 72-73, 327-30, 332, 335-64, 419, 430; Carl B. Swisher, Roger B. Taney (New York: Macmillan, 1935), 151-55, 158; Schnell, "Court Cases," 139, 142, 144-47; Thomas D. Morris, Free Men All: The Personal Liberty Laws of the North (Baltimore: Johns Hopkins University Press, 1974), 169-73; Eric Foner, Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War (New York: Oxford University Press, 1970), 97, 101-102, 292-93; Lincoln, Coll. Works, 2:401, 3:255; North American Review (April 1862), 94:448, and (October 1862), 95:509. For a thorough discussion of the evolution of United States citizenship, see James H. Kettner, The Development of American Citizenship, 1608-1870 (Chapel Hill: University of North Carolina Press, 1978), passim. Kettner maintains that only after four years of war was it possible to affirm that blacks were citizens and eliminate many of the ambiguities of American citizenship, ibid., 333. For the ambiguity in treating blacks and citizenship before the Dred Scott decision, see Caleb Cushing to Jefferson Davis, May 25, 1854, Cushing Papers, DLC. Cushing reviewed two court martial cases in which blacks were allowed to testify.


7. Opinions Attorneys General, 10:397-413; Cain, Bates, 222-25.

8. Corfield v. Corvell 4 Wash C.C. 371-81 (U.S.C.C., 1823); Bennett v. Boggs 3 Fed Cases 221 (U.S.C.C., 1830); Kettner, Development American Citizenship, 259-60; Schnell, "Court
Cases," 124-27; New York Times, December 17, 1862; but see Bates to John D. De Free, December 17, 1862, for this: "There seems to be much curiosity to see [his opinion], and I am constantly asked for copies," DNA, M 699, roll 7; T. Farrar said that the Dred Scott opinion was the instance in which Taney "scandalizes all sound law, and all good sense," "State Rights," in New Englander (October 1862), 21:708, 721; N. H. Eggleston, "Emancipation," ibid., 813, for the separation of human and citizenship rights. See also William M. Wiecek, Sources of Antislavery Constitutionalism in America, 1760-1848 (Ithaca, New York: Cornell University Press, 1977), 164-66 for a differing view of Corfield v. Coryell.


10. Liberator, January 9, 1863; Lincoln, Coll. Works, 6:28-30; Opinions Attorneys General, 10:389. Several months later the Speaker of the House, Schuyler Colfax, picked up Phillips' theme and reviewed the progressive, necessary steps of the war--emancipation in the District, confiscation, the Emancipation Proclamation, the use of black troops--as part of the "grand whole" from God to punish slavery, Colfax to James C. Conklin, printed in Indianapolis Daily Journal, September 7, 1863.


12. Edward Everett Hale, "The Desert and the Promised Land; A Sermon," in Freidel, Union Pamphlets, 1:508; Welles, Diary, 1:212-13. For details on the final decree of emancipation, see Lincoln, Coll. Works, 6:24n-26n; Welles, Diary, 1:209.


21. Johnson quoted in "The Great Union Meeting ...," in Freidel, Union Pamphlets, 2:581; Bushnell, "The Doctrine of Loyalty," in New Englander (July 1863), 22:577; Will S. Hays, "The Constitution as it is, the Union as it was," Indianapolis State Sentinel, July 17, 1863, stanzas one and three; Anonymous to Wade, October 5, 1863, Benjamin F. Wade Papers, DLC.


23. Oates, With Malice Toward None, 331; Wood, Black Scare, 40-44, 52, and ch. 5; Mary F. Berry, Military Necessity and Civil Rights Policy: Black Citizenship and the Constitu-

24. Cong. Globe, 37:2, 2100, 2671, 2675, 2717; ibid., 37:3, 525, 819-20, 1327, 1329-30, 1435; SAL, 12:805. The four Republicans voting "no" were Howe, Cowan, Lane (Indiana), and Anthony. David Donald, Constance Green, and Herman Belz do not consider the Washington-Alexandria extension act, Donald, Sumner and the Rights of Man, Green, Secret City, Belz, Emancipation and Equal Rights. For other efforts against discrimination on rail lines in Philadelphia and in California, see Liberator, December 23, 1864, January 6, 1865, and National Anti-Slavery Standard, December 24, 1864, respectively.


359; Berry, Military Necessity and Civil Rights, 60-65; North American Review (October 1863), 97:348-55.


29. Indianapolis Daily Journal, November 18, 1863.


34. Cong. Globe, 38:1, 145, 521-22, 1313; Donald, Sumner and the Rights of Man, 150-51; Bates diary, February 10, 1864, DLC; see also Hamilton, Legislative and Judicial History of


37. John G. Fee to Chase, December 21, 1863, Salmon P. Chase Papers, DLC; G. T. Allen to Trumbull, February 16, 1864, Lyman Trumbull Papers, DLC.


43. Cong. Globe, 38:1, 694, 1130, 1283, 1313. On March 23, Finance Committee chairman William P. Fessenden remarked that S. No. 16 was "more important than any other business except the appropriation bills," ibid., 1130.


46. Ibid., 1320, 1323-24, 1368-69.

47. Ibid., 1313-14.

48. Ibid., 1323, 1370, 1424. Publicist John Hancock reiterated the view that freedom secured citizenship, that changes in status brought "that class of our citizens . . . on [an] equal footing with the white population," Hancock, The Great Question for the People: Essays on the Elective Franchise or Who has the Right to Vote? (Philadelphia: Merrihew and Son, 1865), 20-25.

49. Cong. Globe, 38:1, 1346, 1361-64; Wood, Black Scare, 81. The only two Republicans to vote against Wilkinson's amendment were John Sherman and Lyman Trumbull.


52. Ibid., 1447, 1456-57.

53. Ibid., 1462-63, 1465.

54. Ibid., 1482-83, 1488-89; Donald, Sumner and the Rights of Man, 150-51.


56. Ibid., 1486, 1489-90. The six negative votes were cast by Davis, Hendricks, McDougall, Powell, Riddle, and Stansbury. McDougall objected to the vote on the ground that two-thirds vote of all senators (including the vacant seats of the seceded states) were necessary to pass a constitutional amendment. Vice-President Hannibal Hamlin ruled against the objection, saying that two-thirds of a quorum was all that was necessary.

57. Liberator, April 22, 1864; Washington Daily Morning Chronicle, March 11, 1864; "Abolition and Negro Equality," in


59. Liberator, April 15, 22, 1864.


61. Abolitionists regularly acknowledged the hand of God working through the war as the chastisement of the nation for slavery. See Liberator, May 20, 1864.


64. Cong. Globe, 38:1, 2955.

65. Ibid., 2941-42, 2960, 2962.


67. Liberator, May 20, 1864.

68. Cong. Globe, 38:1, 2979-80, 2989, 2991, 2995, 3357.


73. "The Constitution and its Defects," in North American Review (July 1864), 99:128-38, 142. See also Russell, "The Constitutional Amendment," in Continental Monthly (September 1864), 6:315: "Ought the idea of the nation to be now, at last, incorporated into the law of the nation, and so made a fixed fact of the nation's history?"


75. Ibid., 95-97, 111-12.


78. "Mr. Lincoln and Congress," in Brownson's Quarterly Review (October 1864), 1:429; "Abolition and Negro Equality," ibid., (April 1864), 1:193-99; Alexander [Tap?] to Wade, September 8, 1864, Orson S. Murray to Wade, September 6, 1864, Benjamin F. Wade Papers, DLC; G. T. Allen to Trumbull, October 11, 1864, Lyman Trumbull Papers, DLC; Jonathan Hieltland to Stevens, May 29, 1864, Thaddeus Stevens Papers, DLC. See, for example, Tap to Wade on Lincoln's future course: "he will not dare to give up the Union, or to re-establish slavery, I hope."

79. Liberator, June 10, 1864.


82. "Abraham Lincoln," in Freidel, Union Pamphlets, 2:905-913. See also Chase's view: "God grant that [Lincoln's] name may go down to posterity with the two noblest additions historians ever recorded—Restorer and Liberator," Chase to Charles Sumner, October 9, 1864, Salmon P. Chase Papers, DLC.


84. Fisher, Diary, 487.

85. G. T. Allen to Trumbull, December 19, 1864, Lyman Trumbull Papers, DLC; Wilson to Lincoln, November 24, 1864, Abraham Lincoln Papers, DLC. See also Charles Sumner to Chase, October 24, 1864, Salmon P. Chase Papers, DLC.


87. Cong. Globe, 38:2, 53; National Anti-Slavery Standard, December 24, 31, 1864; Ashley circular, December 25, 1864, Abraham Lincoln Papers, DLC. The total number of members voting was the key, since two-thirds of that number (assuming a quorum) was the constitutional majority. In this sense, a Democratic abstention was almost as good as a vote favoring the amendment.

88. Lawanda and John H. Cox, Politics, Principle, and Prejudice, 1865-1866; Dilemma of Reconstruction America
(New York: Free Press of Glencoe, 1963), 6-25, Horowitz,
Great Impeacher, Trefousse, Radical Republicans, 298-300,
all of which inform my treatment; Liberator, December 16,
1864 for Charles Sumner's letter of praise, and National
Anti-Slavery Standard, February 11, 1865.

89. George S. Denison to Chase, January 13, 1865,
I. White to Chase, January 6, 1865, Salmon P. Chase Papers,
DLC.

90. William M. Grosvenor, "The Law of Conquest: The
True Basis of Reconstruction," in New Englander (January 1865)
24:111-15; Alex Twining, "President Lincoln's Proclamation


92. Ibid., 150-54, 216, 241-42.

93. Ibid., 177. Ward did not favor the amendment,
believing that it would have little real effect on the
freedmen's condition.

94. Ibid., 149-50, 194-95, 216.

95. Ibid., 170-71, 181. See also the speech of Kentucky
Union Democrat Robert Mallory, 179-80, and William E. Friack
(D, Ohio), ibid., 480. Fernando Wood (D, New York) was an
exception to these statements, continuing a strick pro-
slavery attitude, ibid., 194-95. For southern attitudes see
George S. Denison to Chase, January 13, 1865, Salmon P. Chase
Papers, DLC, and this quotation from the New Orleans Tribune,
reprinted in the Liberator, December 23, 1864: "Slavery is
dead! Would that we could add, that the prejudices engendered
by the inhuman institution have ceased also to live."

96. Cong. Globe, 38:2, 145-46, 174, 191-93. See also
Arthur Bestor, "State Sovereignty and Slavery--A Reinterpre-
tation of Proslavery Constitutional Doctrine, 1846-1860,"
Schnell, "Court Cases," 44-45 on antislavery as an effort to
guard white and later black civil rights; J. White to Chase,
January 6, 1865, Salmon P. Chase Papers, DLC.

97. Cong. Globe, 38:2, 154-55. For Republican expression
of doubt about black ability and/or equality, see ibid., 202,
484-85, and *Liberator*, December 30, 1864.


CHAPTER SIX

THE ESCAPE OF HISTORY

The Sabbath. February 12, 1865. The twelfth day past Congress' approval of the constitutional amendment prohibiting slavery and enshrining freedom; the time of celebration and joy.

The Sabbath. February 12, 1865. The Lord's day of rest from his great creation commemorated in his people's own rest from labor, from deeds done, from efforts made.

The Sabbath. February 12, 1865. Birthday of Abraham Lincoln, president and leader during four years of confusion, hurt, discovery, and invigoration.

It was a time of relative ease, almost contentment, as the new inauguration approached and the war showed signs of exhaustion. The constitutional amendment had been available for ratification less than two weeks and already thirteen states had assented.1 The long battle against the slave power neared an end. The Congress continued consideration of a reconstruction bill, unsure as to how the constitutional amendment might shape the reality or reunion. The key question as yet had no answer—how must the peace be like the war so that what had been achieved might be preserved and fostered?
The House chamber was overflowing as a black choir raised up hymns of praise. Then the crowd looked upon a sole black man standing at the Speaker's desk as he prayed a fervent prayer, his words anunction. The Reverend Henry Highland Garnet, pastor of Washington's Fifteenth Street Presbyterian Church, and black, preached to the assembly of white and blacks in the House. Garnet explained his understanding of the end of slavery. Answering the rhetorical question of when the reformers' demands would end, he said:

When all unjust and heavy burdens shall be removed from every man in the land. When all invidious and proscriptive distinctions shall be blotted out from our laws, whether they be constitutional, statute, or municipal laws. When emancipation shall be followed by enfranchisement and all men holding allegiance to the government shall enjoy every right of American citizenship. When our brave and gallant soldiers shall have justice done unto them. When the men who endure the sufferings and perils of the battle-field in the defence of their country, and in order to keep our rulers in their places, shall enjoy the well-earned privilege of voting for them. When in the army and navy, and in every legitimate and honorable occupation, promotion shall smile upon merit without the slightest regard to the complexion of a man's face. When there shall be no more class-legislation, and no more trouble concerning the black man and his rights, than there is in regard to other American citizens. When, in every respect, he shall be equal before the law, and shall be left to make his own way in the social walks of life...

Upon the total and complete destruction of this accursed sin depends the safety and perpetuity of our Republic and its excellent institutions.

Let slavery die. It has had a long and fair trial. God himself has pleaded against it. The enlightened nations of the earth have condemned it. Its death is
signed by God and man. Do not commute its sentence. Give it no respite but let it be ignominiously executed.  

At a February 4 Boston meeting celebrating the passage of the Thirteenth Amendment, William Lloyd Garrison asserted that the Amendment was proof certain of God's favor and a sign that the cause of the Union had finally become the cause of liberty and the black. The Amendment was, in fact, the culmination of long years of antislavery and pro-liberty activity, efforts to secure in law the principles upon which America was founded. For Garrison, the Thirteenth Amendment was "the Declaration [of Independence] CONSTITUTIONALIZED."

Major General Benjamin F. Butler, recently relieved from the command of the Department of Virginia and North Carolina by Lincoln, addressed the same meeting and echoed Garrison's view. When ratified and made part of the Constitution, every black would be a citizen entitled to every "political and legal immunity and privilege . . . equal in right under the law."  

Garrison and Butler shared a high view of abolition's substance; freedom was more than the absence of slavery and necessarily entailed equal rights and privileges. Some abolitionists, Gerrit Smith for one, differed, and therefore were already urging yet another constitutional amendment that
would secure freedmen's rights and not just abolish the legal status of "slave." The consolidation of all antislavery measures into and under the Thirteenth Amendment, while never a unanimously held idea, was still a discernable trend through the war years, nurtured by and as the war developed. By February 1865, with the Amendment only one step away from embodiment in the fundamental law, doubts and questions began to surface as to its efficacy, its catholic application and power. Perhaps in recognition of the divergent views of abolitions, perhaps merely as a tactical suggestions, Oliver Johnson's National Anti-Slavery Standard recommended the dissolution of antislavery societies. With the Amendment, their primary raison d'être was fulfilled. The effects of slavery posed a problem with which abolitionists ought to deal, but could do so in different organizations and in combination with new fellow-workers. In effect, Johnson argued with Gerrit Smith and maintained that the question of status was distinct from the question of rights. Even before the war's end, the radical-abolitionist alternative--the view that had won acceptance by the passage of the Thirteenth Amendment--showed signs of decline.5

Abolitionists and radical congressmen did not differ on goals. In anything, the demand for specific guarantees for
freedmen's civil and political rights came from the realization that freedmen must be more than mere ex-slaves. Massachusetts Governor John A. Andrew, addressing the state legislature early in January, pointedly called for an end to discrimination. Color, long the badge of slavery, should "cease to be the badge of exclusion from any of the privileges of citizenship." Similarly, I. N. Tarbox believed voting distinctions based on color would only serve to invite "the Lord again to chastise us, and vex us with his sore judgment." Frederick Douglass and Wendell Phillips, speaking before the Massachusetts Anti-Slavery Society convention on January 26, 1865, both stressed the necessity of black suffrage as the only sure means to safeguard liberty. "No emancipation is effectual, no freedom is real, which does not take that shape," said Phillips. Douglass put it squarely: the vote was the "all-important right."\

Unlike Gerrit Smith, not every abolitionists then favored another constitutional amendment. Yet by focusing upon new goals, civil rights and suffrage, abolitionists became at once more radical and more short-sighted. Throughout the war specific antislavery goals were attained until abolitionists reached the sought after goal--abolition. Now it had come, and rather than derive effects from the
Thirteenth Amendment (once ratified), abolitionists and radicals continued the heretofore successful pattern of seeking additional measures and goals. But if the abolition of slavery brought the fullness of freedom, then abolitionists' emphasis on additional measures was unnecessary and damaging to the Amendment. Continuing the war-born pattern of specific goals very nearly conceded the conservatives' argument that freedom was status more than substance.

Important specific changes were still occurring. On February 1, John S. Rock became the first black lawyer admitted to practice at the bar of the Supreme Court. Three years before the Boston abolitionist-lawyer had journeyed to Washington in the wake of abolition in the District of Columbia. While there he was assaulted by a white mob. But in 1865 Charles Sumner presented Rock to Chief Justice Salmon P. Chase, appointed by Lincoln after Roger B. Taney's death in October, 1864. Rock's presence was a fitting symbol of the overthrow of Taney's legacy—an abolitionist sat in his chair as Chief Justice, and a black man, whose rights no white man was bound to respect, was admitted to the same privileges as other lawyers.

Taney's presence on the Court had been a chief reason for fear about the Emancipation Proclamation and the freedman's future. Wendell Phillips had put it succinctly:
"Now, God help the negro if he hangs on Roger B. Taney for his liberty!" With his replacement by Chase, antislavery men felt confident that the "cause," in congressman James Ashley's phrase, would be safe. The Court would be called upon to pass on many issues raised during the war. Chase's presence assured that "every department of the government is now raised out of the mire of slavery," according to one of the Ohioan's admirers. Oliver Johnson expressed the view:

Slavery will hereafter sue in vain for favour . . . and the humblest negro may enter the temple of American Justice in the full assurance of finding protection for his rights as a man and a citizen.8

In Congress deliberation continued on the House's reconstruction bill, H. R. 602. That bill contained a key provision, by James Ashley, guaranteeing freedom and equality of civil rights to all persons within each seceded state. Civil rights included the right to hold property, to sue and be sued, to testify in courts—in essence, to be treated fairly by the law and other citizens. Ashley, the floor manager of the recently passed constitutional amendment, made clear that H. R. 602 was aimed precisely at the remnants of slavery, state discriminatory legislation and black codes. Yet the bill's relation to the Thirteenth Amendment (when ratified) was not discussed, and as the congressional session
neared its close, the bill was tabled and lost.\textsuperscript{9} However, the constantly increasing number of freedmen prompted Congress to create the Freedmen's Bureau, charged, among other things, with the resettlement, education, and general rehabilitation of slaves into free men.\textsuperscript{10}

Correspondents of Salmon Chase and Benjamin Wade reported slow but constant progress in the people's thinking about slavery and related matters. New Orleans customs collector George S. Denison reported to Chase as early as November 1864 that opinion was moving in the direction of black suffrage. Brevet Brigadier General James S. Brisbin, superintendent of black troops in Kentucky, advised Wade the Union should make more use of the Negro. Brisbin feared that the Confederacy might, in a last desperate gamble, arm as many as 250,000 slaves. Later, in February 1865, Brisbin confirmed that laws and constitutional amendment aside, "the problem of freedom can be worked out under army rules and Kentucky is now nominally free."\textsuperscript{11}

Brisbin's "nominal" freedom was more tentative than he suggested.\textsuperscript{12} Yet he was correct in his central statement: the war itself was the great emancipator. On the same day that Brisbin wrote Wade, congressman Henry Winter Davis predicted the war's end, possibly by July 4 and certainly
by the close of the year. What effect the absence of war might have on the nation was a question often asked in the late winter of 1865.  

Neither party expected for the war, the magnitude, or the duration, which it has already attained. Neither anticipated that the cause of the conflict should cease. Each looked for an easier triumph, and a result less fundamental and astounding.

Lincoln summed up the history of his first term of office, the history of the war, and the history of the end of slavery. The Second Inaugural Address, remembered for its peroration, was anchored in two themes: the history of men's actions and the God behind those actions. Within his brief four paragraph address, Lincoln displayed none of the ambiguity found in his earlier reflections upon the meaning of the war. Doubtless, ambiguity retreated as Union forces advanced toward the victory of arms. Yet, where Lincoln had once echoed the pleading of Job, he now expressed the acceptance that transcended resignation and submission, suggesting a deep trust in the working out of a divine plan:

Fondly do we hope—fervently do we pray—that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue, until all the wealth piled by the bondman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash, shall be paid by another
drawn by the sword, as was said three thousand years ago, so still it must be said "the judgments of the Lord, are true and righteous altogether."\textsuperscript{15}

Only with that understanding did Lincoln—could Lincoln—continue and express forgiveness and reconciliation: "With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds."\textsuperscript{16}

On March 23 Lincoln left Washington for City Point, Virginia, headquarters of General in Chief Ulysses S. Grant. While there Lincoln visited the front, communicating regularly to Secretary of War Stanton. Like successive hammer blows events now quickly brought an end to the war and the era. On the night of April 2 Jefferson Davis and his government evacuated Richmond, leaving only hours before federal troops occupied the once capital of the Confederacy. Leaving Grant's headquarters, Lincoln travelled to Richmond on April 4, arriving barely a day after the city's capture. It was during this visit of April 4-5 that Lincoln encountered a group of new freedmen who, upon seeing the author of the Emancipation Proclamation, fell down before him. "You must kneel to God only," Lincoln told them.\textsuperscript{17}
Four days later Robert E. Lee surrendered his once mighty Army of Northern Virginia, reduced now to barely 28,000 men, at Appomattox Courthouse. Almost to the day, the war had lasted four years. While other southerners still resisted (notably Joseph E. Johnston in North Carolina), Lee's capitulation marked the effective end of the war. Back in Washington, Lincoln greeted the news with satisfaction and public restraint. "Everything I say, you know, goes into print," he joked. "If I make a mistake it doesn't merely affect me nor you but the country." 18

It was a time for caution, a time for measured words and actions. What would peace be like? Were the "splendid possibilities" created by the war temporary or had they been permanently engrafted onto the American spirit? The question facing the country was squarely this: "What are we to do with the country our arms have regained?" The North American Review did not answer its question, but gave an astute observation: "With the end of the war the real trial of our statesmanship, our patriotism and our patience will begin." 19

The President made what became his last public address on April 11. He spoke at length of the reconstructed government of Louisiana, reconstructed under his supervision and according to his plan. Louisiana was regarded suspiciously
by radicals. Radicals worried that the state's return to the Union had been so swift that southern whites had not the opportunity nor the necessity to reform their thinking about the Union and blacks. Because of radicals' suspicions, Lincoln emphasized the state's new constitution and its positive aspects. For the first time he committed himself publicly to some form of black suffrage, of only for the "very intelligent" and those who fought in the Union army. Most important, however, was the President's emphasis on the possibility for further change in the Louisiana constitution. The present status of blacks was not all that some wanted, he admitted, and not all that he might want. Yet the question was clear, and the President put it forcefully: "Will it be wiser to take it as it is, and help improve it; or to reject, and disperse it?"20 The President had discerned and made his own a chief lesson of the war--change, even profound change, was possible given the right situation and an attitude open to change. Before peace could reign, the war must first end; secession and slavery must finally be vanquished.

Charleston, site of the war's beginning, had fallen to federal forces on February 18. The President and Stanton had planned a flag-raising ceremony for April 14 even before Lee's surrender on April 9. With the Confederacy's collapse
the celebration at Charleston would take on added meaning. Four years before Major Robert Anderson had commanded the federal garrison at Charleston. On April 14, 1865, Major General Anderson would raise the same Stars and Stripes he had lowered in surrender.

April 14, 1865. Good Friday. A crowd of about 3,000 gathered at Charleston harbor to hear Henry Ward Beecher's address marking the raising of the flag of the United States. Among the guests were Senator Henry Wilson, Supreme Court Justice Noah Swayne, English abolitionist George Thompson, and William Lloyd Garrison. Earlier that day Garrison had visited the grave of John C. Calhoun, South Carolina's most illustrious son and architect of much of what she had become. Four years before Garrison could not have travelled anywhere in Dixie. Now he came as the prophet proved true.

The President worked throughout the day at the White House, meeting with the Cabinet and finally leaving for the theater about 8:15 that evening. Two hours later he lay dying, shot once in the brain by the actor John Wilkes Booth.21

His countrymen recognized him as martyr, cementing the Union anew with his own blood. They recognized him as champion of the poor, "whose fetters God commissioned him to break." They saw and created a secular Christ, dying on Friday, in
the hope of a national resurrection in Easter reconstruction.\textsuperscript{22}

There was no need to make his importance in death greater than it was in life. He was absolutely interwoven in the history of those four years. At his death in the moment of victory, he took his place in that history—a word, a name, full of meaning, symbol of reality.

Sumter—Slavery—Freedom—Lincoln.

Now the war was over; now Andrew Johnson was President. Now was the "danger of success" at hand. Abolitionists had predicted that southerners would try to keep the substance of slavery even if they yielded its "shadow," or form. That was why, in the view of the \textit{National Anti-Slavery Standard}, reconstruction had to "go down deep to the foundation of things, or it might about as well be let alone." The editor had in mind the redistribution of land, political rights for blacks, and a prolonged military occupation of the South. Much of this would have been difficult to secure with Lincoln as president. In March Lincoln and his new attorney general James Speed had agreed to wait for subsidence of passion in the postwar South before instituting any proceedings for treason. Nine days after Lincoln's death Speed reaffirmed that the South was still controlled by the
"rebellious spirit now rampant" and that civilian judicial proceedings could not yet be re-established. Yet two days earlier, a week after the assassination, Assistant Attorney General J. Hubley Ashton circulated a letter to the United States district attorneys in Missouri, Tennessee, and Kentucky, directing the suspension of new confiscation actions against rebel property. A month later, however, Speed directed confiscation proceedings to begin in Virginia and suggested that a Kentucky grand jury indict some rebel sympathizers for treason to demonstrate that the government had "ample and sufficient power to punish the guilty and defend the innocent."

Conflicts of perception and action were evident, and it was unclear when the South would be ready for peace and the government willing to forgo war measures.23

Some anticipated the ambiguity that accompanied peace. In December 1863, Wendell Phillips declared that:

the nation owes the negro, after such a war, in which he has nobly joined, not technical freedom but substantial protection in all his rights. It should never admit state sovereignty between it and the negro, until both by constitutional guarantees and by natural laws it has insured him full, real liberty.

In June 1864, however, William Lloyd Garrison expressed considerably less optimism and worried publicly that "the disease of this people is yet unhealed; their sin is neither
forsaken, nor repented of, nor acknowledged, nor even understood by themselves." The disease—racism—had not died with the war and the question became whether the leniency shown to Lee at his surrender, and by implication to all the seceded South, would make reconstruction more difficult.

What was the freedman's future? Was he a free man or something less? What was the government's attitude toward him; what would it be? In March 1865 the National Anti-Slavery Standard's Washington correspondent confidently predicted that Congress would continue to use the District of Columbia as it laboratory for legislation on freedmen. Chief Justice Chase and the editor of the North American Review had both pronounced freedmen citizens—"in the words of the Review, "the necessary consequence, as it is the only effectual warranty of freedom." Yet the ambiguity remained, in part because some Americans could not comprehend the changes war had effected.

They were left perplexed, as was Kentucky slaveholder W. R. McFerren. He had remained loyal throughout the war; a son had died in the Union's cause. Now, at age 72, McFerren wanted his five slaves to care for him. They had been bought in accordance with the Constitution and the law of Kentucky. Why, McFerren wrote Lincoln on April 9, could he not have
them? Lincoln did not have the opportunity to answer, but the question remained, and as long as it did the freedman's fate was uncertain. That was why freedom in name created more questions. Indeed, nominal freedom freed neither black nor white, as the *North American Review* observed:

> If we only emancipate him, he will not let us go free. We must do something more than merely this. While the sufferings from them is still sharp, we should fix it in our minds as a principle, that the evils which have come upon us are the direct and logical consequence of our forefathers having dealt with a question of man as they would with one of trade or territory . . . . It is well to keep this present in the mind, because in the general joy and hurry of peace we shall be likely to forget it again, and to make concession, or to leave things at loose ends for time to settle,--as time has settled the blunders of our ancestors.27

The South did not act much like a vanquished foe, at least with regard to its former bondsmen. Secession sentiment was still strong in Charleston, South Carolina, according to M. S. Littlefield, a correspondent of Lyman Trumbull's. The end of the war was really only an armistice, a respite in the fighting, Littlefield wrote. Given the chance, rebellion would flourish "if even a vestage [sic] of the slavery question be left unsettled." It was clear, Littlefield concluded, that the South intended to put the freedman "way out of the reach of Justice." His opinion was borne out by events in other ex-rebel states. Virginia passed a law to
pay black laborers a ridiculously low $5.00 per month salary. Tennessee's proposed black code prohibited black testimony in judicial proceedings and created two sets of punishments for the same crimes, one for white and another, harsher set for blacks. Similarly, discriminatory laws on the books before the war would in all likelihood remain in force during the postwar era.  

Conjoined with these disturbing facts were Andrew Johnson's first actions regarding reconstruction. Six weeks after assuming the presidency Johnson issued an amnesty proclamation granting a full return of civil rights to a broad class of southerners. The only conditions for the amnesty were that title to slaves had to be relinquished and the claimant must take the oath of allegiance to the United States. Johnson also excluded from the proclamation's terms fourteen categories of southerners in an effort to keep the prewar leadership class from political power in the reconstructing state governments. Even so, the vast majority of ex-rebels (an potentially indictable traitors) were given the means to recover all their rights as American citizens.

On the same day Johnson returned citizenship rights to millions of ex-rebels he withheld them from thousands of ex-slaves. The May 29 Amnesty Proclamation was a bitter pill
for abolitionists to swallow because of its twin proclamation, issued the same day, appointing William W. Holden provisional governor of North Carolina. The proclamation also called a state convention for the purpose of establishing a new legislature. In that second proclamation, Johnson explicitly limited the franchise to those voters who took the amnesty oath, and who were eligible to vote on May 20, 1861. This ruled out any balloting by freedmen since on May 20, 1861, no blacks could vote in North Carolina. Blacks were excluded from choosing delegates to the state convention, a convention called for the expressed purpose of reconstructing the state's government.29

The President followed his North Carolina action with rapid appointments of provisional governors for Mississippi, Georgia, Texas, Alabama, South Carolina, and Florida. By July 13 every former Confederate state was well on its way to reconstruction. Each governor issued a call for a state convention, and every call stipulated the same two criteria as Johnson's original: two amnesty oath and suffrage qualifications as before secession.30 Moreover, Johnson gave his provisional governors the power to pass on applications for special pardons of those otherwise excluded by the terms of the May 29 Amnesty Proclamation. Thus, on the governor's
recommendation, prominent ex-Confederates might well be pardoned and admitted to political and civil rights.31

Johnson's first appointee, William W. Holden, made his attitude toward freedmen known. Addressing the freedmen Holden said: "It now remains for you, aided as you will be by the superior intelligence of the white race . . . to decide whether the freedom thus suddenly bestowed upon you will be a blessing to you or a source of injury." To North Carolina whites Holden asserted that he would give education and legal marriage to freedmen, but "it remains for the people of this State in Convention and by legislative action to define the status of the emancipated race . . . The extent of their further elevation belongs legitimately to the governing race."32 This meant definition of status rather than of rights and citizenship and exclusion from rather than inclusion in state reorganization. Under Johnson's policies reconstruction was something done with little reference to the standing blacks would have and a preoccupation with formal, controlled status of blacks.

The President had acted during the interregnum between the war's end and the congressional session of December 1865. Just as Lincoln had time to cope alone with the first months of war, so did Johnson take advantage of the congressional
hiatus to deal exclusively with the first months of peace.\textsuperscript{33} Johnson's actions were politically possible because the war's end brought a disinclination to press for further "radical" measures. With the war over, the necessity for novel approaches to problems appeared to be at an end. At least many northerners hoped that was the case. Conservatives hoped that prewar political alliances might be rebuilt and played upon the latent conservatism of some Unionist members of Congress. Johnson himself would attempt shortly to create a National Union party coalition. Many commentators expected a major party realignment, suggesting that Republican-abolitionist answers for war were irrelevant for peace.\textsuperscript{34}

Abolitionists and radicals in and our of Congress did not concede the struggle to Johnson and conservatism. The \textit{National Anti-Slavery Standard} observed congruently that the question at issue was just who were the people. Johnson's instructions on voter qualifications for the reconstructing states' conventions decided the matter, and blacks were excluded \textit{ipso facto}. The newspaper went on to term Johnson's policy "the last great crime of the Nation." One publicist judged the situation accordingly: "If the loyal black \textit{may} not vote, the rebel white \textit{must} not." Massachusetts senator Charles Sumner echoed the disbelief of many radicals when he
wrote to Senator Ben Wade: "How easy it was to be right! The President seems to have made an effort to be wrong." In Sumner's view Johnson could either have postponed the decision on reconstruction until Congress met, appointing temporary administrators only, or the President could have followed the principles of the Declaration of Independence and included freedmen in the eligible electorate. Instead, Johnson struck out on his own, and Sumner plaintively asked Wade, "What can be done?"35

Abolitionists' initial shock was short lived. They rapidly began to organize to counter Johnson. Sumner again wrote Wade, saying that the President could not stop the triumph of "the cause," though he might delay it. Sumner urged Pennsylvania Republican Thaddeus Stevens to "arrest this fatal policy," suggesting that Stevens write or meet with Johnson to persuade him of the error he was committing. Sumner was determined to see "the cause" through, as was clear in his parting message to Stevens: "It is hard--very hard to be driven to another contest." The Massachusetts senator also wrote Chief Justice Chase declaring that unless the President acted upon the principle of the Declaration of Independence, his policies would be "unconstitutional . . . [and] . . . indecent."36
The Chief Justice's reaction to the President's emerging reconstruction policy was one of disappointment that Johnson did not recognize blacks as citizens. Chase predicted that northerners would not tolerate disloyal southerners as the basis for the reconstructed state governments. He suggested a solution to the situation, however: "we must work for the constitutional amendment & having obtained that remand our appeal to the People, which in the end will obey the instincts of humanity & the voice of Justice."

Chase's views were significant; if the Thirteenth Amendment only had the object of affecting status, leaving rights out of the equation, its ratification could be no antidote to Johnson's reconstruction policies or for southern racial intransigence. Yet the Amendment together with the "voice of Justice" were Chase's alternatives to policies that denied the freedmen citizenship and political participation in reconstruction. The Amendment secured freedom for blacks in name and substance. The "voice of Justice"--the voice of abolitionists--was the catalyst that would activate freedom.

The question facing the abolitionist-radical alliance in the summer of 1865 was the question that had been implicit all along: what did freedom mean? "Is the freedman a citizen? Shall he vote," asked one of Chase's many correspon-
dents. "Should reconstruction be left at the hands of prejudiced Southern men?" The historian Benjamin Lossing warned Henry Wilson, author of antislavery legislation:

Your work is not yet done. The freedmen are citizens, but may not exercise the privileges of citizens. When they shall be in possession of those privileges, the great design of the "late war," as I apprehend it, will be fully accomplished, so far as the late bondsmen are concerned.38

The condition of freedmen in the South was not good. When given a chance to improve themselves blacks surprised even their staunchest supporters with their ability to overcome years of "laziness" as slaves. Simultaneously with reports of the freedmen's poor conditions, the Johnson Administration curtailed war-related prosecutions. By September Attorney General Speed wrote that it was "not the wish of the Government to keep open the sores made in & by the late struggle." This leniency, combined with the amnesty policy, prompted Ben Wade to observe that Johnson was trying to imitate Lincoln's compassionate attitude toward the South. In this, Wade commented, Johnson was "the feeble copyist of a very feeble original." The co-author of the Wade-Davis bill of 1864 retained his radicalism and his antipathy toward superficial reconstruction.39

Leniency toward southern whites appeared to doom the
freedman's place as a free person in southern civil and political life. Former congressman John Covode, just returned from a visit to New Orleans, reported that "the slave holders will have slavery in some form if they get control." Before the war southerners had often protested that they liked their Negroes. Back in 1864 New Orleans customs collector George S. Denison saw through the rhetoric to the reality: "This was all grammar. They liked the negro like I like my horse--a convenient beast of burden for my use & pleasure. But that a negro should have a voice or influence in Government, or any rights which a white man is bound to respect--this is intolerable." In mid-1865 Denison's observation was more acute than ever.40

The trouble with Andrew Johnson, in Chief Justice Chase's opinion, was that he looked to state constitutions to determine the rights of citizens. What the President forgot, Chase maintained, was that "the war has made all men free[,] the war has made all men citizens." Rather than look at the legal conditions five years in the past, Johnson ought to use the "actual relations now" as his standard. Loyal blacks were part of the people, unquestionably so, according to Chase. Despite his errors, Johnson supported the Thirteenth Amendment. Its ratification, Chase believed, would supply
"a fulcrum of immesne value . . . and progress."  

Doubtless, the fulcrum Chase envisioned would be used to support the idea of substantive freedom for blacks. Ohio congressman James A. Garfield posed the key question to a July 4 crowd at Ravenna, Ohio:

What is freedom? Is it mere negation? Is it the bare privilege of not being chained,--of not being bought and sold, branded and scourged? If this is all, then freedom is a bitter mockery, a cruel delusion . . . . But liberty is no negation. It is a substantial, tangible reality. It is the realization of those imperishable truths of the Declaration.  

Freedom had been so long undefined because there had never been the need for explicit definition. White men assumed an identity between themselves and free men, that is, citizens. Only the advent of four million freed black men and women created the condition that required reflection on freedom's meaning.  

The battle was joined between substance and form. If high abolitionism won substantive freedom would, at the very least, continue as the nation's goal and the aid of its policies. If, on the other hand, freedom as status prevailed, not only would blacks suffer, but the late seceded South would soon return to the Union in strength. And southern representation in Congress would be increased by the very
blacks who, no longer only counted as three-fifths, would become at once whole men and empty. That specter prompted invigorated political activity among radicals. The dreaded result was, in Ben Wade's words, "political suicide." Some abolitionists and politicians proposed, therefore, yet another constitutional amendment. This one was to secure freedmen's civil rights and make those rights a matter of national definition. Henry Winter Davis, Maryland's Whig turned radical Republican, supported a new amendment as did the National Anti-Slavery Standard. The newspaper made the call for a new constitutional amendment a continuing column heading from July onward. By supporting another constitutional amendment even before the Thirteenth Amendment's ratification, abolitionists unwittingly contributed to the decline of the expansive view of freedom. The Thirteenth Amendment's abolition of slavery confirmed the plenitude of freedom. If abolitionists now advocated another constitutional amendment to secure freedmen's civil rights, then the substantive view of freedom and the Thirteenth Amendment lost potency. If the Thirteenth Amendment confirmed the fullness of freedom, there was no need for another amendment.44

Benjamin Butler gloomily appraised the situation in the
nation, and expressed hope for the future:

All is wrong [,] we are losing the first results of this four years struggle.
The most [vivid] hope I have is that the rebels will behave so outrageously as to awaken the Government and the North once more our of the dream of brotherly union . . . . My ground for that hope is that heretofore under Providence whenever all looked gloomy for our cause, something of outrage or extravagant pretentions has been put forth on the part of the South which has brought our people to their senses--
May it so happen again. I think it is happening.45

It was. Throughout the fall of 1865 southern conventions met to re-create their state legislatures as the first step in rectifying their relationship with the Union. Not far behind on the agenda, however, was the effort to define the freedman's status, his rights and place in the new society. In brief, the more postwar society resembled the prewar system, the happier whites would be. The same Mississippi convention that emancipated the state's slaves (that is, repealed the state's slave code) was, in the view of one observer, bent on the use of vagrancy laws and other means "to restore all of slavery but its name." Once federal troops were withdrawn, the "poor freedom" that blacks enjoyed would vanish. "The utter want of all sense of justice, right [and] honor toward the negro is amazing," the writer remarked.

Other reports from the former Confederacy confirmed
southern intentions--and northern fears--about the freedman's situation. Predictions were clear and in agreement: the black could expect the same, if not worse, conditions from "freedom" that he experienced under slavery. The South's intention was as the National Anti-Slavery Standard described it: "Not only is slavery not dead, the rebellion is not dead. As it did not begin in 1861, it does not end in 1865."46

Northerners, particularly radicals, were angered by the arrogance ex-rebels showed toward the war's outcome. They were horrified at Johnson's policies that allowed (cultivated?) the southern response. Radical leaders were organizing to prevent the initial summer trend in reconstruction from becoming the final answer to the question" what shall we do with the Negro. There were indications that Lyman Trumbull's Senate Judiciary Committee might investigate southern white actions and intentions toward the freedmen. "It was not enough to strike down the master," Charles Sumner told Massachusetts Republicans gathered in convention, "you must also lift up the slave." Thaddeus Stevens put the radical view directly. If southern states would not bow before God and "embrace the Declaration of Independence," Congress would not recognize their reconstruction.47

That the spirit of slavery had not died was clear from
the news reaching northerners during the summer and fall of 1865. Kentucky--loyal Kentucky--indicted an army officer for "aiding slaves to escape" during the war. Although no state black codes were enacted until November, the publication of South Carolina's proposed code in the New York Tribune stirred comment. Assistant Attorney General J. Hubley Ashton supplied the Tribune editor Horace Greeley with a copy of the code and the newspaper detailed the methods by which freedmen were to be reduced to near slavery. Extensive use and expansion of apprenticeship, abandonment, and vagrancy laws would allow South Carolina courts to order the "apprenticeship" of black children until majority if "abandoned" by their parents or if parental consent was given. So, too, would unemployment be defined as vagrancy, allowing arrest and "hiring out" for up to a year. Some commentators believed that the Thirteenth Amendment's ratification would make all such codes and freedmen regulations unconstitutional. The problem, however, would be to ensure that this was the universal interpretation placed on the Amendment. And southern states were notorious before the war for flouting constitutional obligations to protect free speech and free press rights of northern antislavery men. The trend in 1865 confirmed the fact that southerners had not appreciably changed their ways or attitudes. The irony was
that the day before the New York Tribune published its proposed black code, South Carolina ratified the Thirteenth Amendment. 49

These were "troublesome times" with "dismal prospects" for freedmen. Earlier hopes that "sambo will come out all right" bespoke not only northern racism but a remarkable detachment from reality. 50 In the last months of 1865 southern intentions were proved in ways that the North could not ignore if it was to maintain any semblance of commitment to the freedmen.

The Thirteenth Amendment's initial progress toward ratification was swift. By April 14, 1865, twenty states had approved the Amendment. If the lately seceded states were counted toward the total number of states (a view not without controversy) then only seven more ratifications were needed for the Amendment's incorporation into the Constitution. Between Lincoln's assassination and November 1, however, only Connecticut, New Hampshire, and New York approved the proposal. None of the state reconstructed under Johnson's authority had considered the Amendment, although all had met in state conventions and reorganized state legislatures. On October 7 Florida's provisional governor William Marvin wrote Secretary of State William Seward, who was charged with oversight of
the ratification process. Marvin explained that Florida was reluctant to ratify since adoption of the Amendment would force abolition in Kentucky and Delaware, two loyal states that had rejected the Thirteenth Amendment. But if the President really wanted Florida's assent. Marvin told Seward he would try to move the legislature toward approval. Five weeks later Marvin suggested that Florida would follow her southern sister states, but would not lead the Amendment's ratification. Whatever action Alabama, Georgia, and others took, Florida would do likewise.52

In the meantime South Carolina, under the guidance of its provisional governor Benjamin F. Perry, considered the constitutional amendment. The state had abolished its slave code and adopted a new constitution and was presently preparing a new code for the "protection of the Freedmen in all their rights of person and property." Under the circumstances, Perry wondered whether the Johnson Administration still thought ratification of the Thirteenth Amendment was necessary. The biggest impediment to ratification, according to Perry, was the "constant irritating local legislation on the part of Congress in reference to the freedmen." With that in mind Perry wrote Seward that section two of the Amendment was too much for South Carolina to swallow.53
On November 6 Seward telegraphed the governor assuring him that section two restrained rather than increased congressional power. Presumably, Seward attached special meaning to the word "appropriate" in section two: "Congress shall have power to enforce this amendment by appropriate legislation." Seward again wrote Perry three days later emphasizing Johnson's desire that South Carolina ratify the Amendment, calling her assent "peculiarly important and especially desirable."54

With Seward's interpretation of section two at hand, the South Carolina legislature passed the Thirteenth Amendment by a large majority. There was, however, a significant condition attached to its approval. Any congressional interference with civil or political relations within the state (that is, freedmen's rights) would be a violation of the Constitution, the legislature declared. Even when altered by the abolition amendment, the Constitution would prohibit the "irritating local legislation" on freedmen's rights. The idea of substantive freedom was neatly disposed of with Seward's aid because South Carolina's symbolic acceptance of abolition was more important to the Administration than its real presence. After ratifying the Amendment, South Carolina's legislature immediately began consideration of its black code.55

It was precisely this interpretation of section two of
the Amendment that Benjamin Butler rejected so strongly in recommending a civil rights bill to Thaddeus Stevens. Congress must declare its intent "so that hereafter no sophistry can claim that the word 'appropriate' is a restraining word." 56

Seward's "sophistry" did not convince members of the Mississippi legislature. By late November they had enacted the state's new black code, allowing the apprenticeship of black minors and expanding the definition of vagrant to include all unemployed freedmen. By that definition, unemployed blacks were subject to arrest and "hiring out." Additional provisions legalized black marriages, prohibited freedmen from possessing firearms without a license, granted court access, and allowed black testimony only in cases in which blacks were plaintiffs or defendants. After passing the black code, the Mississippi legislature was ready to consider adoption of the Thirteenth Amendment.

A report from the legislature's Joint Committee on State and Federal Relations suggested Mississippi's acceptance of the Amendment was unnecessary. Since the state had already abolished its slave code, the Thirteenth Amendment could have no practical effect because "the absolute freedom of the African race is already assumed here." It was irrelevant but acceptable if the Administration wanted its passage. Section
two of the Amendment, however, caused "more grave objection." The committee expected that no "possible good can result from its adoption." In a gesture of benevolence that fooled no one, the committee expressed its desire to "withdraw the negro from national and state politics; to quiet forever all subjects and questions connected with it . . . and prevent the outbreak of agitation hereafter." Because Mississippi could not anticipate what construction Congress might place on the Amendment's second section—what might be construed as "appropriate"—the committee recommended rejection of the entire constitutional amendment:

This committee can hardly conceive of a more dangerous grant of power, than one which, by construction, might admit federal legislation in respect to persons, denizens and inhabitants of the state.57

Mississippi rejected the Thirteenth Amendment on December 2.58 On the same day Alabama ratified the constitutional amendment but followed South Carolina's example and added the reservation that the new amendment gave no grant of power for Congress to legislate on the political status of freedmen within the state. A week later, Alabama adopted its black code, with provisions similar to those of Mississippi and South Carolina. With North Carolina's ratification on December 1 and Georgia's on December 6 (part of Georgia's
black code passed on December 15), twenty-seven states had approved the Thirteenth Amendment. While there had been some maneuvering for the honor of being the twenty-seventh to ratify (Oregon passed the Amendment on December 8), it was fitting that an ex-Confederate state should provide the necessary margin for the Amendment's adoption. Seward issued the formal promulgation of the Thirteenth Amendment on December 18, and the status of "slave" ceased to exist in American law.59

Reaction to the final abolition of slavery was muted in comparison to the fanfare that greeted Congress' approval of the Amendment on January 31. But the ten and a half intervening months had taught even the most enthusiastic supporter of abolition that substantive freedom was still only an ideal. Substantive slavery was closer to the emerging southern reality. The National Anti-Slavery Standard called the Amendment's promulgation a "sham ratification" and observed that the "sober opinion must be that the great work of Abolition still waits its legal completion." The more sanguine Washington Daily Morning Chronicle hoped all states would soon ratify so that "the life of Liberty will soon be chanted by an unbroken chorus of free American states." The New York Times criticized antislavery advocates because they
did not rejoice with the Amendment's ratification, wanting instead to turn the moment into a "carnival of vengeance."
In the Times' opinion, there was too much "botheration about the status of the negro."60

Although the abolition of slavery was now the fundamental law of the land, four of the ex-Confederate states either rejected (Mississippi) or qualified their ratification of the Amendment (South Carolina, Alabama, and Florida) because they feared the grant of power given Congress in section two.61 Southern white intentions were revealed with the passage of black codes designed to keep freedmen as closely to their former slave status as possible. When questioned about the freedmen's condition one southerner admitted that federal protection for the freedman was proper: "Yes, if the nigger is to be free, I reckon [the Freedmen's Bureau] is [a good idea]; but it's a mighty bitter thing for us." More important, white southerners made no commitment to respect the rights of freedmen, despite President Johnson's insistence that ratification of the Thirteenth Amendment was the sine qua non for re-admission into the Union. This philosophical gymnastic was immeasurably aided by Seward's perverse interpretation of the Amendment's second section. What was clearly a grant of new power to Congress became, at Seward's
hands, a reassurance to southern whites that they retained control over black citizens. It was a great blow to the idea of expansive, substantive freedom as the natural opposite of slavery.62

Rapid military demobilization after the war's end had reduced the number of Union men under arms to only 150,000, down from the 1,000,000 soldiers serving in April. With that reduced force, long-term, meaningful occupation of the South was impossible. In its place was Johnsonian leniency. The same lenient attitude that worked to exclude blacks from their rights also produced the rapid reconstruction of white men's governments, controlled almost exclusively by former rebels. "My God," Brigadier General James S. Brisbin wrote to Thaddeus Stevens, "can any sane man look at the men who fill their so called state legislatures and then say that the states are loyal?" The issue, of course, centered in the definition of loyalty and loyalty's object. In a formal sense ex-rebels were transformed into American citizens when they subscribed to Johnson's amnesty criteria. To that extent they were loyal to the United States, having pledged their allegiance. Loyalty's object, however, was the key. To what America were the ostensibly rehabilitated white southerners loyal; was it the same America that northerners
claimed? Or was it the "Union as it was?" The tendency to interpret away the idea of substantive freedom had already worked to create, as nearly as possible, "the Constitution as it was." While slavery as status was gone forever, slavery as substance remained and was fostered by the black codes. Former Texas attorney general William Alexander wrote Chief Justice Chase in December 1865 that "as yet the great teachings of the war have not yet reached [Texans]." Had they reached anyone southward? After the fighting stopped in April 1865, the battle continued to determine exactly what those teachings were.63

On January 5 Lyman Trumbull introduced a civil rights bill to enforce the Thirteenth Amendment's abolition of slavery. Because Trumbull accepted the substantive view of slavery and freedom, a federal civil rights act was necessary and appropriate to ensure freedmen's rights. Together with an extension of the Freedmen's Bureau Act, the Civil Rights Act would make explicit the high abolition view that freedom was more than the absence of slavery, and that civil equality between the races was created by slavery's abolition. Conservatives worried that the bill might be interpreted as conferring suffrage on blacks. Trumbull denied this conclusion and the Senate passed the bill on February 2, 1866.64
President Johnson vetoed the Freedmen's Bureau extension bill on February 19, and the Senate sustained his action the next day. (A nearly identical bill extending the Bureau's life was enacted on July 16). In the wake of the veto, the House began consideration of the civil rights bill on March 1. Much discussion ensued about the power of Congress over civil rights. M. Russell Thayer of Pennsylvania declared that his intention in voting for the Thirteenth Amendment had been to give Congress the power to ensure freedmen's rights; that that was the purpose of the Amendment's second section. Others disagreed, however, with that interpretation. One of the most significant dissenters was John A. Bingham of Ohio. Long known as a radical, Bingham did not believe that Congress acquired power under the abolition amendment to touch state laws affecting freedmen's rights. To remedy that deficiency, Bingham proposed a new constitutional amendment specifically granting Congress authority to prohibit state abuse of citizens' civil rights.65

The House passed the civil rights bill on March 13, and on March 27 President Johnson vetoed it. After a vigorous debate the Senate overrode the veto on April 6. Three days later and after no debate the House also overrode the veto and the Civil Rights Act became law.66
The enactment of the Civil Rights Act of 1866 would have been an unambiguous declaration of Congress' endorsement of substantive freedom had not another measure been considered at the same time—Representative Bingham's new constitutional amendment. Introduced on December 6, 1865, the new amendment sought the same end as the Civil Rights Act. But Bingham thought the civil rights measure unconstitutional because he believed that the Thirteenth Amendment did not give Congress adequate power to enforce substantive freedom. The doubt Bingham expressed convinced enough of his colleagues so that on June 13, 1866, Congress passed another constitutional amendment and sent it to the states for ratification. It would become the Fourteenth Amendment.67

To some the Fourteenth Amendment was an attempt to make "doubly sure" that the Civil Rights Act was constitutional. Yet by the perceived need to ensure the law's constitutionality, Congress conceded away much of the Thirteenth Amendment's power. Moreover, by resorting to an explicit listing of some civil rights in the Fourteenth Amendment, Congress also conceded the idea that substantive freedom was included in the Thirteenth Amendment, thus acknowledging that freedom per se did not necessarily guarantee civil equality for blacks. A broadly based power to enforce the abolition of
slavery was set aside for the much more specific and
circumscribed action proper under the proposed Fourteenth
Amendment. Of course, the Fourteenth Amendment was part of
the continuing attempt by Congress to teach the lessons of
the war to recalcitrant southern whites. Just as slavery
was of long duration, so "the settle [of slavery]," wrote
General J. W. Phelps, "should be correspondingly thorough-
going and final." And the black codes which were the target
of the new amendment contained the "deadly venom of slavery."68

But there was no agreement about the war's lessons.
Certainly, southerners rejected the idea that ex-slaves were
entitled to civil equality or political rights. More
important, northerners no longer supported the Thirteenth
Amendment's absolute ban on slavery as an adequate corrective
for postwar racial legislation. By adopting the Fourteenth
Amendment Congress retreated to a more familiar arena of
specifically listing duties and responsibilities. In that
respect the Fourteenth Amendment resembles mere law. The
Thirteenth Amendment used the language of the Northwest
Ordinance but relied upon the Declaration of Independence for
its meaning. From that perspective there could be no gradation
in freedom. Freedom was the plenitude of rights, and slavery
the negation of rights. But freedom held precedence, so
that it was incorrect to reverse the order and make liberty
the mere negation of slavery.\textsuperscript{69} This was a lesson of the
war abolitionists and radicals proposed and fought for and a
key to understanding the Thirteenth Amendment. But only
six months after the abolition amendment's ratification and
incorporation into the Constitution, Congress sent the
Fourteenth Amendment to the states, and amendment that would
have been unnecessary had the ideal of substantive freedom
been maintained. What was to have been the crowning
achievement of antislavery became the most modest of
ornaments.\textsuperscript{70}

How did this happen? What allowed the drift away from
the broad view of freedom to the comparatively narrow focus
of the Fourteenth Amendment? A clue is found in a letter
of Charles H. Ray, former editor of the Chicago \textit{Tribune} and
a frequent correspondent of Lyman Trumbull's. Writing in
February 1866, Ray reminded Trumbull that the country was
changing. "You all in Washington must remember that the
excitement of the great contest is dying out." The absence
of war was the key. Ray recognized it, as did the leader
of New England intellectuals, Ralph Waldo Emerson: "the energy
of the nation seems to have expended itself in the war, and
every interest is found as sectional and timorous as before."\textsuperscript{71}
The war imposed many demands upon the leaders of the North, demands that were necessities if the Union was to be preserved. The need to strike at rebellion's cause--slavery--was a lesson learned early by abolitionists and radicals in Congress. Eventually, Lincoln and the country as a whole agreed with abolition's necessity. What was not learned was the next logical step in the process of abolition. It was meaningless to abolish slavery if freedom was to be only a negative. Despite repeated exhortations from radicals and repeated demonstrations from southerners in and out of the Union that they would not treat blacks as fellow citizens, Americans were all too willing to return to peace and forget the black. True, there was the Fourteenth Amendment, and there would also be a Fifteenth Amendment securing black suffrage. These subsequent amendments, however, were necessary only after substantive freedom lost its place in the nation's conscience. Once Congress retreated from an open-ended view of freedom, freedmen's rights were almost certainly doomed. No matter how precise subsequent amendments were, their very precision limited them. Prejudice could always find a loophole.

The other side of war-born necessity was war-born opportunity. Once the war ended both necessity and oppor-
tunity faded away. The sobering conclusion about the relation between war and the abolition of slavery is this: that which was most awful was precisely that which was necessary. Without the horror of war, the horror of slavery could not have been abolished, nor could the idea of substantive freedom ever have emerged as a plausible alternative to racial discrimination. As it was, the impetus of history formed during the war became an anachronism. War was stronger than prejudice, but prejudice was stronger than peace. And so the lessons formed during the experience of war became irrelevant during the time of peace. The obligations that the lessons imposed and the new opportunities that they envisioned were overthrown, and the United States of America escaped the history that had cemented its existence.

For Jerusalem is ruined, and Judah is fallen; because their tongue and their doings are against the Lord, to provoke the eyes of his glory. The shew of their countenance doth witness against them; and they declare their sin as Sodom, they hide it not. Woe unto their soul! for they have rewarded evil unto themselves. (Isaiah 3:8-9)
EPILOGUE

That men consent to dwell with men will ever be the highest proof that God dwells with them.
Gerrit Smith

The war was over; Lincoln dead; slavery gone. Black men and women as a race were unchained for the first time in 250 years. For the first time in its life the United States was a land of freedom. All this came by great suffering, sacrifice, and death. All this found meaning through the same suffering, sacrifice, and death.

The war was over; 500,000 dead; slavery gone. Freedom, so often the beacon of hope, was considerably less than abolitionist had envisioned, certainly less than black people deserved. Postwar patterns of experience resumed patterns ascendant before the war. Four years full of soul-wrenching pain were put aside because it was over—the horror was over, the war was over. All this to preserve the Union; all this found meaning in the preserved Union.

The same slavery, the same war, the same history. But when told from two perspectives, the conclusions become almost antithetical. Can one reality encompass both views, balancing each, bringing deeper meaning to the one by the presence of
the other? War and slavery, slavery and war. The relationship between the two was organic and absolute in American history. The relationship was conclusive for freedom. It is conclusive now.

The war is not over; slavery is not gone. We are the beneficiaries of our past as we are the benefactors of our future. The war goes on, the suffering goes on, slavery goes on. The pain of death, the pain of bondage, brand our consciences, and that which was sufficient and necessary yet burdens the soul in its darkness.

After all the experience, after all the reflective thought, the moral dilemma of horror pitted against horror still endures.

"We—even we here—hold the power and bear the responsibility." The calculus eludes. We cannot escape history.
NOTES FOR CHAPTER SIX


4. Liberator, February 10, 1865.

5. Ibid., February 24, 1865; National Anti-Slavery Standard, February 11, 1865.


8. Phillips in Liberator, January 1, 1864; James Ashley to Lincoln, November 14, 1864, Abraham Lincoln Papers, DLC; A. Foster to Chase, December 10, 1864, Oliver Johnson to Chase, December 7, 1864, Salmon P. Chase Papers, DLC.


10. SAL, 13:507-509; Donald C. Nieman, To Set the Law in Motion: The Freedmen's Bureau and the Legal Rights of Blacks, 1865-1868 (Millwood, New York: KTO Press, 1979), xiii-xv. As an example of the problem, by August 1864 over 30,000 freedmen were reportedly in the District of Columbia, Mrs.
Josephine Griffing to Trumbull, August 10, 1864, Lyman Trumbull Papers, DLC.


12. At the close of its session, Congress passed a law freeing the wives and children of slaves enlisted in the Union army. At the end of March one observer rejoiced at how well the law appeared to be working at ending the "damnable slave system in Kentucky." That it had not ended the system nor the love of it was seen some months later when one writer queried Attorney General James Speed whether the act applied to a woman whose husband died prior to the law's passage. Samuel May, Jr., to Wilson, March 31, 1865, Henry Wilson Papers, DLC; W. S. Yates to James Speed, July 19, 1865, DNA,RG60, Letters Received, Kentucky, Private Citizens, 1840-66.

15. Ibid., 333.
16. Ibid.


27. W. R. McFerren to Abraham Lincoln, April 9, 1865, enclosed in McFerren to James Speed, April 9, 1865, DNA, RG60, Letters Received, Kentucky, Private citizens, 1840-66; "Reconstruction," in *North American Review* (April 1865), 100:549-50. A correspondent to Benjamin Wade reminded the senator "what you already know, that in Kentucky is the big battle over slavery to be fought." C. Clay Smith to Wade, May 12, 1865, Benjamin F. Wade Papers, DLC.

June 3, 10, 17, 1865; Nieman, To Set the Law in Motion, 4-5, 17-18, 24-28, 39-45.


30. Ibid., 12, 19-28. Louisiana, Arkansas, and Tennessee were already much advanced in reconstruction due to Lincoln's plans having gone into effect there before the war concluded. On May 9 Johnson recognized the Pierpont Administration located at Alexandria as the legitimate government of all Virginia, ibid., 8.

31. James Speed to James Johnson [governor of Georgia], June 23, 1865, Speed to William Price [United States district attorney for Baltimore] June 28, 1865, DNA, M 699, roll 10. In September Speed queried Mississippi provisional governor William Sharkey asking if there were any members of the state legislature that Sharkey wanted pardoned so that they could take their seats, Speed to Sharkey, September 16, 1865, ibid.


33. Parish, American Civil War, 598.


35. National Anti-Slavery Standard, June 3, 24, 1865; John Hancock, The Great Question for the People: Essays on the Elective Franchise or Who has the Right to Vote? (Philadelphia: Merrihew & Sons, 1865), 4; Charles Sumner to Wade, June 9, 1865, Benjamin F. Wade Papers, DLC.

36. Charles Sumner to Wade, June 12, 1865, Benjamin F. Wade Papers, DLC; Sumner to Stevens, June 19, 1865, Thaddeus Stevens Papers, DLC; Sumner to Chase, June 25, 1865, Salmon P. Chase Papers, DLC.
37. Salmon P. Chase to Charles Sumner, June 25, 1865, Salmon P. Chase Papers, DLC. Earlier in June, Chase addressed a committee of blacks in New Orleans and declared his belief that executive and legislative actions during the war had made freedmen citizens of the United States and that they were entitled to claim their rights as citizens, *Liberator*, July 7, 1865.

38. A. Mot to Chase, June 30, 1865, Salmon P. Chase Papers, DLC; Benjamin Lossing to Wilson, June 19, 1865, Henry Wilson Papers, DLC. Lossing went on, however, to recommend attitude changes rather than "imperious laws" as the best way to secure freedmen their citizenship rights.

39. "Freedmen at Port Royal," in *North American Review* (July 1865), 101:1-28; J. Hubley Ashton to Robert B. Carnahan, July 25, 1865, James Speed to W. N. Grover, September 20, 1865, DNA, M 699, roll 10; Wade to Charles Sumner, draft dated July 29, 1865, Benjamin F. Wade Papers, DLC. New seizures for confiscation were stopped in Virginia since the inhabitants there were being "unnecessarily vexed" by the execution of the confiscation laws, James Speed to L. H. Chandler, September 5, 1865, DNA, M 699, roll 10.

40. John Covode to Wade, July 11, 1865, Benjamin F. Wade Papers, DLC; George S. Denison to Chase, October 8, 1864, Salmon P. Chase Papers, DLC.

41. Chase to Mr. Shuckers, July 7, 1865, Salmon P. Chase Papers, DLC.


43. See Edward Bates' opinion of November, 1862: "Eighty years of practical enjoyment of citizenship, under the Constitution, have not sufficed to teach us either the exact meaning of the word [citizen], or the constituent elements of the thing we prize so highly," *Opinions Attorneys General*, 10:383.

44. Wade to Charles Sumner, draft dated July 29, 1865, Benjamin F. Wade Papers, DLC; Charles Sumner to Stevens, July 12, 1865, Thaddeus Stevens Papers, DLC; Parish, *American Civil War*, 595; *National Anti-Slavery Standard*, July 22, 1865.
45. Benjamin F. Butler to Wade, July 26, 1865, Benjamin F. Wade Papers, DLC.

46. C. E. Lippincott to Trumbull, August 24, 1865, Charles H. Fox to Trumbull, September 26, 1865, Lyman Trumbull Papers, DLC; Bvt. Major General E. M. McCook to Wade, September 25, 1865, Benjamin F. Wade Papers, DLC; National Anti-Slavery Standard, August 5, 1865. See also Charles Sumner's remarks before the Massachusetts Republican state convention, September 14: "As there is still a quasi Rebellion, so is there still a quasi Slavery," quoted in ibid., September 23, 1865.

47. Speech of Thaddeus Stevens, September 7, 1865, Thaddeus Stevens Papers, DLC; Charles Sumner to Wade, August 3, 1865, Benjamin F. Wade Papers, DLC; Charles H. Fox to Trumbull, September 26, 1865, Lyman Trumbull Papers, DLC. Sumner quotation in National Anti-Slavery Standard, September 23, 1865; Stevens quotation, speech of Thaddeus Stevens at Gettysburg, October 2, 1865, Thaddeus Stevens Papers, DLC.


49. W. M. Grosvenor, "The Rights of the Nation and the Duty of Congress," in New Englander (October 1865), 24:756–63, 769–71. See also Benjamin F. Butler to Stevens, November 30, 1865, for the view that the Thirteenth Amendment gave citizenship to blacks and proposing that Congress pass a civil rights bill to enforce the Amendment, Thaddeus Stevens Papers, DLC. South Carolina ratified the Thirteenth Amendment on November 13, 1865, with the proviso that Congress did not gain power to interfere with state definitions of civil or political arrangements, DNA, RG11, Records of Constitutional Amendments, Thirteenth, South Carolina (hereafter, Recs., Thirteenth Amendment). See also Senate Document 240, 71 Congress, 3 Session, 4, for a complete listing of the dates and votes of all state actions on the Thirteenth Amendment.

50. Letter to the editor, dated October 27, 1865, with headline "Troublesome Times and Dismal Prospects," New York Times, November 13, 1865; James Smith to Trumbull, October 26, 1865, Lyman Trumbull Papers, DLC. For northern postwar racial
51. Senate Document 240, 71:3, 4; William Marvin to William Seward, October 7, 1865. Seward responded on November 1 saying that Florida's action was "indispensable to the return of peace and harmony throughout the Republic," DNA, RG 11, Recs., Thirteenth Amendment, Florida. Delaware finally assented to the abolition of slavery on February 12, 1902, ibid., Delaware.

52. William Marvin to William Seward, November 12, 1865, ibid., Florida. The Governor noted that the state convention had failed to recognize explicitly that freedom existed without distinction of color. Although the convention abolished slavery in Florida, black witnesses could testify in court only when blacks were involved as plaintiff or defendant, ibid. Florida's black code was formally adopted January 1, 1866, Senate Executive Document 6, 39th Congress, 2 Session, 174-76.

53. Benjamin F. Perry to William Seward, November 4, 1865, DNA, RG 11, Recs., Thirteenth Amendment, South Carolina.


55. South Carolina ratification dated November 13, 1865, DNA, RG 11, Recs., Thirteenth Amendment, South Carolina; Senate Document 240, 71:3, 4. South Carolina's black code contained provisions similar to those in Mississippi, described below, Senate Executive Document 6, 39:2, 202-219. See also Theodore B. Wilson, The Black Codes of the South (University, Alabama: University of Alabama Press, 1965), 61-80.

56. Benjamin F. Butler to Thaddeus Stevens, November 20, 1865, Thaddeus Stevens Papers, DLC.

57. For the text of Mississippi's black code, see Senate Executive Document 6, 39:2, 190-96; Report of the Joint Standing Committee on State and Federal Relations [of Mississi-
ippi], DNA, RG11, Recs., Thirteenth Amendment, Mississippi.

58. The Joint Committee’s report, recommending rejection, was adopted by the Mississippi House on November 27 and by the state Senate on December 2. The action was taken precisely because of the Thirteenth Amendment’s second section, ibid.


64. Cong. Globe, 39:1, 129, 209, 211, 340, 475, 599, 606-607; Benedict, Compromise of Principle, 147-49; Horace E. Flack, The Adoption of the Fourteenth Amendment (Baltimore: The Johns Hopkins Press, 1908), 17-25. See also Robert Kohl,


67. Flack, *Adoption Fourteenth Amendment*, 55-70, 74-97; *Cong. Globe*, 39:1, 14, 3149. Thaddeus Stevens also considered a plan for a new constitutional amendment. See his undated memorandum, Thaddeus Stevens Papers, DLC.

68. *Cong. Globe*, 39:1, 2498; Benedict, *Compromise of Principle*, 169-70 for the Fourteenth Amendment's essential conservatism and narrow definition; J. W. Phelps to Stevens, February 13, 1866, John Binny to Stevens, January 5, 1866, Thaddeus Stevens Papers, DLC. See also Binny to Stevens, December 18, 21, 23, 25, 1865, and February 20, 1866, and John G. Hertwig to Stevens, May 11, 1866, *ibid*.


70. Notable because they are exceptions are *Bleyew v. U.S.* and *In re: Turner*.

SELECTED BIBLIOGRAPHY

Public Documents

National Archives

Records Group 11, Records of Constitutional Amendments
Records Group 46, Records of the U. S. Senate
Records Group 60, Records of the Department of Justice
Records Group 233, Records of the U. S. House of
Representatives
Micropublication M 433, Records of the U. S. District
Court for the District of Columbia Relating to
Slaves, 1851-1863
Micropublication M 699, Letters Sent by the Department of
Justice, General and Miscellaneous, 1818-1904

US Federal Cases

US Supreme Court Reports

US Journals of the Continental Congress, 1774-1789

US Annals of the Congress of the United States

US Congressional Globe

US House of Representatives Journal

US Senate Executive Document 6, 39th Congress 2nd Session

US Senate Document 240, 71st Congress 3d Session

Official Opinions of the Attorneys General of the
United States (Washington: Government Printing
Office, various volumes and years).

The Statutes At Large . . . of the United States of
America (Boston: Little Brown and Company, 1863-
1866).
Newspapers and Contemporary Periodicals

Indianapolis Daily Journal
Indianapolis State Sentinel
The Liberator
The National Anti-Slavery Standard
New York Times
New York Tribune
Peoria (Illinois) Daily Transcript
Philadelphia American
Philadelphia Legal Intelligencer
Washington, D. C. Daily Morning Chronicle
Washington, D. C. National Intelligencer
Wellsboro (Pennsylvania) Agitator

Brownson's Quarterly Review
Continental Monthly
Monthly Law Reporter
New Englander
North American Review

Manuscript Collections

Edward Bates Papers, Library of Congress
Salmon P. Chase Papers, Library of Congress
Caleb Cushing Papers, Library of Congress
Abraham Lincoln Papers, Library of Congress
Thaddeus Stevens Papers, Library of Congress
Lyman Trumbull Papers, Library of Congress
Benjamin F. Wade Papers, Library of Congress
Henry Wilson Papers, Library of Congress

Other Primary Sources


Ashley, James M. Duplicate Copy of the Souvenir from the Afro-American League of Tennessee to Hon. James M. Ashley of Ohio . . . edited by Benjamin W. Arnett (Philadelphia: Publishing House of the A. M. E. Church, 1894).


Chase, Salmon P. *Going Home to Vote; Authentic Speeches of Salmon P. Chase* (Washington: W. H. Moore, 1863), in Salmon P. Chase Papers, Library of Congress.


Dickinson, Daniel S. *Speeches, Correspondence, etc., of the late Daniel S. Dickinson of New York* (New York: G. P. Putnam & Sons, 1867).
Dictionary of American Biography, edited by Allen Johnson

Donald, David, ed. Inside Lincoln's Cabinet: The Civil War
Diaries of Salmon P. Chase (New York: Longmans, Green

Emerson, Ralph Waldo. Journals of Ralph Waldo Emerson, with
Annotations. Edited by Edward Waldo Emerson and Waldo
Emerson Forbes (Boston and New York: Houghton Mifflin
Company, 1913-1914).

Fisher, Sidney George. A Philadelphia Perspective: The Diary
of Sidney George Fisher Covering the Years 1834-1871,
edited by Nicholas B. Wainwright (Philadelphia: Historical

The Trial of the Constitution (New York:

Freidel, Frank M., comp. Union Pamphlets of the Civil War,
1861-1865 (Cambridge: Belknap Press of Harvard University

Garfield, James A. The Works of James Abram Garfield, edited
by Burke A. Hinsdale (Boston: J. R. Osgood and Company,
1882-1883).

Garnet, Henry Highland. A Memorial Discourse by Rev. Henry
Highland Garnet delivered . . . February 12, 1865
(Philadelphia: Joseph M. Wilson, 1865).

Garrison, William Lloyd. The Letters of William Lloyd Garrison,
edited by Walter M. Merrill (Cambridge: Belknap Press of

Goddard, Samuel A. The American Rebellion: Letters on the
American Rebellion (London: Simpkin, Marshall and
Company, 1870).

Hancock, John. The Great Question for the People: Essays on
the Elective Franchise or Who has the Right to Vote?
(Philadelphia: Merrihew and Son, 1865).

Hay, John. Lincoln and the Civil War in the Diaries and

Hayes, Rutherford B. The Diary and Letters of Rutherford Birchard Hayes ([s. l.]: Ohio State Archaeology and Historical Society, 1924).


Perry, Thomas S., ed. The Life and Times of Francis Lieber (Boston: J. R. Osgood, 1882).

Pierce, Edward L. Enfranchisement and Citizenship: Addresses and Papers (Boston: Roberts Brothers, 1896).


Thorndike, Rachel S., ed. The Sherman Letters: Correspondence Between General and Senator Sherman from 1837 to 1891 (New York: Charles Scribner's Sons, 1894).


[Wright, Elizur]. The Programme of Peace. By a Democrat of the Old School (Boston: Ticknor and Fields, 1862).

Secondary Sources: Books and Periodicals


Berdahl, Clarence A. War Powers of the Executive of the United States ([s. l.]: University of Illinois Studies in Social Sciences, Volume IX, Nos. 1 & 2, 1921).


Cook, Adrian. The Armies of the Streets: The New York City
Draft Riots of 1863 (Lexington, Kentucky: University of Kentucky Press, 1974).


*Papers of the Abraham Lincoln Association*, volume II.


Roske, Ralph J. *His Own Counsel: The Life and Times of Lyman Trumbull* (Reno, Nevada: University of Nevada Press, 1979).


Smith, Willard H. *Schuyler Colfax, the Changing Fortunes of A Political Idol* (Indianapolis, Indiana: Indiana Historical Bureau, 1952).


Wilson, Theodore B. *The Black Codes of the South* (University, Alabama: University of Alabama Press, 1965).


Unpublished Theses


Lucie, Patricia M. L. See Allen, Patricia M.

