ENTRENCHMENT

Wealth, Power, and the Constitution of Democratic Societies

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Racial Slavery as an Entrenched Contradiction

ALTHOUGH AMERICANS LIKE TO think of their country as never having had a ruling class, the slaveholding planters of the antebellum South surely qualify as one. Their power stretched from the estates they ruled as masters and patriarchs to the nation's highest lawmaking and judicial authority. Like European aristocracies at their peak, the planters drew their power from fundamental rules concerning property and political representation. The distinctive property of slave-owners, however, consisted of human beings, and their distinctive political advantage lay in provisions entrenched in the Constitution that enabled them to protect that property and extend its reach. Two property-rights regimes emerged in the United States before the Civil War: one in the South that recognized a right to own other people and coerce labor from them, and one in the North that didn't. Slaveholding affected the entire structure of the South's economy and society and the nation's politics, and like the overthrow of patrimonial systems of inheritance and aristocratic privilege, the overthrow of slavery had far-ranging democratic political implications.

Contrary to an old mythology, the South's planters on the eve of the Civil War were not a declining class engaged in a hopeless

defense of an outdated, precapitalist institution. Slave plantations were highly profitable enterprises enmeshed in the global capitalist economy.[1] As of 1860, the South's cotton, nearly all of it slave-produced, accounted for 61 percent of U.S. exports; three-fifths of America's wealthiest men were southern slaveholders.[2] Legal and political institutions supported their economic position. The law gave slaveholders more absolute power over their slaves than European landlords had over their tenants, and rather than shrinking, slavery had expanded into America's western territories since the nation's founding. But despite their legal privileges and political influence, slaveholders had reason to fear that their property and power were vulnerable—vulnerable to slave revolts; vulnerable to whites who questioned the legitimacy of slavery and opposed its extension; vulnerable because their section of the country was growing more slowly than the free states; and vulnerable not least because they had joined a nation that announced itself to the world with the words "All men are created equal."

Slavery is not inherently unstable. After its emergence during the Neolithic Revolution around 8000 BC, slaveholding persisted for millennia. But slavery in the modern West created a distinctive situation. As of 1500, northwestern Europe was the one region in the world where chattel slavery had virtually disappeared. Yet during the next three centuries—through the Renaissance, Reformation, and Enlightenment, eras often identified with the growth of individualism and freedom—the northeast European states created a system of chattel slavery of unprecedented global scale, transporting some ten million Africans to the Americas (another million and a half died in transit). During this time, the English, French, and Dutch operated under two sets of rules. While enslaving non-Europeans abroad, they generally did not import slaves into their own societies or reestablish slavery at home. This distinction between the "outside" and "inside" social worlds—much like the difference in rules for war with outsiders and civil peace internally—helped the imperial powers, at least for a time, manage the tensions between slave and free labor.[3]

Slavery presented a different political problem in the United States because the "outside" was "inside" the same nation. The American republic was born in ambivalence and division over slavery.

Unlike any other society with large-scale slavery, it wrote contrary principles into its founding declaration, federal constitution, and state laws, and then developed half slave, half free. When the nation was established, some of the slave-owning founders who acknowledged slavery was wrong consoled themselves with the thought that their successors would end it. Instead, as the early republic developed, slavery became more extensive, and more brutal.

The growth of slavery in the United States has been described as a paradox. In a paradox, however, the opposed elements only appear to be contradictory; a deeper understanding of their relationship reveals them to be consistent. In a contradiction, the opposed elements negate each other; a contradiction can be resolved only by change.[4] To be sure, societies can often live with logically contradictory beliefs and morally inconsistent institutions. A social contradiction exists only where the relationships are unstable, and institutional change in one direction or another becomes unavoidable. The relationship between slavery and freedom in the United States was not merely a paradox, a logical contradiction, or an example of moral hypocrisy—it was a contradiction in a true sociological sense, at the most fundamental, constitutive level. Opposed principles were entrenched in the structure of both state and society. Rather than one of them receding, the two varieties of capitalism in the North and South both had strong expansionary drives. Neither freedom nor slavery alone but the contradictory relation between them defined what America became.

It is easy to assume that this contradiction was destined to be resolved through the disappearance of slavery. That outcome conforms to the standard American narrative that treats freedom as the dominant story and slavery as a deviation from it. But the early history of the United States did not follow that story line. And if the later history did, it was only because of economic forces, demographic change, and political movements and leadership that no one could have predicted. The adoption of the Constitution's Thirteenth Amendment, which abolished slavery, was a highly contingent event, impossible to separate from the Civil War that preceded it.

The slaveocracy of the American South, however, was not the only propertied class in history ever to face rising threats to its

wealth and political power, nor the only one to resort to war to defend its privileges. A "peculiar institution" in some ways, American racial slavery was also representative of a larger phenomenon, entrenched domination unstably combined with representative political institutions. Both sides of this process—how racial slavery became entrenched in the American republic, and how it came undone—require our attention.

THE COLONIAL DIVERGENCE

Since the English in the seventeenth century did not practice slavery at home, it was not a foregone conclusion that they would adopt it in their colonies. Villeinage, the primary form of servitude in feudal England, had meant subjection to a lord's power, but not to being bought and sold or deprived of rights of marriage and kinship. By the era of colonization, villeinage had practically disappeared and did not provide any direct influence, much less a legal foundation, for chattel slavery in the Americas.[5] Earlier forms of servitude and slavery in Britain, going back to the Roman Empire, had also not been based on race. The New World allowed colonists not only more freedom from monarchical rule but also the opportunity to create a system of hereditary racial slavery that was unknown at home. Not all the colonies, however, followed the same path. Only some became full-fledged slave societies, with black populations so large and so frightening to whites that emancipation came to seem impossibly dangerous and costly.

Racial slavery arrived in the New World originally via the Portuguese and Spanish, who had never entirely done away with slavery internally. Even as it died out in northwestern Europe after the Middle Ages, slavery had survived in the Mediterranean. Italian slave traders hauled away captives from the Balkans and the coast of the Black Sea, and it was the Latin term for these peoples (*slavus*, that is, Slavs) that gives us the English word *slave* and its cognates in other western European languages. Ottoman advances leading to the capture of Constantinople in 1453 cut this supply line. By then, however, the Portuguese were making their way down the West African coast and buying African slaves who had previously reached Mediterranean markets through a trans-Saharan circuit.

The Portuguese also led the way in exploiting African slaves as plantation labor in colonies they established in the eastern Atlantic, beginning with Madeira in 1419 and continuing in the Azores and Cape Verde Islands and down the African coast through the fifteenth century.[6]

Settler colonialism of this kind was one model for exploiting new territories. In the New World, the Spanish employed another model for forced labor, conquering native peoples and exacting tribute from them. But the massive die-off of indigenous populations from disease in the post-Columbian period limited the profits from tribute and prevented the Spanish from relying wholly on Amerindian workers. In Spanish as in other European colonies in the New World, African slaves became a solution to the labor shortage.

Although the English arrived in the Americas later and generally disdained Iberian institutions as inconsistent with their free traditions, they confronted the same fundamental problem, a shortage of labor, and ended up following the same course in importing slaves from Africa. Economic interest, combined with beliefs about the inferiority of darker peoples, inclined the English to accept racial slavery and drove some of their colonies toward an overwhelming reliance on it.

In the quest for labor the English had three options: free whites, temporarily bound white labor, and slaves. There were never enough whites who crossed the Atlantic free and unencumbered. From the early 1600s to the American Revolution, three out of every four people who arrived in the colonies were bound to temporary or lifetime service. The temporarily bound—indentured servants, apprentices, debtors, convicts, and others—typically came under arrangements that were more onerous than the annual master-servant contract in English agriculture. Instead of one year, their obligations ran from four years to seven. Servants received such food, clothing, and shelter as their masters provided, but no wages since their transport to America had already been paid for. If they survived long enough, they would be free and could work for wages or strike out on their own. Slavery—perpetual, hereditary subjection—was reserved for blacks and, to a lesser extent, native people deemed to be enemies.[7]

At first there were ambiguities in the distinction between servitude and slavery and in the definitions and boundaries of racial groups (especially in cases of mixed ancestry). White servitude in the colonies entailed a more severe deprivation of freedom than in England: servants were unable to marry or travel without their master's permission, and subject to harsh discipline for any displeasure they caused. They could be sold, seized for their masters' debts, and bequeathed to heirs—in short, like slaves, servants were property. Consequently, servitude and slavery in colonial America differed only in degree. Virginia in the first half of the seventeenth century also accorded slaves rights that it later denied them; the law of slavery had yet to define how completely slaves had lost all rights of their own. These customary practices and legal ambiguities may have slowed the pace of slavery's adoption.[8]

Slavery did not begin in the English colonies with an edict, legislation, or public debate; it emerged as a social practice that was haphazardly acknowledged in law and then clarified and modified through it. The first colonial settlements, in the early 1600s, supplemented free immigrants primarily with indentured servants, but all the colonies recognized slavery. In the second half of the seventeenth century, however, the colonies took different paths in solving the labor problem that confronted any settlement where land was readily available, but labor was not. In an agrarian society with abundant land, why should any freeman hire himself out for less than he could make on his own? In the hypothetical case where land was free, unless landowners had some way of tying down labor, the rent left over for them—that is, the surplus over wages—would have been zero.[9] To solve their labor problems, agricultural colonies could basically go in one of two directions: toward plantations with forced labor or family farms with (mostly) free labor. Virginia and Massachusetts illustrate those two responses. Virginia shifted from servants to slaves on a large scale in the late 1600s (as British settlers in Barbados had already done), while Massachusetts, despite its early embrace of the institution, never made a transition to large-scale slavery.

Conceived as a commercial enterprise and dominated by an elite of gentlemen fortune hunters, the Virginia colony struggled economically from the first settlement in Jamestown in 1607 until the

colonists hit on tobacco as a crop, the source of a boom in the 1620s.[10] From that point on, the key constraint on profits was the supply of labor, since planters had plenty of land for growing to-bacco. Africans had first arrived on a Dutch ship for sale in Virginia in 1619, but their numbers grew slowly, as planters continued until the 1680s to rely chiefly on white servants. Several factors may ac-count for the roughly sixty-year delay in the large-scale importation of slaves after the advent of tobacco farming. During its early de-cades, Virginia suffered from a staggering mortality rate, a consider-ation that probably influenced planters' choices whether to buy indentured servants or slaves. Servants were cheaper, making them a rational choice for planters interested in a quick return on a smaller initial outlay, whereas slaves were a larger and longer-term invest-ment. Declining death rates through the seventeenth century tended to favor the purchase of slaves. By the 1680s, as economic conditions improved in England, the flow of servants to Virginia also declined.

But perhaps the key factors in the substitution of slaves for ser-vants were political. In the second half of the seventeenth century, the planter-controlled colonial government followed two strategies to satisfy the demand for labor, one involving servants and the other involving slaves. From the masters' standpoint, the limited term of servants was a problem. Once they finished their service, instead of working for wages or as tenants, ex-servants could pro-duce tobacco on their own, increasing competition and reducing prices. Between 1656 and 1666, the state adopted new laws length-ening terms of servitude; ex-servants also found it harder to obtain land as a result of a land grab by wealthy planters. But the various steps the planters took to keep ex-servants working for them ex-cited discontent, contributing to an uprising in 1676 known as Bacon's Rebellion. In the same period, the colonial assembly also passed a series of laws clarifying slaveholders' property rights and power over slaves. A 1669 law, for example, said that masters would not be guilty of any crime if slaves died in the course of being dis-ciplined because no master would intentionally destroy his own property. The guarantee of unrestrained power over slaves enabled masters to drive them harder than white servants.[11]

Other laws in this period also began clarifying the racial basis of slavery. In the 1660s and 1670s, the assembly established that

non-Christian servants brought "by shipping" (in contrast to Indians brought by land) were to be slaves forever and that conversion to Christianity did not affect a slave's status. A 1680 law called for thirty lashes "if any negroe or other slave shall presume to lift up his hand in opposition against any christian." By the late seventeenth century, the early distinction between Christians and heathens began to give way to racial language as the term "white" came into increasing use. But instead of recognizing intermediate mixtures among blacks, whites, and indigenous peoples (as the Spanish, Portuguese, and French did), Virginia's laws had a binary structure. They began treating blacks, Indians, and those of mixed ancestry together and imposed punishments for racial mixing between whites and all others. The law also began limiting one power of masters—the power of manumission. A 1691 law said masters could not free slaves unless they paid to transport them out of Virginia (the assembly would later prohibit private manumission unless the governor and council agreed to it). Other southern colonies also adopted restrictions on manumission, an enormously consequential step for race relations because it blocked the emergence of a large population of free blacks and mulattos such as developed in the Spanish, Portuguese, and French colonies in the Americas. In the American South, the binary system of racial classification became almost perfectly aligned with the categories of slave and free; blackness in any degree became congruent with enslavement. By 1705, when Virginia consolidated its previous statutes in a systematic slave code that denied virtually all rights to slaves, the colony had become overwhelmingly reliant on slave labor and unambiguously committed to a racial caste system. This was the critical phase for the cultural entrenchment of the racial order of the slave South.[12]

As a religious colony, indeed a theocracy at its inception, Massachusetts had different origins from Virginia, though Puritanism was no barrier to slavery or racism. The Puritans held both Indian and black slaves, and they sold captives from Indian wars into slavery in the West Indies. The Body of Liberties adopted in Massachusetts in 1642 said "there shall never be any bond-slavery, villenage or captivitie amongst us, unless it be lawfull captives, taken in just warrs, and such strangers as willingly sell themselves,

or are solde to us"—the last exception, in particular, wide enough to eliminate any limits on keeping slaves provided someone else did the enslaving. Family connections and trade linked the Puritans to the Caribbean slave plantations. In 1630, some of the same people who founded the Massachusetts Bay Colony that year were also involved in founding Providence Island, a Caribbean settlement based on slave labor that experienced one of the first slave revolts before it fell to the Spanish in 1641. Massachusetts merchants were active in the West Indies trade, including traffic in slaves, and it was through those connections that the Winthrops, Hutchinsons, and other prominent families became slave-owners themselves. But the numbers of slaves in Massachusetts remained relatively small, about 2 percent of the population, and they were widely dispersed in households rather than concentrated on large plantations.[13]

A distinction originally developed in studies of the ancient world helps to illuminate the different paths of slavery's evolution in Britain's North American colonies. In a *society with slaves*, slavery is one of several forms of labor, whereas in a *slave society*, slavery is integral to the productive system and social structure. The difference is not only in the prevalence of slavery. In a slave society, Ira Berlin argues, the master-slave relationship provides a model or exemplar for other social relations—between men and women, parents and children, employer and employee. Slavery affects the public world as well as intimate life, since slaveholders form a ruling class whose power extends beyond their own estates into civil society and government. In short, slavery is constitutive of social and political relations in a slave society in a way that it is not in a society with slaves.[14]

The transition to a slave society in the Americas typically began with the development of a commodity for export. The profits from that trade enabled the dominant producers to monopolize resources, import slaves, and marginalize other forms of labor. The establishment of a slave society required political power to back it up—to define property rights in human beings and to maintain the system against insurrection from within and meddlesome reformers in the metropole. In the Atlantic slave trade, slaves were taken to regions of the Americas where their use in producing profitable

exports justified the buyers' investment. Virginia developed such an export crop, whereas Massachusetts did not. But Virginia was also a far more unequal society even before its planters adopted large-scale slavery. Their shift from servants to slaves was only a continuation, not a reversal, of earlier trends. From the time it discovered how profitable tobacco could be, Virginia had been "drifting" toward slavery.[15] The advent of large-scale slavery was the culmination of a process that reflected high levels of political inequality from the start as well as the ratio of land to labor and the economic opportunities created by tobacco. If sugar or rice could be grown in Massachusetts, the entire process of settlement would have been different, and slavery might have grown there too. But having begun differently, Massachusetts evolved differently. Settled by families of Protestant dissenters rather than royalist fortune-hunters, it had a more equal distribution of land among freemen who enjoyed rights of political participation. Ill adapted to slavery in its formative period, Massachusetts later became positively resistant to it.

Beginning in the 1720s, some northern colonies did see a significant increase in slavery. The importation of slaves often came as a result of interruptions in the flow of indentured servants and primarily affected the Middle Colonies as well as Rhode Island. From 1732 to 1754, more than a third of new arrivals in New York were slaves, whose share of the population there ranged from 11 percent to 15 percent. From about five hundred in 1720, the number of slaves in Rhode Island increased to more than three thousand in 1750, 10 percent of the colony. Much northern slavery was urban and concentrated in elite households, although it also filtered down into artisans' workshops and spread into pockets of the rural economy. But northern agriculture was not reorganized into large plantations using the gang system, and slavery did not become central to the northern economy.[16] On the whole, slavery's spread in North America followed a geographic gradient; the further south a colony, the more it relied on slaves for labor. In 1770, slaves made up only 4 percent of the population from New Hampshire to Pennsylvania but 37 percent of the population in the Upper South (Delaware to North Carolina) and 58 percent in the Lower South (South Carolina, Georgia, and East Florida).[17]

Whether a colony relied on slave or free labor had pervasive implications for the structure of government. Slavery did not foster democracy or a broad definition of government's responsibilities.[18] But in the crisis that followed the American Revolution, many southern leaders agreed with those in the mid-Atlantic states and New England about the need for a stronger national government rooted in ideas of popular sovereignty—as long as that government did not imperil the slave system that was the foundation of their own wealth and power.

CONSTITUTIONAL ENTRENCHMENT AND THE COSTS OF CHANGE

Even after slavery had taken root in the colonies, Americans might have abolished it when they achieved independence and framed a new political system ostensibly on the principles of liberty and equality. The Revolution did lead, over several decades, to the emancipation of slaves in the states north of Delaware, but the Constitution entrenched the power of southern slaveholders in the national government and, by so doing, entrenched slave societies in the southern states.

The use of the Constitution to protect slavery exemplifies strategic entrenchment—the deliberate effort, in this case, to make an institutionalized system of property and social relations difficult to change. Slavery also became entrenched because of the growing costs of change—the relevant costs, in this case, being the costs of emancipation to groups with political power, as they imagined the alternatives, given their commitments to property rights and expectations about black-white relations in the absence of slavery.

The prospective costs of emancipation were of three kinds: *labor costs* (the additional cost of alternative forms of labor), *compensation costs* (compensation to slaveholders for loss of their property), and *social costs* of the freed black population. While all three types of costs were barriers to emancipation, reigning assumptions made the second and third especially formidable. Property owners, Americans generally believed, were due compensation for property taken from them, but if that principle were applied in this instance, who would bear the cost of compensating slaveholders for the value of their

freed slaves? The social costs associated with emancipating blacks posed at least as difficult a problem, given the racist worldview of the time. Even many whites who disapproved of slavery could not imagine living together with blacks on equal terms—or indeed any terms at all other than slavery. They therefore entertained plans for sending former slaves to colonies in Africa or resettling them in the West. In 1820, Jefferson wrote that the cessation of slavery would not cost him "a second thought" if "a general emancipation and *expatriation* could be effected," but as it was, "we have a wolf by the ears" and "can neither hold him, nor safely let him go. Justice is in one scale, self-preservation in the other."[19] The greater the population of slaves, the more whites feared for their "self-preservation" and the greater they imagined emancipation's social cost.

Racial slavery had developed in the early English colonies with little criticism or restraint, indeed less public debate and official effort at restraint than in Spanish America. But beginning in the mid-eighteenth century, there was a shift in norms in both Europe and North America as critics attacked slavery as morally offensive, economically anachronistic, and politically unjust. Religious leaders, especially from the evangelical denominations, played a leading role in initiating the shift in moral values. The British antislavery movement initially focused on the international slave trade without challenging slavery itself in Britain's overseas colonies. Whether slaves could be held within Britain itself became the subject of an important case in 1772, when an enslaved man from Virginia, James Somerset, petitioned for his freedom after being brought along by his owner on a visit to London. England's Chief Justice ruled that slavery was "so odious" that only positive law—that is, a statute—could authorize it, and since Parliament had passed no such law, Somerset had to be freed. The Somerset ruling did not apply to the colonies, but it had wide reverberations.[20]

By the 1770s, sermons and pamphlets in Britain's colonies also increasingly spoke of slavery as an evil. In the words of the historian Winthrop Jordan, a "generalized sense of slavery as a communal sin" prevailed in New England. An especially strong impetus for emancipation came from the Quakers, who called upon their members to free their slaves and provided much of the leadership for antislavery efforts, including the founding of the first antislavery organization in

1775. The voices demanding freedom for slaves included those of free blacks as well, who rightly saw the revolutionary cause as an opportunity. Political theories of natural rights complemented religious beliefs: What legitimate place could slavery have under a government whose leaders pledged that all men had equal rights to life, liberty, and the pursuit of happiness? Many of the Revolution's leaders admitted the inconsistency but were unable to confront it. The first draft of the Declaration of Independence included a paragraph—cut, Jefferson later said, in deference to South Carolina and Georgia—accusing King George of violating the "most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere, or to incur miserable death in their transportation hither." A French general who traveled through Virginia in 1782, the Marquis de Chastellux, reported that Virginians "grieved at having slaves, and are constantly talking about abolishing slavery and of seeking another means of exploiting their lands."[21]

It is precisely periods like this, when both values and political systems change, that test how deeply institutions are entrenched. Slavery did retreat in the face of changed sentiment, but only in some states. Though it took decades for the process to play out in full, the colonial divergence in slavery's development became a sharp split between Northern free-soil and Southern slave states—indeed, it was this very process that created the "North" and "South" as distinct sectional interests. By 1784, Pennsylvania, Connecticut, and Rhode Island had passed gradual emancipation laws, and during the next two decades New York and New Jersey would do the same. None of these states freed slaves currently in bondage; they emancipated the children of slaves born after passage of the laws but required those children to remain in servitude until ages ranging from eighteen to twenty-eight. Three other states—Vermont, New Hampshire, and Massachusetts—ended slavery through their constitutions and state judicial rulings. The decision by the Massachusetts Superior Court in 1783 that slavery violated rights enshrined in the state's recently ratified constitution was particularly notable.[22]

The southern states did not emancipate their slaves, but they did relax their limits on private manumission. By 1790, Virginia,

Maryland, and Delaware as well as states in the lower South, except for North Carolina, had given masters the power to free their slaves individually. Between 1782 and 1806, when manumission was limited again, slaveholders in Virginia freed about 10,000 slaves out of an enslaved population that, in 1790, numbered 293,000.[23]

Could the Revolutionary era have gone further and even abolished slavery? If the Continental Army in the Revolutionary War had enlisted slaves in significant numbers, it might have made a difference—or so Alexander Hamilton argued in 1779, when he supported a proposal to pay slaveholders $1,000 per slave to create several battalions of black soldiers who would be freed on completion of their service. Giving Negroes "their freedom with their muskets," Hamilton wrote, will "secure their *fidelity*, animate their courage, and I believe will have a *good influence* on those that remain, *by opening a door to their emancipation*."[24] Military emancipation has a long history. To the outrage of the Revolutionary leaders, the British promised freedom to slaves who defected, and about 20,000 did, more than fought on the American side. Southern opposition to arming slaves defeated the proposal endorsed by Hamilton and limited black participation in the Continental Army to around 5,000, not enough to bring about the transformative effects that the role of black soldiers in the Civil War would have.[25]

While the legitimacy of slavery eroded in the 1770s and 1780s, the economic interests in the institution remained powerful and, in the South, overwhelming. Regional differences in the costs of change help to explain the differences in steps toward emancipation. Adam Smith was not entirely unfair in 1776 when he wrote sardonically, "The late resolution of the Quakers in Pennsylvania to set at liberty all their negro slaves may satisfy us that their number cannot be very great. Had they made any considerable part of [the Quakers'] property, such a resolution could never have been agreed to."[26] The gradual emancipation laws in the North, according to an economic analysis by Stanley Engerman and Robert Fogel, did not impose a significant cost on slave-owners or, for that matter, on non-slaveholders: The additional years of labor of living slaves and their children provided nearly full compensation for the slaves' market value at the time of the laws' enactment. In the same

sardonic spirit as Smith, Fogel and Engerman observe that northern whites arrived at a "felicitous compromise" by imposing the cost of emancipation on a group excluded from politics—the slaves themselves—a solution that the authors call "philanthropy at bargain prices."[27]

"Free womb" emancipation was also the solution to the problem of compensating slaveholders after independence movements in Latin America. Between 1811 and 1831, Chile, Argentina, Colombia, Ecuador, Uruguay, Peru, Venezuela, and Bolivia passed laws formally freeing the children of slave mothers but requiring them to remain under slave-owners' tutelage for some fixed period of time.[28] In 1833, when Britain enacted legislation to end slavery in its colonies, it provided for compensation to slaveholders in two forms—half from continued labor by slaves for a limited period, and half from £20 million in cash compensation paid by British taxpayers.[29]

Except for Britain, all these governments were unwilling to ask taxpayers to bear compensation costs, but they did put slavery on a path to extinction. So why did the U.S. South not accept gradual emancipation through "free womb" laws at the time of the nation's founding? Here the social costs of emancipation were critical. The South's slave population had grown spectacularly in the eighteenth century, primarily from a much higher rate of natural increase than elsewhere in the Americas. As a result, whites in the South lived amid black majorities or near-majorities. Like Jefferson, the southerners who conceded the injustice of slavery believed that emancipated slaves would have to be moved somewhere else, but they were never able to resolve how to remove them, much less how to replace their labor. Since Indians had never been enslaved in large numbers, their removal to the West caused whites no economic problems—indeed, it gave them additional property—whereas black removal would have cost slaveholders both capital and income. Even if there had been an agreement to offer compensation (for example, through proceeds from the sale of western lands), the labor and social costs of emancipating black slaves were greater than southern slaveholders and other whites would have been willing to bear.

Economic and demographic concerns also help to explain the early, though only partially successful, efforts to exclude slavery

from the western territories. Excluding slaves did not impose an immediate cost on slaveholders, and it would make the new territories' populations overwhelmingly white, a key objective for Jefferson. In 1784, the Confederation Congress narrowly defeated a bill supported by Jefferson to ban slavery from the western lands. A single additional vote, he later said, "would have prevented this abominable crime from spreading itself across the country." If a slight shift in one close political decision might have averted the extension of slavery, this may have been it—except that slaveholders had already made their way into the territories, especially south of the Ohio River, and if the measure Jefferson sought had passed, those slave-owning settlers might have agitated successfully to reverse it, if not immediately, then after the cotton kingdom beckoned. But on July 13, 1787, in one of its final actions under the Articles of Confederation, Congress passed the Northwest Ordinance, excluding slavery from the territory north of the Ohio River, and that ban ultimately did prevail over settler opposition.[30]

When the Constitutional Convention met in Philadelphia in the spring and summer of 1787, it represented an opportunity as well as a danger to the southern states. The opportunity was to create a national government capable of overcoming the economic and political crisis in the 1780s that put southern and northern interests alike in jeopardy. As a league of sovereign states rather than a single nation, the United States under the Articles of Confederation had no national executive or judicial branch and only limited legislative powers. Its weakness had left it vulnerable to external threats and domestic disorder, and the economy was in shambles. Unable to pass taxes and conscript soldiers, the Confederation was for all practical purposes bankrupt and impotent. It depended on requisitions of money and soldiers from the states and was powerless to do anything when the states failed to comply, as many of them had in the struggle against Britain. The Confederation was similarly powerless when individual states failed to fulfill U.S. obligations under the Treaty of Paris ending the Revolutionary War. Nor could it deter European powers from closing their ports to U.S. trade or respond effectively when Spain closed the Mississippi at New Orleans, potentially leading western settlers to secede. These

developments directly implicated southern interests. As a region dependent on exports of its agricultural products, still struggling to defeat powerful native tribes, and looking toward opportunities beyond the Appalachians, the South would benefit from a stronger federal government. Like their northern counterparts, southern elites were also concerned about threats to property that they discerned in the movements among hard-pressed farmers, who sought to weaken obligations to repay debts under state law.[31]

Compared with the Articles of Confederation, the Constitution vastly increased the national government's fiscal, military, judicial, and other powers. Therein, from the South's standpoint, also lay the danger. A federal government whose laws were supreme might someday give antislavery forces the power to abolish slavery throughout the nation. The rising tide of emancipation in the North also alarmed slaveholders. Consequently, the South's representatives were determined to limit federal authority even as they expanded it, and to obtain sufficient representation in the new government to protect slavery and other sectional interests.

As it turned out, no effort materialized at the Constitutional Convention to emancipate the nation's slaves, though the convention did lay the ground for an end to the international slave trade. Deeming it tactically unwise, Benjamin Franklin, at the time president of the Pennsylvania Abolition Society, decided not to present its petition to the convention. In the interests of forging an agreement, the representatives who personally opposed slavery gave priority to the nationalist aims that northerners and southerners shared. Not for the last time, the interests of black people were sacrificed in the name of compromise and national unity. Consequently, the Constitution does not deal at length with slavery; indeed, the words "slavery" and "slaves" never appear in it. The absence of those words is not an oversight. Delegates opposed to slavery or morally conflicted about it wanted at least to avoid extending it explicit constitutional recognition and thereby entrenching the principle of property in man in national law. But slavery is the unmistakable subject of three major provisions, and it lurks behind others.[32]

The most notorious of these provisions, the "three-fifths" clause, gave southerners more representation in Congress (and

consequently more votes in the Electoral College) than they would have had if the apportionment of the House had been based on the free population alone. On the surface, the clause appeared to balance taxation and representation: "Representatives and direct Taxes shall be apportioned among the several States . . . according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons . . . *three fifths of all other Persons*"—in other words, slaves. Contrary to appearances, however, the clause had almost no bearing on taxes because the new government was expected to be financed, and was financed, through tariffs rather than "direct taxes" (such as capitations and taxes on property). Some historians have argued that by comparison with total population, the three-fifths provision can just as readily be seen as a two-fifths penalty as a three-fifths bonus in apportionment. Counting slaves in any degree, however, added to the power of those who enslaved them, and by no plausible theory of "virtual representation" did slave-owners represent the interests of slaves.[33] The three-fifths rule rewarded slaveholding states with more power if they had more slaves. While insisting that slaves were property, southerners sought to have them counted as persons when it served their interest. The Constitution allowed them to have it both ways.

The two other constitutional provisions dealing directly with slaves effectively treated them as property, although the word "property" never appears in that context. Using another circumlocution in a provision regarding foreign slave imports, Article I barred Congress before 1808 from prohibiting the "Migration or Importation of such Persons as any of the States now existing shall think proper to admit" (Article V further barred any amendment of that provision). The Constitution here did not impose a ban on slave importation after two decades; it only allowed Congress to ban it at that time, but in doing so it implicitly acknowledged that Congress would have the power to regulate the slave trade. In 1794, before it could ban slave imports, Congress prohibited Americans from participating in the international slave trade as maritime carriers. Then in 1807, in the only significant action against slavery while Jefferson was president, it overwhelmingly approved legislation he proposed to bar slave imports (ten days

before Parliament prohibited the slave trade throughout the British empire).[34]

These measures against the international slave trade, while applauded by opponents of slavery, also had the support of most southern representatives, particularly those from the Upper South. Limiting importation raised the prices of slaves domestically, increasing slaveholders' wealth. Moreover, since Virginia's slaveholders had a surplus of slaves whom they were selling into the Lower South, they profited from protectionist legislation. White support for a ban on foreign slave imports, without any similar restriction on interstate traffic, also reflected anxiety about the number of blacks rising to levels that might lead to insurrections. Even during the late colonial period, Virginia had sought to limit slave imports. Britain denied it that power, a point that became part of the indictment of George III in the Declaration of Independence. After independence, nearly all the states had individually limited slave imports. But the deferral of any federal ban proved significant; South Carolina reopened the slave trade from 1803 to 1807. That the Constitution denied the federal government the power to ban slave imports for twenty years was a measure of the willingness of northern delegates in Philadelphia to make concessions on slavery even when only South Carolina and Georgia were emphatically demanding the trade be kept open.

The third clause specifically about slavery dealt with fugitive slaves, and it was unambiguously a gain for slave-owners. Under the Articles of Confederation, slaveholders in one state had had no legal basis for obtaining cooperation in seizing runaways in another state. The Constitution, however, gave slaveholders a legal basis for that power, denying free-soil states the right to award freedom to a slave who escaped into their territory: "No persons held to service or labour in one state under the laws therefor, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due."

Beyond these three provisions, the Constitution's bearing on slavery came mostly from clauses that had wider application. For example, the federal government was authorized to mobilize the

militia to "suppress insurrections," a power it could use against slave revolts, thereby making them a national rather than a local matter. But the government could invoke the same clause to suppress revolts of other kinds, and the most important use it would ever make of that authority would be against the South in the Civil War.

Ultimately, the single most important change wrought by the Constitution was the entrenchment of the union itself. Unlike the Articles of Confederation, the Constitution bound the slave and free states together within the same sovereign power. In a confederation, not only does each state remain sovereign, its continued membership is voluntary. That was no longer true under the Constitution, which explicitly derived its power not from the states but from the people themselves, as its first words, "We the People," made clear. During the debate over ratification, Madison stressed that "the Constitution requires an adoption *in toto*, and *for eve*r." It created an "indissoluble Union" and included no provision for legal exit.[35]

Since the Constitution was mostly silent on slavery, it left open how a union of free and slave states would ultimately resolve the conflicts between them. The general principles of the nation's founding mostly pointed one way, while the specific and practical implications of the Constitution pointed the other. The Declaration of Independence had identified the United States with the idea that all men have inviolable rights to life, liberty, and the pursuit of happiness. Likewise, the Constitution's "We the People" rested the government on a principle of popular sovereignty that seemingly included all people, or at least allowed that interpretation. The Guarantee Clause—guaranteeing the states a "Republican Form of Government"—could similarly be interpreted as precluding oligarchic control of a state, though exactly what "republican" meant was ambiguous. For their part, slaveholders would claim that the nation's founding ensured the inviolability of private property and that it therefore guaranteed property in slaves—an inference that antislavery constitutionalists would never grant. The specific provisions relevant to slavery, however, did protect it. And perhaps most important, the machinery of government the Constitution created gave the South the power to ensure slavery's continued protection.

One sleeper provision would eventually weaken that political protection. Every ten years, the federal government was to conduct a census, the results of which would be used to reapportion representation among the states in the House (and therefore the Electoral College). Southern states had no reason to think they would be disadvantaged by this provision, and their representatives actively sought it at the Constitutional Convention.[36] Before the Revolution, the colonies below the Mason and Dixon line received two-thirds of white immigrants as well as nearly all slaves.[37] Far from wanting to limit white immigration, representatives from all regions hoped to encourage it. Little did southern leaders anticipate the political consequences that decennial reapportionment would have once economic growth and immigration shifted to the North.

The conflicts among founding principles and rules related to slavery and the power of the South raise a fundamental, theoretical question about constitutional entrenchment: *What, if anything, does a constitution entrench when its provisions may later be interpreted in conflicting ways*? Formal provisions of constitutions do not enforce themselves, but neither are they without consequence. Their significance may depend on the interplay between them, particularly as they affect the allocation of power. The express rules regarding the machinery of government, such as those for apportioning representatives, are less open to interpretation than more abstract principles, such as the guarantee to the states of a "republican" form of government. If the machinery created by a constitution tilts power in one direction, it may tilt the subsequent interpretation of more abstract provisions in the same direction. That is not to say that general principles are inconsequential. Political leaders and social movements may seize on them to inspire changes in constitutional and political understanding, as Abraham Lincoln did.[38] By the 1840s, abolitionists were trying to inspire that kind of change with regard to slavery, though they were understandably divided in their view of the Constitution in light of how Congress and the courts had interpreted it in the intervening years. William Lloyd Garrison called the Constitution a "covenant with death" and held it responsible for the nation's failure to end slavery,

whereas Frederick Douglass insisted the nation's founding princi-
ples were a charter of freedom. Up to and during the Civil War,
abolitionists continued to debate whether the Constitution autho-
rized Congress to end slavery or had to be amended to bring about
emancipation.

During the debate over ratification of the Constitution be-
tween the fall of 1787 and spring of 1788, southern leaders were
mostly satisfied that it would protect slavery. Madison said slave-
holders would have "a better security than any that now exists";
Charles Cotesworth Pinckney told his fellow South Carolinians
that the "Eastern States allowed us a representation for a specie of
property which they have not among them." Still, some antifeder-
alists in the South thought slavery was insufficiently protected;
Patrick Henry warned that the federal government could use its
new tax and war powers to emancipate slaves. Lincoln eventually
proved Henry right: war powers were the legal basis claimed by
Lincoln for the Emancipation Proclamation.[39]

The increased powers of the national government, as Dan Feh-
renbacher observes, gave the Constitution both "greater proslavery
potential and greater antislavery potential than the Articles of
Confederation."[40] But in the early republic, the express rules and
machinery established by the Constitution moved the balance to
the proslavery side. Since slavery was the antecedent condition in
the states and territories, it continued as the default, wherever ac-
tion was not taken to end it. Under Britain's Somerset decision, the
silence of the law meant that slavery was impermissible, but in the
United States the silence of the Constitution meant that slavery
continued. Furthermore, while the Constitution did not explicitly
entrench slavery, it entrenched protections for slaveholders. Those
protections might have shielded slavery from attack even longer if
the economy, population, and geographic boundaries of the United
States had changed more slowly. Instead, the dynamic growth of
the country threw off the calculations that went into the founding
compact. Slavery grew and antislavery grew too, and with the in-
tensification of interests and sentiments on both sides, the contra-
diction that had been built into the nation's founding became
impossible to contain.

SLAVEHOLDERS AND NATIONAL POWER

Although two different societies and property-rights regimes emerged in the North and South, the differences between them did not immediately lead to confrontation. The constitutional agreements about slavery held the nation together for more than seventy years and at the same time allowed slavery to deepen its hold on the South. From 700,000 in 1790, the number of slaves increased to nearly four million in 1860. By that time, slaveholders had about $3 billion invested in slaves—more than the total national investment in railroads and manufacturing combined. Planters, conventionally defined as owners of twenty or more slaves, held slaves worth about $1.5 billion.[41] Slavery was so thoroughly entrenched that many in public life thought it not only pointless but dangerous to discuss its abolition. Until the late 1850s, the South's political leaders typically found enough northern allies to support the same strategies of silence and compromise that the Constitutional Convention had followed to prevent conflicts over slavery from upending the national project. Wherever possible, Congress avoided direct engagement with antislavery protest and slavery itself—tabling petitions, gagging debate, silencing dissent, suppressing doubt.

In the early years of the Republic, the basic compromise was the "federal consensus," which held that slavery was a state matter, beyond federal authority, except for the few questions directly addressed in the Constitution.[42] As Americans moved west, however, the acquisition of new territories and accession of new states led to new conflicts and, until the end of the 1850s, new compromises. Far from preferring the federal government to stay out of decisions affecting slavery, slaveholders wanted and at key moments received the government's active support. Increasingly, the two systems could not simply coexist without impinging on each other. The transformation of slavery from a local to a national institution—the "nationalization" of slavery as a political issue and potentially as a legal form of property throughout the entire nation—locked opposed interests into a struggle for national power that eventually turned to war.

The South's national political power was crucial to the development of the southern plantation economy. Beginning in the

1780s, the expansion of cotton textile manufacturing in Britain had created a surging demand for cotton that India, Brazil, and other regions in the world were also in a position to satisfy. What distinguished the United States from virtually all other cotton-growing areas, Sven Beckert writes in his global history of cotton, was "planters' command of nearly unlimited supplies of land, labor, and capital, and their unparalleled political power."[43] That unparalleled power played a central role in the expansion of each of the factors of production and the development of supporting transportation and communications infrastructure. Comparative advantage was as much the result of politics as of natural endowments.

Unencumbered land was the foundation. Southern planters were able to move into millions of acres of empty land because it was deliberately emptied of inhabitants. Indian removal was a massive and violent political project that by 1840 had reduced the native population east of the Mississippi to a few thousand. "Never has such a prodigious development been seen among the nations," Tocqueville observed, "nor a destruction so rapid."[44] This was strategic entrenchment of the most primitive kind, the coerced displacement of an indigenous population by settlers and their slaves, creating irreversible facts on the ground—what today would be called ethnic cleansing and genocide. After surging into the interior of South Carolina and Georgia, the "cotton rush" moved on to Alabama and other territories to the west. The federal government played a crucial role in this process through the Louisiana Purchase (1803), the Indian Removal Act (1830), and the annexation of Texas (1845) and the ensuing war with Mexico. The new land added in the first half of the nineteenth century accounted for half the cotton that Americans grew in 1850.[45]

Just as important was the government's role in upholding and enforcing the labor regime in plantation agriculture. Slave markets came with cotton markets, and neither federal nor state law impeded the domestic sale of slaves or regulated the conditions of their enslavement. Roughly one million black people were forcibly uprooted from Virginia and other areas and sent further south, splitting families to satisfy cotton's thirst for labor. Like the sugar planters of the Caribbean, the South's cotton planters organized work in the fields according to an intensely supervised gang system.

According to Robert Fogel, it was "the enormous, almost uncon-strained degree of force available to masters" that enabled them "to transform ancient modes of labor into a new industrial discipline" and raise productivity to higher levels than would have been possi-ble with free labor.[46] White workers would not easily submit to that regimentation, but black slaves could be forced to do so, and the American law of slavery backed up the use of force. In an infamous decision in 1830 overturning the conviction of a slaveholder for an assault on a female slave, the North Carolina Supreme Court de-clared, "The slave, to remain a slave, must be made sensible that there is no appeal from his master."[47]

Like land and labor, capital in the slave economy ultimately de-pended on political power, partly because so much of a slavehold-er's capital was invested in slaves, whose entire economic value depended on their being legally recognized as property. Since cotton was produced for distant markets, it also required comple-mentary investment in infrastructure. Public investment in canals and railroads as well as the federal post office and post roads pro-vided transportation and communications systems unmatched in the world's other cotton-growing regions. Cotton farming itself was capital-intensive, and cotton plantations were some of the largest and least flexible enterprises of their time. With much of their capital invested in the people they owned, planters could not just lay off workers when demand was slack. They also had no equivalent alternative crop if demand for cotton fell. When de-mand was strong, the slave system was exceptionally profitable; hence a refrain from 1854 that planters "care for nothing but to buy Negroes to plant cotton & raise cotton to buy Negroes." But declines in the demand for cotton could be ruinous. So could a loss of confidence in slave property. If slavery itself came into question, the market price of slaves might fall precipitously. Who would in-vest in purchasing slaves if they might be emancipated, possibly without compensation? The value of all capital depends on beliefs about the future. To the usual economic anxieties, slavery added another: fear that the capital itself might rise in revolt and seek vengeance on its owners.[48]

Just as insecurity about terrorism today is not proportional to the actual risk people face, so insecurity in a slave society was not

proportional to the occurrence of slave rebellions. White panics followed distant uprisings and rumored slave conspiracies as well as the rare insurrections that slaves in the South were able to carry out. The revolution that began in the French colony of Saint-Domingue in 1791 and resulted thirteen years later in the establishment of the Republic of Haiti, the first black government in the New World, terrified slaveholders in the United States. In 1800, Virginians uncovered a plot by a slave blacksmith named Gabriel to take over Richmond; in 1811, Louisiana authorities defeated a large slave insurrection on plantations north of New Orleans; in 1822, South Carolinians prevented a group led by a free black man, Denmark Vesey, from carrying out a rebellion in Charleston; in 1831, Nat Turner's Rebellion swept through Southampton County, Virginia, killing more than fifty whites. These and other plots, real and imagined, led to the torture and mass executions of blacks and to the tightening of restrictions on manumission, heightened policing of free blacks, and hardening of southern opposition to emancipation.

In most slave societies, the possibility of manumission encouraged slaves to cooperate and thus reinforced their masters' control. Individually freed slaves were also often allies of their former masters in fighting slave rebellions and catching runaways. But in the American South, except in the quarter century beginning around 1780, lawmakers were generally too fearful of an enlarged population of free blacks to allow masters discretion in freeing their slaves. Restricting manumission kept down the size of the free black population, whose mere presence violated the binary caste system in which race corresponded to slave status. Panicked about slave conspiracies and revolts, southern lawmakers in the early 1800s increasingly treated free as well as enslaved blacks as security risks. After the Denmark Vesey plot, for example, South Carolina passed the Negro Seamen's Act, requiring all free black sailors on visiting ships to be locked up while they were in port. Nat Turner's Rebellion led to a wave of restrictions on the rights of free blacks across the South.[49]

Southern anxieties about unrest were also reflected in general restrictions of freedom of speech and hostility to an open public sphere. Southerners blamed slave resistance on the ideas in

northern antislavery publications that reached Vesey and other literate blacks and then diffused by word of mouth. In the eyes of the South's leaders, any public support for emancipation was an incitement of slave unrest, and abolitionist literature was by definition "incendiary" and therefore properly banned. Alarmed by the rise and eventual triumph of Britain's antislavery movement, southern politicians were determined to stop abolitionists from taking the United States down the same road. No longer ambivalently defending slavery as a "necessary evil," from the 1830s on they increasingly defended it as a "positive good," the very basis of an orderly civilization, and attacked northern capitalism as slavery in a disguised but more brutal form.

The South was unquestionably an economic success from the slaveowners' standpoint. Counting slaves as wealth, the South had as much wealth per capita as the North. The richest counties in the country and the largest agricultural establishments were to be found in the South. As Fogel and his colleagues have argued, the slave plantations may have been more efficient than small family farms with free labor in the production of cotton and certain other crops that lent themselves to the gang system.[50] Compared with most of the rest of the world, the South was also relatively advanced technologically and economically.

But compared to the North, the South was a laggard. The southern states, unlike those in the North, generally made no provision for public education even for whites. As a closed society concerned to keep out dangerous ideas, the South was inhospitable to diversity and innovation. Technological innovation, as measured by data on patents, was far lower in the South. The North had a booming internal market for new consumer goods that absorbed much of its growing industrial production, whereas the South had neither the internal market nor the new industry. While the South solved its labor problems through slavery, the North addressed its perennial shortage of labor through immigration, new technology, and education—all of which positioned it for stronger economic growth in the coming transition to an industrial society.[51] But although the entire social and economic regime that came with slavery would likely have limited the South's development in the long run—and in that sense was an institutional trap—the slave

economy in the antebellum era was an engine of wealth creation and an oligarchical powerhouse.

In the previous chapter, I suggested that wealth may be translated into power in four ways: through the control of a particular domain (in the case of slavery, the plantation), the concentration of ownership, privileged political representation, and the structural indispensability of specific assets. I also observed that in a preindustrial society, the power of landed wealth depends primarily on the first three of these. The antebellum South conforms to this view, though it proved to be of great consequence that on the eve of the Civil War, the South's planters suffered from an illusion of structural indispensability, the belief that the North's economy, and indeed the entire world's, would come crashing down without the South's cotton.

The domain control exercised by owners depends on the rights and powers held by other parties, and plantation slavery gave singularly few rights or powers to labor. In the antebellum South, masters not only could regulate their slaves' lives, they also had quasi-judicial powers that only the government itself could exercise over free persons. "We try, decide, and execute the sentences, in thousands of cases, which in other countries would go into the courts," wrote the planter-politician James Henry Hammond, a South Carolina governor and senator who owned twenty-two square miles and more than three hundred slaves and famously justified slavery on the grounds that every society requires a "mud-sill" class to do the menial work. Sexual prerogatives were part of the package that Hammond enjoyed: he took one of his slaves as a mistress, and when that woman's daughter turned twelve, he took the daughter as a concubine too.[52]

Although slaveholding had a broad base of support in the white population, planters like Hammond held a singular position at the top of the social hierarchy. During the first half of the nineteenth century, about a third of white families in the South owned slaves, a proportion that declined before the Civil War, though never below one-fourth. Yet slave ownership was always highly concentrated, as was overall wealth. In 1860, the richest 10 percent of free males in the South owned 86 percent of the slaves.[53] With their wealth and

high social standing, the planters dominated southern politics, even after most states in the South, like those in the North, expanded white male voting rights in the early nineteenth century. Southern elections were often hotly contested by candidates who differed sharply over economic policy—but not over slavery. Whether because they hoped to own slaves, feared an emancipated black population, or accepted the leadership of the slaveholding elite out of traditional habits of deference, non-slaveholding whites did not oppose slavery as an institution or slave-owning planters as their political leaders. Two-thirds of all southern state legislators in 1860 were slave-owners. The proportion of slaveholders among southern representatives in Congress may have been even higher, although data are limited. At least forty-eight of the fifty-two members of Mississippi's congressional delegations before 1861 owned slaves.[54]

Planter domination was closely related to the kind of government states had. The planters had no interest in paying taxes for public schools when they could educate their children with private tutors. From the colonial era, governments tended to be "more aristocratic, weaker, and less competent" where slavery was dominant.[55] Among the southern states, South Carolina stands out for its resistance to the trend toward popular government in the early nineteenth century and for its political leaders' singular role in the defense of slavery and periodic threats of secession. Although it had a near-universal white male franchise for legislative elections, the state maintained steep property qualifications for holding office, and many legislative seats went uncontested. The South Carolina legislature in turn appointed the governor, senators, and local officials. While wealthy planters generally controlled southern politics, South Carolina was the extreme case of an exclusive slaveholding oligarchy.[56]

Maintaining slavery required federal as well as state power. Of the first eleven presidents, seven were slaveholders, as were nineteen of the thirty-four men appointed to the Supreme Court from Washington to Lincoln. Until 1860, the three-fifths rule and the equal representation of states in the Senate made it impossible for any political party to win power nationally while bypassing the South. The major parties had southern wings that were controlled by slaveholders, and in deference to those wings, the parties followed a general

rule of non-interference with southern slavery. The three-fifths rule was especially important in the nation's early decades. In 1800, the extra votes it gave Jefferson in the Electoral College enabled him to defeat John Adams; in 1808, the additional votes it gave Madison in the Republican caucus made him the party's presidential nominee. Even though the South never had a majority in the House, it often had a majority in the majority party. Moreover, while southern representatives were united in defending slavery, northern representatives were typically divided. Northern commercial interests had ties to southern planters, and northern politicians often had ties to the southern-dominated administrations and an interest in the patronage they dispensed. The North also had plenty of race-baiting politicians who sided with the South and who tended by the 1820s to gravitate to the Jacksonian Democratic Party.[57]

As the North's population grew faster, the South's share of House seats fell, but the Senate still gave the South a veto on crucial questions. After the War of 1812, Congress admitted a slave state whenever it admitted a free state to preserve the sectional balance. The prospect of Missouri's admission as a slave state in 1819 (when there were eleven free and eleven slave states) precipitated a crisis because no other part of the Louisiana Territory had enough white settlers to be admitted as a free state. In the compromise reached the following year, Congress paired the admission of Missouri with that of Maine (previously a district of Massachusetts) and prohibited slavery in all the rest of the Louisiana Territory north of 36°30´ latitude (Missouri's southern border).[58]

But while the Missouri Compromise resolved the immediate conflict in 1820, it threatened in the long run to deprive the South of its power in the Senate. The territory north of 36°30´ from which Congress had agreed to ban slavery could accommodate many additional states (eleven, as it later turned out). From the 1820s on, not only would the North grow more rapidly in population than the South; northerners would also dominate settlement in the West. The South's slaveholders found themselves "fighting the census returns," as the saying went at the time. If the South were to retain the national political power essential to slavery and the plantation economy, it would need ways of offsetting the edge that the North was gaining.

OVERCOMING SLAVERY'S ENTRENCHMENT

Throughout the first half of the nineteenth century, the entrench-
ment of a slave society in the South, together with the South's
political power in the federal government, effectively made slavery
impossible to dislodge. Nonetheless, after the adoption of emanci-
pation measures in the North, efforts to end slavery throughout
the country continued.

The most prominent, respectable line of thought called for
gradual, compensated emancipation and the removal of black
Americans to colonies in Africa. The American Colonization
Society, established in 1817, counted Jefferson, Madison, Henry
Clay, and Daniel Webster among its leaders and supporters. The
colonization movement was divided between those who wanted to
expatriate only free blacks and those who saw colonization as a
necessary complement to emancipation. Since slave-owners sus-
pected that starting with free blacks would lead to the release of
their slaves, they generally opposed the entire movement. Coloni-
zation long had its distinguished advocates (including Abraham
Lincoln), but it never made any headway in the face of the opposi-
tion of free blacks and slaveholders alike and the staggering costs
that compensation to slaveholders and a black exodus would have
imposed.

Rejecting the premises of the colonizationists, the more radi-
cal, religiously inspired abolitionists who formed the American
Anti-Slavery Society in 1833 insisted that blacks and whites could
live together in America on terms of equality and that slavery had
to be ended immediately without any compensation. But while
abolitionism profoundly affected northern religion and public
opinion, it also elicited intense racist opposition and mob violence
in the North as well as outright suppression in the South and re-
mained marginal to electoral politics for the next two decades.

Only in the wake of the Mexican War and the ensuing strug-
gles over slavery's western expansion did antislavery finally become
the basis of an electoral politics with the potential to win control
of the federal government. After several abortive efforts, political
antislavery coalesced around the new Republican Party in the mid-
1850s. While including a range of views from conservative to

radical, the Republicans were united on one central tenet: opposition to the extension of slavery. Instead of directly attacking it where it was entrenched in the South, Republican leaders attacked slavery where it was not entrenched—in the West—thereby achieving two results that had eluded the colonizationists and abolitionists. First, they won fervent support from northern white farmers and workers, who feared the competition from slavery's expansion as a direct threat to their own interests in pursuing land and economic opportunity in the West. The Republicans, for example, supported homestead legislation that provided land for family farms at no cost to white settlers, while the South saw free homesteads as inimical to its interests in expanding slavery in the territories. Second, by opposing the addition of any further slave states, political antislavery threatened to alter forever the sectional balance, enabling the North to control the nation's destiny.[59]

For the South, the westward expansion of slavery was both a critical vulnerability and a political imperative. With the area north of 36°30′ forbidden to slavery under the Missouri Compromise, the South needed the federal government to swing development in its favor, which it could do in three ways—by acquiring new territory for new slave states, repealing the Missouri Compromise, and creating a constitutional guarantee for the property rights of slaveholders wherever they took their slaves. For more than a decade—from the annexation of Texas in 1845 through the Kansas-Nebraska Act in 1854 and the Supreme Court's *Dred Scott* decision in 1857—the South seemed to get its way on all three fronts. On each one, southern interests called for nationalizing slavery in the sense of making the federal government the instrument of slavery's preservation and extension. All three raised the specter of what Republicans called the "Slave Power," the South's undue sway over the federal government. Conversely, southerners saw Republican opposition to slavery's extension as a plot to gain national power and impose steep protective tariffs and other policies favored by northern manufacturing and finance.

The Texas annexation and Mexican War brought the nation new territory that could potentially be turned into several more slave states. With the help of northern allies in the Senate, southerners defeated a proviso sponsored by a congressman from Pennsylvania,

David Wilmot, that would have banned slavery from the territory acquired from Mexico. But the legislative package settling the territorial issues created by the war (the Compromise of 1850) did not deliver the South the gain in slave states it needed. California was admitted as a single free state, instead of being divided in two, with a separate state in southern California open to slavery. Although slavery was left up to voters in the Utah and New Mexico territories, neither was likely to adopt it (Mexico having previously prohibited slavery in those areas). Four years later, the South scored a major victory with the Kansas-Nebraska Act, which repealed the Missouri Compromise and opened Kansas to slavery, depending on a territorial election. But the effort to impose the proslavery Lecompton Constitution on Kansas through a fraudulent vote ended in failure in 1858.

Southerners also sought new territory beyond the continental bounds of the United States, envisioning a slave empire extending into the Caribbean, Mexico, and Central and South America. Expeditions of freelance invaders ("filibusters") went to Cuba, Honduras, and Ecuador; in 1855, one of those filibusters, William Walker, seized Nicaragua and briefly legalized slavery. In 1858, Mississippi Senator Albert Gallatin Brown declared: "I want a foothold in Central America . . . because I want to plant slavery there. . . . I want Cuba, . . . Tamaulipas, Potosi, and one or two other Mexican States; and I want them all for the same reason—for the planting and spreading of slavery."[60] But the acquisition of territory for slavery depended on holding national power and being able to use it aggressively for that purpose, and by the late 1850s the odds the South would have that power were receding. The North was growing more rapidly in population and electoral votes and becoming more united in its opposition to slavery's expansion.

The South's view of federal powers varied according to their implications for slavery. As representatives of the minority section, John C. Calhoun and other antebellum southern leaders generally insisted on states' rights and a narrow construction of federal powers, for fear those powers might someday be used to limit or abolish slavery. But they also favored the strongest possible use of federal power on behalf of slavery, in catching fugitive slaves, defending slave-owner interests on the high seas, and most of all,

expanding slavery through the seizure of territory. It was a slave-holder president, Andrew Jackson, who pushed for Indian removal, and another slaveholder president, James Polk, who led America into the war with Mexico. "Whenever a question arose of extending or protecting slavery," the historian Henry Adams later wrote, "the slave-holders became friends of centralized power, and used that dangerous weapon with a kind of frenzy."[61]

The South sought not only to nationalize slavery but also to constitutionalize it—to entrench slavery by giving it the full protection of the Constitution. The old federal consensus, which treated slavery as a state matter except in those respects expressly addressed in the Constitution, was insufficient to advance slavery in the territories or in foreign relations. Southerners now insisted that the Constitution required the federal government to protect slave-owners' property rights not just in the states where slavery existed but in areas where the federal government enjoyed full jurisdiction, including the territories and the District of Columbia. Indeed, slaveowners charged, under the Constitution the federal government had no power over slavery except the power to protect it. In contrast, according to the constitutional interpretation that came to dominate in the new Republican Party, slavery was a wholly local institution that the framers of the Constitution had refused to admit into national law. In the concise formulation of Salmon P. Chase, "Freedom is national; slavery is only local and sectional." Chase argued that because the Fifth Amendment barred Congress from depriving any "person" of "life, liberty, or property" without due process of law, Congress had no authority to enforce enslavement in any area where the federal government exercised exclusive jurisdiction.[62]

The constitutional issue came to a head in the 1857 *Dred Scott* case, which concerned a slave in Missouri who sought freedom for himself and his family on the grounds that their owner had taken them to live for years on free soil. In a decision supported by seven justices (six from slaveholding states), Chief Justice Roger Taney ruled that the Scotts remained slaves, and furthermore that black people were not citizens of the United States regardless of whether they were enslaved or free. The nation's founders, Taney wrote, regarded blacks as "beings of an inferior order, and altogether unfit

to associate with the white race ... and so far inferior, that they had no rights which the white man was bound to respect." The Constitution, in Taney's reading, "distinctly and expressly affirmed" the right to property in slaves. Consequently, Congress had no authority to bar slavery from the territories and the Missouri Compromise had been unconstitutional. Since barring slavery from the territories was the Republican Party's central tenet, the Court effectively declared the party's cause to be futile.[63]

With *Dred Scott*, the Supreme Court entrenched both slavery and racism more profoundly in American law than ever before. The logic of the decision, according to Lincoln and other Republicans, threatened to introduce slavery not just into the territories but into the North as well. If the federal Constitution guaranteed the rights of slaveholders outside the states that permitted slavery, what was to prevent them from bringing slaves into the free states? In October 1857, an appellate court ruled that eight slaves brought to New York for shipment to Texas were free as soon as they stepped on free soil. But the Supreme Court might now overturn the New York decision, in which case there would be nothing to stop slave traders from setting up slave markets in the North. This was the context for Lincoln's declaration in June 1858 that "a house divided against itself" could not stand and that either the opponents of slavery would arrest its spread and set it on a "course of ultimate extinction," or its advocates would "push it forward, till it shall become alike lawful in all the States, old as well as new—North as well as South."[64]

The political strategies and ideas of southern slaveholders, as they confronted the threats to their national power from the growth of the free states, fit into a general pattern. Whenever a dominant, propertied class faces the prospect of political decline in a representative system, it has an incentive to use its power over the system's rules to entrench itself in two ways: first, by engineering electoral advantage and, second, by creating constitutional barriers against hostile electoral majorities. The South's efforts to increase the number of slave states fall into the first type of entrenchment strategy. The constitutional theories favored by the South, from states' rights to the federal protection of slaveholder property rights in *Dred Scott*, correspond to the second type.

But instead of working as the South and its northern support-
ers hoped, these efforts to entrench slavery backfired, stirring up
northern opposition to the Slave Power and contributing to a his-
toric political realignment that crystallized in 1858. Not only did
the Whigs collapse; the Democrats suffered huge losses in the
North and then split into separate northern and southern parties
for the 1860 presidential election. As the Republican nominee that
year, Lincoln received only 40 percent of the national vote, but he
won the presidency by triumphing in the most populous region
with a majority of votes in the Electoral College. For the first time,
the United States had a president who owed nothing to the South.

From the founding to the 1850s, the South had always had a
final card to play in blocking antislavery measures: it could
threaten to secede if the North did not make a credible commit-
ment to respect southern interests in slavery. The calculation that
lay behind this threat was that northern political leaders (and the
voters who chose them) cared more about other goals, including
the survival of the Union itself, than about ending or limiting slav-
ery. At the Constitutional Convention, Charles Pinckney threat-
ened to walk out if slavery came up for discussion. Beginning
in the late 1820s, South Carolinians, led by Calhoun, repeatedly
made strategic use of the disunion threat in conflicts over the tariff
and slavery. Southern fire-eaters threatened secession all through
the controversies over the territories in the 1850s. The demand for
credible commitments had always worked. But with the Republi-
can victory, southern leaders concluded that their only option for
dominating a nation-state was to create their own. Seven states
across the Lower South, from South Carolina to Texas, had already
seceded and formed a Confederate government by the time
Lincoln was sworn in on March 4, 1861. Supremely confident of
their position, Confederate leaders expected to have support in
the North and abroad because of the indispensability of cotton. In
1858, when he proclaimed "Cotton is king," Senator Hammond
gave perfect expression to that illusion of structural indispensabil-
ity. "I firmly believe," he declared, "that the slave-holding South is
now the controlling power in the world."[65]

The southern states did not secede because of any specific
action Lincoln was poised to take but because of the signal his

victory sent. He was not calling for slavery's abolition in the South and could not have carried out such a policy; the Republicans had only pluralities in both houses of Congress (though those pluralities became majorities when southerners left). But his victory signaled that the long-term erosion of southern power had reached a tipping point and that slavery's federal protection had ended. Ultimately, secession was a response to a cause that the South saw it was already losing—national power.

Lincoln was willing to conciliate the South on some issues, but as he wrote after the election, he was "inflexible" on the question of slavery's expansion. That alone was decisive for the South, because slaveholder wealth depended on controlling enough states to control national policy. A month after Lincoln's inauguration, the new president of the Confederacy, Jefferson Davis, said that Republican measures excluding slavery from the territories would have the effect of "rendering the property in slaves so insecure as to be comparatively worthless, and thereby annihilating in effect property worth thousands of millions of dollars." Southern leaders believed, furthermore, that just as antislavery forces in France and Britain had incited slave uprisings in Haiti and elsewhere in the Caribbean, so the Republicans, once in power in Washington, would incite slave uprisings in the South.[66]

The irony is that Lincoln and other Republicans had never figured out a way to end slavery. Although they had talked vaguely about putting it on a path toward "ultimate extinction," they had not arrived at a policy or strategy for bringing about that distant goal. But it turned out not to matter. By withdrawing from the Union and going to war, the South supplied the answer to a puzzle none of slavery's opponents had been able to solve. War would break down the barriers to abolition posed by the constitutional entrenchment of slavery and the costs of emancipation.

ENTRENCHING ABOLITION—BUT NOT EQUALITY

By the late 1850s, leaders in both the free states and the South were saying that the differences between them could no longer be papered over. Just as a logical contradiction exists when two statements cannot both be true, so a contradictory social condition

exists when two forms of organization cannot continue operating in the same system without at least one of them, and therefore the system itself, undergoing fundamental change. That was, in essence, the claim about the United States that Lincoln made in his 1858 "house divided" speech, when he said the country could not continue half slave, half free but would become all one or all the other. Later the same year, William H. Seward—senator from New York and Lincoln's chief rival for the 1860 Republican presidential nomination—also declared that the United States would "sooner or later" necessarily become either "entirely a slaveholding nation, or entirely a free-labor nation."[67]

But what was making the contradictory forces of the slave and free-labor systems impossible to contain? Seward suggested that the underlying cause was the economic integration of the country due to improved transportation and the market revolution. An increasing population, "a new and extended network of railroads and other avenues, and an internal commerce which daily becomes more intimate" were bringing the two systems into "closer contact," producing a "collision" and "an irrepressible conflict between opposing and enduring forces." That collision, however, was not only the result of the knitting together of the national economy, which aroused the fear among northern workers and farmers that slave labor would undercut their earnings and block their opportunities. The collision also stemmed from the expansionary tendencies of both the southern and northern varieties of capitalism. Cotton planters were continually on the hunt for new land, while northern industry and finance sought to expand their markets through policies such as high tariffs and free homesteads that the South opposed. As the nation expanded territorially, neither the South nor the North was content to see its system confined within its old geographic limits. Both slavery and free-labor capitalism required the backing of federal law and federal power, and whichever system dominated the West would control the national government.

The contradiction between the slave and free-labor systems could have had other means of resolution besides war. Social contradictions, even entrenched ones, need to be resolved through change, but not necessarily through violence. The contradiction between slave and free labor might have been resolved by secession

if the Union had simply let the South go. The Confederacy, unlike the Union, was not born in ambivalence or division about slavery. Its constitution guaranteed "the institution of negro slavery" in all of its states and territories, thereby barring any individual state from abolishing slavery and creating internal conflict of the kind that divided the United States. Nor was there any conflict between the Confederacy's general principles and specific constitutional provisions. Referring to Jefferson's Declaration of Independence, the Confederacy's vice president, Alexander Stephens, declared, "Our new government is founded upon exactly the opposite idea: its foundations are laid, its corner-stone rests upon the great truth, that the negro is not equal to the white man; that slavery—subordination to the superior race—is his natural and normal condition."[68]

As I suggested earlier, slavery might eventually have become an institutional trap for the South, limiting its economic growth. But this was not apparent in 1860, when demand for cotton was strong and prices were high. Even if demand weakened, an independent Confederacy might have fulfilled the designs that slaveholders had on Mexico, the Caribbean, and Central America and created a slave empire that would have been equal in wealth and power to the United States and a continuing source of support for slavery elsewhere in the world—perhaps well into the twentieth century, when the Confederacy might have become an ally of Germany and the world wars might have been fought on American soil.

The abolition of slavery in the United States now seems like a logical result of Lincoln's election and the Civil War, but even leaving aside the possibility of the Confederacy's survival, abolition was far from inevitable. Republicans had united around the goal of stopping the expansion of slavery, not abolishing it; they generally acknowledged that the Constitution afforded the southern states the legal right to maintain slavery. After the war began, in April 1861, the steps toward emancipation were not immediate, and the wartime measures Lincoln and Congress adopted could have been reversed afterward. Abolishing slavery permanently through a constitutional amendment was not a self-evident idea; Americans had never before used amendments to the Constitution to bring about large-scale social change.[69]

In fact, the idea of amending the Constitution in regard to slavery first came up after Lincoln's election for the opposite purpose. Hoping to dissuade the southern states from seceding, advocates of compromise suggested dozens of amendments to protect slavery. A package of six amendments offered by Kentucky Senator John Crittenden followed the classic pattern of attempting to placate the South with credible commitments to respect slavery. The Crittenden amendments, which would themselves have been unamendable, included not only protection for slavery within the existing slave states but also the extension of the Missouri Compromise line to the Pacific—a step Republicans would not accept. As Lincoln put it in December, if slavery were guaranteed in all territory acquired to the south, "immediately filibustering and extending slavery recommences."[70]

Led by Seward, however, Republicans did rally behind an alternative that became known as the Corwin amendment (after Thomas Corwin, who headed the committee that sent the amendment to the floor of the House). Passed by both houses of Congress by the necessary two-thirds vote just before Lincoln took office in March, the Corwin amendment prohibited any future amendment that would authorize Congress to "abolish or interfere" with any state's "domestic institutions," including "that of persons held to labor or service by the laws of said State." In his inaugural address, Lincoln said that he regarded this provision protecting slavery within the slave states to be "implied constitutional law" and therefore had "no objection to its being made express, and irrevocable." Making it express and irrevocable, however, was hardly insignificant, as it would have given state-sanctioned slavery the unamendable status that the Constitution extends to only one other provision, the equal representation of states in the Senate. If the South had been thereby dissuaded from secession, or if the war had been quickly settled on the basis of the ratification of what would have been the Thirteenth Amendment, slavery would have become expressly entrenched in the Constitution and more difficult to overturn later. But in the month after the Corwin amendment passed Congress, only two states ratified it, and the outbreak of war then deprived the amendment of its rationale.[71]

The war itself did what antislavery agitation had long been unable to do. The longer it went on, the more it broke down the reluctance of Lincoln and the Republicans to attack slavery. Step by step, Congress and the president adopted a strategy of military emancipation, offering freedom to slaves as a way of both weakening the South economically and strengthening the Union militarily. The direct effect of the war was to encourage slaves—by 1864, more than 400,000 of them—to flee to Union lines. Although some Union generals at first returned runaways, Congress in March 1862 approved an article of war forbidding officers under penalty of court-martial from returning escaped slaves to their former masters. Two Confiscation Acts also moved in the direction of military emancipation—the first, in August 1861, authorizing the confiscation of slaves used by the Confederacy for military purposes; the second, in July 1862, emancipating all rebel-owned slaves who escaped to areas held by Union troops. Perhaps most important, the Second Confiscation Act gave Lincoln the authority to employ blacks in whatever way he saw as "necessary and proper for the suppression of the rebellion," which opened the way to enrolling blacks into the military effort not just as laborers but as soldiers.[72]

Still, through the first sixteen months of the war, Lincoln refrained from endorsing stronger measures against slavery, much less adopting emancipation as a war aim, for fear of getting too far ahead of public opinion, violating constitutional limitations, and driving the non-seceding slave states (Kentucky, Maryland, Delaware, and Missouri) into the arms of the Confederacy. Only in mid-1862, when a quick Union victory was no longer likely, did Lincoln begin considering the Emancipation Proclamation that he would issue in final form on January 1, 1863. Grounded on "military necessity" and therefore on the president's powers as commander-in-chief, Lincoln declared "all persons held as slaves" in the Confederacy to be free and authorized the active recruitment of blacks into the "armed service" of the Union. By this point, Congress had abolished slavery in the District of Columbia and the federal territories, important symbolic steps even though they affected only a few thousand enslaved people. The presidential Emancipation Proclamation applied to about three million slaves, omitting

roughly 800,000 in the border states, the soon-to-be-admitted state of West Virginia, and certain exempt areas of the Confederacy under Union control. The proclamation could be carried out only with a Union victory, but it turned the Civil War into a war of liberation.[73]

Military emancipation proved as crucial to the black struggle for freedom as it did to the Union's triumph. By the end of the war, more than 180,000 blacks served in the Union army, about one of every five adult black males under age forty-five. If it were not for the black soldiers, Lincoln told two Wisconsin Republicans in August 1864, "we would be compelled to abandon the war in 3 weeks." The recruitment of blacks signaled a shift in public attitudes; an Ohio congressman called it "a recognition of the Negro's manhood such as has never before been made by this nation." The heroic sacrifices of those soldiers then contributed to a new respect for the dignity and courage of black Americans among many whites who, for the first time, recognized them as their fellow countrymen.[74]

The role that slaves in the Americas played in bringing about their own emancipation has long been a subject of international scholarly contention.[75] The Haitian Revolution is the one unambiguous case of a violent uprising by slaves directly bringing about abolition. In the United States, slave revolts did not weaken the southern resolve to maintain slavery, though they affected white opinion in the North by undermining the claim that slaves were contented. Frederick Douglass and others who escaped from slavery played a role in informing and arousing the religious and moral movements against slavery. It was the war, however, that finally enabled slaves en masse to make the most direct contribution to their own freedom, both by fleeing the South (a movement that the sociologist W. E. B. Du Bois later likened to a "general strike") and by fighting on the side of the North. Black soldiers carrying guns symbolized a transformation of their status in a society that had long denied blacks the right to bear arms. The soldiers' experience in the Union army, where many of them learned to read and write and gained leadership experience, also had effects after the war when, as veterans, they played notable roles in the organization and politics of black communities.[76]

Once the war was over, however, there was no guarantee slavery would be permanently abolished. After the French Republic abolished slavery in its Caribbean colonies in 1794, Napoleon reestablished it eight years later, and colonial slavery then survived until France had another revolution in 1848. Lincoln and the Republicans had good reason to think that wartime emancipation might later be reversed. After long granting that slavery was within the power of the states, they could not be certain that the Supreme Court would uphold either the Emancipation Proclamation or any federal abolitionist legislation. As part of his Reconstruction policy, therefore, Lincoln sought to have the slave states themselves adopt new constitutions abolishing slavery. Since those constitutions might be changed, however, the more secure strategy for entrenching abolition was an amendment to the U.S. Constitution.

Parties and other groups typically favor the constitutional entrenchment of a rule or policy when they hold power but are uncertain whether they will keep it. Before the Civil War, the South's efforts to constitutionalize slavery and entrench it politically stemmed from growing uncertainty about its own power. As the war ended, the Republican effort to entrench abolition in the Constitution reflected an interest in seizing the historical opportunity presented by the war and the destruction of the Old South. The war had increased both antislavery and anti-southern sentiment. Many in the North saw abolition as both a fitting reward for black service to the Union and a fitting punishment for slaveholders for the destruction and death they had brought upon the nation. After so bloody a war, why leave its original cause in place and perhaps have to fight over it again? As Union armies advanced, moreover, and much of the former Confederacy came under military occupation, voters there and in the border states were subject to loyalty tests. Constitutional emancipation had previously been inconceivable because it would have to be ratified by three-fourths of the states, but in the war's aftermath the governments of the occupied southern states would help reach that threshold.[77]

What became the Thirteenth Amendment was the diametric opposite of the Corwin amendment. Passed first by the Senate in April 1864, the amendment prohibited slavery and involuntary servitude, except as a punishment for crime, and authorized Congress

to enforce that prohibition by appropriate legislation. After its initial defeat in the House, the amendment became part of the Republican Party platform in 1864, and upon their reelection Lincoln and congressional Republicans claimed a mandate to pass it. The president did not hesitate to use all the powers at his disposal to push it through the House in January 1865, and it became part of the Constitution that December, when Georgia became the twenty-seventh state to ratify.[78]

Although later overshadowed by the Fourteenth Amendment, the Thirteenth was striking for its radicalism. Before the war, most Republican leaders saw immediate abolition as an unreasonable goal, and well into the war, Lincoln had remained committed to the ideas of gradualism, compensation, and colonization. Even after the Emancipation Proclamation, he was still trying to persuade representatives of the border states to accept gradual emancipation, with compensation to slaveholders to be financed by the federal government. With the Thirteenth Amendment applying to the entire country, not just the former Confederacy, emancipation was both immediate and complete, slave-owners went uncompensated, and colonization was forgotten.

In its immediacy and lack of compensation, the Thirteenth Amendment was more radical than earlier northern emancipation laws or Britain's emancipation of West Indian slaves in 1833. The £20 million in compensation that Britain paid to colonial slaveholders for half the market value of their slaves was no small commitment by British taxpayers: it equaled 40 percent of Britain's public expenditure that year.[79] Providing southern slaveholders equivalent compensation for the roughly $3 billion in market value of slaves in 1860 would have cost twenty-four times that year's total U.S. federal outlays.[80] To be sure, paying that compensation would have been cheaper in the long run than fighting the Civil War. But no one could have made that calculation beforehand, and slaveholders never showed any interest in compensated emancipation.

Slavery in the early republic had become entrenched through the political power of the South, constitutional law, and the staggering costs of emancipation, as those costs appeared at the time. By 1865, each of these obstacles had been overcome. Lincoln's election demonstrated the South's loss of power over the national

government. The secession and defeat of the Confederacy re-moved the obstacles to changing the Constitution, and blacks' own sacrifices in blood contributed to the support for making abolition an irrevocable constitutional commitment. The immediate costs of emancipation fell once again on a class that, at least for the mo-ment, had no power—the former slaveholders. Together, the Emancipation Proclamation and Thirteenth Amendment repre-sented the greatest liquidation of concentrated wealth in American history—"the most stupendous act of sequestration in the history of Anglo-Saxon jurisprudence," Charles and Mary Beard wrote, referring to the Emancipation Proclamation alone. This is what violent revolutions do, and by any reasonable definition the Civil War and Reconstruction qualify for the designation the Beards gave it, the "Second American Revolution."[81]

The abolition of slavery in the United States may now be remem-bered more for its limitations than for its radicalism. But the subse-quent history of white supremacy and Jim Crow should not obscure the significance of abolition and the early thrust of Recon-struction, or lead us to think that no other outcome was possible.

The Thirteenth Amendment itself was limited or at least ambig-uous in its reach. In the interests of maximizing support, the spon-sors of the amendment were deliberately vague about the rights the amendment conveyed to former slaves. According to the free-labor thought of the time, self-ownership included the right to enter freely into contracts and to receive the "fruits" of one's labor, but not necessarily full civil and political equality. The limitations of that minimal definition of freedom became clear as the war ended, when some of the new southern state governments enacted Black Codes that threatened to reduce the newly freed people to a condition close to slavery. Seizing national leadership from Lincoln's successor, Andrew Johnson, the radical Republicans in Congress responded with a series of measures, including the Civil Rights Act of 1866. Then they took advantage of the singular political opportunity of Reconstruction (including reimposed military rule) to pass the Four-teenth and Fifteenth Amendments, ratified successively in 1868 and 1870. Reversing the *Dred Scott* decision, the Fourteenth established that all those born in the United States are citizens (the principle of

birthright citizenship) and prohibited any state from abridging "the privileges and immunities of citizens" or depriving any person "of life, liberty, or property, without due process of law" or of "the equal protection of the laws." The Fifteenth Amendment extended the suffrage to black men, barring citizens from being denied the right to vote "on account of race, color, or previous condition of servitude."[82]

The passage of the Reconstruction amendments was part of a wide-ranging effort to transform southern society. Among the countries that ended slavery in the nineteenth century, the United States stands out as the only one that, at least briefly, gave former slaves some genuine power as part of an effort to replace the plantation order with a society based on free labor and equal rights.[83] The failure to carry out those changes in full and make them stick—in other words, to entrench them—was due in part to the enormous obstacles Reconstruction faced. As difficult as it was to end slavery as a property-rights regime, it was even more difficult to change the social relations that had developed under it. Abolishing slavery did not abolish the racial caste system. It would have taken a thoroughgoing governmental commitment sustained over decades even to begin mitigating the many deprivations that slavery imposed. According to one line of analysis, the de facto power of whites, stemming from their advantages in education and capacities for collective action, explains the persistence of racial hierarchy and the resilience of old elites after the Civil War.[84] But the advantages whites enjoyed are only part of the explanation. Transforming southern society after the war would have required the active power of the national government, and federal intervention in the South was limited in both depth and duration.

In post-emancipation societies, the position of former slaves depended on their real economic alternatives. In the U.S. South, they might have had two alternatives to a labor regime controlled by their former masters: working in the North's growing industrial economy or obtaining their own land and becoming independent farmers. Racism in the North closed off the first of these possibilities. As long as industrial employers preferred white immigrants and could rely on large numbers of them arriving every year, opportunities for blacks to move north were limited. Freedpeople

were also unable to obtain their own farms, although they were led to believe the government would help them do so. On establishing the Freedmen's Bureau in March 1865 to provide aid to former slaves, Congress authorized the agency to create forty-acre plots out of abandoned and confiscated land and to rent those homesteads and eventually sell them with "such title as the United States can convey." Some federal officials did begin settling freedpeople on farms, and with 850,000 acres under its control, the bureau might have created a substantial class of black freeholders. Later in 1865, however, President Johnson issued pardons to former Confederates and restored their land, unilaterally reversing the bureau's legal mandate and leading the army to evict tens of thousands of blacks from lands they had expected would be theirs. No land reform ever took place. After abrogating property in slaves, Republicans were not willing to take the further step of expropriating land, even when the owners had taken up arms against the government. An attempt to make land available from the public domain, the Southwest Homestead Act, resulted in only four thousand applications; the land being offered was generally of poor quality and often inaccessible, and hence would have taken capital to develop. Sustainable land reform would have required not just land itself but capital, credit, and other forms of assistance. Instead, federal officials forced former slaves to sign annual contracts for plantation labor. While slavery ended, it gave way to a form of economic entrapment. Even so, the share of plantation income going to blacks did increase substantially in the period after the war compared with the in-kind goods they had received as slaves.[85]

Slavery, moreover, had been a system not just of labor relations but of comprehensive power relations—"the permanent, violent domination of natally alienated and generally dishonored persons," in Orlando Patterson's definition.[86] The end of slavery enabled black men and women to enter into legal marriages and form families without the risk of being sold. It enabled them to create churches and mutual aid societies under their own control and to see many of their children educated. (Between 1860 and 1880, the proportion of school-age children attending school increased from 2 percent to 34 percent among blacks, in a period when the percentage among whites rose from 60 percent to 62 percent.) While facing persistent

violence by whites, blacks were also able to organize politically during Reconstruction and assume roles in government. But federal intervention in the South failed to change the "balance of property" or to prevent a wave of terror from snuffing out black political organization. And so when the federal government pulled out its troops and the last of the Republican governments in the South fell in 1877, the planter class reimposed its political domination in what was, in effect, a counterrevolution.[87]

The outcome of Reconstruction highlights again both the importance and limitations of constitutionally entrenched principles. Reconstruction introduced into the Constitution general principles of civil and political equality nowhere to be found in the original text or the Bill of Rights. The constitutional entrenchment of those principles has been undeniably significant. Long afterward, the civil rights movement would successfully invoke them to mobilize both popular support and the weight of federal authority on behalf of equal rights for African Americans and other minorities.

But general principles depend for their efficacy on the machinery of power. After the Civil War, southern planters lost their sway over national politics and the Supreme Court, but they nonetheless became once again locally entrenched as a dominant class and were able to nullify the Fourteenth and Fifteenth Amendments in their home region. At the national level too, the Reconstruction amendments long proved ineffectual in advancing their original intent in assuring equal civil and political rights. The Fourteenth Amendment became the basis for strengthening the rights of property against state intervention. In 1912, a study of the 604 Fourteenth Amendment cases decided by the Supreme Court up to that point showed that only 28 of the cases, or less than 5 percent, had concerned African Americans—who lost nearly every case they brought. But 312 cases had involved corporations, and in those the Court used the amendment to strike down regulation of business, including child labor and minimum wage laws.[88] There is no better example than the Reconstruction amendments of how general principles can be put to different purposes if contrary interests dominate.

But precisely because constitutional rights are at least textually entrenched, they lie ready to be reactivated. The overthrow of

slavery turned upside down the old constitutional understanding of the relationship between the national government and freedom. According to the earlier understanding, restrictions on federal power protected liberty, even though much of the impetus for those restrictions actually came from an interest in protecting slavery. With the abolition of slavery, a more powerful national government became the means of advancing freedom. The New Deal and the civil rights revolution would take up that model in the twentieth century.

Reconstruction failed to bring the South fully into line with northern society, but the war did put to rest the challenge that the South's peculiar institution posed to the North. The United States had contained two expansionary economic systems, each of which demanded the backing of the national government. With the Civil War, the North gained firm control, while the white South surrendered its greater ambitions and was left to rule at home. The Civil War did not end the moral inconsistencies between equality and white supremacy in America, but it subdued, for a time, the contradictory relation between the South and the nation.

The drive of the antebellum southern planter class to dominate national institutions was not a peculiar phenomenon. Concentrated wealth fits uneasily into representative governments. Modern democracies arose amid the propertied classes' fear that if given the vote, popular majorities would use it to redistribute wealth. In some cases, that fear has led the propertied to support military dictatorships and other forms of authoritarian rule. Many on the left have also believed that concentrated wealth cannot coexist with democracy. Nonetheless, capitalism and democracy have proved a surprisingly stable combination, in part due to the uses of entrenched rules in the design of democratic institutions, which we turn to next.

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42. Jens Beckert, *Inherited Wealth* (Princeton, NJ: Princeton University Press, 2008), 119–130.

43. Beckert, *Inherited Wealth*, 23–49.

44. Beckert, *Inherited Wealth*, 131–156 (quotation: 146).

45. David Cannadine, *The Decline and Fall of the British Aristocracy* (New Haven, CT: Yale University Press, 1990), 89.

46. Christopher Dyer and Richard Hoyle, "Britain, 1000–1750," in Bavel and Richard Hoyle, *Rural Economy and Society in North-western Europe*, 51–78.

47. Paul Brassley, Richard Hoyle, and Michael Turner, "Britain, 1750–2000," in Bavel and Hoyle, *Rural Economy and Society in North-western Europe*, 81; Lindert, "Who Owned Victorian England?"

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49. Alexander Gerschenkron, *Bread and Democracy in Germany* (Ithaca, NY: Cornell University Press, 1946); Barrington Moore, *Social Origins of Dictatorship and Democracy* (Boston: Beacon Press, 1966); Daniel Ziblatt, "Does Landholding Inequality Block Democratization? A Test of the 'Bread and Democracy' Thesis and the Case of Prussia," *World Politics* (2008), 60: 610–641.

50. Carles Boix, *Democracy and Redistribution* (New York: Cambridge University Press, 2003), 40, 88–92.

51. Ben Ansell and David Samuels, "Inequality and Democratization: A Contractarian Approach," *Comparative Political Studies* (2010), 43: 1543–1574; Christian Houle, "Inequality and Democracy: Why Inequality Harms Consolidation but Does Not Affect Democratization," *World Politics* (2009), 61: 589–622.

52. Rosanvallon, *Society of Equals*, 31.

Chapter Three. Racial Slavery as an Entrenched Contradiction

1. On the flourishing condition of the South's economy, see Robert William Fogel, *Without Consent or Contract: The Rise and Fall of American Slavery* (New York: W. W. Norton, 1989), and Sven Beckert, *Empire of Cotton: A Global History* (New York: Alfred A. Knopf, 2014). The view I take here is that the southern and northern economies were varieties of capitalism, not that the South was precapitalist, much less anticapitalist.

2. Beckert, *Empire of Cotton*, 243; Lee Soltow, *Men and Wealth in the United States*, *1850–1870* (New Haven: Yale University Press, 1971), 101.

3. David Eltis, "Slavery and Freedom in the Early Modern World," pp. 25–49 in Stanley Engerman, ed., *Terms of Labor: Slavery, Serfdom, and Free Labor* (Stanford, CA: Stanford University Press, 1999); David Eltis, *The Rise of African Slavery in the Americas* (New York: Cambridge University Press, 2000), 1–28; David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (Ithaca, NY: Cornell University Press, 1975); Beckert, *Empire of Cotton*, 38.

4. I am indebted to a memo from Jason Windawi on this point.

5. Winthrop Jordan, *White over Black: American Attitudes Toward the Negro, 1550–1812* (Chapel Hill: University of North Carolina Press, 1968), 48–52; Thomas D. Morris, " 'Villeinage . . . As It Existed in England, Reflects But Little Light on Our Subject': The Problem of the Sources of Southern Slave Law," *American Journal of Legal History* (1988), 32: 95–137.

6. Robin Blackburn, *The Making of New World Slavery: From the Baroque to Modern* (London: Verso, 1997), 97–123; David Brion Davis, *Challenging the Boundaries of Slavery* (Cambridge, MA: Harvard University Press, 2009), 14–27.

7. Jordan, *White over Black*, 61–63; Eltis, "Slavery and Freedom in the Early Modern World"; Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: Norton, 1975), 126.

8. Morgan, *American Slavery, American Freedom*, 154–55; Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Knopf, 1992), 53–54.

9. Evsey D. Domar, "Causes of Slavery or Serfdom," *Journal of Economic History* (1970), 30: 1832; see also Barbara Solow, "Slavery and Colonization," pp. 21–42 in Barbara L. Solow, ed., *Slavery and the Rise of the Atlantic System* (New York: Cambridge University Press, 1991).

10. The following account of slavery in colonial Virginia relies heavily on Morgan, *American Slavery, American Freedom*.

11. Morgan, *American Slavery, American Freedom*, 296–307; David W. Galenson, "Economic Aspects of the Growth of Slavery in the Seventeenth-Century Chesapeake," pp. 265–92 in Solow, *Slavery and the Rise of the Atlantic System*.

12. Jordan, *White over Black*, 78–82; Morgan, *American Slavery, American Freedom*, 306–337; Rosemary Brana-Shute and Randy J. Sparks, eds., *Paths to Freedom: Manumission in the Atlantic World* (Columbia: University of South Carolina Press, 2009).

13. Jordan, *White over Black*, 66–71 (Body of Liberties quoted, 67); Wendy Warren, *New England Bound: Slavery and Colonization in Early America* (New York: Liveright, 2016).

14. Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, MA: Belknap Press of Harvard University

Press, 1998), 8–10, 97–98. For the original distinction, see Moses I. Finley, *Ancient Slavery and Modern Ideology*, ed. Brent D. Shaw (Princeton, NJ: Markus Wiener, 1998 [1980]), 147–150, 274.

15. Morgan, *American Slavery*, *American Freedom*, 296.

16. Berlin, *Many Thousands Gone*, 177–182.

17. Berlin, *Many Thousands Gone*, Table 1, 369–371.

18. Robin L. Einhorn, *American Taxation*, *American Slavery* (Chicago: University of Chicago Press, 2014), 7.

19. Thomas Jefferson to John Holmes, Monticello, April 22, 1820, in Andrew A. Lipscomb and Albert Ellery Bergh, eds., *The Writings of Thomas Jefferson* (Washington, DC, 1903), 15: 248–250.

20. Davis, *The Problem of Slavery in the Age of Revolution*, 470–501; David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification* (New York: Hill and Wang, 2009), 39.

21. Jordan, *White over Black*, 291; Gary B. Nash, *Race and Revolution* (New York: Rowman & Littlefield, 1990), 8–12.

22. Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* (Chicago: University of Chicago Press, 1967); Gary B. Nash and Jean R. Soderlund, *Freedom by Degrees: Emancipation in Pennsylvania and Its Aftermath* (New York: Oxford University Press, 1991); Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and "Race" in New England, 1780–1860* (Ithaca, NY: Cornell University Press, 1998).

23. Eva Sheppard Wolf, "Manumission and the Two-Race System in Early National Virginia," pp. 309–337 in Brana-Shute and Sparks, *Paths to Freedom*; Nash, *Race and Revolution*, 18.

24. Michael D. Chan, "Alexander Hamilton on Slavery," *Review of Politics* (2004), 66: 207–231 (Hamilton quoted, 217).

25. Benjamin Quarles, *The Negro in the American Revolution* (Chapel Hill: University of North Carolina Press, 2012 [1961]); Cassandra Pybus, "Jefferson's Faulty Math: The Question of Slave Defections in the American Revolution," *William and Mary Quarterly*, 3rd ser. (2005), 62: 243–264.

26. Adam Smith, *The Wealth of Nations* (New York: Random House, 1937), 366.

27. Robert Fogel and Stanley Engerman, "Philanthropy at Bargain Prices: Notes on the Economics of Gradual Emancipation," *Journal of Legal Studies* (1974), 3: 377–401.

28. Alejandro de la Fuente and Ariela Gross, "Comparative Studies of Law, Slavery and Race in the Americas," *Annual Review of Law and Social Science* (2010), 6: 475.

29. Fogel, *Without Consent or Contract*, 228–229. Taking into account the additional cost of sugar between 1835 and 1842, Fogel estimates the British outlay for emancipation to be more than £40 million.

30. Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (New York: Oxford University Press, 2001), 27–28, 253–258 (Jefferson quoted, 27).

31. Max M. Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York: Oxford University Press, 2003); Gordon S. Wood, *The Creation of the American Republic* (Chapel Hill: University of North Carolina Press, 1998 [1969]).

32. Fehrenbacher, *The Slaveholding Republic*, 28–35; Waldstreicher, *Slavery's Constitution*, 71–105; Sean Wilentz, *No Property in Man: Slavery and Antislavery at the Nation's Founding* (Cambridge, MA: Harvard University Press, 2018).

33. For the skeptical view that the three-fifths clause was a penalty, see Fehrenbacher, *The Slaveholding Republic*, 29–33, 40–41; for the opposed view, see Akhil Reed Amar, *America's Constitution: A Biography* (New York: Random House, 2005), 88–98, and Leonard L. Richards, *The Slave Power: The Free North and Southern Domination, 1780–1860* (Baton Rouge: Louisiana State Press, 2000), 32–37.

34. Fehrenbacher, *The Slaveholding Republic*, 33–35, 135–137. On the origins of the provision regarding slave imports and the exclusion of any explicit reference therein to slaves as property, see Wilentz, *No Property in Man*, 72–100.

35. Amar, *America's Constitution*, 21–39 (Madison quoted, 38).

36. See Madison's notes for July 12, 1787: http://consource.org/document/james-madisonsnotes-of-the-constitutional-convention-1787–7-12/.

37. Stanley L. Engerman, "Slavery and Emancipation in Comparative Perspective: A Look at Some Recent Debates," *Journal of Economic History* (1986), 46: 320.

38. Garry Wills, *Lincoln at Gettysburg: The Words That Remade America* (New York: Simon & Schuster, 1992).

39. Fehrenbacher, *The Slaveholding Republic*, 37–38 (Madison quoted, 37); Waldstreicher, *Slavery's Constitution*, 114 (Pinckney quoted).

40. Fehrenbacher, *The Slaveholding Republic*, 47.

41. James L. Huston, *Calculating the Value of the Union: Slavery, Property Rights, and the Economic Origins of the Civil War* (Chapel Hill: University of North Carolina Press, 2003), 16, 27–28.

42. Fehrenbacher, *The Slaveholding Republic*, 10–11.

43. Beckert, *Empire of Cotton*, 105.

44. Paul Frymer, *Building an American Empire: The Era of Territorial and Political Expansion* (Princeton, NJ: Princeton University Press, 2017), 21 (quoting Tocqueville).

45. Adam Rothman, *Slave Country: American Expansion and the Origins of the Deep South* (Cambridge, MA: Harvard University Press, 2005); Beckert, *Empire of Cotton*, 105.

46. Fogel, *Without Consent or Contract*, 34; for a review of contrary or at least complicating evidence, see Gavin Wright, *Slavery and American Economic Development* (Baton Rouge: Louisiana State University Press, 2006).

47. *State v. Mann*, 13 N.C. 263 (N.C. 1830), For background on the case, see Mark V. Tushnet, *Slave Law in the American South: State v. Mann in History and Literature* (Lawrence: University Press of Kansas, 2003).

48. Walter Johnson, *River of Dark Dreams: Slavery and Empire in Cotton Kingdom* (Cambridge, MA: Belknap Press of Harvard University Press, 2013), 12–13.

49. Robin Blackburn, "Introduction," pp. 1–13 in Brana-Shute and Sparks, *Paths to Freedom*; Wolf, "Manumission and the Two-Race System in Early National Virginia"; Manisha Sinha, *The Counterrevolution of Slavery: Politics and Ideology in Antebellum South Carolina* (Chapel Hill: University of North Carolina Press, 2000), 14–15. On the various possible explanations for the restriction of manumission in the American South, see Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, MA: Harvard University Press, 1982), 259–261.

50. Robert William Fogel and Stanley L. Engerman, *Time on the Cross: The Economics of American Negro Slavery* (Boston: Little, Brown, 1974); Fogel, *Without Consent or Contract*.

51. Carl F. Kaestle, *Pillars of the Republic: Common Schools and American Society, 1780–1860* (New York: Hill and Wang, 1983), 206–210; Eugene D. Genovese, *The Political Economy of Slavery* (New York: Pantheon, 1967), 157–179.

52. James Henry Hammond, "Letter to an English Abolitionist" (1845), in Drew Gilpin Faust, ed., *The Ideology of Slavery: Proslavery Thought in the Antebellum South* (Baton Rouge: Louisiana University Press, 1981), 190. On Hammond, see Carol Bleser, ed., *Secret and Sacred: The Diaries of James Henry Hammond, a Southern Slaveholder* (New York: Oxford University Press, 1988).

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54. Henry L. Watson, "Conflict and Collaboration: Yeomen, Slaveholders, and Politics in the Antebellum South," *Journal of Social History* (1985), 10: 273–298; Adam Rothman, "The 'Slave Power' in the United States, 1783–1865," pp. 78–79 in Steve Fraser and Gary Gerstle, eds., *Ruling America: A History of Wealth and Power in a Democracy* (Cambridge, MA: Harvard University Press, 2005).

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56. William Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816–1836* (New York: Harper, 1966), 89–90; Sinha, *The Counterrevolution of Slavery*, 12–14.

57. Richards, *The Slave Power*, 56–62, 69, 94, 112–120.

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60. Larry E. May, *Manifest Destiny's Underworld: Filibustering in Antebellum America* (Chapel Hill: University of North Carolina Press, 2002), 45–52, 52–79; Amar, *America's Constitution*, 266–67 (Brown quoted, 267).

61. Matthew Karp, *This Vast Southern Empire: Slaveholders at the Helm of American Foreign Policy* (Cambridge, MA: Harvard University Press, 2016), 5–7 (Adams quoted, 5).

62. Fehrenbacher, *The Slaveholding Republic*, 11–12; Foner, *Free Soil*, *Free Labor*, *Free Men*, 73–102 (Chase quoted, 76, 83).

63. *Dred Scott v. Sandford*, 60 U.S. 393. On the contradictions and incoherence of Taney's opinion, see Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), esp. 335–364.

64. Foner, *Free Soil*, *Free Labor*, *Free Men*, 97–98; Eric Foner, *The Fiery Trial: Abraham Lincoln and American Slavery* (New York: W. W. Norton, 2010), 99–100.

65. Charles A. Beard and Mary R. Beard, *The Rise of American Civilization* (New York: Macmillan, 1927), 2: 55–56 (Hammond quoted, 55).

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67. William H. Seward, "On the Irrepressible Conflict," Rochester, New York, October 25, 1858, at http://www.nyhistory.com/central/conflict.html.

68. Fehrenbacher, *The Slaveholding Republic*, 307.

69. Michael Vorenberg, *Final Freedom: The Civil War*, *the Abolition of Slavery*, *and the Thirteenth Amendment* (New York: Cambridge University Press, 2001), 1–7.

70. May, *Manifest Destiny's Underworld*, 278–279 (Lincoln quoted, 279).

71. Vorenberg, *Final Freedom*, 18–22. The two ratifying states were Maryland and Ohio. Although Illinois also ratified the Corwin amendment, its ratification was invalid because it did so by a state convention instead of by the state legislature, as Congress had specified.

72. Foner, *The Fiery Trial*, 167–216.

73. Foner, *The Fiery Trial*, 240–247.

74. Gary W. Gallegher, *The Union War* (Cambridge, MA: Harvard University Press, 2011), 75–82 (Lincoln to Wisconsin representatives, 75); Foner, *The Fiery Trial*, 249–256.

75. For a superb review of the issues, see Seymour Drescher and Pieter C. Emmer, eds., *Who Abolished Slavery? Slave Revolts and Abolitionism*, *A Debate with João Pedro Marques* (New York: Berghahn Books, 2010).

76. W. E. B. Du Bois, *Black Reconstruction: An Essay toward a History of the Part which Black Folk Played in the Attempt to Reconstruct Democracy in America*, *1860–1880* (New York: Harcourt, Brace, 1935), 63–68.

77. Vorenberg, *Final Freedom*, 36–40, 222–233; Bruce Ackerman, *We the People*, vol. 2: *Transformations* (Cambridge, MA: Harvard University Press, 1998), 136–159.

78. Vorenberg, *Final Freedom*, 176–210.

79. B. R. Mitchell, ed., *Abstract of British Historical Statistics* (Cambridge: Cambridge University Press, 1962), 396.

80. Total outlays in 1860 were $63 million. U.S. Department of Commerce, *Historical Statistics of the United States*, *Colonial Times to 1970* (Washington, DC: Government Printing Office, 1975), 2: 1114.

81. Beard and Beard, *The Rise of American Civilization*, 2: 100, 52–121. They were not the first to characterize the Civil War as revolutionary. For an analysis of the history of that idea, see James M. McPherson, *Abraham Lincoln and the Second American Revolution* (New York: Oxford University Press, 1991), 3–42.

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83. Eric Foner, *Nothing but Freedom: Emancipation and Its Legacy* (Baton Rouge: Louisiana State University Press, 1983), 39–40.

84. Daron Acemoglu and James A. Robinson, "De Facto Political Power and Institutional Persistence," *American Economic Review* 96 (2006), 325–330.

85. Jay R. Mandle, "Black Economic Entrapment After Emancipation in the United States," in Frank McGlynn and Seymour Drescher, eds., *The Meaning of Freedom: Economics*, *Politics*, *and Culture After Slavery* (Pittsburgh: University of Pittsburgh Press, 1992), 69–84; Foner, *Reconstruction: America's Unfinished Revolution*, 69–70, 158–163; Roger L. Ransom and Richard Sutch, *One Kind of Freedom: The Economic Consequences of Emancipation* (Cambridge, MA: Harvard University Press, 1977).

86. Patterson, *Slavery and Social Death*, 13.

87. McPherson, *Abraham Lincoln and the Second American Revolution*, 16–22.

88. For the original study, see Charles Wallace Collins, *The Fourteenth Amendment and the States* (Boston: Little, Brown, 1912), 129–138; for a recent historical account of how the amendment was diverted from its original purpose, see Adam Winkler, *We the Corporations: How American Businesses Won Their Civil Rights* (New York: Liveright, 2018), 113–160.